CRIMINAL LITIGATION

By:

Killi Nancwat

NIGERIAN LAW SCHOOL 2018/2019

(ENUGU CAMPUS)

TABLE OF CONTENTS

(Week 3)

INTRODUCTION TO CRIMINAL LITIGATION AND OVERVIEW OF COURSE

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, trail, defence, judgment, sentence and appeals which are all considered as part of the scope of criminal litigation.

COMPARISON OF CRIMINAL AND CIVIL PROCEEDINGS

I. Similarities

1. **Objective of serving Justice:** The objective of both is to serve justice.
2. **Court Room:** The both trials are herd and determined in the same court room.
3. **Presiding Judges:** the judge who sits to hear criminal matters is the same judge who sits to adjudicate over civil matters brought before the same court.[1]
4. **Double Jeopardy/Res Judicata:** the rule against double jeopardy provided for in ***Section 36(9) CFRN 1999*** in relation to criminal trial has an equivalent in civil proceedings known as ***res judicata***.

II. Differences

1. **Commencement:** criminal proceedings are commenced by the state usually through the Attorney General,[2] police,[3] or any other person authorised person or authority, while civil proceedings is commenced by an individual or a corporation in his/its own name for enforcement of his/its own rights.
2. **Parties:** in criminal proceedings, the state is referred to as the Prosecution and the opposing party as the Accused or Defendant, while in civil proceedings, the person commencing the action is referred to as the Plaintiff/Claimant/Petitioner and the opposing party is the Defendant/Respondent.
3. **Outcome of Proceedings:** at the end of a criminal case, the court will discharge and/or acquit the accused person or convict him/her and punished, while at the end of a civil case, the court will either find for the Plaintiff or dismiss his/her claim.
4. **Burden and Standard of Proof:** in criminal cases, the burden of proof is on the prosecution and the standard of proof is beyond reasonable doubt,[4] while in civil cases, the burden of proof is on he who asserts[5] and the standard of proof is on the balance of probability or on preponderance of evidence.

---

[1] However, in some jurisdictions like Lagos, some Judges are assigned to hear only specific matters.
[2] Section 174 & 211 CFRN 1999
[3] Section 23 Police Act
[4] Section 138 Evidence Act
[5] Section 135 Evidence Act

5. **Constitutional and Statutory Protections:** in criminal trials, the accused person enjoys a variety of legal protections such as mandatory legal representation in capital offences, right to speedy trial, etc. while in civil trials, once the two parties are of age, each fights the case however he/she wants subject to necessary directions from the court.
6. **Giving of Evidence:** in criminal trials, an accused person may choose not to give evidence or say anything at his trial and his silence will not mean he is guilty,[6] while in civil proceedings, where the defendant is in default of appearance or pleadings, judgment (default judgment) may be given against him except where the claim is for declaration.

SOURCES OF THE LAW/RULES GUIDING CRIMINAL PROCEEDINGS

I. Principal Enactments

These are enactments which are so central to criminal proceedings that you can virtually not commence criminal proceedings without reference to them.

1. **Criminal Procedure Laws:** this was initially enacted as the Criminal Procedure Act in 1945 and had general application throughout Nigeria until 1963 when the CPC was enacted to govern criminal proceedings in Northern Region. The application of CPA was then limited to Southern Region[7] and it has been re-designated as the Criminal Procedure Laws of the various states. The CPA was used in criminal proceedings before the FHC and NIC until the coming into force of the ACJA in 2015. The CPA is also not applicable in Lagos because the ACJL of Lagos 2011 is the law now applicable. Other southern states that have equally adopted the ACJA and now using ACJL instead of the CPL are Anambra 2010, Ekiti 2014, Oyo 2015, Ondo 2016, Rivers 2016, Enugu 2017, Akwa Ibom 2017, Cross River 2017, Delta 2017 and Ogun 2018.
2. **Criminal Procedure Code Laws:** this was initially enacted by the Northern Region Government in 1963 as the Criminal Procedure Code to govern criminal proceedings in the Northern Region.[8] It has been re-designated as the Criminal Procedure Code Laws of the various states.
3. **Administration of Criminal Justice Act 2015:** this was enacted in 2015 and currently applies to criminal proceedings in the FHC, NIC and the HC of the FCT. Other states must first adopt it before it will have nation-wide applicability. The ***Criminal Procedure Code Act*** was the law applicable in the HC of the FCT until the enactment of the ACJA in 2015. The ACJA has also repealed the CPA and CPC. By virtue of ***Section 2(1)***, the Act applies to all causes and matters arising from offences created by an Act of the National Assembly.
4. **Administration of Criminal Justice Law:** governs proceedings in High Court and Magistrates' Courts in Lagos State. It was first enacted in 2007 but later repealed and re-enacted in 2011 as the Administration of Criminal Justice (Repeal and Re-enactment) Law 2011. The CPA is no longer applicable to Lagos State.
5. **Harmonised Sharia Criminal Procedure Code:** operative in over 11 Northern states[9] and regulates sharia criminal proceedings in sharia courts[10] within the applicable states.

II. Secondary Enactments

1. **Constitution of the Federal Republic of Nigeria 1999:** ***Chapter IV*** deals with the fundamental rights of an accused person such as right to personal liberty under ***Section 35*** and right to fair hearing under ***Section 36***. ***Chapter VII*** deals with superior courts of record

[6] Section 36 (11) CFRN 1999; Section 180 Evidence Act

[7] The current southern states applying the CPA are Abia, Anambara, Akwa-Ibom, Bayelsa, Cross-River, Delta, Ebonyi, Edo, Enugu, Imo, Ogun, Ondo, Osun, Oyo and Rivers.

[8] The current northern states applying the CPA are Adamawa, Bauchi, Benue, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Nasarawa, Niger, Plateau, Sokoto, Taraba, Yobe and Zamfara.

[9] Zamfara, Sokoto, Jigawa, Gombe, Bauchi, Kaduna, Kebbi, Borno, Kano, Niger, and Zamfara.

[10] Sharia Court, Higher Sharia Court, Upper Sharia Court, and Sharia Court of Appeal.

setting out their constitution, jurisdiction, composition, practice and direction, etc. as well as other lower courts that may be created by the laws of the states. All criminal proceedings must be done in a manner that do not conflict with constitutional provisions. See ***Section 1***.

2. **Statutes Creating Courts:** the ***Federal High Court Act, Court of Appeal Act, Supreme Court Act;*** and the ***High Court Laws*** make provision for the establishment of criminal courts and their powers.
3. **Rules of Courts:** the ***Federal High Court Rules, State High Court Rules, Court of Appeal Rules,*** and the ***Supreme Court Rules*** makes provision for the practice and procedure of the various courts.
4. **Other Secondary Enactments:** Penal Code, Criminal Code, Evidence Act 2011; Police Act; Armed Forces Act; Coroners' Laws of the States; Children and Young Persons Law (has been superseded by the Child Rights Act and the Child Rights Laws); Magistrate Court Laws; Area Court Edicts; Economic and Financial Crime Commission Act; Independent Corrupt Practices Commission Act; Procurement Act; etc.

III. Application of English High Court Rules of Practice and Procedure to Criminal Trials in Nigeria

1. **CPA:** ***Section 363*** provides for the application of English Rules of Practice and Procedure in criminal trials where local laws do not make provisions. See ***Board of Customs & Excise v Hassan.***[11] In ***Simidele v COP***[12], there was no provision under the CPA for applying for bail at the High Court after it has been refused in the Magistrate Court. The practice and procedure in England where such application is made by summons was adopted. Some of the areas where there is a lacuna in our local laws are mode of application for bail at the High Court after it was refused at the Magistrate Court; change of plea; application for leave to file an information; and application for consent of a High Court judge in respect of an indictable offence.
2. **CPC:** ***Section 35 High Court Law of Northern Nigeria*** expressly prohibited the application of English High Court Rules of practice and procedure to proceedings before the High Court. Where there is lacuna in the CPC, the High Courts in the north would look at any other law made for that purpose or pass another law to take care of it. Where no such law is passed to take care of the lacuna, the courts are enjoined to do what, in their view, amounts to substantial justice. Thus, in ***Achadu v State,***[13] when the question arose as to the procedure to apply when applying to the HC for bail after its refusal by the Magistrate, it was held that the application may be made by either motions or summons.
3. **ACJL and ACJA:** ***Section 262 ACJL 2011*** and ***Section 492 ACJA 2015*** enjoins the court, when faced with a lacuna to do, what in its view, amounts to substantial justice between the parties.

IV. Judicial Interpretation of Enactments

They are referred to as both principal and secondary enactments. Whatever the pronouncement of the court on any statutory provision, in its interpretative role, is the law on that provision subject to the decision of an appellate court. The types of interpretation are literal rule, golden rule, mischief rule and ejusdem generis rule.

[11] (1978) 2 LRN 56
[12] (1966) NMLR 116
[13] (1981) 1 NCR 16

TYPES, SITTINGS, AND SETTINGS OF CRIMINAL COURTS

I. Types of Courts of Criminal Jurisdiction

A. Courts of General Criminal Jurisdiction: these are courts that have jurisdiction over different classes of offenders and in respect of different types of offences. Courts of General Criminal Jurisdiction are further subdivided into two:

1. **Courts of Original Criminal jurisdiction** – These are courts you can commence criminal proceedings at first instance, such as:
   (a) Customary Court,
   (b) Area Court,
   (c) Sharia Court,
   (d) Magistrate Court, and
   (e) High Courts.
2. **Courts of Appellate Criminal Jurisdiction**: these are courts that only entertain criminal matters on appeal such as:
   (a) Court of Appeal, and
   (b) Supreme Court.

B. Courts of Special Criminal Jurisdiction: These courts are set up to try particular types of offences or particular classes of offenders. These courts include:

1. Federal High Court,
2. National Industrial Court,
3. Juvenile Court,
4. Court Martial, and
5. International Criminal Court.

II. Setting of a Criminal Court

1. **Bench:** this is the elevated podium in front of the court room where the presiding Judge(s) or Magistrate sits to dispense justice.
2. **Bar:** part of the courtroom where lawyers who are in court normally sit. In a superior court, a lawyer can only sit at the bar if he is robbed and must either have a case to handle or appear to have one.[14] The front row of the bar is normally left for SANs and AGs where there is no inner bar. The bar is usually located between the Registrar's desk and the gallery. The bar may also mean all the lawyers entitled to practice in Nigeria.
3. **Registrar's Desk:** located directly beneath the bench and before it. The Registrar sits along with the Court Clerk or other Clerical Assistants. The Registrar normally backs the Judge and only stands up to face the Judge when his attention is required by the Judge.
4. **Gallery:** part of the courtroom where litigants, spectators and all other persons who are visitors to the court usually sit. Lawyers who have no matter in court or who are unrobed sit at the gallery. It is located directly behind the bar.
5. **Dock:** enclosed part of the courtroom where the accused person is placed during his trial. It is exclusively reserved for the accused person. There is no rule as to which side of the Judge the dock is located. Where the accused person testifies from the dock, he will not be cross-examined but when he testifies from the witness box, he shall be cross-examined. In a joint-trial, all accused persons enter the dock except where the number outstretches the space in which case they may spill over and crowd around the dock.
6. **Witness Box:** part of the courtroom where a witness is placed to testify but usually smaller than a dock.[15] It is usually located between the bar and the bench so that the lawyer and the Judge can look at the witness when he is testifying. There is no rule as to which side of the Judge is located. Only one witness can be in a witness box at a time.

[14] Even if the lawyer has no case but is dressed fully for court business, he is entitled to sit at the bar.
[15] See Proviso (d) of Section 180 Evidence Act

III. Sittings of the Court

The court is open for business throughout the year. The court sits at 9:00am – 4:00pm from Monday – Friday. Saturday, Sunday and public holidays, days within the week of Easter vacation, and days within annual vacations are non-juridical days. No superior court of record sits on non-juridical days. However, in the case of ***Ososami v COP***,[16] the court held that the court may subject to the agreement of the parties, sit on non-juridical day. Also, during annual vacations, there is usually a vacation judge in the High Court who hears emergency cases and other matters that require urgency. In the Magistrates' Courts, at least one Magistrate shall sit in every Magisterial District for hearing cases of bail, remand and other non-custodial disposition. See ***Section 40(2) Magistrates' Court Law of Lagos 2009***.

MODE OF DRESSING AND DECORUM IN THE VARIOUS COURTS

I. Customary and Area Courts

1. **Dressing:** Lawyers do not go to these courts robed (wig and gown) but they should be dressed in black suits and black shoes with tie. The judge may wear traditional apparel. Some of the judges are not legally trained lawyers.
2. **Mode of Address:** "Your Honour".

II. Magistrates' Courts

1. **Dressing:** officers presiding over these courts are qualified legal practitioners. They do not sit robed but are usually smartly dressed in somber suits. The lawyers appearing before them do not appear in robes. For the male, a black suit and trousers with a shirt and tie to match a black pair of shoes. For the female, a black suit and skirt with black shoes.
2. **Mode of Address:** "Your Worship". However, the mode of addressing a Magistrate in Lagos is now "Your Honour" by virtue of ***Section 349 ACJL 2011***.
3. **Quorum:** At least one Magistrate shall sit in every Magisterial District for hearing cases of bail, review and other non-custodial disposition. See ***Section 40(2) MCL Lagos, 2009*****.**

III. High Court (State & Federal)

1. **Dressing:** The High Court Judge is robed. The standard apparel for a male Judge is a black suit, a white shirt (usually collarless or winged) a bib, a plastic collar (especially where it is a collarless shirt), stud and black shoes, wig and a gown. A female Judge would adorn a black skirt-suit, a white collaret, white blouse, a black pair of shoes and a wig and gown. The Judge can wear a red gown when trying a capital offence and adorn a black cap when about to pronounce a death sentence.
   For a male lawyer, he must wear a black suit, a white collarless or winged shirt, a black pair of shoes, a white plastic collar, a bib, stud and his wig and gown. For the lady, a black skirt suit, a white blouse, a white collaret, black pair of shoes and wig and a gown. Her hairstyle shall not be in a wig form as she is not expected to wear a wig on a wig.
2. **Privileges and Seniority of Senior Members of the Bar:** The wig of the Judge is normally different from that of the counsel and each Judge has a police orderly. The material for the lawyers' gown is cotton or mixed fibre gown, while for the senior members of the bar (Attorney General, Members of Body of Benchers, and Senior Advocates of Nigeria), they wear silk gowns. The senior members of the bar sit in the front row of the bar and have the privilege of mentioning their cases before others. Their seniority is determined in the order of Attorney General (Federation and State), then members of the Body of Benchers, and followed by Senior Advocates of Nigeria.
3. **Mode of Address:** "My Lord".

[16] (1952) 14 WACA 25

4. **Quorum:** The High Court is constituted by one Judge sitting who is at least 10 years post call. However, in the North, whenever the High Court of a state is hearing an appeal from the Magistrate or Upper Area Court, two judges form the quorum to sit.[17]

IV. Court of Appeal

1. **Dressing:** the Justices and lawyers appearing before them must sit robed. **Mode of Address:** "My Lords".
2. **Quorum:** this court is constituted by at least 3 Justices[18] or 5 Justices (in constitutional interpretation) who are at least 12 years post call. Each justice has a police orderly.

V. Supreme Court

1. **Dressing:** the Justices and lawyers appearing before them must sit robed.
2. **Mode of Address:** "My Lords".
3. **Quorum:** this court is constituted by at least 5 Justices or 7 Justices (in constitutional interpretation or exercise of its original jurisdiction) who are at least 15 years post call. Each Justice has a police orderly.

ETHICAL DUTIES OF COUNSEL AND COURT IN CRIMINAL TRIALS

I. Prosecuting Counsel

1. Being present in court at all times
2. Avoiding forum shopping
3. Acting fairly, honestly and candidly
4. Calling material witnesses
5. Observing the interest of justice
6. Conducting case with due diligence
7. Making available to the accused person proof of evidence
8. Avoiding frivolous institution of criminal proceedings

II. Defence Counsel

1. Being present in court
2. Undertaking defence of an accused person
3. Keeping client's confidences. See ***R v Eguabor***[19]
4. Not withdrawing from the brief. See ***Abele v Tiv NA***[20]
5. Not seeking unnecessary adjournments. See ***Worlu v Umelo***.[21]
6. Employing the right mode of address for the judge or other presiding officer of a court. See ***Global Transport v Free Ent.,***[22]
7. Not casting aspersion on the trial judge.

III. Trial Judge

1. Granting to the parties right of audience before the court
2. Being neutral
3. Not descending to the arena of conflict
4. Maintaining high standard of conduct
5. Active participator in the proceedings but not necessarily interfere
6. Ensuring that litigants don't waste judicial time.

IV. Court Registrar

1. Accept all processes for filing
2. Make records of proceedings available to the parties upon demand

---

[17] Section 40(1) High Court Law of Northern Nigeria
[18] Section 247(1) CFRN 1999
[19] (1962) 1 All NLR 287
[20] (1965) NMLR 425
[21] (2010) All FWLR [Pt 503] 1367
[22] (2001) 2 SCNJ 224

3. Ensures that hearing notices and other court processes are served
4. Interpret or arrange for interpreter to interpret court proceedings to an accused if necessary
5. Ensures that the court file is brought to the attention of the judge before the date for hearing especially where a new process is filed by a party
6. In a capital offence where the accused is sentenced to death, the Registrar shall, as soon as possible forward copies of the certificate issued by the Judge to the Prison Officer as well as the Sheriff. Generally, he liaises between the court and the Attorney-General in issues of plea of clemency in capital offences.

(Week 4)

ARREST, SEARCHES & CONSTITUTIONAL RIGHTS

SUMMONS

I. Meaning

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.

II. Issuance

A. Authority to Issue: A summons to appear may be issued by a Court against any suspect. See ***Section 80 CPL***, and ***Section 47(1) CPCL, Section 79 ACJL*** and ***Section 113 ACJA***. The Court in this instance include: Magistrate, Judge and Justice of the Peace (in the North).

B. Discretion to Issue: The discretion to issue a summons in any particular case is that of the Magistrate before whom the complaint was laid – ***Section 81 CPL, Section 154 CPCL, Section 80 ACJL, & Section 114 ACJA*****.** Under the ACJA, upon receipt of a complaint that an offence has been committed, the Magistrate is empowered to consider the allegations and if he is of the view that the allegations are unfounded, he may refuse to issue the summons and he would give reasons for his refusal. Where he thinks the allegation is worthy of consideration, he may decide to cause a summons to issue. See ***Section 115(1) ACJA*****.**

C. Circumstances of Issue: A summons is issued in the following circumstances:

1. Minor offences
2. Where the person is not likely to refuse to attend the court or police station
3. Offences in Column 4 Appendix A to the CPCL

III. Content

A summons must be in writing and in duplicate copy with the following particulars:

1. A concise statement of the alleged offence.
2. Name of the individual charged with the alleged offence.
3. Invitation to the named individual to attend court or police station at a particular date or time being not less than forty eight (48) hours after the service of the summons on him.
4. Date the summons was issued.
5. Signature of the issuing authority. It has been held in ***Goodman v Ebans Ltd*** that the use of a rubber stamped signature is a sufficient compliance with requirement for signature.

See ***Section 83 & 87 CPL, Section 47(2) CPCL*****,** and ***Section 79 & 85 ACJL*****.** Summons must be in duplicate copy – ***Section 85 ACJL*****.** The rationale is so that the duplicate will serve as evidence of service.

IV. Service

A. Appropriate Person to serve: the appropriate persons who serve summons are Police officer, Officer of the court, or Authorised public servant. See ***Section 88 CPL; Section 48 CPCL; Section 86 ACJL***.

B. Days and Time for Service: A summons may be issued or served on any day including a Sunday or Public Holiday. See ***Section 82 CPL; Section 81 ACJL***. It must be served within the hours of 8am-6pm (Lagos only). Summons served/issued on Sunday or public holiday take effect from next working day. See ***Section 81B ACJL*****.**

C. Modes of Service

1. **Personal Service:** Summons is served personally on individuals. See ***Section 89(a) CPL, Section 49(1) CPCL, Section 87(a) ACJL***, and ***Section 123 ACJA***. Service is effected on other persons as follows:
   - **(a) Corporations** - Secretary, Manager, or Principal Officer at the company's premises.
   - **(b) Firms** - One of the Partners, Secretary/Director, Chief Agent, or by leaving it at the premises.
   - **(c) Local Government Council** - in accordance to Local Government law. See ***Section 89 CPL; Section 49(1) CPCL; Section 87 ACJL*****.**
   - **(d) Government Employee** - sent to Head of Department – ***Section 91 CPL; Section 89 ACJL*****.**

   An individual who is personally served with a summons to appear **must acknowledge** receipt on the back of the duplicate copy of the summons **–** ***Section 94 CPL, Section 49(2) CPCL, Section 92 ACJL*****.** Any person refusing to endorse may be arrested and is liable to a maximum of 14 days imprisonment – ***Section 93 ACJL; Section 95 ACJL*****.** However, persons who cannot sign or make their mark must be served in the presence of a witness – ***Section 53 CPCL*** **(**Illiterates & blind persons - North only).
2. **Substituted Service:** Can only be done on two conditions - where personal service is not possible and with leave of court. The various substituted modes of service are –
   (a) Pasting of the summons on a conspicuous part of the last known address of the individual named in the summons - ***Section 90 CPL, Section 52 CPCL, Section 88 ACJL & Section 124 ACJA*****.**
   (b) Leaving a duplicate copy of the summons with an adult male member of the individual's family - ***Section 52 CPCL*****.** (North Only)

D. Proof of Service: Substituted service is proved by Affidavit or declaration stating the reasons for the substituted service and how it was done - ***Section 55 CPCL***. In the South, the person effecting service must endorse particulars of method of service on the duplicate – ***Section 94 CPL; Section 92 ACJL***. Where person serving summons is absent at hearing, endorsement on a duplicate and affidavit to show date and method of effecting service is sufficient proof – ***Section 90 ACJL; Section 93 CPL*****.**

E. Mode of Receipt of Service: Person served must acknowledge receipt by signing the back of the duplicate. See ***Section 94 CPL, Section 55(2) CPCL, Section 92 (1) ACJL***, and ***Section 128 (1) ACJA***.

F. Effect of Failure to Endorse Summons: A person who refuses to sign such duplicate is liable to punishment by detention in custody or prison for a period not exceeding 14 days as a court deems fit. See ***Section 95 CPL, Section 129 ACJA***.

G. Service outside a Judicial Division/District of Issue: This will be done by sending a duplicate of the summons to the court within the division where the offender resides. That Court shall therefore direct service as if it had issued the summons - ***Section 92 CPL; Section 54 CPCL; Section 91 ACJL*****.**

H. Service and Execution Outside the State of Issue - Summons (other than summons to compel attendance of a witness) issued in one state may be served on the person to whom it is addressed in another state. This applies only to summons on information or complaint. The endorsement of a Magistrate in the state of execution is not required. The service of such summons in another state follows the same process as its execution in the state in which the summons was issued. The person on whom the summons is served must endorse the duplicate copy, acknowledging service. See ***Section 478 CPL; Section 361 ACJL*****.** No

provision in CPCL. All other summons (e.g. witnesses summons etc.) can only be served outside the state of issue by leave of court - ***Section 479 CPL; Section 362 ACJL*****.**

V. Life Span of Summons

Once a summons is issued, it remains valid and subsisting until it is executed or cancelled by the issuing Judge/Magistrate. It is not invalidated by the death, retirement, removal from office, promotion or loss of jurisdiction by the issuing authority - ***Section 103 CPL, Section 383 CPCL; Section 100 ACJL*****.**

VI. Consequences of Disobeying Summons

A warrant of arrest (Bench Warrant) may be issued to compel the individual to appear and answer to the alleged offence - ***Section 96 CPL; Section 70 CPCL; Section 94 ACJL*****.**

VII. Dispensing with the Presence of Accused

When summons is issued against an accused, the Court may dispense with his presence provided he pleads guilty in writing. His counsel can also plead guilty for him under the Criminal Procedure Law, but in this case, he has to appear in Court. See ***Section 100 CPL, Section 135 ACJA***. Under CPCL, his presence can be dispensed with if among other things, he pleads guilty in writing; or is represented by Counsel. See ***Section 154 (2) CPCL***.

Note that under ***Section 154(3) CPCL***, the Court shall adjourn for the personal attendance of the accused before the accused is sentenced. Under ***Section 100(2) CPL*** and ***Section 135(2) ACJA***, however, the Court may direct the personal attendance of the accused if it thinks fit and can enforce this by issuing a warrant for his arrest.

VIII. Sample Draft of Summons

SUMMONS TO DEFENDANT/ACCUSED

IN THE HIGH COURT OF ENUGU STATE
IN THE AGBANI JUDICIAL DIVISION
HOLDEN AT AGBANI

Charge No: EN/HC/2018/033

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, Enugu State Command that you, Mr. Kerikeri John, on the 1st day of December, 2018 at the Ojukwu market in the Agbani Judicial Division did unlawfully stole a laptop belonging to Mr. Bako James.

You are hereby summoned to appear before the High Court of Enugu State sitting at Agbani Judicial Division on the 21st day of December, 2018 at the hour of 9:00am in the morning or so soon afterwards to answer to the said complaint.

Dated this 6th day of December, 2018.

_____

Judge

SUMMONS TO WITNESS

IN THE HIGH COURT OF ENUGU STATE
IN THE AGBANI JUDICIAL DIVISION
HOLDEN AT AGBANI

Charge No: EN/HC/2018/033

SUMMONS TO WITNESS

To: Killi Nancwat (Inspector of Police)

Mr. Kerikeri John has been charged by this High Court for that he on the 1st day of December, 2018 at the Ojukwu market in the Agbani Judicial Division, did unlawfully stole a laptop belonging to Mr. Bako James and it appeared to me by the oath of Mr. Kerikeri John 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 Enugu State sitting at Agbani Judicial Division on the 21st day of December, 2018 at the hour of 9:00am in the morning or so soon afterwards, to satisfy what you know in such matter.

Dated this 7th day of December, 2018.

_____
Judge

ARREST
I. Arrest with Warrant
A. Meaning

A warrant of arrest is an authority directed to a police officer or any other person to arrest an offender – ***Section 25 & 27 CPL, Section 58 CPCL, Section 22 ACJL*****.**

B. Issuance

1. **Authority to Issue:** In the South, only a Magistrate or a Judge, may issue a warrant of arrest – ***Section 22(1) CPL & Section 23 ACJL***. Under the CPCL, in addition to a magistrate or judge, a Justice of the Peace can also issue a warrant of arrest - ***Section 56(1) CPCL***. A magistrate can lawfully issue a warrant of arrest irrespective of the fact that he lacks jurisdiction to try the alleged offender for the offence. An Alkali Court/Area Court cannot issue a warrant of arrest if the warrant is to be served in CPL states – ***COP v Apampa*****.** It is also to be noted that a *police officer cannot issue a warrant of arrest*.
2. **Circumstances of Issue**
   (a) Where the law creating the offence states that an offender cannot be arrested without warrant.
   (b) Where a summons is disobeyed
   (c) Where a serious offence is alleged against the offender
   (d) Where a detainee is running away
   (e) Where an officer is running away from the army

But even for such offences, an arrest without warrant will not vitiate any proceedings arising there from. See ***State v. Osler***.[23]

3. **Issuance upon Complaint:** A warrant of arrest can only be issued where there is a complaint on oath that the person therein is suspected to have committed an offence – ***Section 22(1) CPL, Section 56(1) CPCL, Section 23 ACJL*****.** Allegations in a letter is not sufficient - ***Ikonne v COP*****.**[24] Complaint must be made by the complainant himself or by a material witness - ***Section 23 CPL; Section 23 ACJL*****.** The complaint on oath shall be made to a Judge or Magistrate sitting in his capacity as a Judge or Magistrate - ***Ikonne v. COP*** **(**a Judge issued a warrant acting in his capacity as a Chairman of a Judicial Commission of Inquiry. It was quashed on appeal). In the North (CPCL), the complaint need not be under oath. It can be issued once the complaint discloses an offence.

B. Contents of a Warrant of Arrest

A warrant of arrest must be in writing and in duplicate copy with the following particulars:

1. Concise statement of the alleged offence.
2. Name of the individual charged with the alleged offence.
3. Order directing the police or person executing the warrant to arrest the offender
4. Date of issue
5. Signature of the issuing authority.

Sections 22 CPL, Section 56 CPCL, Section 22 ACJL

C. Execution

1. **Persons Who Can Execute a Warrant of Arrest:** Any police officer. May be directed to all police officers **–** ***Section 25 CPL/ACJL; Section 58 CPCL*****.**
2. **Day/Time and Place of Issue and Execution:** A warrant of arrest may be issued or executed anywhere and on any day including a Sunday or public holiday **–** ***Section 24 & 28 CPL; Section 63 CPCL; Section 24 & 27ACJL*****.** However, a warrant of arrest cannot be executed in –
   (a) Court room while the court is sitting – ***Section 28(2) CPL; Section 27(2) ACJL*** (CPCL is silent)
   (b) Legislative house while in session except with the permission of the person presiding e.g. Speaker of the House of Representatives - ***Tony Momoh v. Senate of National Assembly & 2 Ors; Section 31 Legislative Houses (Powers and Privileges) Act 2004*****.**
3. **Mode of Execution:** The Police Officer or any person executing the warrant of arrest must disclose the substance of the warrant to the suspect and show the warrant to the offender at the time of arrest **–** ***Section 28 (3) CPL; Section 60 CPCL; Section 27(3) ACJL*** **-** Except there is reasonable ground for non-disclosure such as instances of escape/resistance/rescue. Where the warrant of arrest is not immediately available at the time of arrest, the officer may still arrest the offender but must disclose the existence of the warrant to the arrested person, and thereafter show the warrant to the person as soon as practicable and within 24 hours in Lagos State - ***Section 29 CPL; Section 61 CPCL; Section 28 ACJL*****.** The accused shall be informed of the offence by the police when arrested unless caught in the middle of the act or chased immediately after the act – ***Section 5 CPL; Section 38 CPCL*****.** A warrant of arrest may be endorsed with bail (except for a capital offence) – ***Section 31 CPL; Section 64 CPCL*****.**
4. **Destination of the Person Arrested:** He must be taken to the Court that issued it except the endorsement at the back of the warrant authorises that such person be released upon

[23] (1991) 6 N.W.L.R (pt. 199) 576
[24] (1986)

complying with certain conditions as stated under Section 30. See ***Section 28 (4) CPL, Section 62 CPCL, Section 36(2) & 43(4) ACJL***, and ***Section 39 (2) ACJA***.

5. **Execution outside the District of Issue:** Where a warrant of arrest executed outside the district of issue but within the same state is not endorsed with bail; the arrested person must be taken to a competent court within the district where he was arrested. The court will then direct his removal to the court which issued the warrant of arrest – ***Section 31 CPL; Section 64 CPCL; Section 30 ACJL*****.** However, in the North, before a warrant of arrest is executed outside the district of issue, a Court in the district where the offender is to be found must endorse it, before it is executed on the offender - ***Section 66 CPCL*****.**
6. **Execution outside the State of Issue (Nationwide)**
   - **(a) Taking Warrant for Endorsement:** The Police officer is to take the warrant for endorsement by a Court having jurisdiction in the executing State.
   - **(b) Endorsement by Judge or Magistrate:** The Judge or Magistrate in the executing State before endorsing it must satisfy himself that it was issued by a court of competent jurisdiction (whose name appears on the process) and it is for an offence known to law in the issuing State. The Court will refuse to endorse the warrant if unsatisfied on the above points - ***COP v Apampa; Metropolitan Police Commissioner v. Hammond*****.** Thus, the Magistrate to whom the warrant is taken need not endorse it as a matter of course. If its issuance results in abuse of legal process, he has to refuse his endorsement on the warrant. Endorsement is a ministerial act while making of orders is a judicial act – ***R v. Olowu*****.** Where a warrant of arrest is not endorsed before an arrestee is moved from one place to another, the non-endorsement will be regarded as a mere procedural irregularity which cannot vitiate proceedings unless there is a failure of justice. See ***Mattaradona v. Alu***.[25]
   - **(c) Execution by Police Officer:** Police officer has sufficient authority to execute after endorsement - ***Section 482(2) CPL; Section 372(2) ACJL*****.**
   - **(d) Orders by Endorsing Court upon Arrest:** The endorsing Court upon arrest of the person may:
     - (i) by warrant under his hand order the person arrested to be returned to the state that issued the warrant and for this purpose be delivered to the officer who brought the warrant; or
     - (ii) Where the offence for which the person is accused is bailable, admit such person to bail upon conditions as it deems fit; or
     - (iii) Order the discharge of the offender if the offence is not known to law in issuing state. See ***Section 484 (2) CPL, Section 365 (3) (a), (b) ACJL***. ***Section 7(b) Criminal Procedure (Northern Region) Act 1960*** states that the provision of Section 482 CPL shall apply to the Northern States.
   - **(e) Receiving Evidence before making Order for Removal:** The Magistrate in the state of execution shall receive evidence before making an order for removal. This is because the person arrested and ordered to be removed to the state which issued the warrant, if dissatisfied with the order has a right to apply to the Judge of the High Court of that State, for the review of the order. See ***Section 484(1) CPL***. Such review shall be by way of rehearing, and evidence in addition to or in substitution for the evidence given on the making of the order may be given - ***Section 483(3) CPL***. This presupposes that

[25] (1995) 8 N.W.L.R (pt. 412) 225

evidence, if sought to be given in the first instance must be taken. See ***R. v. Olowu***.[26]
The judge of the High Court may make the following orders upon a review:
(i) Order the release on bail of the apprehended person on such terms as he deems fit or,
(ii) Direct that such person be kept in such custody as the judge deems fit. See ***Section 484(2) CPL***.

D. Lifespan of a Warrant of Arrest

A warrant of arrest once issued, remains valid and subsisting until executed or cancelled by the issuing authority - ***Section 25(2) CPL/ACJL; Section 56 (2) CPCL*****.** The death, resignation, retirement, promotion or transfer of the judge who issued it does not affect its validity. However, once a warrant of arrest has been executed, the warrant expires. Thus, it can no longer be used to make another arrest, not even the same person earlier arrested - ***R v. Akinyanju*****.**[27] For instance, where a nulle prosequi was entered in favour of an accused person, he cannot be re-arrested by the same warrant of arrest; it has to be a new warrant of arrest.

E. Consequences of Disobeying Warrant of Arrest
(Public Summons – North & FCT Only)

Public Summons is issued by a Judge of the High Court where there is evidence showing that a person against whom warrant of arrest was issued has absconded or is concealing himself in order to frustrate the execution of the warrant. The Judge may publish a public summons in writing requiring the person to appear at a specified date and time, within 30 days from the date of publication - ***Section 67 CPCL*** and ***Section 41 ACJA*****.**
By virtue of ***Section 62 CPCL*** and ***Section 42 ACJA*****,** a public summon is published by:

1. Reading it orally in a conspicuous part of the town or village where the alleged offender resides e.g. town hall, market place etc.;
2. Pasting of the summons on a conspicuous part of the alleged offender's residence; or
3. Affixing it to a conspicuous part of the High Court building such as a door or notice board.

F. Irregularity in Summons or Warrant of Arrest

When an accused person is before a Magistrate whether voluntarily or upon summons or after being apprehended with or without warrant, the preliminary inquiry or trial may be held notwithstanding any irregularity, illegality or defect or error in the summons or warrant, or the issuing, service, or execution of the same, and notwithstanding the want of any complaint, or any irregularity or illegality in the arrest or custody of the accused person. See ***Section 101 CPL, Section 384 CPCL, Section 98 ACJL***. Compare with ***Section 382 CPCL***.
Note: By virtue of ***Section 103 CPL*** a warrant or summons is not invalidated by reason of the person issuing the same dying, ceasing to hold office or no longer having jurisdiction. See also ***Section 383 CPCL***.

G. Sample Draft of Warrant of Arrest

WARRANT FOR APPREHENTION OF DEFENDANT IN FIRST INSTANCE

IN THE HIGH COURT OF ENUGU STATE
IN THE AGBANI JUDICIAL DIVISION
HOLDEN AT AGBANI

Charge No: EN/HC/2018/033

WARRANT FOR ARREST OF DEFENDANT IN FIRST INSTANCE

To: Each and all Police Officers.

[26] (1971) NMLR 213
[27] (1959)

Complaint on oath has been made on Mr Kerikeri John, the Defendant that on the 1st day of December, 2018 at Ojukwu market in the Agbani Judicial Division, the Defendant did unlawfully stole a laptop belonging to Mr. Bako James.

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

Dated this 7th day of December, 2018.

_____

Judge

WARRANT FOR ARREST OF DEFENDANT WHO HAS DISOBEYED SUMMONS

IN THE HIGH COURT OF ENUGU STATE
IN THE AGBANI JUDICIAL DIVISION
HOLDEN AT AGBANI

Charge No: EN/HC/2018/033

WARRANT FOR ARREST OF DEFENDANT WHO HAS DISOBYED SUMMONS

To: Each and all Police Officers.

Complaint on oath has been made on Mr Kerikeri John, the Defendant that on the 1st day of December, 2018 at Ojukwu market in the Agbani Judicial Division, the Defendant did unlawfully stole a laptop belonging to Mr. Bako James.

And the Defendant was thereupon summoned to appear before the High Court of Enugu State in the Agbani Judicial Division sitting at Agbani on the 6th day of December, 2018 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 Agbani Judicial Division sitting at Agbani forthwith to answer the said complain and be dealt with according to law.

Dated this 7th day of December, 2018.

_____

Judge

II. Arrest without Warrant

If a person is suspected to have committed an offence, he may be arrested by: A Police Officer, Judicial Officer, Justice of the Peace (North), or Private Person without warrant.

A. Police Officers

By virtue of ***Sections 10, 11 & 55 CPL; Section 26 CPCL, Section 10 ACJL; Section 24 Police Act*** a police officer may arrest without warrant in the following circumstances:

1. Person against whom he suspects upon reasonable grounds of having committed an indictable offence (subject to the provisions of the law)
2. Any person who commits any offence in his presence.
3. Any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody.
4. Any person in possession of anything reasonably suspected to be stolen property.
5. Any person whom he suspects upon reasonable grounds to commit an offence punishable in Nigeria outside the country.
6. Any person having in his possession any instrument of house breaking without lawful excuse.
7. Any person against whom a warrant of arrest has been issued by a court of competent jurisdiction in the state. ***Section 25 Police Act*.**
8. Any person who has no ostensible means of subsistence and who cannot give a satisfactory account of himself. However, the ACJA has prohibited arrest on this ground.
9. Any person found in the state taking precautions to conceal his presence in circumstances which afford reason to believe that he is taking such precautions with a view to committing an offence.

NOTE - In arrest without warrant, once the arrest is made upon reasonable grounds, the police is not in breach of any law - ***Jackson v. Omorokuna*.**[28] If the arrest is not based on reasonable suspicion, the police may be liable for unlawful arrest - ***COP v. Obolo*.**[29] If no offence was actually committed, and although an offence was committed, the arrested person was not responsible for it, the Police Officer is not liable for unlawful arrest - ***Wiltshire v. Barrett*.** Where a policeman detains a suspect in order to confirm his alibi or to investigate the case further, he would not be liable for false imprisonment - ***Dallison v. Caffery*.**

It is also worthy of note that a police officer can only exercise the power of arrest without warrant within his state command – ***Section 10(3) CPL*.**

B. Judicial Officers

Where an offence is committed in the presence of a Judicial Officer (Magistrate or Judge) within his district or division, the Magistrate or Judge may arrest or order any person to arrest the offender - ***Section 15 CPL, Section 15 ACJL. Section 29 CPCL*** confers powers of arrest without warrant on a Justice of the Peace. However, in practice magistrates and Judges in Northern States also exercise powers of arrest without warrant.

Furthermore, a Magistrate or Judge may arrest or order the arrest of an offender who commits an offence in his presence if upon a complaint on oath by another person he would have issued a warrant for arrest of the offender - ***Section 16 CPL, Section 30 CPCL***.

C. Private Persons

Section 12 & 13 CPL; Section 28(d) CPCL; Section 21 ACJL; Section 24 Police Act provides that a private person may arrest without warrant in the following circumstances:

1. Any person who commits an indictable offence in his presence;
2. Any person whom he reasonably suspects of having committed a felony - ***Nweke v. The State*.**
3. Any person who commits a misdemeanour by night;
4. A property owner can arrest any person found committing an offence injurious to property;

[28] (1981)
[29] (1989)

5. If an arrested person escapes or is rescued from custody - **Section 28 (d) CPCL.**
6. Any person whom he is directed to arrest by a Justice of Peace or a Superior Police Officer.
7. Any person who has escaped from his lawful custody;
8. Any person required to appear by public summons published under **Section 67 CPCL.**
9. Any person who commits offence in his presence – ***Section 13 ACJL*.**
10. Any person he finds damaging public property.

NOTE - a person who resists by force an attempt by a private person to arrest him in the exercise of his right cannot claim the benefit of self defence - ***Abdullahi v. Borno Native Authority***.
Upon reasonable demand, every person is bound to assist a Judge, Magistrate or Police Officer in effecting an arrest or preventing the escape of any person whom such a Judge, Magistrate or Police Officer is authorised to arrest - ***Section 34 CPL***. Failure to so assist without reasonable excuse and knowledge is a misdemeanour punishable by imprisonment for one year.

III. Post Arrest Requirement

A. How to Deal With the Person Arrested without Warrant

1. **Police Officers:** If a police officer arrests a person without a warrant, he shall take such person with all reasonable dispatch to a police station or other place(s) for the reception of arrested persons. Such a person must be given reasonable facilities to obtain legal advice, taking steps to furnish bail. See ***Section 9 CPL, Section 14 ACJL***, and ***Section 14 ACJA***.
2. **Private Persons:** In case of a private person, he must proceed without unnecessary delay, to hand over the arrested person to a police officer or where not possible, the private person must take the arrested person to the nearest police station - ***Section 14 CPL; Section 39 CPCL; Section 9 ACJL*.** The Police Officer to whom the person is handed over must thereupon re-arrest the arrested person where the arrested person is one who the police can arrest. See ***Section 14(2) CPL***; ***Section 39(2) CPCL***; ***John Lewis and Co. v. Tims***;[30] ***Nweke v. The State***.[31]

   Where a private person arrests an offender without warrant and fails to hand over the arrested person to the police timely, he may be liable for damages for false imprisonment if unreasonable delay is established - ***Lewis v Tims*.**[32]
3. **Judicial Officers:** If a Judge arrests or directs the arrest of a person, he shall commit the offender to custody or grant him bail, if the offence is bailable - ***Section 29(a) CPL and Section 61 CPCL***.

B. What Happens to the Accused while in Police Station?

The law enjoins the police officer to bring the accused to Court within 40km radius having jurisdiction over the case within twenty-four hours or within forty eight hours in other cases, and if this is not practicable, he shall be released on bail, upon his entering into recognizance with or without sureties, except the offence is a capital offence or of a very serious nature. See ***Section 35(5) CFRN 1999, Section 17 CPL, Section 340(1) CPCL, Section 17 ACJL***, and ***Section 30 (1), (3) ACJA***.
If, while the accused is at the station, investigation cannot be completed forthwith, he shall be allowed to go on bail upon entering into a recognizance, with or without sureties for a reasonable amount to appear at such police station and at such time as are named in the recognizance - ***Section 18 CPL, Section 31 ACJA***, and ***Section 35 (3), (4) and (5) CFRN 1999***.

IV. Mode of Effecting Arrest

In making an arrest, the police officer or any other person making same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody

[30] (1952) 1 All E. R. 1203
[31] (1965) 1 All NLR 114
[32] (1952)

by word or by conduct. See ***Sections 3, 5 CPL, Section 38 CPCL, Sections 1, 3 ACJL*** and ***Section 4 ACJA***.

The person arrested shall not be handcuffed, or otherwise bound or be subjected to unnecessary restraint except by order of the Court or when there is a reasonable apprehension of violence, or of an attempt to escape or the restraint is necessary for the safety of the person arrested – ***Section 4 CPL, Sections 31, 37 CPCL, Section 2 ACJL***, and ***Section 5 ACJA***.

The arrested person must be informed of the cause of the arrest except he is in the actual course of committing a crime or is pursued immediately after committing a crime or escaping from lawful custody. See Section 5 CPL, Section 38 ACJL, and Section 6 (1) ACJA.

In ***Holgate Mohammed v. Duke***,[33] the House of Lords stated the meaning of the word 'arrest' as follows: "it is a continuing act and starts with the arrester taking a person into custody, it continues until the person restrained is either released from custody or having been brought before a Magistrate is remanded in custody, by the Magistrate's judicial act".

On what constitutes a lawful arrest, House of Lord said, "The mere act of taking a person into custody does not constitute an arrest unless that person knows, either at the time when he is first taken into custody or as soon thereafter as it is reasonably practicable to inform, upon what charge, or on suspicion of what crime he is being arrested". See also ***Christie v. Leachinsky***.[34]

V. Arrest of a Person in Lieu of Another

Section 4 ACJA and ***Section 7 ACJA*** expressly prohibits the arrest of one person in lieu of another. This is to avoid instances where the police will arrest relations or friends of a crime suspect with the goal that such arrest would make the suspect who is on the wanted list to give up himself.

VI. Effect of Non-Compliance with the Provisions of the Law in the Course of Arrest

When an accused person is before a Magistrate whether voluntarily or upon summons or after being apprehended with or without warrant, the preliminary inquiry or trial may be held notwithstanding any irregularity, illegality or defect or error in the summons or warrant, or the issuing, service, or execution of the same, and notwithstanding the want of any complaint, or any irregularity or illegality in the arrest or custody of the accused person. See ***Section 101 CPL, Section 384 CPCL, Section 98 ACJL***. Compare with ***Section 382 CPCL***. In the case of ***Okotie v COP***,[35] the court held that the defect in the process of arrest merely makes the arrest unlawful but it does not affect the validity of the trial.

Note: By virtue of ***Section 103 CPL*** a warrant or summons is not invalidated by reason of the person issuing the same dying, ceasing to hold office or no longer having jurisdiction. See also ***Section 383 CPCL***.

SEARCHES

I. Meaning and Essence of Search

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.

---

[33] (1984) Vol. 79 CR. App. Rep. 120

[34] (1947) A.C. 573

[35] (1959) 4 FSC 125

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. This naturally depends on the nature of the offence. There may also be need to conduct a search on the premises occupied by the alleged offender(s) for purposes of uncovering anything incriminating thereupon. In some other cases, the allegation may well be that the alleged offender uses an object or thing to produce or convey the articles of crime. There may be need to conduct search on such object or thing.

II. Categories of Search

A. Search of Persons

A search on persons may be conducted with or without a search warrant. A search on persons is usually done by policemen – ***Section 28 Police Act***. Special prosecutors like NDLEA, EFCC, ICPC and Customs officials can search persons without warrant - ***Section 494 NDLEA Act*** and ***Section 133 Custom & Excise Management Act***. A police officer may detain and search any person whom he reasonably suspects of having in his possession or conveying in any manner anything which he has reason to believe to have been stolen or otherwise unlawfully obtained - ***Section 29 Police Act; Section 4 Police Act***. The test of reasonable suspicion is an objective one not subjective. Thus, where a police officer, without reasonable suspicion conducts the search of a person, he would render himself liable in damages.

A search can also be conducted at the cause of effecting an arrest using such force as is necessary for the purpose – ***Section 6(1) CPL; Section 5(1) ACJL*****.** Thus, whenever a police officer makes a lawful arrest, he also has the power to search the body of such person.

Only a woman is to search the body of a woman - ***Section 6(2) CPL, Section 44(3) CPCL***. However, the exception is that a man can search a woman's handbags, briefcases, wallet, etc. or in cases of urgency when there is no other woman available to conduct the search. The search of the body of a woman by another woman must be done with strict regard to decency - ***Section 82 CPCL***. Although no provision is made specifically in the CPL and CPCL regarding who shall search a man or whether a woman can search a man, ***Section 5(2) ACJL*** and ***Section 9(3) ACJA*** took care of that lacuna by providing that search shall be conducted on persons by persons of the same sex except in cases of urgency where it will be impracticable to do so. Also, in practice, search of men is done by men notwithstanding that CPC and CPCL did not provide for that. The rule of a man searching a man and a woman searching a woman does not apply to things outside the body of the suspect.

Private persons with power to arrest may conduct searches - ***Nweke v. State*****.** A police man can carry out medical examination for latent items as part of a search. Thus, where a person is detained in lawful custody, the police can conduct medical examination on the suspect – ***Section 6(6) CPL; Section 127(1) & (2) CPCL; Section 5(6) ACJL; Section 11 ACJA; FRN v. Baba Suwe***. This kind of examination is more common with drug related offences.

B. Search of Premises

Power to search a premises includes power to arrest a person found. Generally, premises cannot be searched without a search warrant. This requirement appear to be in obedience to the constitutional right to privacy provided under ***Section 37 CFRN 1999***. The exceptions where search of premises can be conducted without warrant are:

1. Where a person against whom a Warrant of Arrest has been issued is found in a premises - ***Section 7 (1) CPL/ACJL; Section 344(1) CPCL***. However, he may seek the permission of the person in charge or residing in such premises.
2. A justice of the peace may direct a search to be done in his presence – ***Section 85 CPCL*****.**
3. If the police or any other person who is executing a search warrant of premises reasonably suspects any person of concealing about his person or articles for which a search should be made, such a person shall be searched - ***Section 112(3) CPL, Section 81 CPCL***.

4. Where there is a complaint on oath as to an abducted person kept in the premises.
5. A warrant of arrest comes with an implied authority to search person upon whom search is to be conducted.
6. The Nigerian Security and Civil Defence Corp do not need a search warrant to enter a premises where there is a reasonable belief that government property is being unlawfully harboured - ***Commandant General NSCD & Anor v. Emason Ukpeye***;[36] ***Section 3(1) – (3) NSCD (Amendment) Act 2001***.
7. NDLEA officials can search any premises connected with a drug related offence **–** ***Section 32 NDLEA Act***.
8. Custom officers may enter and break into any Premises reasonably suspected to harbour illegal goods **–** ***Section 147 CEMA***.

It must be noted that although it is ethical for the police or other officer conducting a search with or without a warrant to ask that he/she be searched before he/she commences the search, it is not a legal requirement. Thus, the fact that a police officer's body is not searched before he/she conducts a search does not make the search illegal or unlawful or wrongful. The advantage of police officer asking that he should be search before he conducts the search is so that it would become impossible for the suspect to allege subsequently that the item recovered in the course of the search was planted there by the searching officer – ***State v Musa Sadau.***[37]

C. Search of Things

A search of things may be conducted with or without a search warrant. A police officer can search and stop vehicles on the road, vessels etc. without a warrant - ***Karuma v. R***.[38] Powers of search of things without warrant is also conferred on customs officers, the Federal and State Task Forces of NAFDAC, etc.

III. Contents of a Search Warrant

1. Address of the premises to be searched;
2. Items to be searched for;
3. A directive that the items be seized and brought to court; and
4. Signature of the person issuing it - **Section 111(2) CPL.**

IV. How to Procure a Search Warrant

Under ***Section 107(1) CPL; Section 297 ACJL;*** and ***Section 144(1) ACJA*****,** a search warrant is procurable upon information on oath. However in the North, the CPC does not call for information on oath.

V. Issuance and Execution of Search Warrant

A. Authority to Issue

A search warrant may be issued for a specific premises or thing by a:

1. Magistrate – ***Section 109 CPL; Section 74 CPCL***.
2. Judge – ***Section 109 CPL; Section 74 CPCL***.
3. Justice of the Peace (North Only**) –** ***Section 74-76 CPCL***.
4. Superior Police Officer for this purpose above the rank of a Cadet Assistant Superintendent of Police – ***Section 28(3) Police Act***. The power of a superior police officer to issue a search warrant is limited to a period of 12 months. A Superior Police Officer (above Cadet ASP) can issue a search warrant only in respect of premises in the following circumstances:
   (a) When the thing to be recovered from the premises searched is stolen property.
   (b) Where the premises have within the preceding twelve months been in occupation of any person who has been convicted of receiving stolen property or harbouring thieves.

[36] (2012) CA
[37] (1968) NMLR 208; Section 144(1) ACJA
[38] (1955)

(c) Premises occupied by persons who committed any offence involving fraud or dishonesty and punishable by imprisonment.

B. Mode of Execution

1. **Disclosure of Warrant:** Before a search warrant is executed, it must be shown to the person, or occupier or person in control of the thing.
2. **Searching the Person Conducting the Search:** The body of the person who intends to conduct the search will then be searched by the person named in the warrant or occupier of things. [This is hardly obtainable as it is not a requirement of the law]. ***Musa Sadau v. State***.[39]
3. **Premises Occupied by a Woman in Purdah:** Where the apartment to be searched is occupied by a woman in purdah, the person making the search shall, before entering the apartment, notify the woman that she is at liberty to withdraw and shall afford her reasonable time and every facility for withdrawing - ***Section 79 CPCL*****.** The reason is because of religious sanctity and due respect to the protection of the woman by her husband. However, where the woman is the object of the search, the rule does not apply. It does not appear that if an executing officer has reason to suspect that any lady, whether she is the true occupier or not may be concealing something, he would allow such a lady to go out because of this provision. Thus, ***Section 81(1) CPCL*** and ***Section 112(3) CPL*** provide that in the course of conducting a search, if it appears to the executing officer that any person found in the premises (who may be unconnected with the matter) is concealing something, such a person may be searched.
4. **Presence of Witnesses & Occupant:** The search must be conducted in the presence of two respectable inhabitants of the neighbourhood to be summoned by the person to whom the warrant is addressed. This may be waived by the Justice of Peace – ***Section 78(1) CPCL*** (North Only) or Judge – ***Section 149(4) ACJA***. Also, ***Section 150 ACJA*** provides that the occupant of a place to be searched or some person on his behalf shall be permitted to be present at the search and shall, if he so requires, receive a copy of the list of things seized there, signed or sealed by the witnesses, if any.
5. **Right of Ingress and Egress (Entry and Exit):** Where the premises or thing to be searched is locked, the occupier shall on demand allow the Police Officer free entry – ***Section 112(2) CPL; Section 109 ACJL***. If free entry is denied, the Police Officer or other person executing the search warrant is authorized to use reasonable force to break in – ***Section 7, 8, 112 CPL; Section 34(3) CPCL; Section 8 ACJL***. He is also authorised to break out if he is denied exit - ***Section 84 & 8 CPL***.
6. **Seizure and List of Objects Found:** In the course of the search, if the object is found, it is liable to seizure by the Police Officer executing the search warrant - ***Section 107 CPL; Section 74, 76 CPCL***. In addition, a list of all things seized in the course of search and of the places in which they are found shall be drawn up by the person carrying out the search and shall be signed or sealed by the witnesses – ***Section 78(2) CPCL; Section 149(5) ACJA*****.**

C. Seizing Goods not specified in the Search Warrant

Generally, only items mentioned in the search warrant should be seized. However, where the person executing the search warrant comes across items which he reasonably believes to have been stolen or are relevant in respect of other offences, he can lawfully seize such items - ***Reynolds v The Commissioner of Police for the Metropolis.;[40] Section 4 Police Act*****.** However, in ***Elias v. Pasmore*****,[41]** it was held that where the items seized are irrelevant to the case in which

[39] (1968)
[40] (1985) 80 Cr. App. Rep. 125
[41] (1934) 2 KB 164

it was brought, the person will be liable in damages. Also, where items not specified in the search warrant are seized, the said items must not be detained longer than necessary or else, the officer will render himself liable in damages

D. Dual Power to Search and Arrest Occupant

The power to search includes the power to arrest the occupant of the premises - ***Section 76(b) CPCL***. A Police officer who enters a man's house for the purpose of lawfully arresting him may remove any document or material which he finds in his house and which he reasonably believes to be material evidence in relation to the crime for which he is arrested or which shows him to be implicated in some other crime provided he acts reasonably and detains them not longer than is necessary – **Reynolds Case (Supra)**.

E. Execution outside Jurisdiction

Section 151 ACJA provides that a person executing a search warrant beyond the jurisdiction of the Court or Justice of the Peace issuing it shall, before doing so, apply to the court within whose jurisdiction search is to be made and shall act under its directions. The above provision is absent under the other statutes.

F. Time of Issuance and Execution

A search warrant may be issued and executed on any day including Sundays or Public holidays. A search warrant shall be executed between the hours of 5am – 8pm. The exception is where the Issuing court authorises otherwise in order to meet the urgency of a particular situation e.g. smuggling vessels, brothel, etc. - ***Section 111 CPL; Section 108(1) ACJL, Section 148 ACJA; Musa Sadau v. The State.***[42] Such endorsement need not be by the issuing authority, it can be done by another issuing authority. It is also not mandatory for such endorsement to be done at the time of issue, it may be done at any time before execution – ***Section 111(2) CPL.***

VI. Life Span of Search Warrant

A search warrant once issued remains valid and subsisting until it is executed or cancelled by the issuing authority **–** ***Section 109(2) CPL; Section 106(2) ACJL; Section 146(2) ACJA***.

VII. Detention and Disposal of Items Seized During a Search

Although the search warrant usually is an order directing the executing officer to proceed to a premises with a view to seizing any item specified in the warrant and bringing same before the court or issuing authority for same to be dealt with according to law, the usual practice is that after a search, the police officer normally takes the seized items first to the police station before it is later brought to court from which the warrant was issued. If after the investigation of the case, the prosecution proposes to prosecute, the items may be tendered in evidence during the trial if any of such items is considered relevant for the trial. ***Section 113 CPL; Section 110(1) ACJL*** provides that the Magistrate before whom a property seized pursuant to a search is brought may order that same be detained until the conclusion of trial where a trial has been commenced.

Where no person has been charged in respect of an alleged offence or in connection with the recovered items, the Magistrate may direct that the items or part of it be restored to the person who appears to him to be entitled to it and if the person so entitled is the person accused of the offence, that it be restored to him or to any other person the latter may direct – ***Section 113(a) CPL; Section 110(3) ACJL.*** He may also direct that the property or item be applied to the payment of any costs or compensation directed to be paid by the person so accused – ***Section 113(b) CPL; Section 110(3) (b) ACJL.*** Where the property is of perishable nature or otherwise hazardous or noxious, the court may order its disposal as it pleases – ***Section 114 CPL; Section 111 ACJL; and Section 154 ACJA.***

In cases where an item recovered is such that its possession is by law prohibited and there is no proceedings taken out against any person in respect thereof, the Magistrate or Judge may

[42] (1968) NMLR 208

order its destruction such as in the case of gun powder[43] or defacing or destruction usually by burning in the case of possession of counterfeit coins and/or currency notes or pirated documents.[44] However, where any person is being prosecuted in respect of any such offence, then an order cannot be made for its destruction until the case has been disposed of – ***Section 113 ACJL*.**

VIII. Civil Liability for Wrongly Procuring a Search Warrant

Where a person without reasonable cause, cause a police officer to procure a search warrant leading to the search of another, his premises or even leading to his arrest, detention and/or prosecution, the person who laid such malicious complaint on the basis of which the officer acted will be liable in damages. In the case of a complaint leading to arrest and detention of the suspect, the complainant will be liable for false imprisonment. In the case of a search of the person or his premises, the complainant will be liable for malicious procurement of a search warrant. In the case of a complaint leading to the prosecution of the suspect, and which prosecution of ended in an acquittal, the complainant will be liable for malicious prosecution except there was reasonable and probable cause – ***Garba v Maigoro*.[45]**

At all times, what is important in the consideration whether the defendant is liable is to ascertain that the defendant set the law in motion against the plaintiff. Where the complainant sets the law in motion against another person, there is no protection for him even where the actual arrest, detention and perhaps, prosecution is done by the police – ***Balogun v. Amubikahu*.[46]** However, in ***Ojo v. Lasisi*[47]**and ***UAC PLC v. Sobodu*[48]** the Court held that there will be no liability where the complaint was made in good faith and upon reasonable suspicion.

IX. Admissibility of Illegally Obtained Evidence

Non-compliance with any of the provisions of the law relating to the issuance and execution of a search warrant will render such search unlawful. Where documents or any other materials are seized from the premises of another in circumstances that render such removal unlawful, such documents may notwithstanding, be admitted in evidence at the trial, where they are relevant. Reason being that the basis of admissibility of any evidence is its relevancy - ***Kuruma v The Queen*;[49] *Musa Sadau v The State*.[50]** The police officer may however be liable in civil action – ***Elias v Pasmore*.**

Section 14 Evidence Act, 2011, however, gives the Court the discretion to exclude improperly obtained evidence if it is of the opinion that the undesirability of admitting it out-weights its desirability. ***Section 15 Evidence Act, 2011*** provides for matters the Court should take into consideration in its exercise of discretion under Section 14 viz:

1. The probative value of the evidence;
2. The nature of the relevant offence, cause of action of defence and the nature of the subject-matter of the proceeding;
3. The gravity of the impropriety or contravention;
4. Whether the impropriety or contravention was deliberate or reckless;
5. Whether any other proceeding, (whether or not in a court) has been or is likely to be taken in relation to the impropriety or contravention; and
6. The difficulty, if any, of obtaining the evidence without impropriety or contravention of law.

---

[43] Section 115 CPL; Section 112 ACJL and Section 155 ACJA
[44] Section 116 & 117 CPL; Section 113 ACJL and Section 156 ACJA
[45] (1992) 5 NWLR (Pt. 243) 588
[46] (1989) 3 NWLR (Pt. 107) 18
[47] (2003) FWLR (Pt. 156) 886
[48] (2006) All FWLR (Pt. 329) 876
[49] (1955) 1 All E. R. 236
[50] (1968) NMLR 208

X. Sample Draft of Search Warrant

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

CASE NO……..

SEARCH WARRANT

To: Corporal Ado John or any other police officer.

Following the investigation of Alhaji Atutuwa of No. 5 Oduwole Street Kakuri Kaduna of being in possession of a fake currency printing machine on the compliant of Chief Dede made on the 8th day of September 2018, you are therefore commanded to search the premises of the suspect, Alhaji Atutuwa and to bring any of the item related to the offence before the State High Court sitting at Kaduna forthwith to aid the trial of the case according to Law.

Dated This 8th Day of September 2018

…….
Judge of the High Court
Kaduna State

CONSTITUTIONAL/PROCEDURAL SAFEGUARDS RELATING TO SEARCHES, ARRESTS AND SUMMONS

I. Constitutional Safeguards

1. **Right to Life:** a suspect is entitle to his right to life – ***Section 33(1) CFRN 1999*****.** However, the exception is as provided under ***Section 33 (2) (b) CFRN 1999*** – killing of a suspect may be justified in order to effect a lawful arrest or to prevent his escape from lawful detention.
2. **Right to Dignity of Human Person:** any search on or arrest of a suspect shall be done with high sense of dignity. Such suspect shall not be threatened or tortured or molested. See ***Section 34 CFRN 1999***.
3. **Right to Personal Liberty:** every suspect is entitle to his personal liberty. Thus, no suspect shall be unlawfully arrested – ***Section 35(1) CFRN 1999***. However, the exception under ***Section 35(1) (c) CFRN 1999*** recognises the right to arrest a person under a warrant or on reasonable suspicion of his having committed an offence or to prevent commission of offence.
4. **Right to Remain Silent:** a suspect arrested has the right to remain silent and not answer any question until after consultation with a lawyer or any person of his choice - ***Section 35(2) CFRN 1999***.
5. **Right to be Informed of the Reasons of Arrest:** Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention - ***Section 35(3) CFRN 1999***.
6. **Right to be Charged to Court within a Reasonable Time:** Any person who is arrested or detained in execution of an order of court or on reasonable suspicion of having committed a crime or to prevent him from committing a crime, shall be brought before a court of law within a reasonable time – ***Section 35(4) CFRN 1999***. The expression "a reasonable time" means - (a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of 40km, a period of one day; and (b)

in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable - ***Section 35 (5) CFRN 1999*****.**

7. **Right to Public Apology and Compensation:** ***Section 35(6) CFRN 1999*** makes provision for public apology and compensation from the appropriate authority or person to a person who is unlawfully arrested or detained.

II. Procedural Safeguards

1. The police after arresting a person must bring him to court within 24 hours.
2. Right to be informed of the offence by the police unless caught in the middle of the act or chased immediately after the act – ***Section 5 CPL; Section 38 CPCL*****.**
3. A woman is to be searched by another woman – ***Section 44(3) CPCL, Section 6(2) CPL, Section 5 ACJL*** (done by person of the same sex)
4. Search of a person shall be done with decency - ***Section 82 CPCL***.
5. A woman in purdah has a right to withdraw before a search is conducted in the premises she occupies – ***Section 79 CPCL***.
6. In the North, 2 adults are to be present when executing a search warrant.
7. Where a person has been issued a public summons, he must be given 30 days to appear before that Court – ***Section 67 CPCL***.
8. Any Court to issue summons must be a Court that can try that offence.
9. The police shall not handcuff the person being arrested or searched unless the person is being violent or for his safety or when he is resisting arrest.
10. The police cannot enter a person's premises by force unless entry is denied. The police can then break in and break out.

(Week 5)

PRE-TRIAL INVESTIGATIONS AND POLICE INTERVIEW

INTRODUCTION

I. Concept of Investigation

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 State***[51] 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.

II. Questioning the Parties or Witnesses

During pre-trial investigation, the police may question the parties involved or related to the offence. These include the injured party (victim), the suspect, witnesses and perhaps, experts such as forensic or pathology experts depending on the nature of the offence e.g. in case involving narcotic or psychotropic substance. It is usual that the person to be questioned attend the meeting in person except where the circumstances of the case permit the use of telephone or written representation or representation via counsel or other agent. This is permitted where the offence is a minor one and the suspect does not deny the accuracy of the report of the offence. It is required that an official record of every questioning is kept in every case.

The whole idea of police interview is to obtain evidence with which to prosecute a suspect. It is usually a conversation between the witness and interviewer with a view to obtaining useful information from the witness as to the commission of an offence.

III. Rights of Person Interviewed

1. Disclosure of offence and status, whether invited as a suspect or witness.
2. Treatment in a calm and rational manner. Threat, torture, promise, etc. to persons interviewed are prohibited.
3. An interviewer shall be provided to the person interviewed at no cost where the person does not understand the language of the interviewing officer.
4. The investigation shall be carried out within the ambits of the law.

IV. Appropriate Place to Interview a Suspect

When a person is arrested, his interview shall not commence until he is taken to the police station or other authorized place except where it will:

1. Interfere with or cause harm to evidence or other persons, or cause damage to property;
2. Lead to alerting other persons suspected of having committed such an offence but not yet arrested for it; or

[51] (1973) 8 NSCC 250

3. Hinder the recovery of property obtained in consequence of the commission of such an offence.

CONDUCTING AN EFFECTIVE STATION INTERVIEW

I. Rapport Building Stage

At this stage, matters entirely unrelated to the offence or subject matter of investigation may be discussed. This may start with the interviewer introducing himself in his own words and then asking the witness questions such as where he lives, what he does for a living, nature of his work, past work experiences, etc. The witness at this stage should be allowed to answer questions freely without interjection. At some point, some sense of humour may be introduced – all aimed at relaxing the witness and giving him confidence. The whole idea at this stage is not necessarily to make friends with the witness but so that there will be free flow of interaction and information.

II. Information Exchange Stage

At this stage, the interviewer is getting down to more details. He can now ask more direct questions and seek clarifications on answers given. The witness can be asked general questions such as whether he knows why he has been invited and what he knows about the crime in question. He, may be asked whether he knows a particular person, place or thing and whether he has had an interaction with a particular person or thing, etc.

At this stage, if the witness is a suspect who is likely to be prosecuted then, the interviewer will have to ask the witness whether he has or wishes to have a lawyer to be with him at the interview. If the witness indicates that he wishes but he has none, he may be allowed to contact one. If he cannot get one, he should be advised about the existence of the public defender or the Legal Aid Scheme. The interviewer is also expected to comply with the Judges Rule at this stage.

III. Challenge Stage

With information gathered at the earlier stages, the interviewer now has a clearer idea of the psychology of the witness and his level of consistency. He can now challenge the witness on specific aspects of his information. He can now put more direct questions to the witness and changing from the open question style to closed question style calling more for a "yes" or "no" answer. Also at this stage, the approach of the interviewer may change from warm and friendly to cold and official. It is necessary to inform the witness that the interviewer is only interested in the truth and that it is in his own best interest to tell the truth.

IV. Concluding Stage

At this stage, all questions that the interviewer can reasonably ask have been asked. The interviewer may ask the suspect to tell him any other thing about this case that he thinks the interviewer may want to know. It is also important that before allowing the witness to go, his contact address including telephone number should be obtained so that he does not go away with the impression that he has finished with the interviewer forever.

In any case, the interview setting should be bare of instruments of torture such as cane, electric heater, needless and the room should look as friendly as possible.

COMMON EVIDENTIAL ISSUES IN THE COURSE OF POLICE AND PRE-TRIAL INVESTIGATIONS

I. Alibi

A. Meaning

Alibi simply means "elsewhere". Alibi means that an accused was somewhere other than the where the prosectution says he was at the time of the commission of the offence making it

impossible for him to have committed or participated in the commission of the offence with which he is charged – ***Azeez v State***.[52]

B. Duty on Defendant to Promptly and Properly Raise the Plea of Alibi

The defence of alibi must be raised promptly and properly by the suspect i.e. the suspect must raise the defence timeously and also furnish sufficient particulars to the prosecution/police to investigate.

1. **Timeously:** the right time to raise the plea of alibi is as soon as the suspect is apprehended by the police or other law enforcement agent – ***Mohammed v State***.[53] In fact, it must form part of his statement to the police if he were to make any statement. Alibi raised for the first time at the point of trial is an afterthought and will fail.
2. **Sufficient Particulars:** to properly raise the defence of alibi, the suspect must furnish the police with the following particulars –
   (a) Where he was when the offence took place;
   (b) Who he was with at the time the offence took place;
   (c) The appropriate time he was together with them – ***Ndidi v. State***.[54] The relevant time is the exact time the offence was committed. Thus, it is not sufficient that the suspect was somewhere else at a time antecedent or subsequent to the commission of the alleged offence. He must show that at the relevant time the offence was committed, he was somewhere else and could not have been present at the scene of the crime.

   Where an accused person fails to give particulars or where he gives conflicting stories as to his whereabouts at the material time under consideration, he has not properly raised alibi and there is no obligation on the prosecution to go on investigation – ***Mohammed v. State***.[55] As much as the burden to disprove alibi is on the prosecution, the defendant, on his own part, must discharge the evidential or secondary burden – ***Okosi v State***.[56]

C. Duty of Prosecution to Investigate and Disprove the Alibi

1. **General Rule:** Once the accused has discharge his evidential burden of furnishing sufficient particulars, the prosecution will now have a burden to investigate the alibi and disprove it by fixing the accused at the scene of the crime – ***Atta v State***.[57] The prosecution must investigate the alibi to verify its truthfulness or otherwise. Failure to investigate may be fatal to the case of the prosecution as it will render the alibi unrebutted and may vitiate the proof beyond reasonable doubt against raising the alibi.
2. **How to Discharge the Burden of Disproving Alibi:** Generally, there is no definite or particular manner in which the prosecution must attack or disprove alibi raised by the accused. All that the prosecution is required to do is to produce cogent evidence to convince the court that the accused person was at the scene of the crime and committed the crime. Once the prosecution is able to do this, the defence of alibi crumbles – ***State v Azeez***.[58] Thus, generally, when the duty on the prosecution to disprove alibi arises, that duty may be discharged in any of the following ways –
   (a) By showing directly that the accused person was wrong in his claim to have been at another place during the commission of the offence; or
   (b) By calling evidence so strong and connecting the accused person with the commission of the offence charged that his defence of alibi cannot be true – ***Yanor v State***.[59]

---

[52] (2008) All FWLR (Pt. 424) 1423 at 1447
[53] (2015) All FWLR (Pt. 782) 1658 at 1685
[54] (2007) All FWLR (Pt. 381) 1617
[55] (Supra)
[56] (1989) 1 NWLR (Pt. 100) 642
[57] (2010) All FWLR (Pt. 540) 1224 at 1250
[58] (Supra)
[59] (1965) NMLR 337

3. **Where Alibi need not be Investigated**
   - **(a) Fixing the Accused at the Scene of the Crime:** if the prosecution succeeds in fixing the accused at the scene of the crime by adducing sufficient acceptable evidence, his alibi is thereby logically and physically demolished – ***Archibong v. State.***[60]
   - **(b) Vague Accounts:** where the defence of alibi consists of vague accounts which are simply placed before the courts as make-believe of plea of that defence which are completely devoid of material facts worthy of investigation, there would be no need for investigation – ***Saka v State.***[61]
   - **(c) Lack of Sufficient Particulars:** the plea of alibi will only be taken seriously where the accused himself has properly raised the defence worthy of investigation by the police. Thus, there will be no duty to investigate where the accused did not furnish the police with sufficient particulars – ***Mohammed v. State.***[62]
   - **(d) Confession:** where the accused person raises the plea of alibi but also made a voluntary confession that he committed the crime, there will be no duty to investigate the alibi – ***Ogoala v. State.***

D. Duty on Court to Consider Alibi

Once the defence of alibi is properly raised by the defence, the court is under a duty to consider the defence. It does not matter that the court does not believe that the defence will avail the accused. Once the accused raised the defence of alibi, he must be given the opportunity to call his witnesses or other evidence to establish the defence – ***Ogoala v. State.***

Where the police fails to investigate the alibi and the court is of the view that the evidence of a particular witness mentioned by the accused in his statement is material, the court can suo moto call such a witness to consider the alibi whether such witness was called by the prosecution or defence or not – ***Abudu v State.***[63]

E. Effect of Confessional Statement on a Plea of Alibi

A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the offence – ***Section 28 Evidence Act 2011***. Alibi on the other hand is a statement tending to show that the accused was somewhere else other than the scene of crime and could not have committed the offence charged. No doubt, the two statements are inconsistent in nature and character. Thus, the effect of confessional statement on plea of alibi is that the plea is completely shut out and abandoned if it was first ever made – ***Ogoala v. State.*** If the plea of alibi is raised not before the police but for the first time before the trial Judge and there is a confessional statement properly proved to be true and voluntarily made, the plea of alibi is totally destroyed by the confessional statement.

II. Confessions

A. Concept

A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime – ***Section 28 Evidence Act 2011***. Thus, in ordinary usage, the term "confession" and "admission" may mean the same thing. In law, however, they are distinct as different legal consequences flow from each of them. The distinction are:

1. Only voluntary and direct acknowledgement of guilt is confession but when confession falls short of actual admission of guilt, it may nevertheless be used as evidence against the person who made it or his authorized agent as admission - ***CBI v. Shukla.***[64]

---

[60] (2006) All FWLR (Pt. 323) 1747 at 1785
[61] (2006) All FWLR (Pt. 335) 148 at 163
[62] (Supra)
[63] (1985) 1 NSCC 78
[64] (1998) All MR (Cri) 629

2. Confession is more common with criminal proceedings while admission is more common with civil proceedings.
3. While every confession involves admission, admission alone does not amount to confession. For example, in civil proceedings, an agent can admit liability on behalf of his principal – ***Section 21 Evidence Act 2011*****,** but a confession is only admissible if made by the accused himself – ***R v. Inyang*****.**[65]
4. An admission may be used as corroborative evidence against the accused even while it may not qualify as a confession on the strength of which a conviction may be based solely – ***FRN v. Iweka*****.**[66]

B. Types of Confessions

1. **Formal/Judicial Confession:** this is a confession made in court before a judge or a Magistrate or other tribunal. For instance where the accused pleads guilty to the charge upon same being read to him by the court or where the accused admits guilt in a statement in a preliminary inquiry.
2. **Informal/Extra-Judicial Confession:** any statement made outside the court by an accused person or a suspect tending to show that he is guilty of the offence for which he is charged or suspected is called an informal confession. It may be oral or written – ***Arogundade v. State*****.**[67] All confessions made to the police or other law enforcement officers qualify as informal confessions.

C. Confession obtained from a Defendant through an Interpreter in a Language Unknown to the IPO

An interpreter is normally employed when the Investigating Police Officer (IPO) who receives the confessional statement of the accused does not understand the language of the accused and the accused did not write the statement by himself. In this case, there is need to call the interpreter as witness to give evidence. Thus, in ***Bello v. State*****,**[68] the court held that evidence of an IPO about confession of a crime made by an accused person in a language the IPO does not understand but relayed to him by an interpreter amounts to inadmissible hearsay evidence where the interpreter is not called as a witness. Meanwhile, ***Section 17(3) ACJA*** provides for what the police shall do where the suspect does not understand English language.

D. Forms of Confession

A confession can be in a written form or made orally. In ***Igbinovia v. State*****,**[69] an oral confession made by the accused person to one of the police officers who pretended to be one of the criminals in the cell was admitted in evidence and used to convict the accused. ***Section 15(5) ACJA*** also provides that an oral confession of arrested suspect shall be admissible in evidence.

E. Rationale for Admitting Confessional Statements in Evidence

Ordinarily, confessions are not admissible because they constitute hearsay evidence. However, the Common Law allowed the admissibility of confessions as exception to the hearsay rule due to the crucial role the play in the determination of criminal trials. The danger of unreliability traditionally associated with hearsay evidence is outweighed by the fact that a statement so clearly adverse to the interests of the maker is unlikely to be made unless the contents are true. The court in ***Fabiyi v. State*****,**[70] held that the confessional statement of an accused remains the best proof of what he had done. It constitutes a clear and cogent proof of an act of a person's own confession. This is so, since no rational being will say a negative thing against his own interest, all things being equal.

---

[65] (1931) 10 NLR 33
[66] (2013) 3 NWLR (Pt. 1341) 285
[67] (2009) All FWLR (Pt. 469) 409
[68] (2012) 8 NWLR (Pt. 1302) 207 at 238
[69] (1981) 2 SC 5
[70] (2015) All FWLR (Pt. 797) 777

F. Admissibility of Confessional Statements

The following principles are applicable in admissibility of confessional statements:

1. The statement must admit or acknowledge that the maker of the statement committed the offence alleged against him.
2. The confession must be direct, positive and unequivocal as to the guilt of the accused person – ***State v. Enabosi.***[71]
3. The statement must contain admission of both the actus reus and mens rea (where mens rea is required) – ***Omisade v Queen.***[72]
4. The confession must have been made voluntary – ***Section 29 Evidence Act 2011.***
5. The confession of an accused is admissible only against him and not against any other person – ***Mbang v. State.***[73] However, the confession may be admissible against a co-accused where the co-accused admits it by words or through conduct.

G. Challenge of Confessional Statements

Confessional statements may be challenged by a defendant in the following ways:

1. That he/she did not make the statement – retraction.
2. That the statement was made by him/her but that it was not made voluntarily.

1. Retraction

An accused person may object to a statement on the ground that it was not made by him. This is call retraction – ***Sule v. State.*** Retraction may arise where:

(a) The statement is not signed;
(b) The defendant denies that the signature belongs to him;
(c) The accused alleges that the statement was not properly or accurately recorded (where the accused did not write by himself);
(d) The accused alleges that he did not make the oral confession accredited to him;
(e) The accused alleges that his written statement was altered by someone;
(f) The accused alleges that he did not make the statement;
(g) The accused alleges that he was unsettled in mind at the time he made the statement; or
(h) The accused alleges that his statement was involuntary but fails to raise objection when it is tendered. At this stage, the court will deem the statement as tantamount to a denial as such belated retraction would not affect the voluntariness of the statement – ***Ode v. State.***[74]

Where there is retraction, it does not affect the admissibility of the statement. The Judge may admit the confessional statement when same is tendered and then, decide later at the end of the case whether the accused made the statement and to ascribe probative value to same – ***Oguno v. State.***[75] However, it will be desirable to have a corroborative evidence no matter how slight before convicting on such retracted confessional statement that was admitted – ***Mohammed v. State.***[76] Thus, the court must scrutinize the statement to test its truthfulness or otherwise in line with other available evidence outside the statement in order to see whether they confirm, support or correspond with the statement.

The appropriate time to retract the confession is when it is sought to be tendered by the prosecution so that the court will note that the statement was denied by the defendant and will be more ready to entertain evidence of the retraction in the course of the defence. Any objection coming in the course of the defence (long after its admission and closure of the prosecution's case) will be regarded as an afterthought – ***Usung v. State.***[77]

---

[71] (1966) 2 All NLR 116
[72] (1964) 1 All NLR 233
[73] (2010) All FWLR (Pt. 508) 379 at 395
[74] (1974) 1 All NLR (Pt. 2) 24
[75] (2011) 7 NWLR (Pt. 1246) 314
[76] (2015) All FWLR (Pt. 793) 1926
[77] (2009) All FWLR (Pt. 462) 1203

2. Involuntariness or Oppression (Trial within Trial)

By virtue of ***Section 29(2) (a) & (b) Evidence Act 2011*****,** the Court shall not admit a confession obtained by oppression or in consequence of anything said or done which will likely in the circumstance make such confession unreliable, except the prosecution proves to the court beyond reasonable doubt that the confession was not obtained in such a manner. ***Section 29(3) Evidence Act 2011*** went further and stated that the court can also *suo motu* require the prosecution to prove that the confession was not obtained in an oppressive manner. Where the court out of inadvertence or any other reason fail to fulfill this obligation, the defence counsel is required to object to such confession being tendered. ***Section 29(5) Evidence Act 2011*** defines "oppression" to include torture, inhuman or degrading treatment, and the use of threat of violence whether or not amounting to torture.

An accused person may challenge a confessional statement on the allegation of existence of (inducement, threat or promise) properly proved to emanate from a person before whom a confession is being taken. Where any of the factors is shown to exist before or in the course of obtaining a witness statement, it can be said that the statement is obtained in a way or manner considered oppressive.

The appropriate stage to raise an objection to a confessional statement is when it is about to be tendered in evidence. It must be made timeously. Any belated denial of the voluntariness of a confessional statement or its retraction is a mere after thought – ***Usung v. State.***[78]

Where there is an objection as to the voluntariness of the confessional statement, the court must stop further proceedings and determine the question of voluntariness of the confession before taking further step by way of admitting or rejecting it – ***Lateef v. FRN.***[79] The procedure whereby the court determines the voluntariness or otherwise of a confessional statement is known as "trial within trial". It is a trial within the main trial. While the main trial is concern with determining the guilt or otherwise of the accused, the trial within trial is concerned with an interlocutory question of whether a confession statement sought to be tendered was obtained according to law. The procedure for conducting a trial within trial is as follows:

(a) The court halts the main proceedings;
(b) The court informs the parties that there is going to be a trial within trial to determine the voluntariness of the statement sought to be tendered;
(c) The court call on the prosecution to call witnesses to prove voluntariness. The burden is on the prosecution to prove that it was free and voluntary;
(d) Each witness called is sworn or re-sworn as the case may be;
(e) Each witness so called is liable to be examined in chief, cross-examined and re-examined if need be;
(f) Exhibits may be tendered;
(g) After all prosecution witnesses have testified, the court calls on the defence to call its own witness if any to refute the position of the prosecution;
(h) Defence witnesses are examined in chief, cross-examined and re-examined if need be;
(i) Parties are allowed to address the court based on the evidence;
(j) The court then delivers a ruling either admitting the statement or rejecting same;
(k) Whichever way the ruling goes, the main trial then resumes unless the court *suo motu* or on the application of parties, adjourns the matter to another day for continuation of hearing – ***Babarinde v. State.***[80]

At the end of the trial within trial, if the court is satisfied that the statement was not voluntarily made, then the statement is not admissible in evidence and would be so declared by the court.

---

[78] (Supra)
[79] (2010) All FWLR (Pt. 539) 1171
[80] (2014) All FWLR (Pt. 717) 606 at 622

Where a confessional statement is admitted after a trial within trial, the ruling is a decision within the meaning of ***Section 318(1) CFRN 1999*** and therefore appealable. Where the defendant fails to appeal after the ruling within the time allowed for such interlocutory ruling, he cannot raise it at the appeal court after the final judgment without leave of court – ***Asimi v. State***.[81]

H. Conflicting Confessions and Confession Implicating a Co-Accused

1. **Conflicting Confessions:** where the accused makes two voluntary confessional statements with full knowledge of what he was doing, it has been held that the trial judge will be right to take the one that is less favourable to the accused, particularly when that one is the first in time. The second statement will be taken to be an afterthought – ***Edoko v State***.[82]
2. **Confession Implicating Co-Accused Persons:** confession made by one accused person is a relevant fact against the person making it only and not against any other person the confession may implicate – ***Adebowale v. State***.[83] The rationale for this rule is that the marker may have his own motives for implicating any other person who may not have opportunity of refuting what has been alleged against him. However, the exceptions to this rule are –
   (a) Where the accused goes into the witness box and repeats on oath, the contents of his statement to the police, they become evidence for all purposes, admissible in law and can be acted upon by the court against the co-accused – ***Gbohor v State***.[84]
   (b) Where the co-accused voluntarily adopts a confessional statement made by the accused – ***State v. Gwangwan***.[85] The adoption can be done expressly or through conduct e.g. refusal to deny the allegation when the confessional statement was brought to him either before or at the trial.
   (c) Where the confessional statement by the accused against a co-accused is corroborated by other evidence, a court can rely on it – ***Gbohor v. State***.[86]

   A confessional statement implicating a co-accused, though not relevant against the co-accused, is still admissible in evidence as it is relevant against the marker. The appropriate thing for the counsel to the co-accused to do is to strenuously cross-examine the marker of the statement rather than fighting that the statement should not be admitted. It is worthy of note that, where the prosecution intends to use the confession made by one person against another person, then he must make a true copy of that statement available to that other person – ***Yongo v COP***.[87]

III. Recording and Taking of Exhibits

A. Concept

Exhibits refers to items seized by police officers in the course of a search or other criminal investigations. They are items which the police intend to use at the trial of the suspect (when the decision is finally taken to prosecute). ***Section 10(1) ACJA*** provides that a police officer making an arrest or to whom a private person hands over a suspect, shall immediately record information about the arrested suspect and an inventory of all items or properties recovered from the suspect which shall be signed by the investigating police officer.

[81] (2016) All FWLR (Pt. 857) 468 at 494
[82] (2015) All FWLR (Pt. 772) 1728
[83] (2013) 16 NWLR (Pt. 1379) 104
[84] (2013) All FWLR (Pt. 709) 1061 at 1089
[85] (2016) All FWLR (Pt. 801) 1470
[86] (Supra)
[87] (1992) 9 SCNJ 113

B. How Exhibits are kept

1. **Exhibit List:** before the police keep these exhibits, they make the exhibit list which usually chronicles the items seized from a particular suspect of from different suspects in respect of the same case.
2. **Exhibit Register:** at the station, the list of all exhibits in the custody of the police in a particular station or division is then recorded in the exhibit register.
3. **Exhibit Keeper:** the exhibit keeper then keeps custody of all items in the custody of the police. He transfers all exhibits to the exhibit room.
4. **Exhibit Room:** all items in relation to the cases handled are kept in the exhibit room where only designated officers are allowed entry to avoid unauthorized interference. Where exhibits kept in the exhibit room are to be tendered in court, they are to be taken out by the appropriate officer who has proper custody of the exhibits.
5. **Description Name and Number for Purposes of Identification:** in keeping these exhibits, they are properly described in the register and given a name or number for purposes of identification.
6. **Description by Real Name When Tendered in Court:** at the end of the investigation, if any of these items is to be tendered in court, it is described to the court not by the exhibit number given it by the police but by the exhibit's real name and the court would if it admits it, give it a new name e.g. Exhibit A1.
7. **Laboratory or Forensic Test:** where an item seized by the police requires going for laboratory or forensic test, the item is usually packed in an exhibit pouch and then sent to the laboratory under security.
8. **Custody of Exhibits:** Exhibits remain in police custody until the end of investigation or case. However, ***Section 10(4) ACJA*** provides that a police officer may, upon request by the owner or a party interested, release the property on bond pending the arraignment of the arrested suspect before the court.

C. Effect of Failure to Properly Handle Exhibits

Where the police fail to properly handle exhibits, objection may easily be taken against its admissibility at the trial and where admitted, less weight shall be attached to it.

IV. Judges Rule

A. Concept

These rules were formulated in England by the Judges of the Queen's Bench Division in 1912. The whole purpose was to guide police officers and others involved in criminal investigation in taking statements from suspects to ensure that what the police turn in as confession are voluntary.

B. The Rules

1. **Rule One – Questioning Anyone to Obtain Useful Information:** if a police officer is trying to discover whether a crime has been committed and the perpetrator of such a crime, he is entitled to question anybody who he thinks that useful information may be obtained. This is so whether or not the person concerned has been taken into custody so long as he has not been charged with the offence or informed that he may be prosecuted for it.
2. **Rule Two – Cautioning Suspect before Asking Questions Relating to the Offence:** if the police officer has evidence which gives reasonable grounds for believing that a person has committed a crime, he shall caution that person or cause him to be cautioned before putting to him any questions, relating to that offence as follows: *"You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence."*
3. **Rule Three –**
   (a) Record of Questioning & Statement: after being cautioned, when a person being questioned makes a statement or elects to make a statement, a record of the time and

place at which any of such questioning or statement began an ended and of the person(s) present shall be kept.

(b) Cautioning where a Person may be prosecuted for or charged with an Offence: where a person may be prosecuted for an offence or charged with an offence, he shall be cautioned as follows: *"Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence."*

The rule for caution before taking a statement from a suspect or an accused outside the court has been extended to include posing for a photograph. Thus, in ***Ugama v. Queen*,**[88] the court held that where a police officer wants a suspect to pose for photograph which is likely to be used in evidence against him, he must be informed of such and cautioned that he is not under obligation to pose for the photograph.

(c) Prohibition of Questions Relating to the Offence after the Accused has been Charged or Informed that he may be Prosecuted: questions relating to the offence should not be put to the accused after he has been charged or informed that he may be prosecuted except for the purpose of preventing or minimizing harm or loss to some other person or the public or for clearing up an ambiguity in a previous answer or statement and should be stated in the following terms: *"I wish to put some questions to you about the offence with which you have been charged (or for an offence for which you may be prosecuted). You are not obliged to answer any of these questions but if you do, the questions and answers will be taken down in writing and be given in evidence."*

4. Rule Four –

(a) Contemporaneous Record of Questions and Answers: questions asked and answers given relating to the offence must at the same time, be recorded in full and the record signed by that person or, if he refuses, by the interrogating officer.

(b) Written Statements by Suspect: if a person says that he wants to make a statement, he shall be told that it is intended to make a written record of what he says. He shall always be asked whether he wishes to write down himself what he wants to say; if the suspect is to write the statement himself, he shall be asked to write out and sign the statement below before writing what he wants to say: *"I make this statement of my own free will. I have been told that I need not say anything unless I wish to do and that whatever I say may be given in evidence."*

A witness writing his own statement shall be allowed to do so on his own without any prompting except that he may be told of matters that are material.

(c) Written Statements on Behalf of the Suspect: if the suspect says that he cannot write or that he would like someone to write it for him, a police officer may offer to write the statement for him. If he accepts the offer, the officer shall before starting ask the person making the statement to sign or make his mark to the following: *"I wish to make statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do and that whatever I say may be given in evidence."*

The police officer is to take down the exact words of the suspect without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters. He shall not prompt him.

When the police officer has finished writing the statement, the person making it shall be asked to read it and to make any corrections, alterations or addition he wishes. When he has finished reading it, he shall be asked to write and sign the following: *"I*

[88] (1959) 4 FSC, 218

have read the above statement and I have been told that I can correct, alter, or add anything I wish. This statement is true. I have made it of my own free will."

(d) Refusal of Suspect to Sign or Read the Statement Written on His Behalf: If the suspect who has made a statement refuses to write the above mentioned certificate at the end of it or sign it, the senior police officer present is to write on the statement and in the presence of the person making it, what transpired. If the person making the statement cannot read or refuses to read it, the officer who has written it for him shall read it over to him and ask him whether he would like to alter or add anything and to put his signature or make his mark at the end. The police officer shall then certify on the statement itself what he has done.

5. **Rule Five – Written Statement made by Co-Suspect:** if at any time after a person has been charged with or informed that he may be prosecuted for an offence, a police officer wishes to bring to the notice of that person any written statement made by another person who in respect of the same offence has also been charged or informed that he may be prosecuted, he shall hand to that person a true copy of that written statement, but nothing shall be said or done to invite any comment. Provided that when the person charged is an illiterate the statement may be read over or interpreted to him apart by some other person than a police man. Anything said to such reader by the person charged when the statement is read shall not be admissible in evidence against him. If the person says that he would like to make a statement or starts to say something in reply, he shall at once be cautioned.
6. **Rule Six – Compliance with Rules by Persons Other Police Officers Charged with Duty of Investigating Offences:** persons other than police officers charged with the duty of investigating offences or charging offenders should endeavor to comply with these rules. Thus, every law enforcement officer involved in criminal investigation (EFCC, ICPC, NAFDAC, Custom, etc.) and who takes statements from suspects is enjoyed to observe the rules – ***Dairo v. FRN*****.**

C. Additional Practice to Confirm the Voluntariness of Confessional Statements

The police in Nigeria have developed a practice whereby after a confession has been made by a suspect, such suspect is taken together with the statement to a superior police officer for the purpose of confirming the voluntariness of the statement. When the suspect is brought before the superior officer, the statement is then read to him for him to confirm. The questions put to the suspect by the superior police officer and the answers given by the suspect shall be recorded in a separate document known as "Confessional Statement Form A" by the superior police officer who shall sign it and also give the suspect to sign. The idea is that if the statement was made under threat or duress, such threat or duress would have been removed by the time the suspect is brought before a superior officer before whom he should feel safer.

D. Effect of Non-Compliance with Rules

1. **Judges' Rules:** Mere non observance of the Judges rules would not render a confession inadmissible if the court is otherwise satisfied that the statement in question was voluntarily made – ***R v. Voison*****.** They rules have no force of law but its non-compliance may lead to rejection of the statement by the court where the non-compliance affected the voluntary nature of the confession – ***State v. Edekere*****.**[89] However, where the non-compliance did not affect the voluntary nature of the confession, it will be admissible. In the same vein, the court in ***Usman v. State*****,** held that breaches of the Judge's rules do not render a document inadmissible. At best, such breaches might only affect the weight the court attaches to the statement and certainly not its admissibility. Thus, the admissibility of a confessional statement depends not on whether there was compliance with the Judges' rules but whether it was voluntarily made.

[89] (1981) 2 NCR 335

2. **Confirmation before a Superior Police Officer:** Just like the effect of non-compliance with the Judges' rules, where the statement is not taken before a superior police officer for confirmation of its voluntariness, it does not ipso facto render the confession inadmissible – ***Osisugo v. State.***[90] Although the usual practice is to get the suspect or accused person to sign the self-incriminating statement again after it has been read to him before a superior police officer, it has been held that failure to re-sign would not affect its admissibility – ***Oke v. The Republic.***[91]

V. Identification Parade

A. Concept

Identification means a whole series of facts and circumstances by which a witness associates a person with the commission of the offence charged. It may consist of or include fingerprints, handwriting, palm prints, voice, identification parade, photographs, and recollection of the features of the culprit by a witness who saw him in the act of commission.

In the case of parade by the police or other law enforcement officers, it may be an expression of opinion that the person pointed out by the witness is the same person he had seen previously committing the alleged offence. Thus, the court in ***Agboola v. State,***[92] defined identification parade as a police identification procedure in which a criminal suspect and other physically similar persons are shown to the victim or a witness to determine whether the suspect can be identified as the perpetrator of the alleged crime.

The whole essence of identification is to:

1. Test the witness' ability to identify the person he saw on a previous occasion; or
2. Ensure that there is no mistaken identity and consequently, avoid miscarriage of justice – ***Okiemute v. State.***[93]

B. Circumstances where Identification Parade is required

Identification will be necessary where:

1. The victim or witness did not know the accused before and his first acquaintance with him was during the commission of the offence;
2. The meeting with the accused was just brief; or
3. Due to time and circumstances, the victim or witness was unable to see the suspect clearly - ***Ikemson v State.***[94]

The following are to be considered when faced with the question of whether to conduct an identification parade or not:

1. The culprit was caught at the scene of crime;
2. A person whether victim or not witnessed the incident;
3. The witness volunteered a statement to the police wherein he gave the police descriptions of the culprit;
4. The witness indicated to the police that if he sees the culprit again, he can recognize him;
5. The culprit is subsequently apprehended by the police or any other person having power to do so; and
6. The suspect disputes being the person the witness claims to have seen.

C. Circumstances where Identification Parade is not necessary

1. Where by his confession, an accused person identifies himself as the offender.
2. Where the offender is apprehended at the scene of crime or pursued immediately thereafter and apprehended – ***Ogoala v. State.***
3. Where the offender is well known to the witness before the incident – ***Abudu v. State.***

[90] (2016) All FWLR (Pt. 792) 1602
[91] (1968) NMLR 69
[92] (2015) All FWLR (Pt. 795) 197
[93] (2017) All FWLR (Pt. 864) 1866
[94] (1989) 3 NWLR (Pt. 110) 455

4. Where the circumstances of the case has sufficiently and irresistibly married the offender to the crime and the crime scene – ***Otti v. State*.**
5. Where a clear case of alibi has been put forward by the suspect – ***Abudu v. State*.**
6. Where there is a clear and uncontradicting eye witness account and identification of the person who committed the offence – ***Ibrahim v. State*.**

D. Difference between Recognition and Identification

The difference between recognition and identification was brought out by the court in the case of ***Emenegor v. State*** as follows: "Recognition of an accused person arises when a person sees (or acknowledges the identity of) a man or woman well known to him committing a crime. The value of this acknowledgment or recognition is that it dispels any scintilla of doubt not only about the accused person's physiognomy but also his personae. On the other hand, the identification of an accused person arises when a person unknown to a witness commits a crime in his presence. In such situation, the identity of the accused person become a fact in issue or relevant fact." In is only in the latter situation that identification parade becomes necessary and is thus usually conducted.

E. Mistaken Identity

Whenever the evidence against the accused is that of identification, the most common defence for the accused is to allege mistaken identity. Thus, whenever the case against the accused depends wholly or substantially on the correctness of the identification of the accused which the defence alleges to be mistaken, the court must closely examine and receive the evidence with caution before convicting on the said evidence – ***Ndidi v. State*.**[95]

Because evidence of identification is essentially evidence of opinion, it is not full proof and the court acting on such evidence must be cognizant of the fact that such evidence is usually fraught with a lot of human errors resulting in cases of mistaken identity. Such errors may include: error of recognition; error of observation for example, the witness may not be very good in his sight; error of reconstruction; or it is possible for the culprit to divert attention from himself by offering to assist the police in identifying the criminal when he is himself the criminal.

As a result, courts trying cases where the only evidence against the accused is evidence of identity, should:

1. Be wary and, in fact, should warn itself of the danger of convicting on the uncorroborated evidence of such identification – ***Okeke v State*.**[96]
2. Meticulously examine the evidence proffered by the prosecution to see whether there are any weaknesses capable of endangering or rendering worthless any contention that the accused was sufficiently recognized by the witness – ***Osuagwu v. State*.**[97]

F. Conduct of Identification Parade

None of our local rules of criminal evidence make provision for how identification parade is conducted. Thus, the rules of conducting identification parade, the guiding principles and the rights of the suspects at such parades are largely drawn from England's ***Code of Practice for Identification of Persons by Police Officers (Code D)*** made pursuant to the ***Police and Criminal Evidence Act of 1984*.** The following are culled from Annex D to the Code:

1. **Reminder and Caution to Suspect:** immediately before the identification parade, the suspect must be reminded of the procedure governing its conduct and cautioned as appropriate.
2. **Exclusion of Unauthorized Persons:** all unauthorized persons must be excluded from the place where the identification is held.

---

[95] (2007) All FWLR (Pt. 381) 1617
[96] (1995) 4 NWLR (Pt. 392) 676
[97] (2017) All FWLR (Pt. 872) 1475 at 1500

3. **Presence & Hearing of Suspect:** once the identification parade has been formed, everything afterwards, in respect of it, shall take place in the presence and hearing of the suspect and any interpreter, solicitor, friend or any appropriate adult who is present.
4. **Composition:** the identification parade shall consist of at least 8 people (in addition to the suspect) who, so far as possible, resemble the suspect in age, height, general appearance and position in life. Only one suspect shall be included in an identification parade unless there are two suspects of roughly similar appearance, in which case, they may be paraded together with at least 12 other people. In no circumstance shall more than two suspects be included in one identification parade and where there are separate identification parades, they shall be made up of different people.
5. **Concealing Unusual Physical Feature:** if the suspect has an unusual physical feature (tattoo, facial scar, etc.) which cannot be replicated on other members of the identification parade, steps may be taken to conceal the location of that feature on the suspect and other members of the identification parade, so that all members of the identification parade resemble each other in general appearance, if the suspect and their solicitor or appropriate adult agree. Where police officers in uniform form an identification parade, any numerals or other identifying badges shall be concealed.
6. **Opportunity to Raise Objection:** when the suspect is brought to where the identification parade is to be held, he shall be asked if he has any objection to the arrangement for the identification parade or to any of the participants in it and to state the reasons for the objection. Where there is an objection, steps shall be taken to remove the grounds of the objection if practicable.
7. **Position of Suspect in Line:** the suspect may select his own position in the line, but may not otherwise interfere with the order of the people forming the line. Where there is more than one witness, the suspect must be told, after each witness has left, that he can, if he wishes, change position in line. Each position in line must be clearly numbered.
8. **Proper Precaution on Witnesses:** before witnesses attend the identification parade, appropriate arrangements must be made to make sure that they are not able to:
   (a) Communicate with each other about the case or overhear a witness who has already seen the identification parade;
   (b) See any member of the identification parade;
   (c) See or be reminded of, any photograph or description of the suspect or be given any other identification as to the suspect's identity;
   (d) See the suspect before or after the identification parade;
   (e) Discuss with the person conducting the witness about the composition or whether any witness has made any identification.
9. **Identification by Witness:** witnesses shall be brought in one at a time and are expected to look at each of the members of the identification parade at least twice before making a decision whether the person he/she saw is on the identification parade. When the officer conducting the identification parade is satisfied the witness looked at each of the identification parade member, they shall ask the witness whether the person he saw on a specified earlier occasion is on the identification parade and, if so, to identify the number of the person concerned. The witness may request that any of the member of the identification parade should speak, adopt any specified posture, move, or remove anything use for the purpose of concealing an unusual physical feature.
10. **Identification after the Identification Parade has ended:** if the witness makes identification after the identification parade has ended, the suspect and, if present, his solicitor, interpreter or friend shall be informed. When this occurs, consideration shall be given to allowing the witness a second opportunity to identify the suspect.

11. **Questions to Witnesses about any Broadcast, Published Films, or Photographs of the Suspect:** after the procedure, each witness shall be asked whether he has seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and their reply shall be recorded.
12. **Comments by Suspects:** when the last witness has left, the suspect shall be asked if he wishes to make any comments on the conduct of the identification parade.
13. **Video Recording or Photograph of the Parade:** a video recording should normally be made of the identification parade. If that is impracticable, a colour photograph must be taken. A copy of the video recording or photograph shall be supplied, on request, to the suspect or his solicitor within reasonable time.
14. **Record of the Conduct of the Identification Parade:** a record of the conduct of any identification parade must be made on forms provided for the purpose. This shall include anything said by the witness or the suspect about identifications or the conduct of the procedure, the persons present at the parade, and any reason it was not practicable to comply with any of the code's provisions.

G. Place of Conducting Identification Parade

Generally, identification parades are conducted at the police station. Thus, where the suspect is detained anywhere other than a police station, he would be required to be taken to the police station for the exercise. However, there may be situations where the suspect is in prison custody and for security reasons, it is not safe to take him out of prison for the identification. Where that is the case, the identification may be conducted in the prison and a prison officer shall be present and the officer conducting the parade shall observe all rules and rights relating to identification parade.

H. Effect of Non-Compliance with Rules

A breach of the rules or guidelines of identification parade does not automatically render the evidence inadmissible, except the technical breach has occasioned or is likely to occasion miscarriage of justice in which case evidence of such identification shall be excluded – ***R. v. Grannel***.[98]

CONSTITUTIONAL RIGHTS OF A SUSPECT AT THE POLICE STATION

When a person is taken to a police station for the commission of an alleged offence or on reasonable suspicion of being about to commit a crime, he is entitled to the following rights under the Constitution and other subsidiary legislation, presently in force:

1. **Right of Silence -** ***Section 35(2) of the 1999 Constitution***, provide for the right of a suspect to remain silent or avoid answering a question while under arrest or being held at the Police station until after consultation with legal practitioner or any other person of his own choice. This right is also known as the right against self-incrimination. Thus, the suspect cannot be compelled to say anything. This right continues up to trial. It is also incumbent on the police to inform the suspect that he has such a right – ***Section 6(2) (a) ACJA***.
2. **Right to have a Legal Representative of One's Choice present during Interview -** An accused person or a suspect, who is under arrest or detention, has a right to consult a Counsel of his choice before answering any question and a right for the counsel to be present at the interview - ***Section 35(2) of the 1999 Constitution***. The role of the solicitor at the police station will be to give the suspect legal advice and advice on his rights; sitting in on police interviews with suspect; ensuring fair play at the police station; and attending identification parade where necessary.
3. **Right to be Informed (in Writing) of the Reason for Arrest within 24 Hours -** ***Section 35(3) of the CFRN, 1999*** states that a person arrested shall be informed in writing within

[98] (1990) 90 Cr. App. R. 149

24 hours of the facts and grounds for his arrest or detention (in a language he understands). This applies to arrest and detention as well as to interview. A person being interviewed ought to be informed of his status in the interview, whether as a suspect or as a witness, this is to enable him decide whether to activate his right against self-incrimination or the right to Counsel of his choice.

4. **Right to Dignity of Human Person –** a suspect in police custody is neither a confirmed prisoner nor an awaiting-trial prisoner per se. To this end, he is entitled to be kept under decent human conditions – ***Section 34 CFRN 1999***. Thus, no suspect shall be subjected to torture or to inhuman or degrading treatment. Some practices in the police stations that infringes on this right are: detainees sleeping on bare floors with bucket of urine and faeces; exposure to bitter cold; deprivation of basic elements of hygiene such as soap and toilet paper; etc.
5. **Right to Bail –** The right of a suspect to bail is a constitutional right fully guaranteed under ***Section 35(4) and (5) of the 1999 Constitution***, which provides that a suspect is entitled to be released with or without conditions, even if further proceedings may be brought against him, within a period of a day or two days of his arrest and detention, as the case may be. This right is given effect to by the provisions of ***Sections 17, 18*** and ***19 of the CPL*** which empowers the police to grant bail to a suspect, on his entering into a bond with or without a surety for a valuable sum, to report at the police station at a given date and time. ***Section 129 CPCL; Section 17(2) ACJL*** makes similar provisions for bail of suspects by the police.
   Where by virtue of the nature and circumstances of a particular case it is not feasible for the police to release the suspect on bail, he must be charged to court not later than a period of 24 hours where there is a court within 40kms radius or 48 hours or more in other instances as the court may deem reasonable, from the date of detention – ***Section 35 (4) & (5) CFRN 1999; Section 3(2) ACJL; Section 17 CPL*****.** In ***Eda v. Commissioner of Police*****,**[99] the court held that where the Police arrests and detains a person over an allegation or reasonable suspicion of committing an offence, and investigation of the case are on-going, it is their duty to offer bail to the suspect and/or charge him to court, within 24 hours, under the appropriate section of the CPL.
6. **Right to be taken to Court within a reasonable time**: ***Section 35(4) of the CFRN 1999*** sets out the requirement that anyone lawfully detained shall be brought before a court of law "within a reasonable time". ***Section 35(5) CFRN 1999*** goes on to define "reasonable time" as one day, in a situation where a court of competent jurisdiction is within 40 kilometres radius from the accused's location, or in other instances, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.
7. **Right to Adequate Time and Facility to Prepare for Defence**: ***Section 36(6) (b) CFRN 1999*** - Just like when an accused is undergoing trial, a suspect is also entitled to reasonable time and facility to prepare for his defence. This requires that he should be informed in clear terms as to the allegations against him as well as showing him copies of documents implicating him. This would enable him to consider whether to engage a legal practitioner for his defence or to conduct his/her defence personally at the trial.
8. **Right to Life**: ***Section 33 CFRN 1999*** makes provision for right to life. Thus, a suspect shall not be torture to the extent of death just to make him confess or comply with the police.
9. **Right to Freedom from Unnecessary Restraint/Personal Liberty:** Just like it happens during arrest, criminal accused persons or suspects are entitled to the right not to be

[99] (1982) 6 NCLR, 223

unnecessarily restrained during Police interview. This right is closely associated with the right to have a legal representative present during the interview, as no Lawyer worth his salt would allow his client to be interview while handcuffed, or in chains as it sometimes happens. Such treatments are degrading, contrary to ***Section 35 (1) of the Constitution*** and ***Section 4 CPL*** and can render whatever statement obtained pursuant to such interview inadmissible. What is more, trial by ordeal is clearly prohibited under our Criminal jurisprudence.

10. **Right to Interpreter:** ***Section 17(3) ACJA*** provides that where a suspect does not understand or speak or write in the English language, an interpreter, shall record and read over the statement to the suspect to his understanding and the suspect shall then endorse the statement as having been made by him, and the interpreter shall attest to the making of the statement.
11. **Right to have Confessional Statement in Writing:** without prejudice to oral confession, ***Section 15(4) ACJA*** provides that where a suspect who is arrested volunteers to make a confessional statement, the police officer shall ensure that such statement is taken in writing and such statement may also be recorded electronically on a retrievable VCD or other audio visual means.

LEGAL AID SCHEME

I. Concept

Section 46 (4) (b) of the 1999 Constitution empowers the National Assembly to make provisions for the rendering of financial assistance to any indigent citizen of Nigeria where his rights under Chapter IV of the Constitution has been infringed or with a view to enabling him engage the services of a Legal Practitioner to prosecute his claim. Pursuant to this Section, the Legal Aid Scheme was established by the Legal Aid Act Cap L9 LFN 2004, now Legal Aid Amendment Act (2011). See also ***Section 3(1)-(3) ACJL***.

II. Notification of Right to Legal Aid & Application by Council for Review of Cases

Section 19 (2) LAA 2011 provides that it shall be the duty of all Police Officers and Courts to inform suspected persons of their entitlements to the services of a Legal Practitioner from the moment of arrest and if such suspect cannot afford the services of a Legal Practitioner, to notify the Council to represent him if he so desires. And under, Subsection (3) of the said Section 19, the Legal Aid Council as well as lawyers designated by it shall have access to the interview.

Section 19 (5) LAA 2011 provides that the Council may file an application in any appropriate Court for the review of the case of any person who has been held in any place of study without trial for a period exceeding the maximum provided by the Constitution.

II. Criteria for Eligibility of Legal Aid

1. There must be merit in the application; and
2. The applicant shall meet the indigence test. The applicant's income shall not exceed the national minimum wage. ***Section 10 (1) of the Legal Aid Act 2011*** provides that legal aid shall be granted to a person whose income does not exceed the National Minimum Wage. ***Section 10(2)*** goes further to provide that notwithstanding the provisions of Subsection (1), the Board may in exceptional circumstances grant legal aid service to a person whose earning exceeds the national minimum wage.

III. Categories of Cases Eligible for Legal Aid

Legal aid is applicable to both criminal and civil matters. ***Section 8 LAA 2011***: legal aid will be allowed in:

1. Cases of criminal defence service, advice and assistance in certain civil matters (e.g. murder/culpable homicide punishable by death etc.);
2. assistance to indigent persons involved in criminal investigation or proceedings;
3. Representation at the police station and in court, mediation, legal counselling, financial and welfare assistance for women and children, rehabilitation back to society, etc.

The ***Second Schedule LAA 2011*** provides for the category of criminal cases that are eligible for legal aid which includes murder; manslaughter; grievous bodily harm; rape; armed robbery; stealing; affray; etc.

IV. How to Apply for Legal Aid from the Council

Under the Legal Aid Act, statutory criminal and civil legal aid application forms have to be used. Applications may be made orally or in writing to the headquarters of the Legal Aid Council in Abuja or to any Zonal or State Legal Aid Office. Oral applications must be reduced in writing by the legal aid officer to whom the application was made.

POLICE BAIL

I. Concept

Police bail is the bail granted to a suspect at the police station upon fulfilment of certain conditions pending the investigation of the matter. Generally, 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.

II. Terms and Conditions of Police Bail

1. It must be entered upon recognizance with or without surety.
2. Bail is not generally monetary (free); may require you to execute a bond.

III. Procedure for Police Bail

1. Oral or written application by the suspect or his counsel.
2. Application by counsel is made on the letter head of his chambers.
3. The application is addressed to the head of the police station where the suspect is detained.
4. The application must state that the suspect will be available anytime he is needed at the police station.
5. The sureties must equally be stated in the application letter.
6. Police reviews the letter and grants bail. The law is that bail is free.

IV. Options Open to a Suspect upon Refusal of Police Bail

A. Application for Enforcement of Fundamental Rights

Fundamental Rights refer to any of the rights provided for in Chapter IV CFRN and includes any of the rights stipulated in the African Charter on Human and Peoples Right (Ratification and Enforcement) Act - ***Order 1 Rule 2 of Fundamental Rights (Enforcement Procedure) Rules 2009*****.** The rules set out the practice and procedure for the litigation, regulation and prosecution of all matters relating to the enforcements of fundamental rights of citizens by the courts, pursuant to the provisions of chapter IV of the constitution.

Thus, where a suspect has been refused bail by the police, he can make an application via any originating process for the enforcement of his fundamental right to personal liberty.

The persons who can institute action for enforcement of fundamental rights can be: anyone acting in his own interest; anyone acting on behalf of another person; anyone acting as a member of, or in the interest of a group or class of persons; anyone acting in the public interest; or association acting in the interest of its members or other individuals.

Another option available to an action person who has been refused bail by the Police is to approach a Court to grant him bail.

B. Habeas Corpus Proceedings: Writ of Habeas Corpus

This is a Latin word, which means “that you have the body”. This remedy is to secure the release or liberty of the suspect, whose right to personal liberty has been lawfully infringed on, and which is better explained by the more elaborate Latin expression *habeas corpus ad*

subjiciendum meaning a writ directed to the person detaining another, and commanding him to produce the body of the prisoner, or person detained. Release from unlawful imprisonment (bring the body) e.g. know they have taken the person away but not sure where he is being imprisoned.

Habeas corpus proceedings are usually governed by State Laws and an application herein is made ex-parte accompanied by a deposition on oath, stating the facts and circumstances of the wrongful detention, necessitating the filing of the application.

In ***Dele Giwa v. Inspector General of Police***,[100] the court awarded monetary compensation to the applicant who had been illegally detained by the police and a public apology was also offered to the applicant. Also, in ***Minister of Internal Affairs v. Shugaba***,[101] the Supreme Court stated as follows: in cases involving an infraction of fundamental rights of a citizen, the court ought to award such damages as would serve as a deterrent against naked, arrogant, arbitrary and oppressive abuse of power. However, such award must not be excessive.

C. Application to the Magistrate

In Lagos State and under CPCL, the suspect may apply to a Magistrate Court for an order for his production in Court – ***Section 77(2) CPCL***. Note if suspect does not fulfil conditions of bail, he cannot just run to court to grant bail as police will state that bail has been granted upon certain provisions.

V. Sample Draft of Police Bail Application

KILLI NANCWAT & CO
BARRISTERS AND SOLICITORS
NO 15 MISSION STREET HWOLSHE
JOS, PLATEAU STATE.
(Knanchwat2020@yahoo.com)

Our Ref: *Your Ref:*

Date: 1st January, 2019

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

APPLICATION FOR BAIL

We are solicitors to Mrs. Atutuwa, Our Client, of No.5 Oduwole Street, Jos, Plateau 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.

We recommend Alhaji Atutuwa Bello of No. 14 Broad Street Jos, Plateau State an in-law to our client, as a surety for our client's bail.

Thanks for the anticipated cooperation.

Yours faithfully,

[100] (Unreported Suit No FHC/12C/83)
[101] (1982) 3 N.C.L.R. 915 at 928

…….
Killi Nancwat Esq.
(Principal Partner)
For: Killi Nancwat & Co.

(Week 6)

JURISDICTION & VENUE OF CRIMINAL COURTS

MEANING, SOURCES & CHALLENGES OF JURISDICTION

I. Meaning & Sources of Jurisdiction

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***.[102]

II. Jurisdictional Challenges in Criminal Trials

The question of jurisdiction arises in criminal proceedings at three different levels viz: Territorial jurisdiction, substantive jurisdiction (subject-matter), and personal jurisdiction. At times, questions arises as to which jurisdiction (that is, in which state) a particular offence may be tried. The law seems to be firmly settled that where the initial elements of an offence occur in one state and other elements of the offence occur in another state, both states would have jurisdiction to try the offence. See ***Section 12(a) Criminal Code*** and ***Section 4(b) Penal Code***. Thus, where the accused started the offence in Plateau State and concluded it in Bauchi State, both the High Court in Plateau State and Bauchi State have jurisdiction to try the offender.

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***,[103] 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 where 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 NIGERIA AND ITS RELAVANCE

I. Determination of Venue

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.

II. When Can an Action Be Commenced In a State High Court/ Magistrate Court?

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***.
4. 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***.[104]

III. Relevance of Determining Jurisdiction

To know the appropriate judicial division/magisterial district to institute a criminal action.

---

[102] (2010) All FWLR (Pt 527) 618
[103] (2009) All FWLR (Pt. 487) 159
[104] (2011) 10 NWLR (Pt 1254) 1

COURTS OF GENERAL CRIMINAL JURISDICTION

I. Southern States (Lagos State)

A. Customary Courts

Constituted by the ***Customary Courts Laws of the States***; for the trial of offences against local authority bye-laws or where jurisdiction is expressly conferred upon it by a law; and contempt committed in the face of the Court. Any State, whether in North or South, that so desires can create a customary court. The maximum punishment it can impose in Lagos State are: Customary Court Grade A; ₦-200:00k fine or 1 year imprisonment and Customary Court Grade B.; ₦100.00k fine or 6 month's imprisonment. ***Section 17, 2nd Schedule, Part 2, Customary Courts Law, Lagos 2004***. Appeals from the customary courts lie to the Magistrate Court.

B. Magistrate Court

This court is created by the ***Magistrates Court Law, 2009 of Lagos State*.** The power to divide the State into Magisterial Districts is vested in the Chief Judge. There are no longer cadres of Magistrates. The hierarchical order has been abolished – ***Section 91 & 93***. Therefore, any reference to grades of Magistrate is no longer applicable. The hierarchical order of Magistrates is now in accordance to number of years of service. All Magistrates are empowered to exercise criminal jurisdiction as stated in the Law. The fine or term of imprisonment to be imposed shall not exceed the maximum fine or term of imprisonment provided for that offence under the law - ***Section 29(3) (4)*.** A Magistrate shall not sentence a person to a prison term of more than 14 years – ***Section 29(5)***. This confirms the existing position that no Magistrate has jurisdiction to try a capital offence. However, where the need arises he can impose an additional term of 4 years. Sentencing in MC can either run concurrently of consecutively.

The power to increase the court jurisdiction is vested in the Attorney General subject to recommendation of the Lagos State Judicial Service Commission and approval of the Lagos State House of Assembly. See ***Section 30*.**

The law also allows for the settlement of cases. Specific cases in which the Magistrate can encourage parties to settle are common assault or of offences amounting to felony and not aggravated in degree, on terms of payment of compensation or other terms approved by the Magistrate (compoundable offences). See ***Section 37*.** The appropriate persons that can prosecute cases in this court are Police officers and other law enforcement agents who are legal practitioners. The Magistrate Court entertains appeals from the Customary Courts – ***Section 41*,** and appeals from the Magistrate Court lies to the High Court.

C. High Court

By virtue of ***Section 272 CFRN 1999*,** the High Court of a State has jurisdiction to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person. The State High Courts have jurisdiction to hear and determine cases involving the contravention of all federal offences. See ***Section 286 (1) (b) of the CFRN 1999***. Thus, the jurisdiction of the FHC is not exclusive in criminal matters. The High Court is a superior Court of record. As such, it is not limited in its jurisdiction to impose punishment.

The High Court entertains appeals from all Magistrates' Court. See ***Section 28 High Court Law Lagos State 2004; Section 272 (2) of the 1999 Constitution (as amended)*.**

II. Northern States

A. Area Courts

Area Courts are constituted by ***Area Courts Edicts of 1967*** of each of the former Six (now nineteen) Northern states. By virtue of ***Section 17*** there are four grades of Area Courts; namely:

1. Upper Area Court
2. Area Court grade I

3. Area Court Grade II
4. Area Court Grade III

The Courts are established by warrant under the hand of the Chief Judge of the State, and every Court thus established shall exercise jurisdiction as may be conferred by the warrant establishing it - ***Section 3*****.** An Area Court shall consist either of an Area Court Judge sitting alone or an Area Court Judge sitting with one or more members - ***Section 4***. The Court may also sit with Assessors approved by the Chief Judge - ***Section 5***.

Area Courts have jurisdiction to try:

1. Offences in the Penal Code shown in Column 7 of Appendix A to the Criminal Procedure Code Law to be triable by Native Courts, and reference to Native Courts in the Appendix should read Area Courts as follows:
   (a) Native Court Grade A and A Limited -Upper Area Court
   (b) Native Court Grade B - Area Court Grade I
   (c) Native Court Grade C - Area Court Grade II
   (d) Native Court Grade D - Area Court Grade III
2. Other offences of which jurisdiction is expressly conferred by the Governor of the State (***Section 24***).

The Maximum punishment which Area Courts can impose are as follows:

1. Upper Area Court - Unlimited but cannot try homicide cases
2. Area Court Grade I - 5 years' imprisonment or₦1,000.00 fine
3. Area Court Grade II - 3 years' imprisonment or ₦600.00 fine
4. Area Court Grade III - 9 months' imprisonment or ₦100.00 fine.

Proceedings are according to substantial justice without undue regard to technicalities (***Section 6***). See ***Akiga v. Tiv NA***[105] and ***Contrast Jos NA v. Allah NA Gani***.[106]

Area Courts have jurisdiction to try:

1. A person whose parents were members of any tribe(s) indigenous to some parts of Africa and their descendants;
2. A person, one of whose parents was a member of a tribe indigenous to Africa;
3. A person who consents to be tried by the Court.

But the Military Governor may direct that any person or class of persons may not be subject to the jurisdiction of Area Court (***Section 15***).

Appeal lies from Area Courts Grade I, II and III to Upper Area Courts then to the High Court. See ***Section 1 (a) FCT Abuja (Appeal from Area Court) Act***. In exercising the appellate jurisdiction of the Area Court, the Court has to be constituted by 2 Judges.

Area Court Inspectors appointed under the Edict or Act have power either on application of any person aggrieved or of its own to appeal to the High Court. (***Section 50***). No appeal shall lie from the lower Court at the instance of any person at whose request a case has been reported to the High Court or Sharia Courts.

By ***Section 390 Criminal Procedure Code*** and ***Section 28 Area Court Edict, 1967*****,** Legal Practitioners have no right of audience in Area Courts. However, this is inconsistent with ***Section 36(6) (c) of the CFRN 1999*** as well as the case of ***Uzodima v. The COP*****.**[107]

[105] (1965)2 All NLR 146
[106] (1968) NMLR 8
[107] (1982) 1 N.C.R., 27

B. Magistrate's Courts

Magistrate's Courts are established by ***Section 6(1) of the Criminal Procedure Code***. They are of four grades viz:

1. Chief Magistrate
2. Magistrate Grade I
3. Magistrate Grade II
4. Magistrate Grade III

The Magistrate Court has jurisdiction to entertain:

1. Offences contained in the Penal Code shown in the 6th Column of Appendix A to be triable by the grade of Magistrate Court. Offences so stated can be tried by Magistrates of higher grades or by High Court, ***Section 12(1) CPC***.
2. Offences contained in laws other than the Penal Code provided Jurisdiction is expressly conferred on the Magistrate's Court. Where the law is silent on Jurisdiction, Magistrate's Courts can try such offences where the punishment does not exceed the following:
   (a) Chief Magistrate - 10 years' imprisonment or ₦1,000.00 fine
   (b) Magistrate Grade I - 5 years' imprisonment or ₦600.00 fine
   (c) Magistrate Grade II - 2 years' imprisonment or ₦400.00 fine
   (d) Magistrate Grade III - 3 months' imprisonment or ₦200.00 fine. See**:** ***Board of Customs and Excise v. Yesufu***.[108]
3. Preliminary Investigation (now abolished)

The maximum punishment which Magistrates can impose are as follows:

1. Chief Magistrate 5 years' imprisonment or ₦1,000.00 fine
2. Magistrate Grade I 13 years' imprisonment or ₦600.00 fine
3. Magistrate Grade II 12 years' imprisonment or ₦400.00 fine
4. Magistrate Grade III 9 months' imprisonment or ₦200.00 fine

Where the Court sentences an accused in respect of more than one offence and it orders such sentences to run consecutively, the aggregate term shall not exceed twice the maximum punishment which the Court can ordinarily impose; ***Section 24 Criminal Procedure Code Law***.

In Kano State, the Criminal Procedure Code was amended and the provision relating to the number of grades of Magistrates' Courts and the punishment to be imposed by them were amended. Consequently, there are now seven grades of Magistrate Courts in Kano State. See ***Section 4(1) & 16 Kano State Magistrate Court Edict 1986*****.** The Grades with their punishments are as follows:

1. Chief Magistrate Grade I - 14 years' imprisonment or ₦30,000.00 fine
2. Chief Magistrate Grade II - 12 years' imprisonment or ₦25,000.00 fine
3. Senior Magistrate Grade I - 10 years' imprisonment or ₦20,000.00 fine
4. Senior Magistrate Grade II - 7 years' imprisonment or ₦15,000.00 fine
5. Magistrate Grade I - 5 years' imprisonment or ₦10,000.00 fine
6. Magistrate Grade II - 3 years' imprisonment or ₦5,000.00 fine
7. Magistrate Grade III - 1 year imprisonment or ₦2,000.00 fine

A similar position now applies in most other states.

Section 19 (I) Criminal Procedure Code Law provides that the Governor on the recommendation of the Chief Judge by order may authorise an increase in jurisdiction of the court. Appeal from the MC lies to the High Court.

---

[108] (1964) N.NLR 38

C. High Court

This court has jurisdiction to entertain all offences in the Penal Code shown in the 6th Column of Appendix A to be triable by that Court. Note ***Section 12(I) Criminal Procedure Code Law***. The Provision of ***Section 272 Constitution of the Federal Republic of Nigeria 1999*** applies to the High Court in the North as in the South. The High Court shall entertain appeals from all Magistrates' Courts and Upper Area Courts.

III. Appellate Courts (North & South)

1. **Court of Appeal:** entertain appeals from all High Courts, the National Industrial Court, and Court Marshal. See ***Section 240 1999 Constitution***. It has no original criminal jurisdiction. The CA in exercising its appellate jurisdiction it is duly constituted by 3 Justices or 5 Justices when it relates to interpretation or application of the Constitution; matters under Chapter IV of the CFRN 1999. Appeals from the CA lies to the Supreme Court.
2. **Supreme Court of Nigeria:** entertains appeals from Court of Appeal under ***Section 233 of the Constitution***. See ***Ajomale v. Yaduat and Anor.***[109] It has no original criminal jurisdiction. The quorum is 5 Justices or 7 Justices when it relates to interpretation or application of the Constitution or matters under Chapter IV of the CFRN 1999.

COURTS OF SPECIAL CRIMINAL JURISDICTION

I. Juvenile Courts

A. Concept

The Juvenile Court is constituted by the Children and Young Persons Law 1994 (CYPL) Lagos and of the various States with sole jurisdiction to try all offences against young offenders except in two cases:

1. Where the charge is one of homicide - ***Section 8(2) CYPL*.**
2. Where the juvenile is charged jointly with an adult - ***Section 6(2) CYPL***.

B. Categories of Juveniles

Juveniles are persons under the age of 18 years under the CYPL. Children are sub-divided into three categories:

1. Person below 7 years – incapable of committing an offence;
2. Persons who are 7 years but below 12 years – only guilty when it can be shown that at the time of commission of the offence, the child knew and understood the consequences of his act. However, a child below 12 years is incapable of committing a rape offence even where penetration has been established.
3. Persons who are 12 years and above - liable

C. Features

The main Features of Juvenile Courts are as follows:

1. Court not open to the public - ***Section 6(5) CYPL*.**
2. Identity of offender not to be published without leave of Court - ***Section 6(5) CYPL*.**
3. Expressions such as '' conviction'' and ''sentence'' not to be used - ***Section 16 CYPL*.**
4. A ''child'' shall not be ordered to be imprisoned and a "young person'' shall not be ordered to be imprisoned if he can suitably be dealt with in any other way - ***Guobadia v. The State*.**[110]
5. Committal to an approved institution – ***Section 11 CYPL***.

D. Determination of Age

Where Age of the accused is in issue, the Court shall make due inquiry and may take such evidence as may be forth coming including the production of a birth certificate or a certificate signed by a government medical officer or testimony of a parent or guardian of the child. The age is determined thereafter by the Court shall for the purpose of the law, be deemed to be the

[109] (No.1) (1991) 5 NWLR (Pt 191) 257
[110] (2004) 6. NWLR (Pt. 869)360

true age of the person - ***Section 29 CYPL; Section 208 Criminal Procedure Law; R v. Oladimeji.***[111]

Note: In ***Modupe v. The State,***[112] the SC held that by virtue of ***Section 368 Criminal Procedure Act*** if the evidence on record shows that at the time the offence was committed, an accused charged with capital offence had not attained the age of 17 years, it will be wrong of any Court not only to sentence him to death, but also to even pronounce such sentence. If the trial judge felt that the accused put his age rather low, he was at liberty to adjourn the case and call 'a medical witness to testify as to the age of the accused. See also ***Oladimeji v.R, (supra).***

II. Federal High Court

The Federal High Court is established under **Section 249 of the 1999 Constitution**. The Criminal jurisdiction of the Court is provided by ***Section 251 (2) and (3) of the Constitution***. From the above provision, the Criminal jurisdiction of the Court will cover treason, offences in respect of taxation statutes, violation of provisions of CAMA, offences under the Customs and Excise Management Act, offences concerning banking, foreign exchange and currency laws, Criminal liability arising from copyright, patent, designs, trademarks and merchandise marks, admiralty cases, bankruptcy and insolvency, aviation and safety of aircraft, arms, ammunition and explosives, drugs and poisons, etc.

Note that while ***Section 251(1) C.F.R.N 1999*** is unequivocal about the exclusive jurisdiction of the Federal High Court in civil matters, ***Section 251 (3)*** which attempts to define or delimit the Criminal jurisdiction of the Federal High Court omitted the word "exclusive". This has cast doubts on the exclusiveness of the jurisdiction of the Court with respect to criminal matters. Thus, the jurisdiction of the FHC in criminal matters is not exclusive. By ***Section 251 (2)***, the Federal High Court has jurisdiction to entertain matters in respect of treason, treasonable felonies and allied matters arising out of S. 251 (1).

However, there are instances where statute may make the jurisdiction of the FHC exclusive. For instance, the ***National Drugs Law Enforcement Agency Act*** and the ***Money Laundering (Prohibition) Act*** provides that matters arising out of the Act shall only be prosecuted in the FHC.

The FHC has appellate jurisdiction to entertain appeals from the Tax Appeal Tribunal as provided under the ***Income Tax Act*** and ***Company Tax Act.***

III. National Industrial Court

The National Industrial Court is provided for under ***Section 254A (1) of Constitution***. ***Section 254C (2)*** gives the Court jurisdiction and powers to deal with any matter connected with or pertaining to the application of international convention, treaty or protocol of which Nigeria has ratified. ***Section 254 C (5)*** confers criminal jurisdiction on Court. ***Section 254C (6)*** provides for appeals from National Industrial Court.

Section 254F (2) provides that the provisions of the Criminal Code, Penal Code, CPA, CPC, or the Evidence Acts apply. The ACJA now applies to NIC by virtue of the provisions of ***Section 2 of the ACJA***.

IV. Courts Martial

Courts Martial are established by the ***Armed Forces Decree No. 105 of 1993*** (as amended). The Decree consolidates pre-existing legislations on the subject, i.e. Nigerian Army Act, the Air force Act, and the Navy Act. The A.F.D. 1993 established two types of Courts Martial.

1. **General Court Martial:** consisting of a President and not less than four members, a waiting member, a liaison officer and a Judge Advocate.
2. **Special Court Martial**: consisting of President and not less than two members, a waiting member, a liaison officer and a Judge Advocate. See ***Section 129 A.F.D. 1993***. For purpose

[111] (1964) NMLR 3 17

[112] (1988) 4 NWLR 130

of the constitution of the Court martial, the waiting member, liaison officer and judge Advocate should not be counted. They are regarded as adjuncts to the Court. See ***Obisi v. Chief of Naval Staff.***[113]

By ***Section 130 of the A.F.D. 1993***, the Courts Martial shall have jurisdiction to try a person subject to service law for offences created under the Decree. See ***Olatunji v. The State***.[114] The offences include: Misconduct in Action, Insubordination, Absence from Duty and Drunkenness, etc. See ***Section 45 – 103 A.F.D.1993***. Apart from these Military offences, the Courts can also try civil offences as provided by ***Sections 104 – 114 of the Decree***. Civil offences are all other offences committed by military officers other than those stated to be military offences.

The President and Service Chiefs (Chief of Defence Staff; Chief of Naval Staff; and Chief of Air Staff) are officers having power to convene a Court Martial, and the Constitution of Court Martial. See generally ***Sections 131, 133 and 136 A.F.D***. The power to convene Court Martial can be delegated - ***Section 131 (3)***. See ***NAF v. James.***[115]

Provisions relating to procedure for trials before Courts Martial are stated in ***Sections 137 – 146 A.F.D. 1993***. A Court Martial is bound by rules of evidence and manifestation of fair trials - ***Nigeria Army v. Mohammed***.[116] ***Sections 148 – 155 of the Decree*** provide for Confirmation, Revision and Review of Proceedings of Courts Martial.

Where there is equality of votes, the accused person shall be discharged and acquitted. Less than 7 members cannot pass a death sentence and less than 2 members can only pass a 1 year prison term. A person tried by a Court Martial cannot be tried on the same charge in a Civil Court. However, a person who was punished by his commanding officer can still be tried by a Civil Court putting into consideration the punishment earlier given by his commanding officer.

The time limit for trying offences before Court Martial is 3 years within service period and 3 months after service period – ***Section 169 Armed Forces Act.***

Appeals from the decision of the Courts Martial shall lie to the Court of Appeal and then to the Supreme Court. See ***Section 240, 1999 Constitution.***

V. Coroners Court

This court is normally presided over by a coroner. A coroner is a public officer charged with the duty to make inquiry into the causes and circumstances of any death which occurs through violence or suddenly and with more suspicion of unnatural death. This court being a court of inquest, it conducts investigation into the causes of death, place of death, time of death and the identity of the deceased whenever death occurs in a public place, such as a prison, police station and such other public places. The court does not conduct a trial. All it conducts is an inquest. However, in arriving at its findings, the court can call witnesses and admit evidence. Also, the investigation could lead to a criminal charge being preferred against an accused person. A magistrate can function as a coroner whenever it appears that a person died of unnatural circumstances.

Where medical proof reveals that the death of a person is due to violence or by any culpable or negligent conduct either on the part of the deceased or of any other person, a coroner may dispense with the need to hold an inquest, the exception being where the inquest is in respect of death of a prisoner or persons in police custody.

VI. Other Tribunals

The incursion of the various tribunals into our Criminal justice system has necessitated a consideration of their overall effect. Under the military various tribunal such as the Treason and Treasonable Offences Tribunal established by Decree No. I of 1986; Civil Disturbances

[113] (2004) II NWLR (pt. 885) 482
[114] (2003) 1 N.W.L.R. (Pt 839) 138
[115] (2002) 18 NWLR (pt. 798) 295; State v. Onyenkwu (2004) 14 NWLR (pt. 893) 340.
[116] (2002) 15 NWLR (Pt. 789), 42

tribunal established by Decree No. 2 of 1987; and the Robbery and Firearms tribunals established by Decree No.5 of 1984 were established. However, all these Tribunals have presently been disbanded with effect from May 29, 1999, with a directive that all pending cases be transferred to the Federal High Court. See ***Tribunals (Certain Consequential Amendments etc.) Decree, 1999***.

VII. International Criminal Court

The ICC was created by the ***Rome Statute*** out of the grave international concern to deal with certain offences considered to constitute serious threat to human existence and or human dignity. The ICC as a permanent institution has its headquarters located at The Hague, Netherlands. See ***Article 3(1)*****.**

The jurisdiction of the ICC is over persons who have committed offences regarded as serious or heinous crimes under the statute. It does not have jurisdiction to try states, unlike the International Court of Justice that has jurisdiction over states. In addition, in ratifying the statute, state parties are not divested of jurisdiction to try offences covered under the statute provided the local laws cover such crimes and there is the willingness of the state to prosecute such crimes. In other words, the ICC is meant to complement national criminal jurisdictions and by no means to supplant or substitute same. See ***Article 1***. Furthermore, ***Article 5*** confers jurisdiction on the court to try the following offences:

1. Crime of genocide
2. Crimes against humanity
3. War crimes
4. Crimes of aggression

The jurisdiction of the ICC does not extend to persons under the age of 18 at the time the crime in question was committed. See ***Article 26*****.** Where a person has been found guilty, the court may order the imprisonment of such a convict for a specified number of years not exceeding a maximum of 30 years or a term of life imprisonment. In addition to the imprisonment, the court may order fine or forfeiture of proceed, property and assets derived directly or indirectly from that crime. The ICC has no power to impose death sentence.

NOTE - ICC cannot execute a warrant of arrest against a NON STATE PARTY e.g. USA, China. ICC crimes do not apply retroactively. It only has jurisdiction over crimes committed ON or AFTER 1 July 2002. ICC crimes are not subject to statute of limitations - ***Article 29*****.**

The jurisdiction of the ICC is initiated through any of the following:

1. Referral from a state party to the prosecutor
2. Referral from the UN Security Council to the prosecutor
3. Prosecutor may initiate investigation on its own in accordance to Article 15
4. Where the alleged crime was committed on the territory of a state party (or where the state on whose territory the crime was committed has accepted the jurisdiction of the court)

The Headquarters of the ICC is located in Hague, Netherlands. However, for the purpose of its proceedings, it can decide to seat anywhere when it considers it desirable in the circumstances as may be permitted by the Statute – ***Article 3(3)*****.**

(Week 7)

INSTITUTION OF CRIMINAL PROCEEDING

INRODUCTION

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 authorised 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.

PERSONS WHO HAVE POWER TO INSTITUTE CRIMINAL PROCEEDINGS

I. Attorney-General

A. Creation of Office

The office of the AG of federation is created under ***Section 150(1) CFRN 1999***, while that of AG of states is created under ***Section 195(1) CFRN***. The AG of federation is regarded as the chief law officer of the federation, while that of a state is regarded as the chief law officer of the state.bThe qualification for an AG is a legal practitioner who has practiced in Nigeria for at least ten years - ***Section 150(2) & 195(2) CFRN***.

B. Powers

The constitution empowers the AG with regards to instituting and commencing criminal proceedings in three respect - ***Section 174(1) (a)-(c), 211(1) (a)-(c) CFRN*** with respect to federation AG and the state AG respectively. These are:

1. Power to institute criminal proceeding against any person before any court of law in Nigeria, except court martial in respect to any law enacted by the National Assembly (AGF) or State House of Assembly (States).
2. Power to take over and continue any such criminal proceedings that may have been instituted by any other authority or person.
3. Power to discontinue at any stage before judgment is delivered, any criminal proceeding instituted or undertaken by him or any authority or person.

C. Division between Powers of AG Federation and AG State

1. **General Rule:** There is a division between the powers of the AG of federation and that of the state. The AG of the federation can exercise the above stated powers in respect of federal offences created by Act of National Assembly – ***Section 174(1) CFRN***. The AG of the state can exercise the above stated powers in respect of offences created by the law of the House of Assembly - ***Section 211(1) CFRN***. In ***Anyebe v. State*** where the AG of Benue state had brought a charge against the accused at the HC for being in possession of a shot gun against the provision of the Firearms Act. The accused had been convicted and on his appeal, the SC had quashed the conviction on the ground that the AG of Benue state

was not competent to commence the criminal proceedings in respect of the said offence unless he was delegated by the federal AG.

2. **Exception:** If by the tenor of the Act of National Assembly it is meant to operate or designate as a state law, then the state AG can commence criminal proceedings without the consent of the federal AG. In ***Emelogu v. State***, the state AG commenced criminal proceeding against accused in respect of armed robbery as offence under the Armed Robbery and Firearms (Special Provisions) Act 1970. He was convicted and sentenced to death. His appeal was dismissed at the SC. The court while distinguishing the case from Anyebe's case held that the Armed Robbery and Firearms (Special Provisions) Act was meant to operate as state law. Also see ***Mohammed v. State***.[117]

D. Power to Institute Criminal Proceedings

As earlier stated, federal AG can institute criminal proceedings against any person in any court except a court martial in respect to offences created by Act of the National Assembly - ***Section 174(1) (a) CFRN***. See ***State v. Okpegboro***. Similarly, the state AG has power to institute criminal proceeding against any person in any court in Nigeria except a court martial in respect to offences created by the law of House of Assembly - ***Section 211(1) (a) CFRN*** or Act of National Assembly meant to operate as a state law - ***Mohammed v. State***.[118] In respect to exclusion of court martial, see ***Adali v. State***.

E. Power to Take Over and Continue Proceedings

When a criminal proceeding has been commenced by any authority or person, the AG can take over and continue such criminal proceeding - ***Section 174(1) (b) & 211(1) (b) CFRN*** for federal and state respectively. In ***Amaefule v. State***, the accused persons had been charged before the magistrate court for indictable offence. The magistrate adjourned the case sine die. While it was still pending, the AG filed an information at the state HC against some of the accused. The SC held that he can validly do so, only that it was desirable to withdraw the one at the magistrate court. Also, in ***Edet v. State*** where the accused had been charged for manslaughter at the magistrate court and ten months later an information not of manslaughter was entered against him at the HC charging him with murder. His conviction of death was upheld at the SC, although the trial was done in form of persecution.

F. Power to Discontinue (Nolle Prosequi)

1. **Concept:** The power of the AG to discontinue at any stage before judgment of any proceeding instituted or undertaken by him or any other person or authority is otherwise known as Nolle Prosequi. Nolle prosequi literally means one no longer prosecute - ***Section 174(1)(c) & 211(1)(c) CFRN*** with regard to federal and state respectively.
2. **Discretion on Exercise of Power:** Generally, the AG has discretion on how to conduct his case and he does not need any person giving him reasons as to why he should do that and that. An AG can decide to prosecute only A where A and B had been alleged to have jointly committed the offence and need not give reasons for doing so. In ***State v. Ilori***, the SC while interpreting the power of the AG to discontinue a case of which was exercised by the AG of Lagos state, stated that under the provision of the constitution, the AG still has an unquestionable discretion in the exercise of his powers to institute or discontinue criminal proceedings. He is not subject to any control in so far as the exercise of his powers under Section 174, 211 of the constitution is concerned and in so far as the exercise of

[117] (2015)
[118] (2015)

those powers is concerned, he is a law unto himself. The holders of the office are however advised to avoid the abuse of court process.

3. **Stage and Mode of Exercising Power of Nolle:** The power of the AG on discontinuance can be exercised at any stage of the proceeding before judgment. Even on judgment day before judgment is read, the AG can enter nolle prosequi. However, the power cannot be exercised on appeal since it can only be exercised before judgment. The power of nolle prosequi can be exercised by the AG in two ways, namely:
   (a) Orally: the AG may appear in court and inform the court of his intention to discontinue.
   (b) Writing: written authority of discontinuance can be written by him and presented by any officer in the Ag's office. This officer must be a law officer – ***Section 3 Law Officer's Act***.

   Upon entering a nolle prosequi, the court is to discontinue the proceeding.
4. **Effects of Nolle Prosequi:** When a nolle prosequi is entered by the AG in criminal proceedings, the accused is merely DISCHARGED and not acquitted. Nolle prosequi is just to suspend the criminal proceeding and the criminal proceeding can be re-instituted almost immediately – ***Section 73(3) CPA and Section 71(3) ACJL***. Section 73(3) CPA provides that a nolle prosequi entered with effect of discharge of accused person does not mean that accused cannot be charged again on the same fact. In ***Clarke v. AG of Lagos State***, a nolle prosequi was entered by the AG to discharge the accused persons of the charge of conspiracy. The accused persons were re-arrested and tried for the same offence. The court held that the effect of a discharge upon nolle prosequi is a discharge only and not acquittal.

   It has been said that it can be entered as many times as possible and the following proceeding can still be revived without filing a new information or charge. The AG usually enters nolle prosequi when more time is needed to gather information needed for the prosecution of the accused person.

G. Delegation of Powers

1. **General Rule:** ***Section 174(2) and Section 211(2) CFRN*** provides that the powers of the AG can be exercised by him in person or through officers of his department.
2. **Delegable Powers:** From the above, it would seem that all powers of the AG can be delegated by him to officers of his department. However, only the powers to institute, and take over and continue that can be delegated and this delegation can be express or implied. The delegation is not to one person but to all officers of his department. This is a blanket delegation. The officers however must be law officers – legal practitioners that are under his department. See ***Chukwu v. State***. Note that a youth corper who has not been called to bar is not a law officer.

   The delegable powers – institution and take over and continue – will be deemed delegated even when no person is occupying the office of the AG. This was the position of the SC in ***AG Federation v. ANPP***. In that case, an appeal was filed by the appellant where no one was occupying the office; the SC held that an office created by the constitution though occupied at any given time by a natural person as a constitutional office is a corporation sole. The office of the AG is distinct from the person occupying it and the office continue in perpetuity except otherwise provided by the constitution. In ***Obasi v. State***, the contention of the accused person that their trial was a nullity as the information was filed when there was no AG in office was rejected.

3. **Non-Delegable Powers:** The powers of the AG to discontinue under Section 174(1) (c) & 211(1) (c) CRFN cannot be delegated. Also, the power cannot be exercised when there is no AG in office. In ***AG Kaduna State v. Hassan***, the solicitor-general of Kaduna state had purportedly entered a nolle prosequi and the respondent whose son's alleged murderers were being tried, sought interpretation of exercise of powers of AG under the constitution as it relate to nolle prosequi. The court held (Court of Appeal) that the power of nolle prosequi cannot be exercised where there is no incumbent AG.

H. Regard to Public Interest in Exercise of Power

In exercising his powers, the Attorney-General of the Federation and that of state shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process – ***Section 174(3) & 211(3) CFRN***.

I. Difference between Discharge under Nolle Prosequi and No Case Submission

By virtue of ***Section 301 CPL***, where a complaint is dismissed and such dismissal is stated not to be on the merit, such dismissal shall not have the same effect like an acquittal. Thus, the accused person can still be arrested and arraigned in court in respect to the same charge. Also, ***Section 159(3) & 169(3) CPCL*** provides that a discharge under those sections shall not be a bar to further proceedings against the accused in respect to the same matter. This form of discharge under no case submission has the same effect with discharge under nolle prosequi. However, it must be noted that under the same Section 301 CPL, where the complaint is dismissed and such dismissal is stated to be on the merit, such dismissal shall have the same effect with an acquittal.

II. Police

A. Concept

It was earlier stated that the police has the power under the law to commence criminal proceedings. The power of the police to institute and prosecute criminal proceedings is found in ***Section 4 & 23 Police Act***. Section 23 is to the effect that subject to the powers of the AG under the constitution, any police officer may conduct in person all prosecutions before any court whether or not the information or complaint is laid in his name. The Nigerian police officers were not aware of their powers and limited prosecution to inferior courts (Area, Customary and Magistrate courts) while staying clear of the superior courts.

B. Prosecution at the HC FCT & FHC

Apart from Section 23 Police Act, other laws mentioned the police as being capable of presenting offences in court e.g. ***Section 98 of HC of FCT Act***. In ***Olusemo v. COP***, where the accused had objected to the appearance of a police officer (commissioner of police and a lawyer) as a prosecuting counsel. The Court of Appeal relying on relevant sections held that the police have the power to prosecute at the HC of FCT.

Also in ***FRN v. Osahon***, the competence of Nuhu Ribadu and other police officers who were prosecuting offences before the FHC was challenged by the respondent. The court dismissed the application. The Court of Appeal relying on ***Section 56 FHC Act*** which excluded police from prosecuting criminal proceedings found for the applicants. At the SC, the court held that the police can institute and prosecute criminal proceedings in any court notwithstanding the provision of Section 56 of FHC Act. In sum, a police officer whether or not he is a lawyer can prosecute a criminal proceeding in any court in Nigeria subject to power of the AG.

However, under ***Section 106 and 381 ACJA***, police officers were not included as part of persons who can institute criminal proceedings in courts governed by the ACJA (HC FCT, FHC, NIC, and CCT). Notwithstanding, the same Act under ***Section 268(2)*** indirectly

recognised the power of police officers to institute criminal proceedings by stating that "where proceedings in respect of an offence is instituted by a police officer, it shall be in the name of the Inspector-General of Police (IGP) versus the defendant." Also, Section 381(b) ACJA provides that information can be brought by a public officer acting in his official capacity. Thus, police officers may also be seen to fall under the definition of public officers. These particular provisions are however, subject to interpretation of the court.

III. Private Person

A. Concept

A private person has power to commence criminal proceedings. The right of a private person is subject to provision of any law specifying certain persons to institute criminal proceedings.

B. Conditions

Before a private person can institute and commence criminal proceedings, certain obligations are to be fulfilled – ***Section 59, 342 CPL, Section 254 ACJL, & Section 143(e) CPCL***.

1. Endorsement from the AG or any law officer that he has seen such information, but he does not want to prosecute. Where the AG refuses to endorse a private information or charge, he may be compelled by an order of mandamus - ***Fawehinmi v. Akilu***.[119]
2. Enter into a recognizance for the sum of ₦100 for CPA and ₦10, 000 for ACJL together with one surety undertaken to prosecute the said information diligently.

In northern part of Nigeria, there is no need for any endorsement or recognizance.

C. Limitation in Lagos

In Lagos, the right of a private person to institute criminal proceedings is now limited to the offence of perjury and any indictable offence. He may however charge an offender with non-indictable offence in accordance with the law – ***Atake v. Afejuke***.

The DPP or officers of his department may institute criminal proceedings and thereafter brief a private legal practitioner to continue the prosecution on behalf of the DPP – ***DPP v. Akosor***. But a private legal practitioner is not competent to institute a criminal proceeding on behalf of the AG because he is not an officer in Ministry of Justice – ***Tukur v. Government of Gongola State***.

IV. Special Prosecutors

A. Concept

Special prosecutors are persons given enabling power by a state to prosecute crimes under it. Thus, when persons are so authorised, they are regarded as special prosecutors and can validly institute and prosecute criminal proceedings.

B. Categories

1. **Economic & Financial Crimes Commission:** The ***Section 12(a) EFCC Act*** empowers the EFCC to prosecute offences under the Act. There is a legal unit in that regard.
2. **National Drug Law Enforcement Agency:** ***Section 7(1) NDLEA Act*** empowers the prosecution unit of the Agency to institute and prosecute criminal proceedings.
3. **Inspector of Factory:** Section 66(1) Factories Act empowers any inspector of the factory to institute criminal proceeding even though he is not a lawyer.
4. **Independent Corrupt Practices Commission:** ***Section 6(1) ICPC Act*** empowers the ICPC to prosecute offenders in appropriate cases.
5. **Custom Officers:** ***Section 180(1) Custom and Excise Management Act*** empowers any officer of the department of customs and excise to institute criminal proceedings.

[119] (1987)

6. **Husband or Guardian of Victim of Sexual Offences:** Sexual offences under Section 387, 388 & 389 Penal Code can only be prosecuted upon complaint by the husband if victim is a married woman and if the victim is unmarried, her guardian or any other person in similar description – ***Section142 CPCL***.

C. Overriding Powers of the AG & Withdrawal

The special prosecutors in this regard have their powers subject to the overriding powers of the AG to take over and continue or discontinue any criminal proceeding – Section 174(1) (b) & (c) and Section 211(1) (b) & (c) CFRN. The special prosecutors can also withdraw criminal proceedings instituted by them subject to the conditions stated in ***Section 75 CPL & Section 73 ACJL***.

V. Private Legal Practitioner

A. Concept

By virtue of ***Section 381(c) ACJA***, an information may be filed by a private legal practitioner authorised by the AGF. See also ***Section 98 FCT High Court Act; Section 56 FHC Act***, etc. Where there is any law empowering the AG in this respect, the AG may engage any private legal practitioner not only to conduct criminal proceedings on his behalf but also to initiate such criminal proceedings.

B. Rationale

The rationale for allowing the AG to engage private legal practitioners in prosecution of criminal offences, is because of the nature of some of the offences and the modes of defence initiated by the accused persons. For instance, persons accused of serious crimes like embezzlement, money laundering, bank frauds, drug pushing and other heinous financial crimes engage the services of the best legal minds in the land for his/her defence. If the AG were to rely on officers of his department alone, most of whom are junior counsel, public prosecutions will definitely suffer.

C. Grant of Fiat

Where the AG engages a private legal practitioner to represent the state in any proceedings, it is said that he has given such a private legal practitioner a fiat – ***Nafiu Rabiu v. State***.[120] Once, a fiat is granted by the AG to prosecute a case, the validity of that fiat would continue until the end of the case including interlocutory appeals arising therefrom – ***Nwake v. State***.

PROSECUTOR'S POWER TO WITHDRAW CRIMINAL PROCEEDINGS

I. General Rule

A prosecutor is empowered to withdraw criminal proceedings instituted and being prosecuted by him. This is provided for in ***Section 75 of CPL and Section 73 ACJL***. The prosecutor in this regard may withdraw from the prosecution of the accused person with the consent of the court or on the instruction of an AG with respect to state law at any time before judgment is made by the court. All prosecutors – police officers, private prosecutors and special prosecutors may apply to withdraw.

II. Effect of Withdrawal

The effect of a withdrawal by a prosecutor is dependent on the stage which the withdrawal was made.

1. **Before Accused made His Defence:** If the withdrawal is made before the accused person made his defence, the effect is a MERE DISCHARGE.

[120] (1980) 11-12 SC. 130

2. **After the Accused made His Defence:** If however the withdrawal is after the defendant/accused had made his defence, then the effect would be an ACQUITTAL. Before making an order of acquittal, the judge or magistrate is to be satisfied that such is the proper one. Under the CPL, only magistrate court is mentioned while in the ACJL, both the HC and the magistrate court is referred to.

III. Difference between Nolle Prosequi and Withdrawal

1. A nolle prosequi can only be entered by the AG while a withdrawal is made by any prosecutor (Private persons, police, private legal practitioners, special prosecutors).
2. A nolle prosequi entered even on the day of judgment will still be a mere discharge but a withdrawal by prosecutor on the day of judgment would have the effect of an acquittal.
3. In withdrawal by prosecutor, the consent of the court is needed while in nolle prosequi, the consent of the court is not needed.
4. In nolle prosequi, the court will not demand for reasons from the AG but in withdrawal by prosecutor, the court in making an acquittal must be satisfied that it is the proper order thus would demand for reasons as to the application for withdrawal.
5. Withdrawal is based on the discretion of the court. The court can acquit an accused an accused who has not testified yet. The court has the final say in the withdrawal but in nolle prosequi, the AG does not answer to anybody in exercising the power – ***Ilori v. State***.
6. Where the AG is to give instructions for withdrawal, the instructions need not be in any particular form. In the case of nolle, no instruction is effective unless it is in writing and duly signed by the AG.
7. Under the CPL and ACJL, the power of the prosecutor is exercisable only where the offence is a state offence. Nolle may be entered in any case whether it is a state offence or federal offence or even a violation of a bye law.
8. Under the CPL, the power to withdraw is exercisable only in magistrate courts. The power of nolle is exercisable before any trial court except proceedings before a court martial. Under the ACJA and ACJL, the proceedings may be in any court.
9. Under the ACJA and ACJL, where a private prosecutor withdraws from prosecution, the court may, in its discretion, award costs against the prosecutor. There is no such provision where a nolle is entered.

The similarity is that a discharge of an accused under a withdrawal does not bar subsequent proceedings against him on the same fact – ***Section 75(3) CPA and Section 73(8) ACJL***.

MODES OF INSTITUTING CRIMINAL PROCEEDING

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

I. Magistrate Court

In Magistrate court generally, there are three modes of commencing criminal proceeding against an accused. These are:

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

A. Laying Complaint before the Magistrate (North/South/FCT)

A complaint is a formal allegation made either orally or in writing and on oath or without oath that a person has committed an offence. The magistrate is to decide whether or not to draft a formal charge – ***Section 143 (d) CPCL; Section 78(a) CPL; Section 109(a) & 110(1) (c)***

ACJA. Generally, complaint need not be in writing or on oath unless the statute specifies so. See ***Section 60 CPL***.

Under the CPL, it is permissible to try an offender based on a complaint without drafting a charge. This is not permissible under the CPCL as the complaint is only a mode by which the Magistrate takes cognizance of the offence. Thus, in the North, unless the court is convicting the accused on his plea of guilt or admission, the Magistrate must draft a formal charge.

B. Bringing Person Arrested before a Magistrate upon a Charge signed by a Police Officer (South/Lagos/FCT)

When a person is arrested usually without a warrant, the person is brought to the Magistrate upon a charge which in practice the charge is prepared and signed by the police officer together with all the necessary particulars – ***Section 78(b) CPL, Section 78(1) ACJL & Section 109(a) & 110(a) ACJA***. However, the charge can be prepared and filed in the Magistrate Court by the Attorney General or law officers in his department and not just police officers – ***State v. Okpegboro***. The following are what a charge should contain:

1. Name and occupation of the person charged
2. The offence committed – charged against him
3. The date, time and place where the offence was committed
4. The judicial division where the offence was committed
5. The person or thing against whom/which the offence was committed
6. The charge is signed by the police officer or law officer in charge of the case

This is the most common method of instituting action in southern states and it is the only applicable mode under the ACJL, Lagos.

C. Laying a First Information Report (North/FCT)

This is the commonest method of commencing action in the north and it is peculiar/applicable only in the north and the FCT - ***Section 117 & 118 CPCL; Section 109(a) & 110(1) (b) ACJA***. Once a suspect is arrested by the police usually without warrant, he is brought to the station where the officer in charge of the case listens to the complaint against him (usually by the IPO). If the police officer is satisfied with the information that public interest will be served by prosecution, he reduces the information in writing in the form called First Information Report (FIR). If he is not satisfied, he may refuse the information and the alleged offender released. If the information is received, same shall be read to the suspect who upon satisfaction, sign same. The statement of the suspect may be taken at this stage.

The suspect and the first information are taken to the magistrate. The magistrate will ask the accused if he admits to the guilt of what is contained in the FIR. If he admits, he will be summarily convicted without the necessity of drafting a charge – ***Section 157(1) CPCL; Kolo v. COP***. If the accused denies, and the magistrate is of the opinion that there is ground for presuming that the accused has committed the offence, he will now draft a formal charge. In other words, the magistrate upon FIR will determine whether there is a prima facie case against the accused. If no prima facie case then no charge will be drafted and the accused will be discharged except otherwise.

Prima facie case to be determined by the magistrate is not the determination of the guilt of the accused person. It is only to see whether the ingredients of the offence are adequately staked to link the accused person to the offence in order for him to proceed to trial. Prima facie case is imperative in instituting any criminal proceeding. The mere fact that the magistrate drafts a charge upon determination of prima facie case is not an infringement of the accused's right to fair hearing under ***Section 36(2) CFRN***. In ***Ibeziakor v. COP***, the accused had contended that

the procedure of commencing criminal proceeding against him was unconstitutional as the magistrate who is to try him had already presumed him guilty. The SC in dismissing his appeal stated that the magistrate was only determining whether a prima facie case was made out and not his guilt or innocence. It is mandatory for the magistrate to listen to prosecution witnesses and their cross examination if any before he frames a charge. Where he fails to do so, the trial will be a nullity. See ***Harunami v. Borno Native Authority***.[121]

After framing the charge, if the magistrate has jurisdiction to try the accused person, then he can proceed to try him, but where he has no jurisdiction to try him, he shall transfer the accused to the appropriate court with jurisdiction to try the offence. In the FCT, where a case is commenced by FIR, trial shall commence with 30 days of preferring the charge – ***Order 3 Rule 9(b) FCT High Court Practice Direction 2017***.

II. Area, Customary & Sharia Courts

A. Area Courts (Same like Magistrate Courts in the North)

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

B. 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.

C. 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***

III. State High Court

A. Three Essential Modes

1. **Information filed with the Direction or Consent of the High Court Judge (South):** In bringing an accused person for trial through filing information, the consent of a HC judge is a condition precedent in the states under CPL. This is mandatory. In ***AG federation v. Clement Isong*** where information containing two counts of offences was filed against the accused at the HC without prior consent of a HC judge. He was tried on the counts but at the conclusion of trial, the defence counsel raised objection to the filing of the information without consent of a HC judge. The court quashed the information. Also in ***State v. Akilu***. The procedure for obtaining the consent is not provided for in the CPL. Thus, by virtue of ***Section 363 CPL*** an English rule is applicable - ***Indictment (Procedure) Rules 1971***. The following are the conditions:
   (a) Written application seeking consent - if not AG, accompany with an affidavit
   (b) A copy of the proposed charge
   (c) Written statement of the accused
   (d) List of witnesses and documentary evidence to rely on

   The fact that witnesses will be present at the trial before granting the consent, the judge is to satisfy himself that there is a prima facie case against the accused. In ***Ajidagba v. IGP***, the SC held that the term simply means "grounds for proceedings".
2. **By a Charge filed with the Leave of a High Court Judge (North):** This is the commonest mode of commencing criminal proceeding in the north. The charge is to be

[121] (1967) NNLR 19

filed with the leave of the HC judge – ***Section 185(b) CPCL***. Seeking leave of the HC Judge is a condition precedent. In ***Bature v. State*** the leave of a HC judge was not obtained before the charge was filed. The appellant was tried and convicted. He appealed against his conviction inter alia on non-obtainment of leave of a HC judge. The SC while quashing his conviction rejected the contention that the non-compliance with Section 185(b) CPCL was an irregularity curable by the provisions of section 382 CPCL. The procedure for obtaining leave is provided for in the ***Criminal Procedure (Application to Prefer a Charge in the High Court) Rules***. It is the same with that of HC in southern states (English Rules). An information in the south is what is referred to as Charge in the north. In Adamawa and Taraba States, criminal matters are commenced in the High CT by way of information. This is made possible by reason of amended of the CPCL of these States.

3. **Laying Complaint before a High Court Judge:** Criminal proceedings commenced by laying complaints are only for non-indictable offences and it does not require consent. Under the CPL, the complaints may be or not be in writing and may or may not be on oath - ***Section 77(b) CPL; Section 143(d) CPCL***. In ***DPP v. Aluko***, the SC held that the HC has power to try non-indictable offences and proceedings brought for non-indictable offence by complaint are valid. NB: Commencement of criminal proceedings by complaint is no longer applicable to Lagos state.

V. High Court Lagos/Federal High Court/National Industrial Court/High Court of the FCT

1. **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.
2. **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.

APPLICATION FOR CONSENT TO FILE AN INFORMATION OR LEAVE TO PREFER A CHARGE

I. Concept

CPL does not make express provision. However, by virtue of ***Section 363 CPL*** resort to the practice in England can be made. Thus, application for consent in the south is regulated by the ***Indictment (Procedure) Rules 1971 of England***, while application for leave to prefer a charge in the North is regulated by the ***Criminal Procedure (Application to Prefer a Charge in the High Court) Rules 1970***. In Kano, where AG wants to apply to prefer the charge, he does not require consent. But his law officers need the consent of the High CT judge.

II. Form of Application & Accompanying Documents

The application for consent/leave shall be in writing (motion ex parte) accompanied by the following:

1. Copy of the proposed charge or information
2. Affidavit, where applicant is not the AG, to the effect that to the best of the person's knowledge, information and belief the statements contained in the information are true.
3. Proof of evidence of witnesses, exhibits, list of witnesses to be called etc. (all the evidence that you have against the accused together with a statement that the evidence shown by the

proofs will be available at the trial and that the case disclosed by the proofs is, to the best knowledge, information and belief of the applicant, substantially a true case.

4. Unedited statement of the accused person and witnesses
5. That there had been no committal proceedings
6. Where an application has been previously made, this fact must be disclosed as well as the result of such application – ***State v. Gali***.

III. Prima Facie Case

A judge will satisfy himself that a prima facie case is disclosed before granting consent/leave. Where a prima facie case was not disclosed, the information or charge may be set aside – *Ikomi v. State*.[122]

IV. Effect of Failure to Obtain Consent or Leave

Where consent is required before filing an information or preferring a charge, failure to obtain it will nullify any proceeding thereto – ***AG Federation v Clement Isong***.

V. What an Accused Must Do If He Wants to Object to Grant of Leave/Consent

Where the accused feels the leave was wrongly granted, he may apply by Motion on Notice supported by an affidavit that the Charge or information be quashed. The Motion should be moved immediately after the Prosecution's opening address or before the plea is taken.

VI. Remedy when Application is refused

Application for consent or leave can be made to as many HC judges as possible, only that it is to be stated there that an application had been earlier made of which was refused. Thus, a proposed prosecutor/police officer can make application for consent or leave to another HC judge. See ***Gali v. State***. After exhausting application to all judges of the same jurisdiction, an appeal to the court of appeal.

VII. Sample Applications

Application for Consent to File an Information (Formal Letter)

Director of Public Prosecution
Ministry of Justice,
Ibadan.
Oyo State.

The Chief Judge of Oyo State,
Hon. Justice XYZ,
Oyo State Judiciary,
Ibadan.
Oyo State.

21st January, 2019

My Lord,

APPLICATION FOR CONSENT TO FILE AN INFORMATION

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

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 Oyo 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, Ndu Gabriella
Director of Public Prosecution

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

IN THE HIGH COURT OF NASARAWA STATE
IN THE LAFIA JUDICIAL DIVISION
HOLDEN AT LAFIA

CASE NO:_____

BETWEEN
STATE…….....COMPLAINANT/APPLICANT
AND
JIMOH FATAl……...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 Honourable Court will be moved on the …… day of ……..
2019 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:
1. AN ORDER granting leave to prefer the attached proposed charge against the accused person.
2. AND FOR SUCH ORDERS OR FURTHER ORDER as this Honourable Court may deem fit to make in the circumstances.

DATED THIS ……. DAY OF……..……..2019

…….
Killi Nancwat
Director of Public Prosecution
Ministry of Justice, Nasarawa State
For: Attorney General, Nasarawa State

NB- WHEN DOING 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 NASSARAWA STATE
IN THE LAFIA JUDICIAL DIVISION
HOLDEN AT LAFIA

CASE NO:_____

BETWEEN
STATE…….....COMPLAINANT/APPLICANT
AND
JIMOH FATAl……...ACCUSED PERSON/RESPONDENT

AFFIDAVIT IN SUPPORT OF APPLICATION FOR LEAVE

I, Mr. Killi Nancwat, a male, Christian, adult, legal practitioner and Nigeria citizen residing at No. 137, Awofeso Drive, Lafia, Nassarawa State, make oath and states as follows:

1. I am the Director of Public Prosecution in the Nasarawa 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.
2. I have the consent of the Attorney General of Nasarawa State to make this application and to depose to this affidavit.
3. I know as a matter of fact that the accused persons were arrested by the police on the 19th day of October, 2018 for the offence of arson.
4. I know that no similar application has been made before any Judge of the High Court of the High Court of Nasarawa State.
5. The Honourable Attorney General of Nasarawa 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.
6. The proposed witnesses are resident within the state and shall be available at the trial of the accused persons.
7. To the best of my knowledge and belief, every information contained here is true.
8. 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 Nasarawa State
This…… day of ..... 2019.

BEFORE ME

COMMISSIONER FOR OATHS

Written Address in support of Application for Leave to Prefer Charges

IN THE HIGH COURT OF NASSARAWA STATE
IN THE LAFIA JUDICIAL DIVISION

HOLDEN AT LAFIA

CASE NO:_____

BETWEEN
STATE…….....COMPLAINANT/APPLICANT
AND
JIMOH FATAl……...ACCUSED PERSON/RESPONDENT

WRITTEN ADDRESS

INTRODUCTION
My Lord, before this honourable court is an application to prefer a charge against the accused person brought pursuant to Section 185(B) Criminal Procedure Code Law of Nasarawa 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_____ 2015.

…….
Killi Nancwat
Director of Public Prosecution
Ministry of Justice, Nasarawa State
For: Attorney General, Nasarawa State

LIMITATION PERIOD FOR COMMENCEMENT OF CRIMINAL PROCEEDINGS

I. General Rule

In criminal proceedings unlike civil proceedings, the general rule is that criminal proceedings can be commenced against any offender at any time whether 10 years or 100 years. However there are exceptions to the general rule.

II. Exceptions

1. Treason and treasonable felonies: 2 years - ***Section 43 Criminal Code***.
2. Sedition: 6 months - ***Section 52(1) Criminal Code***.
3. Defilement of a girl under 13 years, above 13 years and below 16 years: 2 months - ***Section 218 and 221 Criminal Code***.
4. Proceedings under the Customs and Excise Management Act: 7 years.
5. Military offences (after retirement): 3 months

6. All military offences except mutiny, failure to suppress mutiny and desertion – 3 years

Conspiracy to commit the above offences is not within the time limit. Public Officer Protection Act is applicable to criminal proceeding.

EFFECT OF THE FCT HIGH COURT AND FEDERAL HIGH COURT PRACTICE DIRECTIONS 2013 ON CRIMINAL TRIALS

The Practice Direction applies to the offences of terrorism, kidnapping, rape, money laundering, corruption, and trafficking in person. The court will not hear the application unless:

1. The accused has been brought before it.
2. An affidavit has been attached showing that all investigation has been carried out and in the opinion of the prosecutor that a prima facie case exist against the accused person.
3. There must be a case against the accused
4. The application must be done in public

(Week 8)

CHARGES I

MEANING AND NATURE OF A CHARGE

I. Meaning of a Charge

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.

II. Purpose of a Charge

The purpose of a charge is to inform the accused person of the nature of the allegations against him in a language that he understands to enable him prepare for his defence – ***Section 36(6)(a) CFRN 1999; Edet v. State***.

III. Persons Who Can Prepare a Charge

1. **Magistrate Court:** In the magistrate court in the south, it is the police officer or law officer that can draft a charge - ***State v. Okpegboro***. In the magistrate court in the north, it is the magistrate that is competent to draft a charge - ***Section 160 CPCL***.
2. **High Court of States:** In the HC, both police officers and law officers. It is a police officer by virtue of ***Osahon v. FRN, Olusemo v. COP*** and law officer that can draft a charge.
3. **Federal High Court, FCT High Court and National Industrial Court:** Law officers and legal practitioners authorised – ***Section 106 and 381 ACJA***. There is no express mention of police officers under these sections. However, ***Section 268(2) ACJA*** impliedly recognised the power of police officers to prepare a charge by providing that where proceedings in respect of an offence is instituted by a police officer, it shall be in the name of the Inspector-General of Police versus the defendant.

It is the person drafting the charge that has power to sign such charge. When an officer in the AG department drafts a charge, such officer signs the charge; he can sign on his own or on behalf of the AG (not necessary).

IV. Prosecutorial Authorities

1. **Commissioner of Police:** In the magistrate courts in any state of the federation, including Abuja.
2. **State:** High courts in other states of the federation apart from Lagos.
3. **State of Lagos:** by virtue of ***Section 249 ACJL***. However, the courts have frowned at this practice.

4. **Federal Republic of Nigeria**: in the FHC, HC of FCT and SHC when it has to do with federal offence or offence created by an Act of the National Assembly, in which Act was meant to operate as a State Law.
5. **Inspector General of Police:** In the Magistrate Court of the FCT where the criminal proceedings was instituted by a police officer – ***Section 268 ACJA***.

FORM AND CONTENTS OF A CHARGE SHEET

I. Form of a Charge

A charge shall be in a written form and must as much as possible conform to the forms as contained in the schedule to the laws as appropriate. However, this forms as contained in the Schedule to the various laws are not sacrosanct as all the laws admit of necessary modifications to adapt them to circumstances of each case. See ***Section150 CPL; Section 200 CPCL; Section 146 ACJL; Section 193 ACJA***.

II. 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 ENUGU STATE
IN THE AGBANI JUDICIAL DIVISION
HOLDEN AT AGBANI

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

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*…….**.....** A reference number is not a requirement of the law and failure to insert it will not invalidate the charge or the proceedings. The number is normally inserted administratively by the Court Registrar or other officers of the court and not the person preparing the charge.
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
AHMED MUSA (alias One Chance) ……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 Enugu Judicial Division of the High Court of Enugu State on the 2nd day of February, 2019 the Court was informed by the Honourable Attorney General of Enugu State on behalf of the state that you AHMED MUSA 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
Ipo Sule on or about 2nd January 2018 at No 5 Abubakar Way, Sokoto within Sokoto Judicial Division stole a bag containing the sum of ₦20,000 belonging to Mrs Ene Innocent thereby committed an offence of theft punishable under Section 287 of Penal Code Law of Sokoto State.

Two Paragraphs

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
Ipo Sule on or about 2nd day of January 2018 at No 5 Obaju Quarters Oba-Akoko within Oka Judicial Division stole a bag containing the sum of ₦20, 000 belonging to Mrs Ene Innocent.

Three Paragraphs

I, KILLI NANCWAT, Chief Magistrate Grade 1 hereby charge you, Muaze Sule and Ahmed Kwali as follows:

CHARGE
That you, Muaze Sule and Ahmed Kwali, on 21st August, 2018 at Wuse within the Kano Magisterial District agreed to do an illegal act to wit: conspiracy to forge a cheque leaf being property of Alhaji Aminu Keffi thereby committing an offence punishable under Section 97(2) of the Penal Code, Laws 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. In the north, the act done by the accused is used more often than not as a form of description of the offence.

(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. There may be offences where no 'victim' exists. Importantly, the word VICTIM should not be restricted to persons suffering from an injury as THE STATE is generally regarded as the victim.

(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***.[123]

(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_____, 2019

_____

Killi Nancwat

Chief Magistrate Grade I

PRECISE CHARGE

The ***Domingo v. Queen***,[124] the Supreme Court explained what is meant by a charge being sufficiently precise. It observed that a possible test of whether a charge is sufficiently precise is whether a good plea of *autre fois convict or acquit* could be founded on a conviction or acquittal on it, and while it may not be the only test, we consider that as one which every charge ought to satisfy. If the charge precisely states the time, date and place where an offence took place, the property or person involved, the acts or omission constituting the offence, it can be

[123] (2018) All FWLR (Pt. 430) 705

[124] (1963) 1 All NLR 81 at 84

readily said whether a subsequent charge relates to the same facts when the time, places, properties or persons as well as the acts or omission mentioned as the particulars of the 2 charges are the same or similar. That is, it can be seen whether both charges refer to the same facts.

RULES OF DRAFTING CHARGES

There are four rules that guide the drafting of charges namely:

1. The rule against duplicity
2. The rule against ambiguity
3. The rule against misjoinder of offences; and
4. The rule against misjoinder of offender

I. Rule against Duplicity

A. General Rule

This rule is to the effect that every offence with which a person is charged must be contained in a distinct count or charge. It has to do with having more than one offence in a count (south) or charge (north) – ***Section 152 ACJL; Section 156 CPL; Section 212 CPCL*****.** In the case of ***Uket v. FRN***,[125]the court held that a charge will be bad for duplicity where in the charge or count, two or more offences are lumped together. For instance, if in the course of armed robbery, A killed B and C, the charge or count cannot be drafted containing both killings. Two offences cannot be in one count or charge. Again A kidnapped B, a girl of 18 to the nearby bush and raped B. When he is to be charged for both the offence of kidnapping and rape and they are charged together, that would be duplicity.

B. Commission of Two or More Murders

Where there is a case of multiple murders, they shall not be charged in one count even if one action or omission resulted in the two or more murders or else, the charge shall be bad for duplicity – ***R v. Achie***.[126] In ***R v. Ugo Chima***, the accused was charged with the murder of her two children (twins) in one count. The court held that two murders were committed and that the charge was bad for duplicity.

C. Statute in One Provision creating more than One Offence

Where a statute in one provision creates more than one offence i.e. creates two or more different acts or omissions each constituting an offence, each offence shall still be contained separately in different counts. See ***Section 404(1) Criminal Code***.

D. Effect of Duplicity

Whether a court will on appeal quash the conviction made on a charge, bad for duplicity and an acquittal entered for the appellant, depends on whether such duplicity resulted in miscarriage of justice or the accused was prejudiced by it. See ***R v. Aniemeka*****;** ***Onakoya v. FRN***. It was also stated in ***State v. Gwonto***,[127] that the Court of Appeal will not interfere on an issue of duplicity if it is clear from the record of proceedings that the accused knew what charge he was to face, was not embarrassed nor prejudiced and there was no miscarriage of justice.

E. Time for Raising Objection

Objection to a charge bad for duplicity should be raised at the appropriate time. This is when the charge has been read over to the accused person, but before he takes his plea – ***Agbo v. State***.

---

[125] (2008) All FWLR (Pt. 411) 923
[126] (1947) 12 WACA 209
[127] (1983) 3 SC 62

F. Exceptions to the Rule against Duplicity

There are however exceptions to the general rule that an offence must be in a count or charge or one count or charge should contain only one offence namely:

1. **Use of Statutory Forms:** ***Sections 150, 463 CPA; Section 200 CPC; Section 146 & 353 ACJL*** provided for the use of the forms set out in the schedule to the Act. However, variation can still be done to the forms where necessary. Thus, if in the statutory forms, a count or charge is drafted to contain two or more offences, so be it. In ***Willie John v. State***, the SC justified the use of Form 11 to charge for housebreaking and stealing in one count.
2. **Allegation of General Deficiency of Money over a Period of Time:** this is provided for where the accused is charged with criminal breach of trust, fraudulent appropriation of property, fraudulent falsification of account or fraudulent conversion - ***Section 152(2) CPA, Section 203 CPC; Section 148(2) ACJL; Section 197 ACJA***. In that case, a gross sum is to be stipulated and duration or period of commission without specifying each particular item and exact date. This is used for only money and not property or goods stolen over a period of time. See ***R v. Aniemeka; Domingo v. R***, where the accused had been charged with offence relating to stealing property and goods over a period of time, the court held that the charge containing all the offences was bad for duplicity.
3. **Offences defined in the Alternative**: where the statute creating an offence defines it in the alternative, it can be stated in a charge or count in the alternative - ***Section 154(5) (a) CPL, Section 150(5) (a) ACJL; Section 203(1) ACJA***. For instance, ***Section 406 Criminal Code*** provides that any person who, with intent to steal anything, demands it from any person with threats of any injury or detriment of any kind to be caused to him, either by the offender or by any other person…. The underlined portions are the different ways by which the offence of demanding property with menaces with intent to steal may be committed. What this means is that it is not offensive to state these underlined acts alternatively in one count under the exception to the rule against duplicity.
4. **Similar or Identical Offences Committed in a Single Transaction:** This is where the offences are not just similar or identical but also committed in one transaction. In ***Police v. Oyenusi***, where the accused, a police officer had demanded money from the five complainants in order not to prosecute them. They gave him the money and on his charge, he was charged on two counts for official corruption and demanding money with menaces. Upon his conviction, he contended on appeal that since the offences were against five different persons, there should be separate count for each. The court found otherwise.
5. **Charges in Respect of Treason and Treasonable Felonies:** ***Section 37, 38 & 41 Criminal Code and Section 410, 411, 412 of Penal Code***, provides for proof of two overt acts before a person can be convicted for treason. Thus, these overt acts can be in one count or charge.

II. Rule against Ambiguity

A. General Rule

Ambiguity means when something is capable of having more than one meaning or it is not clear. The essence of a charge is to enable an accused person prepare for his defence. This is a fundamental right under ***Section 36(6) (b) CFRN***. The rule against ambiguity has no exception. A charge is either ambiguous or it is not. Ambiguity relate to individual count or head charge. If it is said that a charge is ambiguous, it must be in relation to a head of charge or count in a charge sheet.

A charge will be said to be ambiguous when it does not meet the requirements as found in ***Section 151 & 152 CPL, Section 201 & 202 CPCL*** and ***Section 147 & 148 ACJL***. That is that charge or count does not have the sufficient particulars or having the particulars but not stated accurately and methodically. A charge will also be ambiguous where the particulars are omitted, wrongly stated or stated in a disorderly manner. In ***FRN v. Bodunde***,[128] the court held that every charge must be clear so that the person to be tried will understand the complaint against him. In criminal matters, the accused must not be left in doubt as to what he is to face on trial… A Charge should not be framed in such a manner which depicts that a trap is set to catch an accused.

B. Format under One Paragraph Charge

A one paragraph charge that is compliant with the rule against ambiguity would normally follow this format: - Name of the accuse; date of the offence; place of the offence; Magisterial District or Judicial Division; name of the offence or description of the offence; the section of the law contravened and the law contravened. See ***2nd Schedule to CPL***. If a charge does not meet this standard, it is said to be ambiguous. However, the mere fact that there are some discrepancies in the charge would not automatically invalidate the charge.

C. Effect of Ambiguity

When a charge is said to be ambiguous because of non-compliance with the required particulars of a charge, such will not invalidate the charge if the offender knows the offence itself i.e. he was not misled. However, where the accused was misled by the ambiguity, it will lead to setting aside of any conviction obtained on that regard. Also, where the effect of the breach is minor or otherwise technical, the trial shall not be vitiated on that ground – ***Osigwe v. Police***.[129]

In ***Enahoro v. The Queen*** there was non-compliance as regard stating the section of law and the defendant requested for particulars of account of which was refused by the judge. The SC while stating that the refusal was wrong held that there was no miscarriage of justice because the section was stated in previous count. In ***Okeke v. IGP*** the appellants were charged with stealing property belonging to their employer and conspiracy to commit felony contrary to *Section 390 & 516 Criminal Code*. The magistrate stated on record that they were charged under the Criminal Act. On appeal, it was held that the defect was trivial because the appellant was aware of the charge against him and he was represented by a counsel who knew that it was the Criminal Code that was referred to. In ***Ogbomor v. State***, mere omission of (Special provisions) from Robbery and Firearms was regarded as minor and technical.

III. Rule against Mis-Joinder of Offences

A. General Rule

This rule is to the effect that for every distinct offence for which an accused is to be charged, there should be a separate charge contained in a separate charge sheet which shall be tried separately. Thus, while mis-joinder of offences deals with charge sheet, the rule against duplicity deals with charge or count. Thus, if Mr. A commits the offence of rape, stealing and arson, he should be charged in a separate charge sheet for each of the offence and tried separately. If he is tried for the three offences in one charge sheet and in one trial, the charge will be said to be bad for misjoinder of offences - ***Section 156 CPL, Section 152 ACJL and Section 212 CPCL***.

[128] (2016) All FWLR (Pt. 828) 810
[129] (1966) NMLR 212

B. Exceptions to the Rule against Misjoinder of Offences

1. **Offences Committed within One Year (Twelve Months)**: by virtue of ***Section 157(1) CPL; Section 153(1) ACJL; Section 212 CPCL*** if the offences were committed within 12 months, whether against one person or different people, the offender can be tried on a single charge sheet in one trial for those offences, provided the offences charged do not exceed three in one charge sheet.
2. **Offences Committed in the Course of the Same Transaction:** These are offences even though distinct but are committed in the same transaction. For instance, A with intention to rob a bank snatched B's car after the robbery; at a police check point, shot at C, a police man to death. Thus, the offences arising from this transaction can be charged in one charge sheet and tried together (armed robbery and murder) - ***Section 158 CPL, Section 214(1) CPCL; Section 153(iii) ACJL; Section 209(c) ACJA***.
3. **Where it is Doubtful which of the Several Offences the Facts which can be Proved Constitute:** this arises where doubt arises as to the offence which a single fact or omission or series of facts or omission if proved will constitute. It is possible that a single fact can lead to stealing, criminal breach of trust, obtaining by false pretence, and being in possession of stolen property. When there is doubt, these offences can be contained in one charge sheet in the alternative - ***Section 161 CPL; Section 216 CPCL; Section24 ACJA***.
4. **Offences comprising the same Elements but Constituted under Different Laws:** by virtue of ***Section 159 CPL***, if the acts or omissions alleged constitute an offence falling within two or more separate definitions in any written law for the time being in force under which offences are defined or punished, the person accused of them may be charged with and tried at one trial for each of such offences. For instance, under the Criminal Code and Penal Code, the offences of manslaughter and culpable homicide not punishable with death respectively, are constituted while the offence of causing death by dangerous driving is constituted under the Road Traffic Act/Law. However, the accused will not be convicted for more than of such offences in compliance with the principle against double jeopardy – ***Section 36(9) CFRN 1999; Elliot v. COP***.[130]
5. **Offences Comprising Acts or Omissions which by themselves or in Conjunction with Others Constitute a Different Offence:** this arises where several acts or omission of which one or more by itself constitute an offence and in conjunction with others, constitute a different offence. These offences can be on the same charge sheet. - ***Section 160 CPL***. For instance, A enticed B into his house on the pretext that he had an urgent message for her. He then ripped off her clothes and forcefully had carnal knowledge of her. Thereafter he detained her against her will for two weeks before she was rescued. His act individually constitute offences of indecent assault, wrongful confinement, and rape. However, a combination of his acts also constitutes the offence of abduction.
6. **An Offence which may be committed in any of Several Occasions may be charged in the Alternative in Same Charge Sheet**: ***Section 215 CPCL*** is to the effect that if a series of acts is of such a nature that it appears that an offence was committed on one of several occasions and the facts is not certain as to the occasion, the offence can be charged alternatively – burglary and house breaking.
7. **Offences of the same or Similar Character:** Offences are said to be of the same kind where they are identical; similar is if they share or exhibit some common features. They are so similar if evidence for one offence would be admissible to prove the other offence.

[130] (1960) WRNLR 182

In ***Dau v. Kano Native Authority***,[131] the accused was charged with seven counts which are failure to issue receipt for money paid, charging excessive interest on money lent, and failure to keep proper account. The accused contention that the charge was bad for joinder of offences was disregarded by the court.

IV. Rule against Mis-Joinder of Offenders

A. General Rule

The general rule is that every person who is alleged to have committed an offence shall be charged and tried separately for the offence alleged against him. If XYZ & A committed the offence of stealing, they should all be charged separately.

B. Exceptions to the Rule against Misjoinder of Offenders

1. **Persons Accused of Jointly Committing the Same Offence:** For instance, if A, B & C beat up D, A, B & C should be charged together in the same charge sheet. In ***Okojie v. COP***, the accused persons being police officers had assaulted the complainant. They were charged on the same charge sheet and their contention that the charge sheet was bad for misjoinder of offenders was disregarded. See ***Section 155 CPL, Section 151 ACJL, Section 221(1) (a) CPCL,*** and ***Section 208(a) ACJA***.
2. **Persons Accused of Committing Different Offences in the Course of the Same Transaction**: For instance A, B & C went into a house and robbed the occupants; B raped one of the occupants. In that case, they can be charged in same charge sheet for stealing and conspiracy to steal and B should be charged separately for rape (in a separate count not charge sheet). See ***Haruna v. The State; Section 155 CPL, Section 151(a) ACJL, Section 221(d) CPCL,*** and ***Section 208(d) ACJA***.

   Note that were A, B, C & D had agreed to rob a bank and had actually robbed the bank and after they had gone their separate way, A decides to rob the neighbouring house, they will all be charged for conspiracy and robbery of the bank on the same charge sheet. However, A that robbed the neighbouring house will have a separate charge sheet in addition to the other one. The important point to note is that there should not be breaks in transaction. A's subsequent robbery is a break in transaction. The test laid down in Haruna's case are:

   (a) Proximity of time or place; or
   (b) Continuity of action; or
   (c) Community of purpose or design
3. **Persons Accused of Committing an Offence and Persons Accused of Aiding, Abetting or Attempting to Commit the Said Offence:** In ***Njovens v. State***,[132] in this case, the police who aided and abetted the offence were charged with those that committed the offence. The police officers had raised objection on such joinder. The expert upheld the validity of the charge as the police officers fall into the category of those that aided and abetted the offence. This is where there is complicity as found in Section 7 Criminal Code on parties to an offence. See also ***Section 155 CPL, Section 221 (b) CPCL and Section 151(b) ACJL;*** and ***Section 208(b) ACJA***.
4. **Persons Accused of Committing the Same Offence in the Course of the Same Transaction**: when two or more persons commit an offence or a series of offences in the course of the same transaction, they can be charged and tried together - ***Section 151(a) ACJL, Section 155 CPL & Section 221(a) CPCL***.

---

[131] 12 WACA 14
[132] (1973) NNLR 76

5. **Persons Accused of Committing Offences that are Related One to the Other**: ***Section 151(b) ACJL*** is to the effect that where a person is accused of theft, criminal misappropriation, criminal breach of trust and another person is accused of receiving or retaining or assisting in the disposal or concealment of the subject matter of such offence, they can be tried together. See also, ***Section 155 CPL, Section 221(e) & (f) CPCL***.
6. **Persons Accused of Offences Committed during a Fight or Series of Fights Arising out of another Fight and Person Accused of Abetting any of these Offences may be Charged and Tried Together**: this exception is provided for in Section 221(g) CPCL and Section 208(f) ACJA. There is no equivalent provision in the CPL and ACJL apparently because this exception can find accommodation under one or more of the earlier exceptions already discussed.

ORDER OF SEPARATE TRIAL

Notwithstanding all the above exceptions discussed with respect to mis-joinder of offenders and mis-joinder of offences, the court has a discretion considering the circumstances of the case to order separate trials for the accused persons – ***Section 151 ACJL; Section 155 CPL*****.** ***Section 213 CPCL*** also empowers the court to order separate trials for offences of like character committed by the same person. Where an accused person requires a separate trial before the joint trial commences. Where there is no such application, a trial shall not be vitiated unless there is manifest embarrassment or prejudice to any of the accused persons – ***Mailayi v. State***.[133]

[133] (1968) 1 All NLR 116

(Week 9)

CHARGES II

DEFECTIVE CHARGES

I. Meaning of Accurate & Defective Charge

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).

II. Effect of a Defective Charge

The effect of a defective charge is dependent on whether the defect is minor or fundamental. If the defect was discovered before judgment, then amendment can be made, but when the defect was discovered after judgment, it will not lead to the setting aside of a trial unless the defect is fundamental as to mislead the accused as to the state or nature of the offence or the accused was prejudiced in the conduct of his defence. Thus, ***Section 166 CPL*** provides that no error in stating the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material unless the accused was in fact misled by such error or omission. See ***Section 206 CPCL***.

In ***AG Western Region v. CFAO*** where the law under which the accused was charged was not provided for and a conviction was obtained. On appeal, the court quashed the conviction on the ground that such failure was a fundamental error. In ***Ogbomo v. State***, the court held that failure to include (Special Provisions) to the Robbery and Firearms Act 1970 was not fundamental and the appellant was not prejudiced in his defence.

Section 221 ACJA is to the effect that even where a defect is discovered in the charge regardless of the magnitude, the trial will continue. On appeal, the appellate court may:

1. Direct that the trial should recommence on another charge where the court is of the opinion that the defendant was misled in his defence which has occasioned miscarriage of justice, or
2. Quash the conviction of the accused where it is of the opinion that the facts of the case are such that no valid charge could be preferred against the defendant in respect of the facts proved. See ***Section 222 ACJA***.

III. Grounds for Objections

1. **Failure to obtain Consent/Leave:** Where leave or consent of court to be obtained is not obtained before preferring charge – ***AG Federation v. Isong***
2. **Offence Not Known to Law:** Where the offence is not unknown to law – ***Section 36(12) CFRN***
3. **Autre Fois Convict and Autre Fois Acquit:** Where the accused has been previously charged on same count or charged and acquitted or pardoned – ***Section 36(9) CFRN***
4. **Lack of Legal Capacity of Accused:** Where the accused lacks legal capacity (below 7 years) - ***Doli Incapax***
5. **Violation of Jurisdiction:** it can be as a result of a wrong party being brought before the court; the offence is beyond the jurisdiction of the court to try; the court is not properly constituted as to quorum; institution of action via wrong mode; or failure to fulfil all condition precedent to the exercise of jurisdiction – ***Modukolo v. Nkemdilim***.
6. **Breach of Rules of Drafting:** Where the charge is against the rules of drafting charges (ambiguity, duplicity, mis-joinder of offences and mis-joinder of offenders)

7. **Limitation of Action:** this is where a charge is preferred outside the time limit permitted by law. For instance, the time limit for treason and treasonable felony (2 years); sedition (6 months); offences under CEMA (7 years); defilement of a girl under 13 years or an idoit/imbecile (2 months).
8. **Failure to Obtain Consent of Prosecuting Authority**: this arise where the charge contains an offence in respect of which consent of a prosecuting authority is required and the consent has not been obtained.
9. **Immunity:** Charge against persons immune from criminal prosecution in respect to a particular offence e.g. a child below 12 years is incapable of committing the offence of rape even if penetration has been established. It also applies to a person whose acts or omission at the relevant time are not susceptible to the jurisdiction of the court by reason of tender age or legal incapacity or even position (See ***Section 308 CFRN*** for postion)
10. **Offence Charged Not Covered by Extradition Proceedings:** if the charge is against someone who was extradited from a foreign country and the offence for which he is charged is not covered by extradition proceedings – ***Ezeze v. State***.[134]

IV. Time for raising Objection

1. **CPL and CPCL States:** Where a charge is defective, the defence counsel can raise objection. Objection is to be raised timeously – before taking plea by the accused person. Where an accused has taken plea or pleaded to the charges, he is taken to have submitted to the jurisdiction of the court. However, there are some defects that goes to the jurisdiction of the court, objection in that regard can be raised at any time. For the defect that does not go to the jurisdiction of the court, it must be raised before the accused takes his plea.
   Section 167 CPL provides that any objection to a charge for any formal defect on the face thereof shall be taken immediately after the charge has been read over to the accused and not later. In ***Abacha v. The State***, upon arraignment of the appellant and before taking his plea, the appellant counsel had moved that the indictment against the appellant be quashed. At the SC, the court held the application (objection to charge) was properly made. In ***Ikomi & Ors v. The State***, the accused persons had objected to the information before their plea was taken.
2. **ACJL Lagos:** the position is different. ***Section 260(2) ACJL*** provides that an objection to the sufficiency of evidence disclosed in the proof of evidence attached to the information shall not be raised before the close of the prosecution's case. The above states that if the objection is on insufficiency of evidence disclosed in the proof of evidence, then it can only be raised after prosecution has close his case and not before the accuse plead to the charges. Proof of evidence relates to the documents which are to accompany information at the High Court of southern states like the unedited statement of the accused, a copy of the proposed charge, list of witnesses and exhibits. This determines whether the prosecution has a prima facie case. In southern states, the judge looks at these in granting consent. In Lagos unlike other southern states, consent is not required for filing information.
   Thus, on the day fixed for hearing, the prosecution ask the court to take cognizance of the information. If the court takes cognizance, ordinarily the accused can raise objection(s) but Section 260(2) ACJL provides otherwise. The desirability of this section can be seen from the fact that unlike before where in high profile case, the accused counsel will bring application to quash the indictment of which can be appealed up to the Supreme Court.

[134] (2015) All FWLR (Pt. 255) 1181 at 1190-1191

Hence opportunity is given to prosecution to lead evidence to prove his case. This does not derogate from the right of the accused to object. There is however an exception when the objection is based on the jurisdiction of the court. It can be raised before plea is taken. Note the following as relate to Lagos alone. In Lagos, prima facie case is raised only once and not twice unlike other jurisdictions.

3. **ACJA FCT & Federal Courts:** ***Section 221 ACJA*** provides that objections shall not be taken or entertained during proceeding or trial on the ground of an imperfect or erroneous charge. However, ***Section 396(2) ACJA*** went further to state that objections can be taken, but the ruling will be done at the end of the trial. The implication is that it will amount to a waste of time to conduct the trial if at the end of the trial, the ruling in respect to the objection will lead to setting aside of the charge.

AMENDMENT OF CHARGES

I. General Rule

When an objection is raised as to a defective charge, the prosecution counsel can make an application for amendment. The amendment can be made at any time before judgment is given – ***Nigerian Air Force v. Obioso***.[135] The amendment can be made even on the Day of Judgment. The new charged must be related to the previous one. See ***Okwechime v. IGP*** and ***Elumeh v. IGP***. Amendment may take the form of addition, deletion, alteration or even complete substation – ***Uket v. FRN***. Amendment can be made in the following cases:

1. On application of the prosecution; or
2. On a successful objection to the defect by the defence; or
3. By the court suo motu.

II. Persons Who can amend Charge

1. **Drafting Authority/Prosecution:** Amendment is to be made by the drafting authority i.e. the appropriate persons who drafted the charge in accordance to the type of court. For instance, in the Magistrate Court north (magistrate) and in the Magistrate Court south (Police officer and law officer). In ***State v. Chief Magistrate, Aboh Mbaise Ex parte Onukwue***,[136] where a magistrate in the south had amended a charge, the court held that he does not have such power. In the magistrate court in the north, only the magistrate can amend. Generally, amendment can be made before judgment.
2. **Courts:** Courts can amend a charge. ***Section 163 CPL*** provides that any court may alter or add to any charge at any time before judgment is given or verdict returned and every such alteration or addition shall be read and explained to the accused. See ***Uket v. FRN***. Thus, the court can suo motu amend a charge.

III. Leave of Court to Amend

Generally, amendment of charges can be made before arraignment and after arraignment.

1. **Before Arraignment:** when the accused has not been arraigned, the prosecution need not seek the leave of court via an application. This is because at the stage before arraignment, the accused is not even aware of the charge against him. So, the question of his being misled or suffering injustice would ordinarily not arise. ***Section 163 CPL; Section 154 & 155 ACJL; Sections 207 & 208 CPCL; Section 216(1) ACJA*** provides that any court may alter or add to any charge at any time before judgment is given or verdict returned and every such alteration or addition shall be read and explained to the accused.

[135] (2003) FWLR (Pt. 148) 1224
[136] (1978) LRN 316

2. **After Arraignment:** After arraignment of the accused (the accused has taken his plea) there should be an application for leave to amend the charges. ***Section 162 CPL and Section 216(3) ACJA*** provides that when any person is arraigned for trial on an imperfect or erroneous charge, the ***court may permit or direct*** the framing of a new charge or add to or otherwise after the original charge.

IV. Reasons for Amendment

The prosecutor may seek to amend a charge for any of the following reasons:

1. To add or include a vital ingredient or particular of the offence; or
2. To include or add a section of the law either omitted or incorrectly stated; or
3. To delete any particular or statutory provision which does not seem to be appropriate in the charge.

IV. Procedure for Amendment

A. Amendment at the Magistrate Court

1. **South:** The application for amendment may be oral and need not be in writing unless the judge directs otherwise. ***Section 155(3) ACJL*** says no formal application is required. However, the application is required where the plea of the accused has already been taken. Where his plea has not been taken, an entirely new charge may even be substituted for the old one especially for trials before the Magistrate's Court in the South. This is because, before arraignment, an accused is not before the court yet and may not even be aware of the original charge. And so, the question of his being prejudiced by an amendment does not arise. And because at this stage, the court is not actively involved yet other than that the charge would have been filed already, there could hardly be any inconvenience to the court.
2. **North:** in the Magistrate Court in the North, application for amendment would not even arise as it is the magistrate who drafts the charge and give directive for trial. The Magistrate can simply amend the charge at any time before judgment is given.

B. Amendment at the High Court

1. **Before Arraignment:** In the High court in the south and north, leave of court is required to amend a charge whether before or after arraignment. This is because, the leave or consent of court is required to prefer charges or file information.
   However, in Lagos and FCT where leave of court is not required to prefer a charge or file an information, the leave of court will also not be needed to amend the charge before the accused is arraigned. The prosecutor is to just file the amended charge the same way the original charge was filed without reference to the judge. On the day of arraignment, the prosecutor would simply apply to withdraw the original charge and the court will strike it out while the subsisting one will be read over to the accused.
2. **After Arraignment:** the procedure for amendment after arraignment is as follows:
   (a) Application (by motion on notice) for leave of court to amend the charge (whether leave was sought to prefer/file the charge/information or not. This can be oral or in writing. Oral is for clerical errors.
   (b) The defence can object to the amendment.
   (c) The court has discretion to grant or refuse the application for amendment. For an amendment to be granted, the amendment must not be fundamentally different from the nature and character of the original charge. See ***Elumelu v. Police***.[137] For example, while a charge of robbery under the Criminal Code may be amended to that of robbery

[137] (1957) NNLR 17

under the Robbery and Firearms Act, a charge of robbery cannot be substituted by a charge of manslaughter.

Amendment would also not be granted by the court if it will cause miscarriage of justice or otherwise prejudice the accused – ***AG Federation v. Isong***.

(d) After the grant of application for amendment and the charges have been amended. The post amendment procedure will have to be observed.

V. Procedure after Amendment (Exams)

1. **Reading & Explaining the Amended Charge to the Accused:** the charge after it has been amended shall be read and explained to the accused person. See ***Section 163 CPL; Section 208(2) CPCL; Section 155(2) ACJL; Section 217(1) ACJA*** and ***Bassey v. State***.[138] Where the accused does not understand the language of the court (English), he shall be provided with an interpreter for that purpose. See ***Section 36(6) (e) CFRN***.
2. **Taking Fresh Plea of the Accused:** after the charge has been read and explained to the accused, he must make a fresh plea on the amended charge otherwise the trial will be set aside on appeal. In ***Okegbu v. State***,[139] the appellant was tried and convicted for murder at the trial court. In the course of the trial, the charge was amended the second time but plea of the accused was not taken. It was held that failure to obtain fresh plea vitiated the trial by virtue of ***Sections 163 & 164(1) CPL***.
3. **Consent of the Accused:** where the trial is in Magistrate Court and the accused has a right of election whether or not to be tried by the Magistrate, a fresh consent must be obtained after an amendment. In ***Jones v. Police***,[140] the appellant was tried for stealing after he consented to the trial by the Magistrate. After commencement of the trial, the charge was amended and a fresh plea was taken but a fresh consent was not taken. On appeal, his conviction was set aside. The consent of the accused is only relevant in magistrate court as their jurisdiction is usually restricted – ***Section 164(1) CPL; Section 156(1) ACJL***. Where it is a trial before the High Court, consent of the accused is not needed as the jurisdiction of the High Court is not in any way fettered.

   Where consent of the accused is required, a trial will not be vitiated simply because the accused declines to be so tried. The discretion lies with the court whether to go on with the trial if after considering the reasons given by the accused, the court is satisfied that the accused will not be prejudiced. Thus, the court will proceed with the trial as if the altered charge had been the original charge. See ***Section 156(2) ACJL***.
4. **Endorsing Order for Amendment on the Charge Showing the Date of the Amendment:** when so amended, the amendment dates back to the date of the original charge and, in fact, shall be treated as having been filed in amended form. See ***Section 164(4) CPL; Section 156(4) ACJL*** and ***Section 219 ACJA***. In ***COP v. Alao***,[141] a charge was amended in the course of trial but the order of amendment was not endorsed on the amended charge. On appeal, it was held that such endorsement was essential as failure to do so is capable of vitiating the proceedings.
5. **Right of Parties to Call/Recall Witnesses:** when a charge is amended, the law requires that the court shall give opportunity to the prosecution and the defence to recall any witness who has testified for purposes of cross-examination or to call additional witnesses and

[138] (2012) 12 NWLR (Pt. 1314) 209
[139] (1981) 2 PLR 143
[140] 5 FSC 38
[141] (1959) WRNLR 39

examine and cross-examine them with reference to the amendment. See ***Section 165 CPL; Section 211 CPCL; Section 157 ACJL*** and ***Section 219 ACJA***.

This right is so fundamental that the law enjoins the judge to inform the accused person of the right to call or recall witnesses where the accused is not represented by counsel. In ***Shoaga v. R***,[142] it was held that where the accused is represented by counsel, failure of the court to inform him will not vitiate proceedings. This is because, where the accused is so represented, the counsel is deemed to know what to do at every stage of the proceedings.

6. **Right to Adjournment:** where an amendment is granted, the court shall give the prosecutor and the accused the option of an adjournment, if in the opinion of the court, proceeding immediately with the trial after such amendment would be prejudicial to either of the parties. See ***Section 164(2) & (3) CPL; Sections 209 & 210 CPCL; Section 156(3) ACJL*** and ***Section 218 ACJA***. The right to adjournment is a constitutional right of fair hearing under ***Section 36(6) (b) CFRN*** dealing with the right of the accused to adequate time to prepare for his defence.

VI. Effect of Amendment & Non-Compliance with Post-Amendment Procedure

A. Effect of Non-Compliance with Post-Amendment Procedure

Failure to comply with the provisions of the law after amendment renders the trail nullity only where the failure would adversely affect the right of the accused i.e. whether it has occasioned miscarriage of justice to the accused. In ***Uket v. FRN***,[143] the court held that failure to call on the accused person to plead to the amended or new charge would render the entire proceedings, no matter how well conducted and decided, a complete nullity.

B. Effect of Amendment

1. The charge will be deemed amended
2. Evidence that has already been received will not be affected

VII. Joint Trial

Where certain persons are charged together for some offences while the charges against some of them are withdrawn in the cause of trial, the withdrawal against some of the accused persons would not amount to amendment to warrant the remaining accused persons take a fresh plea. In ***Adebayo v. State***,[144] 6 persons were charged for conspiracy and 2 other offences. After their pleas had been taken, 2 of the accused persons absconded and the charges against them were withdrawn while the trial of the rest continued up to conviction. The accused appealed contending in the main that the withdrawal of the charges against the absconding 2 amounted to an amendment which warranted taking of fresh plea and that failure of the court to take such plea vitiated the trial. The appeal was dismissed on the ground that there was no change or alteration to the allegations which each of them was required to answer.

ETHICAL ISSUES ON DRAFTING OF CHARGES

Rule 37(4) & (5) RPC – the primary duty of a lawyer engaged in public prosecution is not to convict but to see that justice is done. A public prosecutor shall not institute or cause to be instituted a criminal charge if he knows or ought reasonably to know that the charge is not supported by the probable evidence.

---

[142] 14 WACA 22

[143] (2008) All FWLR (Pt. 411) 923

[144] (1987) 2 NWLR (Pt. 57) 468

SAMPLE DRAFT OF CHARGES IN THE VARIOUS COURTS

Checklist of Information on Drafting of Charges

Court/ Location	**Charge Sheet**	**Complainant & Offender**	**Reference Number**	**Paragraphs**	**Signature/ 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 Magistrate
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/Adamawa	Information	The State v. Accused Person	Case No	(2 Paragraphs) (Count) 1. Statement of Offence 2. Particulars of Offence	AG of State
High Court (South)	Information	The State v. Accused Person	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. MUAZE SULE (alias One Turn)
2. AHMED KWALI (alias Snake)……..……ACCUSED PERSONS

I, KILLI NANCWAT, Chief Magistrate Grade 1 hereby charge you, Muaze Sule and Ahmed Kwali as follows:

1ST CHARGE
That you, Muaze Sule and Ahmed Kwali, on 21st August, 2018 at Wuse within the Kano Magisterial District agreed to do an illegal act to wit: conspiracy to forge a cheque leaf being property of Alhaji Aminu Keffi thereby committing an offence punishable under Section 97(2) of the Penal Code, Laws of Kano State.

2ND CHARGE
That you Muaze Sule and Ahmed Kwali on 30th September 2018 at Union Bank Plc, Wuse, Kano, within the Kano Magisterial District presented a forged cheque leaf to Union Bank Plc, being property of Alhaji Aminu Keffi 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_____2019

_____
Killi Nancwat
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
IPO SULE (alias Rampage)…….…….…….....…. DEFENDANT

COUNT 1
That you Ipo Sule on or about 2nd January 2018 at Epe Market Square, Shop B4 Epe within Epe Magisterial District stole a bag containing the sum of N20,000 belonging to Mrs Ene Innocent thereby committed an offence of stealing contrary to Section 285 of Criminal Code Law of Lagos State 2011.

COUNT 2
That you Ipo Sule on or about 2nd January 2018 at Epe Market Square, Shop B4 Epe within Epe Magisterial District assaulted Mrs Ene Innocent thereby committed an offence contrary to Sections 169 and 170 Criminal Code Law of Lagos State 2011.

Dated this…… day……, 2019.

_____

Killi Nancwat Esq.
Assistant Commissioner of Police
For: Commissioner of Police

High Court in the North

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

Case No:…..……

BETWEEN
THE STATE……COMPLAINANT
AND
IPO SULE……..ACCUSED PERSON

CHARGE 1
Ipo Sule on or about 2nd January 2018 at No 5 Abubakar Way, Sokoto within Sokoto Judicial Division stole a bag containing the sum of ₦20,000 belonging to Mrs Ene Innocent thereby committed an offence of theft punishable under Section 287 of Penal Code Law of Sokoto State.

CHARGE 2
Ipo Sule on or about 2nd January 2019 at No 5 Abubakar Way, Sokoto within Sokoto Judicial Division assaulted Mrs Ene Innocent thereby committed an offence of criminal assault punishable under Section 265 of Penal Code Law of Sokoto State.

Dated this…….. Day of……..…..... 2019

_____
Killi Nancwat Esq.
Senior State Counsel
Ministry of Justice Sokoto State
For: Attorney General Sokoto 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
IPO SULE……..…….. ACCUSED PERSON

At the session holding at Oka on the 2nd day of January 2019, the court was informed by the Attorney-General of the state on behalf of the State that Ipo Sule 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
Ipo Sule on or about 2nd day of January 2018 at No 5 Obaju Quarters Oba-Akoko within Oka Judicial Division stole a bag containing the sum of ₦20, 000 belonging to Mrs Ene Innocent.

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
Ipo Sule on or about 2nd day of January 2018 at No 5 Obaju Quarters Oba-Akoko within Oka Judicial Division assaulted Mrs Ene Innocent.

Dated this…… day of……, 2019

_____

Killi Nancwat 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
IPO SULE…… DEFENDANT

At the session holding at Lagos on the 2nd day of February 2019, the court was informed by the Attorney-General of the State on behalf of the State that Ipo Sule 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
Ipo Sule on or about 2nd day of January 2018 at No 5 Obaju Quarters Ikorodu within Ikeja Judicial Division stole a bag containing the sum of ₦20,000 belonging to Mrs Ene Innocent.

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
Ipo Sule on or about 2nd day of January 2018 at No 5 Obaju Quarters Ikorodu within Ikeja Judicial Division assaulted Mrs Ene Innocent.

Dated this…… day of…….. , 2015.

_____
Killi Nancwat Esq.
Senior State Counsel
Ministry of Justice Lagos State
For: Attorney General of Lagos State

NOTE:
The use of the "State of Lagos" or "People of Lagos State" as complainant has been condemned by Judges as inappropriate party or personality.

<u>High Court of FCT Abuja</u>

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

Case No:……..

BETWEEN
FEDERAL REPUBLIC OF NIGERIA……... COMPLAINANT
AND
IPO SULE……..……. DEFENDANT

At the session holding at Apo on the 2nd day of January 2019, the court was informed by the Attorney-General of the Federation that Ipo Sule is charged with the following offences:

<u>COUNT 1</u>
STATEMENT OF OFFENCE
Stealing, punishable under Section 287 of Penal Code Act

PARTICULARS OF OFFENCE
Ipo Sule on or about 2nd day of January 2018 at No 5 Obaju Quarters Oba-Akoko within Oka Judicial Division stole a bag containing the sum of ₦ 20,000 belonging to Mrs Ene Innocent.

<u>COUNT 2</u>
STATEMENT OF OFFENCE
Assault, punishable under Section 265 of the Penal Code Act

PARTICULARS OF OFFENCE
Ipo Sule on or about 2nd day of January 2018 at No 5 Obaju Quarters Oba-Akoko within Oka Judicial Division assaulted Mrs Ene Innocent.

Dated this…… Day of……, 2019

_____

Killi Nancwat 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 LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

Charge No:……..

BETWEEN
FEDERAL REPUBLIC OF NIGERIA……... COMPLAINANT
AND
IPO SULE……..……. DEFENDANT

1ST CHARGE

Ipo Sule on or about 20th January 2018 at No 3 Ibrahim Way, Ikeja, Lagos within Lagos Judicial Division bribed Mr. Adeolu Opeoluwa, a Director in the Nigeria Deposit Insurance Commission, 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.

2nd CHARGE

Ipo Sule on or about 20th January 2018 at No 3 Ibrahim Way, Ikeja, Lagos within Lagos Judicial Division committed fraud in the office of Nigeria Deposit Insurance Commission thereby committed an offence contrary to Section _____ of the Economic and Financial Crime Commission Act, Laws of the Federation of Nigeria, 2004.

_____
Killi Nancwat Esq.
Director of Prosecution
Economic and Financial Crime Commission
For: Attorney General of the Federation

(Week 10)

BAIL PENDING TRIAL

NATURE AND TYPES OF BAIL

I. Meaning and Nature of Bail

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***.[145]
A bail is considered a constitutional right meanwhile no provision of the constitution specifically states so. However, the conclusion 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.

II. Reasons for Bail

1. Easy access to counsel and witnesses
2. Provides unhindered opportunity for the accused to prepare adequately for his defence
3. Retaining presumption of innocence

III. Types of Bail

1. The police bail – bail pending investigation – ***Section 27 Police Act, Section 17 CPL and Section 129 CPCL***.
2. Bail by court – bail pending trial
3. Bail by court – bail pending appeal

IV. Power of Court to Grant Bail

The magistrate and high court are enjoined to grant bail to accused person after proper arraignment and taking of plea. The power to grant bail pending trial is primarily depended on:

1. **Types of Courts:** The courts of first instance as regard granting of bail pending trial are the magistrate court and high court. The magistrate cannot grant bail in capital offences (these are offences punishable with death penalty) as they do not have jurisdiction to try such offences – ***Section 118(1) CPL*****.** See ***Ewere v. COP, Dogo v. COP***. The high court can grant bail in all offences including a capital offence. Only a judge of the high court can admit to bail a person charged with offence punishable with death. Thus, in seeking bail of an accused, it is important to consider the court in which the accused is arraigned.
2. **Nature of Offence:** Offences are divided broadly into:
   (a) Capital offences
   (b) Felonies other than capital offences; and
   (c) Misdemeanour, and
   (d) other simple offences

[145] (2009) All FWLR (Pt. 425) 1627

BAIL AT THE MAGISTRATE COURT PENDING TRIAL

I. Power of the Magistrates' Court to Grant Bail

Power of a magistrates' court to grant bail in a criminal matter generally depends on the nature of the offence as well as the jurisdiction. The following categories of offences are considered as follows:

1. **Capital Offences/Very Serious Offences:** These are offences carrying death penalty upon conviction. Examples are murder/homicide punishable with death, treason and treasonable felony, armed robbery etc. In the south under this category of offence only high court have power to grant bail and not the magistrate court – ***Section 118(1) CPL*** and ***Section 115(1) ACJL***. In the north under ***Section 341(1) CPCL*** as a general rule, persons accused of an offence punishable with death shall not be released on bail. However, under sub-section 3 where there are no reasonable grounds for believing that the accused has committed the offence but there exist sufficient grounds for further inquiry, such person can be released on bail.

   Thus, under the southern and northern statutes, capital offences are bailable. In ***Ukatu v. COP***, the Court of Appeal held that a magistrate has no power to release a person charged with capital offence on bail. There is a practice adopted by the police in order to circumvent the provision of Section 85(4) CFRN. The practice is holding charge. Holding charge involves an accused who is charged with a capital offence being brought to a magistrate court. The magistrate then makes an order that it has no power to try the accused and that the accused be remanded in prison. The police in doing this buy more time for themselves for investigation and upon investigation, the accused is brought before the high court. The practice was not known to the Nigerian law and in ***Enwerem v. COP*** inter alia, the Court of Appeal condemned the practice. However, ***Section 293 ACJA*** recognises it.

2. **Felonies/Serious Offences:** Felonies are capital offences punishable with three years or more terms of imprisonment. Under ***Section 118(2) CPL, Section 341(2) CPCL; Section 162 ACJA*** and ***Section 115(2) ACJL***, the offence of felony is a bailable offence. Thus, both the magistrate court and high court are empowered to grant bail to an accused charged with such offence. Under the CPL and ACJL, no condition is provided for granting the bail, only as the court deems fit. Under ***Section 341(2) CPCL***, there are conditions. The court will only grant the bail if it considers:
   (a) That by reason of 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.

   It is worthy of not that in the CPL states, in felonies such as manslaughter, while nothing stops a Magistrate from granting bail, they are, in practice, very slow in granting bail. In the CPCL states, a Magistrate cannot grant bail in a case of culpable homicide not punishable with death because they are expressly forbidden from hearing such cases.

3. **Misdemeanour and Simple Offences:** These are offences whose terms of sentence are below three years. Bail is almost always granted in this category of offences – ***Section 118(3) CPL, Section 115(3) ACJL; Section 163 ACJA*** and ***Section 340(1) CPCL***. Under the CPCL, two conditions are stated for refusal to grant bail, namely:
   (a) Proper investigation of the offence will be prejudice, and
   (b) A serious risk of the accused escaping from justice be occasioned.

Under this category of offence, bail is ordinarily granted as it requires no discretion of court, however it can be denied under CPA and ACJL on good or compelling reasons.

II. Procedure for Application for Bail at the Magistrate Court

1. **Mode of Application**
   - **(a) Oral Application:** there is no provision in the extant rules on the procedure for applying for bail whether in the Magistrates' or in the High Court. As such, application for bail may be made orally. In ***Dogo v. COP***, the court held that application for bail at the Magistrate court is normally orally. In practice however, unless the prosecution indicates that it has no objection to the application for bail, bail is rarely granted upon oral application except in cases of misdemeanors. Where the accused person who is unrepresented by counsel fails to apply for bail, the court ought to draw his attention to the existence of that right since it is more of a constitutional right – ***Section 124 CPL***.
   - **(b) Written Application:** applications for bail pending trial in the south is by SUMMONS supported by an affidavit. This is because of the application of ***Section 363 CPL*** that allows for a voyage to England for the practice and procedure for the time being in force in criminal matters where there is a lacuna. The application by summons is for the state to show cause why the accused should not be released on bail – ***Aroyen v. COP***.[146] In the North, ***Section 35 High Court Laws of Northern Nigeria*** prohibits the application of English rules. Where there is a lacuna, the courts are enjoy to adopt a procedure that will ensure substantial justice is attained. In practice, applications for bail in the north are mostly by SUMMONS supported by an affidavit or MOTION ON NOTICE supported by an affidavit and a written address. Application for bail via summons is usually made to the Judge in chambers while application for bail via motion is made to the court – ***State v. Uwah***.
2. **Counter Affidavit:** where the prosecution wants to challenge the grant of the application for bail, it is expected to file a counter affidavit to either the summons or motion.
3. **Hearing of Application and Objection by Prosecution:** the court is to hear the application on the fixed date. The prosecution will also be allowed to object the application (if any). In ***State v. Ozuzu***,[147] The court held that the court cannot grant bail to an accused person without reference to the prosecutor if the latter is present in court or else, it would amount to a breach of the rule of fair hearing.
4. **Ruling of Court:** the court after hearing the application or hearing from the state reasons why the accused should not be released on bail, will either admit the accused to bail or refuse.

III. Application for Bail at the High Court after Refusal by the Magistrate

A. General Rule

Where application has been made to the Magistrate for bail and same has been refused by the Magistrate, the same application may be made to the High Court. ***Section 123 CPL and Section 119 ACJL*** provides that a judge of the High Court may, if he thinks fit, admit any person charged before a court in the state subject to the jurisdiction of the High Court to bail although the court before whom the charge is made has not thought it fit to do so.

[146] (1968) NMLR 433
[147] (2009) All FWLR (Pt. 454) 1581

B. Procedure for Application

1. **Mode of Application:** in the South, the application is made by SUMMONS by virtue of ***Section 363 CPL*** that allows recourse to the practice and procedure in England where there is a lacuna – ***State v. Uwah***.[148] In the North, the application is made via SUMMONS or MOTION ON NOTICE supported by an affidavit and a written address – ***Offiong v. COP***,[149] because ***Section 35 High Court Laws of Northern Nigeria*** prohibits application of English practice and procedure in the event of any lacuna. However, some courts in the North insist that the application should be by SUMMONS – ***Achadu v. State; Adigun v. State; Tanko v. COP***.
2. **Accompanying Documents:** in the case of ***Simidele v. COP***,[150] the court held that document supporting application for bail at the High Court after it has been refused by the Magistrate are:
   (a) Affidavit
   (b) Written address (only for Motion)
   (c) CTC of the charge
   (d) CTC of the ruling of the Magistrate refusing the application.
3. **Counter Affidavit:** where the prosecution wants to challenge the grant of the application for bail, it is expected to file a counter affidavit to either the summons or motion.
4. **Hearing of Application and Objection by Prosecution:** the court is to hear the application on the fixed date. The prosecution will also be allowed to object the application (if any). In ***State v. Ozuzu***, the court held that the court cannot grant bail to an accused person without reference to the prosecutor if the latter is present in court or else, it would amount to a breach of the rule of fair hearing.
5. **Ruling of Court:** the court after hearing the application or hearing from the state reasons why the accused should not be released on bail, will either admit the accused to bail or refuse.

BAIL AT THE HIGH COURT PENDING TRIAL

I. Power of the High Court to Grant Bail

Being a court of unlimited criminal jurisdiction – ***Section 163 ACJA***, the High Court has power to grant bail in all criminal cases that come before it whether in the exercise of its original, supervisory or appellate jurisdiction – ***Section 118(1) CPL; Section 12 read along with Appendix A CPCL*** and ***Section 161 ACJA***. Thus, the High Court has power to grant bail in all cases that come before it in which it has jurisdiction to try. However, bail in capital offences is not automatic as the applicant will have to show special circumstances why bail should be granted.

II. Special/Exceptional Circumstance for Grant of Bail in Capital Offence

To qualify as special circumstance, the facts relied upon by the applicant must be so compelling that to refuse bail would amount to manifest injustice. Examples are:

1. Good alibi – ***Olugbusi v. COP***.[151]
2. Ill health – ***Ani v. State***.[152]

[148] (1976) 2 FNR 143
[149] (1967) NMLR 341
[150] (1966) NMLR 116
[151] (1970) All NLR 1
[152] (2001) FWLR (Pt. 81) 1715

3. Inordinate delay in the prosecution of the applicant resulting in exceptionally long period in detention without trial – ***Anaekwe v. COP***.[153]
4. Any other circumstances the judge may consider as exceptional circumstance – ***Section 161 ACJA***.

III. Procedure for Application

1. **Mode of Application**
   - **(a) Oral Application:** As stated earlier on, there is no specific mode of bringing bail application in the High Court or Magistrate Court under the extant rules. In the high court by virtue of ***Abiola v. FRN***, application for bail can be made orally. However, not the practice of each court.
   - **(b) Written Application:** Generally, in the South, application is by way of SUMMONS supported by affidavit setting out the grounds for the application. See ***Section 363 CPL, Simidele v. COP*** and ***Okeke v. COP***. Any material documentary evidence can be attached. In the North, the procedure is by SUMMONS or MOTION ON NOTICE supported by affidavit setting out the grounds for application. See ***Section 35 High Court Laws of Northern Nigeria, Offiong v. COP***. However, some courts in the North insist that the application should be by SUMMONS – ***Achadu v. State; Adigun v. State; Tanko v. COP***. The affidavit of the accused should contain the conditions for the grant of application for bail (factors that favour him).

     Where two or more accused persons are jointly tried, even where they are represented by one counsel and one motion paper is filed for their bail, there must be separate affidavits sworn to by each of them or on behalf of each of them as to why he should be admitted to bail – ***Afigbu v. COP***.[154] This is because each of the applications is to be treated on its merit and different considerations may be given to each of the accused such as: the conviction (full time and abetment), age (adult and minor) and previous criminal records (first time offender and recidivist).
2. **Counter Affidavit by the Prosecution:** the prosecution can oppose to a bail application by counter-affidavit stating the grounds of its objection. When there are two defendants applying for bail, the prosecution counsel can oppose by two counter-affidavits and one written address.
3. **Hearing of Application and Objection by Prosecution:** the court is to hear the application on the fixed date. The prosecution will also be allowed to object the application (if any) - ***State v. Ozuzu***.
4. **Ruling of Court:** the court after hearing the application or hearing from the state reasons why the accused should not be released on bail, will either admit the accused to bail or refuse. If the bail is granted, the terms of the bail are stated. Once a court has refused to grant bail, application for bail should be filed at the higher court not in any court of the same co-ordinate jurisdiction. See ***State v. Uwa, Anaekwe v. COP***.

IV. Effect on Non-Compliance with Mode of Application

It is important to note that what the court considers in an application for bail is the affidavit evidence rather than the question of the mode of the application. This is because oral applications are equally entertained in view of the all-important nature of bail as it deals with liberty of the citizen. Because of the drift towards preference for substantial justice over technical justice, mere non-compliance with procedure for applying for bail will not defeat the

[153] (1996) 3 NWLR (Pt. 436) 320
[154] (1975) NNLR 128

application. What the court will consider is whether the relief sought by the applicant is one that is borne out or made out by the affidavit evidence – ***Bello v. AG Oyo State***.[155]

FACTORS THAT GOVERN GRANT OF BAIL BY THE COURT

The following factors which were developed by judicial precedents apply to application for bail on offences and in any court whether in north or south, magistrate or high 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:** the court do not usually grant bail in offences punishable with death or life imprisonment or long term of sentence, based on the fact that the accused would want to escape trial. This is a factor which the prosecution can project to oppose an application for bail in capital offence. See ***Dogo v. COP, State v. Felix***.
2. **Nature of the Charge:** the class of offence which the accused is charged will be considered; whether it is capital, felony or misdemeanour or simple offence.
3. **Likelihood of the Accused Interfering with the Evidence or Investigation:** under this factor, the status of the accused person in the society is usually taken into consideration and interference with evidence could relate to both documentary evidence and witnesses to be called by the prosecution. In ***Bamaiyi v. State*** where the accused was Chief of Army Staff of Nigerian army and some of prosecution witnesses were persons who served under him. The prosecution had opposed the application for bail on that ground among others and the high court refused the bail. The Court of Appeal upheld the decision of the trial court. In ***Abacha v. The State***, application for bail had been refused on the ground that some or the witnesses have expressed great fear and some had been issued threats, the driver of the accused had been taken into protective custody for his safety. In ***Dantata v. The State***, the refusal of grant of application was on the ground that the accused had offered to give the police officer money in order to retrieve evidence against him in the police custody.
4. **Likelihood of the Accused Committing an Offence While on Bail:** this could be the same type of offence or another one entirely. The question is usually considered – whether the accused will commit another offence. The onus is then on the defense counsel that the accused person will not commit another offence. In ***R v. Jaramal***, the accused committed the offence that was being tried while he was on bail for another offence. His application for bail was refused. See ***Fred Ajudua v. FRN***.[156]
5. **Criminal Record of the Accused Person:** if the accused can show that he is a man of good character that has never committed an offence, he is more likely to secure the sympathy of the court to be granted bail than a man who is reputed to have a penchant for breaches of the law or constant brushes with the law – ***Eyu v. State***.[157] When considering the criminal record of the accused, his/her frequent involvement in criminal activities or pendency of many criminal cases against him/her is usually, an influential factor – ***Ajuadua v. FRN***.

[155] (1986) 12 SC 1
[156] (2005) All FWLR (Pt. 240) 1274
[157] (1988) 2 NWLR (Pt. 78) 602

6. **Prevalence of the Offence:** where the offence with which the accused is charged with is rampant, re-occurring or habitually being committed in a particular locality, the judge or magistrate may withhold his discretion to grant bail. In the ***State v. Felix***, where the accused was charged among other counts with theft of motor vehicle and theft of motor vehicles were prevalent in that locality, the court refused his application for bail.
7. **Health Condition of the Accused Person:** See ***Fawehinmi v. State, Abacha v. State, Ofulue v. FGN***.[158] When an accused person relies on ill-health as a ground for bail, the following must be considered:
   (a) The ill-health must be such that will affect other inmates in detention.
   (b) There must be positive, cogent and convincing medical report issued by an expert in that field of medicine to which the accused person suffering the ill-health is referable.
   (c) The authorities have no access to such medical facilities as are required in treating the accused's ill-health.

   The conditions for granting bail on ill-health are:
   (a) Everyone is entitled to be offered access to good medical care whether he is being tried for a crime or has been convicted or is simply in detention
   (b) Whatever the stage at which bail is applied for by an accused person, ill-health of the accused is a consideration weighty enough to be reckoned as special circumstances.
   (c) The mere fact that a person in a custody is ill does not entitle him to be released from custody or allowed bail unless there are really compelling grounds for doing so.
8. **Likelihood of the Accused Jumping Bail:** where there is likelihood of accused jumping bail, the court may refuse the application – ***Orji v. State***. This is based on the fact that bail is granted on both the presumption of innocence and presence of an accused in court during his trial while on bail. One factor that gives rise to the fear that the accused may not be available to take his trial is the question of the gravity of the offence and the severity of punishment – ***Abacha v. State***.
9. **Strength of the Evidence in Support of the Charge:** the court will consider whether the proof of evidence accompanying the charge is weighty enough to secure conviction if no evidence is made by the accused - ***Ukalu v. COP***. The court had stated in ***Anaekwe v. COP***[159] that where no proof of evidence even if the charge is of murder, the court will grant bail as such will be regarded as special circumstances stated by the law. The foregoing factors are not exhaustive and the court in ***Dogo v. COP*** had named that bail should not be refused as a form of punishment.
10. **Detention for the Protection of the Accused:** when the court is invited to by the applicant to grant bail or it is minded towards granting bail suo motu, the court is enjoined to consider the safety and protection of the accused himself. Where the nature of the offence is such that the accused needs to be in protective custody, the court would normally refuse to grant bail.
11. **Possibility of Delay in Trial/Long Detention without Trial:** where there is likelihood that the trial may delay which will lead to the accused person spending his prison terms in custody even before he is convicted and sentenced for the offence, the court will grant him bail. It may also arise in situations where the accused person is kept is detention for a long time without trial.

[158] (2005) 3 NWLR 913
[159] (1996) 3 NWLR (Pt. 436) 320

12. **Factors under the ACJA:** ***Section 161(2) ACJA*** defines exceptional circumstance for granting bail to include:
    (a) Reasonable ground to believe that the defendant will, where released on bail, commit another offence;
    (b) Attempt to evade his trial;
    (c) Attempt to influence, interfere with, intimidate witnesses, and or interfere in the investigation of the case;
    (d) Attempt to conceal or destroy evidence;
    (e) Prejudice the proper investigation of the offence; or
    (f) Undermine or jeopardise the objections or the purpose or the functioning of the criminal justice administration, including the bail system.

TERMS AND CONDITIONS UPON WHICH BAIL MAY BE GRANTED

I. Meaning of Terms of Bail

Terms of bail differ from the factors or guiding principles in exercising discretion to grant bail by the court. Terms of bail are what the court after the grant of application for bail requires the accused person to do or produce (after grant of bail). Thus, the order of bail may be granted on certain conditions known as terms of bail. The terms of bail imposed on an accused are dependent on the circumstances of each case. The terms are imposed in other to secure the attendance of the accused in court for his trial.

II. Types of Terms/Conditions of Bail

The following are terms of bail; it could be the combination of all or just one:

1. **Personal/Own/Self-Recognizance:** under this the accused is granted bail based on his status in the society and no bond is needed. In ***Fawehinmi's Case, FRN v. Babalakin***, the accused were granted bail in self-recognizance. Bails are hardly granted on that term, only when the accused is a reputable member of the society and undertakes not to jump bail.
2. **Execution of a Bond for a Fixed Amount:** in this, the accused is admitted to bail upon executing a bond for a fixed amount, of which he will forfeit if he jumps bail. The sum need not be paid in court.
3. **Producing Surety or Sureties who will Enter Bond in a Specified Amount:** ***Section 122 CPL, Section 118(1) ACJL; Section 167(1) ACJA*** and ***Section 345 CPCL***. The accused is admitted to bail upon executing a bond and producing surety. The court can require the surety to execute a bond in addition to other terms imposed. See ***Onughi v. Police***. The amount paid on bond is to be paid into an interest yielding account – ***Section 116(4) ACJL***.

   Generally, there is no special consideration to be a surety except that the person must be of known address, good character and acceptable to court. ***Section 118(3) ACJL*** and ***Section 167(3) ACJA*** recognised women sureties unlike the CPCL and CPL that are silent about that. The bold step took by ACJL and ACJA was because of the discrimination against women; they are not allowed to stand as sureties either for court bail or at the police station.

   Under the ACJL and ACJA, there are BOND PERSONS. These are persons registered by the chief judge to act as bond person within the jurisdiction of the court in which they are registered – ***Section 138 ACJL*** and ***Section 187 ACJA***. The bond person which can be an individual or corporate body take accused on bail acting as his surety, guarantor. If a bond person takes an accused on bail and the accused acts contrary to the terms of bail, he can apply to court for his discharge as a surety. The court can request for further terms like

international passport, landed properties within the jurisdiction among others. Carrying on activities without licence or registration and violation of terms of licence is offence which attracts a penalty of N500, 000 or 12 months imprisonment.

4. **Deposit of Money in Lieu of a Bond:** this is when the accused is asked to deposit certain sum of money instead of executing a bond either by the court suo motu or upon application of the accused person – ***Section 116(2) ACJL; Section 165(2) ACJA; Section 120 CPCL***. This is usually resorted to by the suspect or accused where he finds it difficult to secure a surety. However, he may take it for any other personal reason.

III. Onerous/Excessive Terms/Conditions

The terms of the bail must not be onerous. If terms of bail are onerous, it would mean that the accused had been denied bail. In ***Eyu v. State***, where bail had been granted to the appellant on the deposit in the court, the sum of N400, 000, 000 being the amount for which she was charged with and enter into a bond in the sum of N5, 000 with one surety in like sum. The Court of Appeal found it odd and offensive and ordered that bail is granted to here in the sum of N100, 000 with two sureties in the sum of N50, 000 each and both sureties should have evidence of ownership of a house each and to also depose to affidavits of means.

There is rather novel provision in the ACJA to the effect that where bail is granted to a defendant in circumstances which, in the opinion of the Attorney General would justify the cancellation of such bail, the Attorney General may apply to cancel same. If the circumstance is such that the amount of bail should be increased, he may apply for such increase subject, of course, to the defendant's right to fair hearing – ***Section 169 and 175 ACJA***.

IV. Non-Fulfilment of Terms or Conditions

Where the accused or suspect fails to meet the conditions of bail, he would remain in detention (if he is already in detention) or be made to go into detention (if he is not already in detention) – ***Section 353 CPCL***. However, upon fulfilment of conditions to the satisfaction of the Registrar, the accused or suspect is allowed to go. If he is in prison custody, the order granting bail is authority for the superintendent or other officer in charge of the place where the accused or suspect is detained to release him forthwith. The court is required to issue a written order to the officer in charge of wherever the accused or suspect is detained directing that he be released forthwith – ***Section 129(1) CPL; Section 346(1) CPCL*** and ***Section 165(1) ACJA***.

V. Child Offenders

A parent, guardian or any other fit person can enter into a recognizance with or without sureties undertaking to secure the attendance of the child in court when required.

REVIEW AND REVOCATION OF BAIL AND DISCHARGE OF SURETIES

I. Review of Bail

When an accused is not satisfied with the terms upon which the bail was granted, he can appeal to the higher court for the terms to be reviewed – ***Eyu v. State***. In ***Bamaiyi's Case***, the Court of Appeal stated that the practice of tying the entitlement of an accused person to bail to his first depositing a percentage of the amount stated in the charge to have been stolen by him is a negation of the constitutional provision which presumes an accused innocent until found guilty.

II. Revocation of Bail

A. Concept

It is possible that an accused having been granted bail and have provided the terms of bail, the court thereafter revokes the bail. The court usually revokes a bail if the accused failed to attend or be present in court for his trial. This amounts to jumping bail. Revocation is based on the application of the prosecution. The court upon granting the order for revocation of bail will

issue a bench warrant for the arrest of the accused. The bond entered by the accused will be forfeited and that of the surety(ies) might be forfeited. Before the order of forfeiture of the bond, the court will hear the surety(ies) as to any defense he might raise or reasons why the bond should not be forfeited.

B. Life Span of Bail

1. **Police Bail:** until the accused is charged to court or otherwise discharged by the police.
2. **Court Bail Pending Trial:** until the determination of the case against the accused person.
3. **Court Bail Pending Appeal:** until the determination of the appeal.

C. Circumstances in which Bail may be revoked

1. Indicted for an offence not bailable while on bail granted by a Magistrate. Upon being informed by a superior police officer, the Magistrate shall issue a warrant for his apprehension – ***Section 132(1) CPL; Section 127(1) ACJL***.
2. Failure to appear in court on the named date without good cause; jump bail. In this case, a bench warrant may be issued for his arrest – ***Section 184 ACJA***.
3. Surety applies to be discharged or surrenders the accused to the court before the date assigned – ***Onyebuchi v. FRN***. Where this happens, the accused shall be detained until he gets another surety or else, he would remain in detention until determination of the case – ***Section 134 CPL; Section 351 CPCL*** and ***Section 129 ACJL***. Under ***Section 177(2) ACJA***, the court may in such circumstance, ask the defendant to meet other conditions and if he fails, the court may make such orders as it considers appropriate.

III. Discharge of Sureties

Once a surety is not always a surety as the surety can, before the forfeiture of bond or at any time in the trial proceeding against the accused bring an application for him to be discharged from his obligations under the terms of bail of the accused. Upon application of the surety, an order is issued for the arrest of the accused. The surety is then discharged. The accused if he is still interested in the bail order in his favour, must bring another surety before he is released again on bail. If a surety dies, his estate is discharged and the accused will be re-arrested until he provides another surety.

IV. Effect of Jumping Bail

1. Issuance of bench warrant against the accused person. He may be refused bail this time around.
2. Forfeiture of bond by surety
3. Revocation the bail by the court
4. Order forfeiture of the bond
5. Order the surety to show cause why he should not surrender the sum stated in the bond to the court registrar.

SAMPLE DRAFTS OF BAIL APPLICAITON

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

CASE NO_____

BETWEEN
FEDERAL REPUBLIC OF NIGERIA_____COMPLAINANT/RESPONDENT
AND
1. IKPO UDO_____DEFENDANT
2. BURAGO MUSA_____ACCUSED/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 March, 2019 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 9th day of March, 2019

_____
NE Killi Esq.
Applicant's Counsel
Killi Nancwat & Co
Plot 111 Mary Close,
Victoria Island, Lagos

FOR SERVICE ON:
The Hon. Attorney-General of Federation
Attorney-General's Chambers
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

CASE NO_____

BETWEEN
FEDERAL REPUBLIC OF NIGERIA_____COMPLAINANT/RESPONDENT
AND
1. IKPO UDO_____DEFENDANT
2. BURAGO MUSA_____ACCUSED/APPLICANT

AFFIDAVIT IN SUPPORT OF APPLICATION FOR BAIL

I, Burago Musa, male, adult Nigerian, resident at 15, Udeh 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 Ikpo Udo by the police officers of the Bwari Division, Abuja on Friday the 2nd of January 2019 on the allegation of robbery of one Mrs. Ene Agbo on the that date.
3. We were arraigned before the Bwari Chief Magistrate in the Bwari Magisterial District, Abuja on 20th January 2019 on a charge of robbery. The charge sheet is hereby attached and marked as EXHIBIT K1.
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 renal failure. The report is hereby attached and marked EXHIBIT K2.
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 K3.
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 March, 2019

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: HCA/019/006
MOTION NO…….....

BETWEEN:
FEDERAL REPUBLIC OF NIGERIA…....……...COMPLAINANT/RESPONDENT
AND
IKPO SUNDAY DEFENDANT
BURAGO DOGO…….....……...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 February, 2019 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:

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 February, 2019

_____
DEFENDANT/APPLICANT'S COUNSEL:
Chris Bamba Esq.
NE KILLI & CO.
No. 1 Benakol Street, Maitama,
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/019/006
MOTION NO……..

BETWEEN:
FEDERAL REPUBLIC OF NIGERIA…....……...COMPLAINANT/RESPONDENT
AND
IKPO SUNDAY DEFENDANT
BURAGO DOGO…….....……...DEFENDANT/APPLICANT

AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE

I, Alhaji Mohammed Dogo, male, Muslim, Business Man, Nigerian citizen of No. 6 Abacha Road, Bwari, Abuja do hereby make oath and state as follows:

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 10th day of January, 2019 on the allegation of stealing and I know that the applicant was arraigned before this honourable court on the 15th day January, 2019 and the court directed that he be remanded in prison custody.
4. On the 20th day of January, 2019, 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 a renal failure, 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 checkup 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 1st day of February, 2019

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/019/006
MOTION NO…….....

BETWEEN:
FEDERAL REPUBLIC OF NIGERIA….....……...COMPLAINANT/RESPONDENT
AND
IKPO SUNDAY DEFENDANT
BURAGO DOGO.…….....……...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 1st day of February, 2019. 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 10th day of January, 2019, 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 trail?

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:

a. 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;
b. 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
c. 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 1st Day of February, 2019

_____

DEFENDANT/APPLICANT'S COUNSEL:
Chris Bamba Esq.
NE KILLI & CO.
No. 1 Benakol Street, Maitama,
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/019/006
MOTION NO: HC/019/200

BETWEEN:
FEDERAL REPUBLIC OF NIGERIA…....……...COMPLAINANT/RESPONDENT
AND
IKPO SUNDAY DEFENDANT
BURAGO DOGO…….....……...DEFENDANT/APPLICANT

COUNTER AFFIDAVIT OPPOSING BAIL

I, Mike Liman, Male, Christian, State Counsel, Nigerian citizen of No. 6 Babangida Road, 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 10th day of January, 2019 on the allegation of stealing.
4. I know that the applicant was arraigned before this honourable court on the 15th day of January, 2019 and the court directed that he be remanded in prison custody.
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 1st day of February, 2019

BEFORE ME

……..……
COMMISSIONER FOR OATHS

Summons 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: HC/O19/006

BETWEEN:
FEDERAL REPUBLIC OF NIGERIA…....……...COMPLAINANT/RESPONDENT
AND
IKPO SUNDAY DEFENDANT
BURAGO DOGO…….....……...DEFENDANT/APPLICANT

SUMMONS FOR BAIL

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

LET ALL PARTIES concerned attend this Honourable Court on the 4th day of February, 2019 at the hour of 9 O'clock in forenoon or so soon afterwards in the hearing of an application by counsel on behalf of the applicant for an order admitting the applicant to bail pending his trial:

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

Dated this 1st day of February, 2019.

_____
DEFENDANT/APPLICANT'S COUNSEL:
Chris Bamba Esq.
NE KILLI & CO.
No. 1 Benakol Street, Maitama,
Abuja.

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

(Week 11 & Week 12)

CONSTITUTIONAL SAFEGUARDS TO ENSURE FAIR TRIAL OF AN ACCUSED

INTRODUCTION

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***

RIGHT TO FAIR HEARING

I. General Rule

Section 36(1) CFRN provides that accused person shall be entitled to fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality. ***Section 36(2) CFRN*** also provides that no law shall be invalidated by reason that it confers power on government or any authority to determine questions relating to administration of a law provided the parties are afforded opportunity of making representations before the administering authority and no provision in that law makes the decision of the administering authority as final and conclusive. ***Section 36(4) CFRN*** also makes provision for fair hearing within reasonable time and in public.

II. Twin Pillars of Justice

From the provision of Section 36(1), it can be said that fair hearing is encapsulated in two principles of law, namely:

1. **Audi Alterem Partem:** this means the other party shall or must be heard. In ***Odessa v FRN,***[160] the trial judge raised the issue of validity of the charge suo moto without affording the accused person opportunity to respond. It was held that it amounted to violation of the

[160] (2005) All FWLR (Pt. 164) 228

appellant's right to fair hearing. It was also held in ***Akabueze v. FRN***,[161] that where the court or tribunal denies the accused person the opportunity to engage a counsel of his choice, this amount to denial of fairhearing. However, this right does not state that the defendant must be heard at all cost. An accused person who failed to use the opportunity cannot complain on appeal. In ***NBA v. Akintokun***,[162] the Legal Practitioners Disciplinary Committee held that the audi alterem partem rule is not breached if the appellant was given adequate opportunity to appear and present his case or defense to the case against him but he chose not to avail himself of the opportunity.

2. **Nemo Judex in Causa Sua**: this means a person shall not be a judge in his own case – ***Garba v. University of Maiduguri***.[163]The second pillar revolves around absence of likelihood of bias. In this like, a reasonable man after witnessing a trial proceeding of an accused should go home with the impression that justice has been done – justice must not only be done but must be seen to be done. Thus fair hearing is an objective test (reasonable man). Hence, a judge is not expected to be interested in the matter before it; must not be interested in the outcome of the proceeding; must not be unnecessarily attached to subject matter or any of the parties.

III. Adherence to Elements of Fair Hearing by Every Court

Every court must adhere to the elements of fair hearing with no exception of any court. In ***Falodun v. Ogunse***, the court held that the requirements of fair hearing are so ubiquitous that every proceeding in customary courts must observe them. Some of the considerations are:

1. Easy access to the court,
2. Whether there is inordinate delay in delivering judgment – ***Effiom v. State***.

RIGHT TO TRIAL IN PUBLIC (PUBLICITY OF TRIAL)

I. General Rule

Section 36(3) CFRN provides that the proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public. See also ***Section 203 CPL; S. 225(1) CPCL; Section 200 ACJL; Section 259 ACJA***. The fair trial as envisaged by ***Section 36(4) CFRN*** must be conducted in the public. Publicity of trial means trial in a court room properly so designated or any place where the public has unimpeded access without discrimination. In ***Edibo v. State***,[164] the court held that arraignment and taking of plea of an accused person in the judge's chamber is unconstitutional.

II. Exceptions

Some exceptions are created under the ***Proviso to Section 36(4) CFRN*** to an extent that a court or tribunal can exclude any person from its proceedings other than persons who are parties and their legal representatives on any of the following grounds:

1. In the interest of defence;
2. Public safety;
3. Public order;
4. Public morality;
5. Welfare of persons who has not attained the age of maturity;
6. Protection of the private lives of the parties; or
7. To such extent as the court or tribunal may consider necessary by reason of special circumstances on which publicity would be contrary to the interest of justice.

---

[161] (2003) FWLR (Pt. 178) 1165
[162] (2006) All FWLR (Pt. 333) 1720
[163] (1986) 1 NSCC 245
[164] (2007) All FWLR (Pt. 384) 192

8. When a young person is to give evidence in the case of an offence which is contrary to decency and morality – ***Section 204 CPL***
9. When a minister of the federation or a commissioner of a state satisfies the court that it will not be in the public interest for any matter to be publicly disclosed, the court may hear the evidence in relation to such matter in private.
10. Express provision of statute that trial should not be open to the members of the public. E.g. sexual offences; offences under the Prevention of Terrorism Act; offences relating to Economic and Financial Crimes; Trafficking in persons as provided under ***Section 232(1) & (4) ACJA***.
11. Protection of the identities of witnesses in respect of certain offences especially those provided under ***Section 232(4) ACJA***.

RIGHT TO BE TRIED WITHIN REASONABLE TIME (SPEEDY TRIAL)

I. General Rule

Right to speedy trial is provided under ***Section 36(4) CFRN***. An accused person is entitled to trial within a reasonable time - ***Okeke v. State***. Reasonable time is the time that will make the judge not forget the evidence given by witnesses.

II. Factors to be considered in Determining Reasonable Time

In ***Effiom v State***,[165] the court held that the following factors must be taken into account in determining whether there was unreasonable delay:

1. Length of the delay
2. Reasons for the delay
3. Accused person assertion of his right
4. Prejudice to the accused

In ***Effiom's Case***, the trial of the accused lasted for 6 years before he was convicted, but the court held that the majority of the adjournments in the trial were inevitable for the just decision of the case and much of the delay was beyond the control of the trial court. Thus, even if it was concluded that there was delay in the trial, cogent reasons were advanced to explain them. Neither the prosecution nor the learned trial judge could be blamed for the delay which itself was not unreasonable having regard to circumstances of the case. Proof of unreasonable delay is not sufficient to nullify conviction unless the delay led to miscarriage of justice - ***Asakitipi v. State*****.**

III. Speedy Trial under the ACJA

Under the ***Section 110 ACJA***, adequate provisions were made to ensure speedy dispensation of justice by setting time limit for every stage of the proceedings from commencement to conclusion of trial. Also, ***Section 396 ACJA*** makes trial of criminal cases to be on a day to day basis. There shall be no more than 5 adjournments at the instance of any party where day to day proceeding is impracticable. Where parties have exhausted the 5 adjournments and it is impracticable to conclude the trial, the interval between one adjournment and the other shall not be more than 7 days inclusive of weekends.

As a form of remedy, the judge may order sentence to run from the period of detention in order to balance the interest. Also, the Chief Judge may release awaiting inmate.

RIGHT TO BE PRESUMPTION OF INNOCENCE

I. General Rule

Section 36(5) CFRN provides that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. In ***Abdullahi v. State***[166]the court held that by the presumption of innocence of an accused person as conferred by Section 36(5) of the

[165] (1995) 1 NWLR (Pt. 373) 507
[166] (2005) All FWLR (Pt. 263) 698

1999 Constitution, the policy of our courts is to be willing to discharge 10 (ten) criminals rather than to convict one (1) innocent person by mistake or error. The grant of bail is also on the right to presumption of innocence – ***Ikhazuagbe v. COP***.[167]

II. Burden on Prosecution to Prove Guilt beyond Reasonable Doubt

The right to presumption of innocence provides for a rebuttable presumption of law and the prosecutor has the legal burden of proving the guilt of the accused beyond reasonable doubt. In ***Okoro v. State***, the court held that it is the duty of the prosecution to prove the guilt of the accused person beyond reasonable doubt. However, once the prosecution discharges the burden placed upon it by the constitution, the burden shifts to the accused (not to prove his innocence) but to disprove the allegation. Where he fails to do this and the trial court finds the case of the prosecution sufficiently proved to the prescribed standard, the presumption of innocence hitherto enjoyed is displaced and the accused will be convicted and given the appropriate punishment – ***Chukwu v. State***.

Also, where the accused has been convicted of the offence charge and he has gone on appeal, he no longer enjoys the right to presumption of innocence.

III. Imposition of Burden of Proving Particular Facts on the Accused by the Law

The ***Proviso to Section 36(5) CFRN*** provides that nothing in the section is to invalidate any law which imposes upon any such person (accused person) the burden of proving particular facts. This is the evidential burden which can be on the accused. For instance, the onus is on the accused person to adduced evidence to establish defence of alibi and defence of insanity.

IV. Consideration of all Forms of Defence Raised by Accused

In ***Agbiti v. Nigerian Navy***, the court had stated that there is presumption of innocence in favour of the accused which entails the proper consideration of his defence even if the defence is weak, stupid, fanciful and improbable.

RIGHT TO BE INFORMED OF THE CRIME ALLEGED

I. General Rule

Section 36(6) (a) CFRN provides that the accused shall be entitled to be informed PROMPTLY in the language that he understands and in DETAIL of the nature of the offence. ***Section 211 ACJL*** has similar provision. This entails the charge being read to the accused in the language he understands. The language of the court is English language and if the accused understands Tarok language, trial cannot commence until an interpreter is provided. The breach of the right renders the trial a nullity as the essence of the right is to inform the accused person in time to prepare for his defence. In ***Yahaya v. State***, the Supreme Court held that the trial and conviction of the appellant was a nullity for failing to comply with Section 36(6) (a) CFRN

II. Conviction only on Offences which the Accused Person Plead to

A. General Rule of Plea

This right also entails the accused is to be convicted of the offence charge and not that which he is not being charged. In other words, as a general rule an accused cannot be convicted of the offence that he did not plead to. See ***Section 215 CPL; Section 287 CPCL; Section 211 ACJL; Section 271(1) & (2) ACJA***. In criminal matters, it is plea that actually gives the court jurisdiction, therefore, where accused did not take a plea, the court is robbed of its jurisdiction.

B. Exceptions

1. **Conviction for a Lesser Offence:** The accused can be convicted of a lesser offence than the one which he is charged – ***Section 213 CPCL***. In ***Adava v. State***, the accused persons who were charged and convicted for homicide punishable with death. At the Supreme Court, their appeal was allowed and they were convicted for a lesser offence of voluntarily causing hurt without provocation. The rationale is that where an accused is charged for a

[167] (2005) All FWLR (Pt. 266) 1323

grave offence, he is deemed to have notice of the lesser one - ***Maja v State***. It can be murder to manslaughter, rape to attempted rape, etc.

2. **Conviction for an Offence not Charge based on the Evidence Disclosed:** Also an accused can be convicted of another offence by which he was not charged based on the evidence disclosed at trial without calling him to make a fresh plea. See generally ***Section 179 CPL, Section 217 CPCL and Section 166 ACJL, Odeh v FRN***. For instance, A is charged with stealing biro, if it is proved in evidence that he receive stolen biro, he could be convicted for receiving stolen property. In ***Nwachukwu v. State***, the accused was being tried for armed robbery. At the end of the trial, the offence was not proved but he was convicted of robbery. The accused appeal was dismissed. The ingredient of offence for which the accused is to be convicted must be contained in the evidence of the offence for which he is been tried.

RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE FOR DEFENCE

I. General Rule

Section 36(6) (b) CFRN provides that any person who has been charged with a criminal offence shall be entitle to be given adequate time and facilities for the preparation of his defence. If a person is charged with an offence, he must be given enough time to study with his legal and other advisers the case against him. If he is in police custody or prison custody, he must be given enough time to make arrangement for a lawyer to visit him so as to prepare his defence. In ***University of Ilorin v. Akinrogunde***, the respondent who was accused of leading students' protest leading to damage of the University property was given less than 24 hours to make his defence to the written allegations against him. The court held that to be unconstitutional.

II. Seeking of Adjournments

The right of the accused person to adequate time and facilities to prepare for his defence extend to seeking adjournment. The courts are enjoined to grant an accused adjournment. However adjournment cannot be granted ad infinito. Thus, an accused is entitled to only reasonable adjournment. Where an accused seek adjournment for the purpose of attendance of material witness or material evidence to be submitted by such witness, the court will grant the adjournment if:

1. The witness is material
2. The accused was not guilty of neglect in procuring the witness; and
3. That the material witness will be available to attend the hearing on a particular day (certain date).

The adjournment could be to secure the attendance of his lawyer. In all adjournment for attendance of an accused person's lawyer in court relating to trial for capital offence must be granted by the court. See ***Udo v. State***. For other offences, the court is not bound to grant an adjournment for the attendance of accused counsel. Adjournment is at the discretion of the court. By virtue of ***Section 186(1) CPL, Section 193(2) CPCL, Section 177 ACJL***.

III. Court assisting Accused Person to Procure a Witness through Summons

The court can assist the accused in procuring a witness to attend criminal proceedings when such person will be a material witness to give material evidence. This is done through summons – witness summon on behalf of an accused person.

IV. Right to Proof of Evidence

An accused person has right to proof of evidence and witnesses statements. The counsel is to apply to the police to give the certified true copy of proof of evidence. If police refuse, the counsel is to make an oral application to the court for an order directing the police to release the certified true copy of proof of evidence. Where the proof of evidence is not available, that can serve as a ground for an adjournment. The proof of evidence consist of the following:

1. Statement of charge against the accused

2. Name, address and summary of the statement of any material witness whom the prosecution intends to call
3. Name, address and summary of the statement of any material witness whom the prosecution does not intend to call.
4. Copy of any report, if available, made by a doctor about the state of mind of the accused person in custody
5. Statement of the accused person
6. Inventory of all the exhibits to be produced at the trial
7. Documents which the prosecution may consider relevant to the case – ***Okoye v COP***.[168]

RIGHT TO COUNSEL

I. General Rule

By virtue of ***Section 36(6) (c) CFRN***, the accused person has a right to defend himself in person or by a legal practitioner of his choice. The right to counsel is not court sensitive, thus available to the accused before any court. In ***Uzodinma v. COP***, where an accused was denied legal representation before an Area court based on Section 28 Area Court Edict and Section 390 CPCL, the Supreme Court held that the above provisions being inconsistent with the provision of the constitution were void. Also, in ***Udo v. State***,[169] the appellant was arraigned for the murder of his mother. In the course of the trial, the defence counsel wrote a letter to the court asking for an adjournment on the ground that he was involved in another murder case before another High Court Judge. The learned trial judge refused the application for adjournment. On that day that counsel was absent, two vital witnesses testified. Ultimately, the appellant was convicted and sentenced to death. The Supreme Court held that the denial of adjournment for counsel to appear and represent the appellant amounted to denial of right to counsel. It allowed the appeal and ordered a retrial.

II. Legal Disability of Legal Practitioners

However, the legal practitioner must be that which does not suffer any legal disability. ***Section 2 of Legal Practitioners Act*** gave definition of a legal practitioner. Senior Advocates of Nigeria are not to appear before an inferior court (Magistrate, Area and Customary court). See ***Registered Trustees of ECWA v. Ijesha***. Also, the right to counsel of choice is subject to the relevant immigration laws. In ***Awolowo v. Minister of Internal Affairs***, the appellant was charged for a capital offence of treason. He seek for the services of a foreign counsel but the foreign counsel was denied entrance into Nigeria on grounds that he did not comply with the relevant immigration requirements, the appellant instituted this action for the enforcement of his fundamental right to representation by counsel of his choice. The court held that there was not denial of right to counsel as the right to a foreign counsel is subject to the relevant immigration requirements.

III. Legal Aid

Where an accused cannot afford the services of a legal practitioner, application can be made to the Director-General of the Legal Aid Council and a counsel will be assigned to such accused upon fulfilment of the condition precedents.

IV. Obligation on Court to Inform Accused of Right where he appears without a Counsel

Where an accused appears in court without a counsel, he is entitled to be informed by the court of his right to defend himself personally or through a counsel of his choice.

---

[168] (2015) All FWLR (Pt. 799) 1101 at 1126-1127

[169] (1988) 3 NWLR (Pt. 82) 316

V. Mandatory Legal Representation in Capital Offences

NB: The CPL and CPCL provides for mandatory legal representation for capital offences. Where a person charged with a capital offence is not represented by a counsel, he should have one provided for him by the court. See ***Josiah v. State***.

RIGHT TO EXAMINE WITNESSES

Section 36(6) (d) CFRN provides that an accused person has a right to call his own witnesses to testify on his behalf. Also, the accused has the right to cross-examine the prosecution witnesses. The right to cross-examine prosecution witnesses is not at the end of all witnesses' testimonies but one after the other. After examination-in-chief of the first witness, the accused will then cross-examine that witness. In ***Tulu v. Bauchi Native Authority***, the trial court after the evidence of the prosecution witness did not allow the accused to cross-examine the witness but put some questions to the witness. The Supreme Court held that the trial was a nullity. See ***Section 179(2) CPCL***. For instance, if three accused persons are represented by a counsel, then cross-examination may be done at a stretch or randomly by the counsel. However, where different counsel represent the various accused persons, the cross- examination will be done in order of the accused persons, e.g. 1st, 2nd, 3rd etc. in that order.

RIGHT TO AN INTERPRETER

I. General Rule

Section 36(6) (e) CFRN provides that where any person is charged for a criminal offence, he shall have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence. ***Section 36(6) (a) CFRN*** also provide that the accused has a right to be informed promptly of the charges against him in the language that he understands. Thus, where an accused does not understand the language of the court, he has a right to an interpreter. See ***Ogunye v. State***. Where an accused is charged with criminal offence, and where he does not understand the language of the court, he is entitled to an interpreter at no cost. See ***Nwachukwu v. State***. Where the accused understands the language in which evidence was given against him, an interpreter is not necessary. See ***Onyia v. State***[170] where the accused person as well as the witnesses who testified in the case testified in Igbo Language. The Supreme Court held that interpretation in such circumstance was not necessary.

II. Duty of Accused Person who does not understand the Language of the Court

Where the accused person does not understand the language of the court, he has a duty to inform the court that he does not understand the language of the court. Where the accused person failed to do so, he cannot complain on appeal about that unless he can prove positively that the failure to interpret the proceedings to him had occasioned miscarriage of justice – ***Bayo v. FRN***.[171]

III. Raising Right to an Interpreter for the First Time on Appeal

The right to an interpreter cannot be raised for the first time on appeal unless such right was denied the accused at the trial. See ***Udesen v. State***. The legal practitioner representing the accused is to raise the issue of an interpreter at the trial court and not on appeal. It can only be raised on appeal if it was denied at the trial court.

IV. Swearing/Affirming of Interpreter

The interpreter before interpreting must be sworn on oath/affirmed - ***Section 242(1) & (2) CPCL***. It is the duty of the accused to tell the court or inform the court that he does not understand the language of the court. See ***State v. Gwonto***.

---

[170] (2009) All FWLR (Pt. 450) 625
[171] (2008) All FWLR (Pt. 428) 304

V. Competent, Accurate and Comprehensible Interpreter

The interpreter must be competent enough. See ***Ajayi v. Zaria Native Authority***. The interpreter must be accurate and comprehensive in his interpretation of the proceedings of the court to the accused. See ***Zaria Native Authority v. Bakari***. He must interpret everything said by the witnesses, complainant and the court.

VI. Waiver of the Right to an Interpreter

In ***Onyia v. State***,[172] the apex court held that although the right to an interpreter is a constitutional right, the procedure may however be dispensed with where the accused so wishes and the trial judge is of the opinion that the accused does not require any interpretation of the proceedings.

RIGHT AGAINST TRIAL UPON RETROACTIVE LEGISLATION & HAVIER PENALTY

I. General Rule

Section 36(8) CFRN provides that no person shall be held guilty of a criminal offence on account of any act or omission that did not, at the time it took place constitute such an offence and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed. See also ***Section 181(1) CPL, Section 223 CPCL, Section 173(1) & (2) and 211 ACJL***. Thus, before a person can be liable for conviction, his act or omission must constitute an offence as at the time of doing or omitting to do so.

II. Limbs

Under this right, there are two limbs:

1. At the time of act or omission, no law creating such offence but subsequently a law is enacted to punish such act or omission. The constitution says that in that circumstance, no person can be said to have committed an offence – ***Egunjobi v. FRN***.[173]
2. The second limb is that if the offence was punishable with a fine as at the time it was committed but subsequently an act was enacted making the punishment imprisonment, the constitution says a person can only be sentenced to a fine.

RIGHT TO ONE TRIAL FOR ONE OFFENCE (DOUBLE JEOPARDY)

I. General Rule

This is the right against double jeopardy. ***Section 36(9) CFRN*** provides that no person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence same upon the order of a superior court. The right is also known as 'autre fois convict' or 'autre fois acquit' or 'bar plea'.

II. Conditions (Exams)

There are four conditions or ingredients which must be fulfilled before the right can avail an accused person – namely:

1. **Criminal Charge:** That the first trial was a criminal charge. Thus, where the accused was tried under the provisions of the constitution of an association to which he belongs, that would not be a criminal charge. See ***R v. Jinadu***.
2. **Competent Jurisdiction:** The first trial was before a court of competent jurisdiction. In other to determine a court of competent jurisdiction, the decision of ***Madukolu v. Nkemdili*** should be looked at. For instance, in the magistrate courts are not empowered to try a person for capital offences. If a magistrate tries a person for the offence of murder and the person is charged before the high court, such person cannot plead autre fois acquit or convict. In ***Umeze v. State***, the conviction of the appellant was set aside by the Supreme

[172] (2009) All FWLR (Pt. 450) 625
[173] (2002) FWLR (Pt. 103) 896

Court when it was shown that the magistrate who conducted the committal proceedings was not competent to do so and in such circumstances, a plea of autre fois acquit is not available.

3. **Conviction or Acquittal:** That the trial ended in a conviction or acquittal. Thus, a nolle prosequi entered by an AG – ***Section 174 & 211 CFRN*** or a withdrawal by a prosecutor – ***Section 75 CPL*** before the accused presented his defense would amount only to a mere discharge and not acquittal.
4. **The same Offences & Ingredients:** That the offence for which the accused is now charged is the same with that that he was previously charged. The ingredients are the same. Thus, if B is charged for stealing C's book and convicted by a court of competent jurisdiction, B cannot be charged for stealing C's book again. In another way, if A was charged with armed robbery and he was acquitted, he cannot in a subsequent trial be charged with attempted armed robbery or robbery simpliciter because the two other offences are offences for which he could have been convicted based on the ingredients proved at the first trial. See ***FRN v. Nwosu***.[174]

RIGHT AGAINST TRIAL FOR AN OFFENCE FOR WHICH ACCUSED HAS BEEN PARDONED

I. General Rule

Section 36(10) CFRN provides that no person who shows that he has been pardoned for a criminal offence shall again be tried for that offence. Thus, where a person who was convicted of an offence (criminal) has been pardon, he can no longer be tried for that offence. The right to pardon is the express right of the President and Governor – ***Section 175 and 212 CFRN***. Pardon can be granted either conditional or unconditional. In ***Falae v. Obasanjo (No 2)***,[175] the court observed that a pardon is an act of grace by the appropriated authority which mitigates or obliterates the punishment that attaches to the offence for which the person was convicted.

II. Instances

1. To an accused who is not yet standing trial – Amnesty
2. To an accused standing trial – Nolle prosequi
3. To an accused who has already been convicted – Pardon

Pardon is different from amnesty, in that in amnesty, the persons involved have committed an offence and the state decides not to prosecute them on the agreement that they would not commit the offence again.

III. Effect & Proof of Pardon

The effect of pardon granted to a convicted person is that it approbates the incident of conviction and it is deemed that the beneficiary has never committed an offence. By the pardon, the rights and benefits that the offender has been denied by virtue of the conviction are restored and the person is seen as a new person - ***Falae v. Obasanjo (No 2)***.[176]

The proof of pardon is by producing an instrument of pardon granted by the President or Governor called CERTIFICATE OF PARDON. Proof of pardon goes to the root of the offence.

RIGHT TO REMAIN SILENT

I. General Rule

Section 36(11) CFRN provides that no person who is tried for a criminal offence shall be compelled to give evidence at the trial. This is also provided for in ***Section 180(a) Evidence Act 2011, Section 236(1) CPCL, Section 278(1) CPL and Section 244 ACJL***. An accused person, even though a competent witness is not a compellable witness.

---

[174] (2016) 17 NWLR (Pt. 1541) 226 at 294-5

[175] (1999) 4 NWLR (Pt. 599) 476

[176] (1999) 4 NWLR (Pt. 599) 476

II. Comment on Silence by Prosecution and the Judge

Where an accused remains silent – elects not to give evidence, the law forbid the prosecutor from submitting that the silence amounts to an admission of guilt but the prosecutor may comment. The law however enjoins the judge to comment by drawing necessary inference but not to assume the guilt of the accused. See ***Audu v. State***.

III. Consequence of electing not to give Evidence

In ***Igabele v. State***, the Supreme Court stated the right of the accused to remain silent but warned that by so doing, the accused runs a risk and will be obliged to make his defense to the charge, if the remaining silent will result in his being convicted on the case made against him by the prosecutor. Failure to give evidence may lead to conviction.

In ***Mbang v. State***,[177] the appellant along with 3 others were charged with the murder of the deceased. The pleaded not guilty. The prosecution called 6 witnesses at the end of which the defence counsel made a no case submission on behalf of all four. It was overruled. Counsel rested the case of the defence on that of the prosecution. The trial court convicted them and the appellant appealed. Dismissing the appeal, the Court of Appeal while acknowledging the right of the accused person to silence held: where an accused person elects not to give evidence explanation of what actually happened, he must accept responsibility for his action as inferred from his conduct in the prevailing circumstances. In the instant case, the appellant who would have extricated himself from the horrible act by explaining his own side of the story failed to do so.

RIGHT TO BE TRIED ONLY FOR AN OFFENCE KNOWN TO LAW

I. General Rule

Section 36(12) CFRN It provides that subject as otherwise provided by this constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written law. From the above, for there to be an offence in Nigeria, the following are important:

1. The offence must be defined in a written law; and
2. The penalty thereof must be prescribed by the same written law

The locus classicus is ***Aoko v. Fagbemi***, where the appellant was charged for adultery under the Criminal Code and convicted. The Court of Appeal had held the conviction unconstitutional as the offence of adultery was not defined by any law in southern Nigeria and no penalty prescribed thereof. It was applied in ***AG Federation v. Isong and Olieh v. FRN***.

II. Application to Court Martial

The provisions of Section 36(12) also apply to the court martial. In ***Asake v. Nigerian Army Council***, where the appellant had borrowed money from his subordinate. He had been charged and convicted for the offence of misconduct to the prejudice of military discipline. The Court of Appeal held that offence of borrowing money from subordinate was not defined in law and penalty provided thereof.

[177] (2007) All FWLR (Pt. 372) 1862

(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***.[178] 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.

B. Exceptions

Exceptions where an accused's 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 of the accused 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***.

In all the above instances, the accused must have been represented by a counsel – ***Section 36(6)(c) CFRN 1999*** as amended. In murder cases, it is mandatory for the court to find him a representation (Legal practitioner). See ***Josiah v. State, Awolowo v. Usman, Shemfe v. COP***.

C. Orders the Court can make if an Accused is absent without Cogent and Compelling Reasons

1. Revoke his bail and issue a Bench warrant for his arrest if he is already on bail
2. Issue a production warrant to the Prison officers to bring him to the Court if the accused is in Prison custody.
3. Issue a warrant of arrest against the accused person (If in respect of summons - ***Section 96 CPL***)

II. Presence of Complainant at Trial

A. General Rule

The complainant is expected to be present in court at all time. Where the complainant will not be present he is expected to have given prior notice to the court. Such notice is to give cogent reasons for his absence.

B. Absence of Complainant

When the Complainant (Police prosecutor or law officer, office of the AG) is absent in Court for the trial; the Court may do any of the following - ***Section 236 of the ACJL, Section 280 of the CPL and Section 165 of the CPCL*****:**

[178] (1999)

1. Dismiss the action if satisfied that the prosecution had adequate information of the trial. In that case, the accused will be discharged for want of diligent prosecution.
2. If a cogent reason is given for the absence, the Court will adjourn the hearing to another date. E.g. an emergency happened on the way to court.
3. If it is a non-capital offence and the reason for absence is not cogent, the court will proceed with the trial.
4. If it is a capital offence, court may adjourn because judges are reluctant to dismiss such matters. In ***Udofia v. State,*** the Court discountenanced complainant's request for adjournment in a capital matter. The conviction was quashed.

III. Absence of Both Parties in a Criminal Matter

Where both parties are not in court:

1. The court will adjourn the case
2. If the accused had been released on bail, bench warrant will be issued for him to be arrested and brought to court
3. The court will also issue notice to the complainant telling him that the next adjourned date if not in court, the accused will be discharged.
4. If the complainant still failed to appear in court, the Court will dismiss the case and discharge the accused person.
5. Additionally, the court may order for cost from the parties - ***Section 237 of the ACJL and Section 282 of the CPL.***

IV. Attendance of Vital Witnesses

A. General Rule

Both parties are entitled to determine the number of witnesses to call. No particular number of witnesses is required to establish a case nor must the Prosecution call all the witnesses listed in his information. It can call only one witness if it is sufficient. In ***Adaje v. The State*****,** both parties did not call a particular witness. The Court of Appeal berated the court and prosecution and defence counsel as there is no way justice could be done without calling that witness. The witness was vital in deciding whether or not the accused killed the victim. Accused alleged that he was held down and someone was told to beat him up (this person was not called).

B. Modes of Compelling the Attendance of a Vital Witness

Some witnesses either for the prosecution or accused person may willingly come to court while others may refuse to come to court. Thus, there are two ways of bringing such witnesses by:

1. **Summons:** this is usually at the instance of the court – ***Section 186 CPL, Section 163 CPCL, Section 177(1) ACJL***. Where a summons has been issued against a witness and the witness refused to come to court, then a warrant of arrest will be issued by the court to bring him before the court – ***Form 7 CPA***. The summons is usually signed by the magistrate or judge.
2. **Subpoena:** this is upon application of either of the parties – ***Section 358 CPL, Section 188 ACJL***. The subpoena may be subpoena *duces tecum* which is to order a witness to produce document(s) only or *subpoena ad testificandum* which is to order a witness to come to Court to testify only. Failure to appear, warrant of arrest can be issued against the witness – ***Section 356 CPL, Section 186 ACJL*** and ***Section 163(1) CPCL***.

NB: In practice, the above processes are issued upon an application (may be a written letter addressed to the Court Registrar or by a Motion Ex Parte) by the party needing a witness.

V. Attendance of Counsel in Court

A. Concept

Every person who is charged with a criminal offence shall be entitled to defend himself in person or by a legal practitioner of his choice – ***Section 36(6) (c) of the 1999 Constitution; Section 211 of the Criminal Procedure Law (CPL); Awolowo v. Usman Sarki.***[179]

B. Absence of Counsel

1. **General Rule:** Where a counsel is unable to attend, the court must be informed of the cogent reason to justify his absence; or another counsel is briefed to take up the matter. The danger inherent in counsel being absent in court without reasonable excuse is the exposure of the accused to the task of defending himself – ***Shemfe v. COP;***[180] ***Gokpa v. COP.***[181]
2. **Capital Offence**: In a capital offence, the accused shall be assigned a counsel to represent him – ***Section 186 CPL***, and ***Section 352 CPCL*****.** In ***Josiah v. The State***,[182] where (in a capital offence) the accused was not represented by counsel, the court held that it amounted to denying him a fair trial; and this vitiated the trial. There is the need for a counsel to be present in court and conduct his case diligently especially where an accused is charged with a capital offence. It has been held by the Supreme Court that where a counsel does not appear to conduct his case or absents himself when it matters, e.g. in a murder charge, a conviction of the accused, who is forced to conduct his case may not hold; for it will amount to a denial of fair trial – ***Udofia v. State;***[183] In ***Okojie v. State***,[184] the accused were charged with armed robbery. During the trial their counsel did little or no cross examination of the prosecution witnesses, despite damaging incriminating evidence against the accused persons and they were convicted. The Supreme Court lamented on the manner the case was handled, more so, when it was a matter of life and death.
3. **Indigent Accused**: It should be noted that under ***Sections 6 and 8 Legal Aid (Amendment) Act 2011***, an accused person whose annual income does not exceed the national minimum wage (N18, 000) is entitled to free legal representation in respect of criminal proceedings.

DUTIES OF COUNSEL, COURT REGISTRAR AND JUDGE

I. Duty of Prosecuting Counsel

1. Candid and fair, not trying to secure conviction by all means - ***Rule 37 (4) RPC, Enahoro v. State*****.**
2. He is not to withhold the existence of any adverse decision on a point of law favourable to the accused – ***Anani v. R.***
3. He must make available to the accused person evidence favourable to the accused - ***State v. Odofin Bello; Rule 32 RPC; R v. Sugarman*****.**
4. Present at the trial of the accused at any time the case comes up - ***Rule 14 RPC.***
5. Duty not to forum shop/to avoid forum shopping. It is unprofessional for a Prosecutor to look for a convenient court where the accused should be tried - ***Ibori v. FRN.***
6. Call and examine all material witnesses whether their testimony would be favourable to the case of the Prosecution or not.
7. Conduct case with due diligence. Counsel must be fully prepared to go on with the case and not seek unnecessary adjournment thereby wasting the court's time.

---

[179] (1962) L.L.R. 177
[180] (1962) All NLR 87
[181] (1961) All NLR 424
[182] (1985) 1 NWLR (Pt. 1) 125
[183] (1988) 7 SCNJ 188
[184] (1989) 1 NWLR (Pt. 100) 642

8. Make available to the accused person proof of evidence – ***Uket v. FRN***.
9. Avoid frivolous institution of criminal proceedings**.** ***Rule 37 (5) RPC*** provides that a public prosecutor shall not institute a criminal charge unless the charge is supported by probating evidence.
10. Prosecution should not be too relaxed when a plea of guilty is entered. He must furnish the court with full facts - ***Omoju v. FRN*****.**
11. Avoids suppressing facts or secret witnesses capable of establishing the innocence of the accused person.
12. Disclose to the accused person or his counsel the existence of evidence known to the prosecution that tends to negate the guilt of the accused or mitigate the degree of the offence or reduce the punishment. See ***State v. Odofin Bello, Enahoro v. State and R v. Sagarman***.

II. Duty of Defence Counsel

1. He is not to return the brief of a person charged with a capital offence. It is the duty of a lawyer to accept any brief in the court in which he professes to practice provided the proper professional fee is offered unless there are special circumstances which justify his refusal - ***Rule 24(1) RPC; R v. Uzorukwu*****.**
2. Where accused confesses to guilt to his counsel, it is unethical for counsel to disclose same or to withdraw from handling the defendant's case.
3. Undertake the defence of a person charged with a capital offence competently and with dedication **–** ***Section 37(1) RPC*** and ***Josiah v. State***. In ***Udofia v. State***, it was held that a youth Corp Member has no experience to be assigned to defend an accused on a capital offence. See also ***Udo v. State*****.**
4. Present in court at all times. The Defence Counsel must be personally present in court especially where the charge against his client is one for murder - ***Rule 37(1) RPC***. If he wants to disengage, he is to give the accused person time to get another counsel – ***Rule 21 RPC***. See also ***Okonofua v. State***.
5. A defence counsel who adopts brief of an accused is expected to personally conduct the defence except under any sufficient unforeseen circumstances – ***Rule 37(2) RPC.***
6. A defence counsel must not refuse a brief solely on the ground that he does not know who will pay him.
7. Represent an indigent accused diligently when called by the court to do so – ***Rule 38 RPC***.
8. When client discloses a fact to a counsel, it is unethical to disclose it to anyone without the express permission of the client - ***Rule 19 RPC***. This duty extends to other counsel and staffs in his law firm. Even after the case, the defence counsel cannot disclose – ***Section 193 Evidence Act***.
9. Where the accused person admits guilt and confessed to having committed the offence the defence counsel should not put up/cook up adverse/false evidence to show the accused as innocent – ***Rule 37(3) RPC***. What he is expected to do is to step up the defence before the court and allow the court to decide. He is not to produce contrary evidence in court.

III. Duty of the Court Registrar

1. Accepts all processes for filing
2. Ensure that exhibits are properly kept and marked
3. Keeping of case files and bringing it to attention of the Judge before the date for hearing
4. Preparing weekly case list/bar list
5. Helps the judge to know the next adjourn date. They are charge of the court diary.
6. Reading of charges to the accused
7. Attend to the need of the judges
8. Act as an interpreter to an accused person who needs one or facilitate an interpreter for the accused or witness.

9. Affirming or swearing in witnesses in trial
10. Ensures hearing notices and other court processes are served.
11. Where an accused is sentenced to death, certificate issued by judge is usually sent by the registrar to the prison officer and sheriff.
12. Makes records of proceedings available to the parties upon demand.
13. Ensure the perfection of a bail bond where necessarily.

IV. Duty of a Presiding Judge

1. The Judge must be an impartial arbiter. The Judge or Magistrate in a criminal case must see himself and be seen as a neutral, unbiased and fair umpire.
2. Not to interject too much or put damaging questions to the accused leading to conviction - ***Okoduwa v. State, Onuoha v. State, Uso v. COP***.
3. Grant all the parties equal right of audience to the court.
4. Fair and respectful to the Bar.
5. Ensure justice is done when a plea of guilty is entered and must ensure that he truly intended to plea same before sentence - ***Kayode v. State***.
6. Maintain the aura of impartiality all through the trial and never descend to the arena of conflict – ***Akinfe v. State, Okoduwa v. State***. This could be when he takes over examination of a witness. However, judges are allowed to put questions to witnesses in order to clarify certain points before him – ***Section 246 Evidence Act***. When a judge descends into the arena of conflict, he will be regarded as "hippy harlet" that is talks too much.

ARRAIGNMENT

I. Concept

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.

II. Procedure for a Valid Arraignment

Section 215 CPL; 211 ACJL; Section 161(1) & Section 187(1) CPCL**.**

A. Accused must be placed before the Court Unfettered

The accused must be unfettered and placed in the dock. For an arraignment to be complete, the accused must be placed before the court unrestrained (unfettered) – ***Section 215 CPL, Section 211 ACJL*** and ***Section 187(1) CPCL***. This is because if an accused is brought before the court unfettered whatever he does after that will be seen to be voluntary. However, where an accused person is very violent, he can be restrained or the court directs otherwise.

While the CPL, ACJL and ACJA provide that the accused or defendant shall be brought before the court unfettered, the CPCL is silent on how the accused or defendant should appear in court although, in practice, the accused is usually brought into court unfettered.

B. Reading and Explaining of Charge or Information to the Accused in a Language He understands

The Charge/Information must be read over and explained to the accused in the language that he understands to the satisfaction of court by the registrar or other officer of the court. Where accused does not understand English language, an interpreter must be provided at no cost – ***Section 36(6) (e) CFRN 1999***. Where there are several accused persons who speak 20 languages; they need separate interpreters - ***Eyide v. State***. Under the ACJL, the Charge is to

be read in the presence of the defendant's Legal Practitioner if represented - ***Section 211 (1) of the ACJL***. The court must equally record that the charge was fully read and explained - ***Akpan v. State***. However, failure to do so will not nullify the trial.

While the CPL, ACJL and ACJA are specific on who should read the charge to the accused, that is the Registrar or any other officer of the court, the CPCL is silent on who should do the reading. Thus, it is possible for the judge or the prosecuting counsel to read the charge to the accused under the CPCL.

While the CPL, ACJL and the ACJA provide specifically that the charge shall be read and explained to the accused or defendant "to the satisfaction of the court", the CPCL is silent on the question of satisfaction of the court.

C. Taking of Plea of Accused Person

The accused will be called upon to plead instantly to the Charge unless there is a good reason not to do so. The instances where an accused person may not plead instantly to the Charge are:

1. The absence of service of the Charge to the accused.
2. A preliminary objection is raised
3. Where an accused person stands mute (silent)

The plea must be unambiguous or unequivocal. Plea is personal as an accused must plead to the Charge himself - ***Adamu v. The State.*** Any change or alteration in his plea must be done by him and none other. A legal practitioner cannot plead for an accused/defendant - ***R v. Pepple; The State v. Ekpo***. The absence of the accused person's Counsel during the taking of his plea shall not render his trial void - ***Effiom v. State*****.**

Where a Charge Sheet contains more than one Count/Head of Charge, the accused is to plead separately to each of the Counts in the Charge Sheet in the language he understands and the trial judge must record the plea to each count. Block plea is not allowed - ***Ayinde v. The State***.[185] Where several accused persons are jointly charged, each accused person must take his plea for himself personally - ***Adamu v. The State*** - a plea by one accused person on behalf of other accused persons was held to have rendered the trial null and void. However, the charges may be read over and explained once to all the accused persons but they must plead individually to the charges.

If an accused person is transferred to another court he must plea afresh. A deaf and dumb accused is not prevented from taking his plea - ***Section 176 of the Evidence Act 2011*****.** The Court shall obtain his plea in a manner understood by him by using sign language, lip reading or writing.

As soon as an accused takes his plea, he is deemed to have submitted to the jurisdiction of the court.

While the CPL, ACJL and ACJA provide that the accused or defendant shall "plead instantly thereto", the CPCL is to the effect that the accused shall be asked whether he is "guilty or not".

Under the CPL, ACJL and ACJA, the accused or defendant may not be required to plead instantly to the charge if he is entitled to service of some processes and in the opinion of the court, service has not been duly effected. There is no similar provision on exception under the CPCL.

While the ACJL provides that the charge shall be read where applicable to the defendant in the presence of his legal practitioner, there is no similar provision in the CPL, CPCL and the ACJA.

D. Recording of Plea by the Court

The plea of an accused is to be recorded by the court as nearly as possible in the language used - ***Edu v. State; Section 218 CPL***. Failure to add the phrase "it was done to the satisfaction of the court will not render a plea defective - ***Sunday Amala v. State*****.** Where there are several accused persons, their pleas must be recorded separately on the record of proceedings (causes

[185] (1980).

delay - EFCC cases). Failure to record separate pleas shall not vitiate the trial unless it is shown to occasion a miscarriage of justice - ***Sharfal v. State***
Failure to record the plea of the accused will make the trial a nullity – ***Ede v. State***.
While the ACJA expressly demands that the Judge record the fact that he is satisfied that the defendant understand the charge read and explained to him, there is no requirement in the other statutes under consideration.

E. Effect of Non-Compliance with the Procedure for Arraignment

Failure to comply with the requirements for a valid arraignment renders the whole trial a nullity. – ***Kajubo v. State; Ogunye v. State; IGP v. Rossek; Toby v. State***.

OPTIONS OPEN TO THE ACCUSED PERSON UPON ARRAIGNMENT

When the charge has been read to the accused and he understands it, he can do any of the following:

1. Preliminary objection to his trail upon the charge
2. Refusal to plead to the charge
3. Stand mute when called upon to enter his plea
4. Plead guilty
5. Plead not guilty
6. Plead not guilty by reason of insanity
7. Bar plea of autre fois acquit and autre fois convict

I. Preliminary Objection

Raising preliminary objections involves issues that go to the jurisdiction of the court to try the accused person. Such preliminary objections include the following:

1. **Jurisdiction of the Court:** this involves stating that the court is not a competent court to try the offence alleged to have been committed. See Madukolu's Case and ***AG Federation v. Abubakar*** for what constitute jurisdiction of the court. This may be on the ground that the court:
   (a) Lacks the jurisdiction to try the offender
   (b) Lacks the jurisdiction to try the offence
   (c) Is not properly constituted as regards to quorum or
   (d) The case is not commenced according to due process.
   Where the objection succeeds, he may be re-arrested and arraigned before a Court of Competent jurisdiction.
2. **Defective Charge:** The objection could be as to defect in charges. That is where the charge offends the rules against ambiguity, rules against duplicity, mis-joinder of offences or mis-joinder of offenders. This objection ought to be made after the charge is read over to the accused person and before he pleads. In ***Obakpolo v. The State***, the SC held that an accused that pleads to a charge after it is read and explained to him, might not thereafter successfully raise an objection to a formal defect on the face of the charge. His plea to the charge is a submission to the jurisdiction. However, on its own part, ***Section 221 ACJA*** has expressly prohibited preliminary objections in the course of criminal proceedings on account of erroneous or imperfect charge.
   Note, where the defect is minor, it can be cured in court. However, where it is a major effect, the accused is discharged and the prosecution has to file a new charge.
3. **Failure to obtain Consent/Leave to File an Information or Charge:** preliminary objection can also be on the ground of failure of the prosecutor to obtain the consent (south excluding Lagos) or leave (north) of the court before filing the information or charge in the high court. See ***AG Federation v. Isong*** and ***State v. Bature***. However, there is no requirement of obtaining consent to file an information in Lagos and FCT that operates the ACJL and ACJA respectively.

4. **Bar Plea of Autre Fois Convict/Acquit (Double Jeopardy):** He could raise bar plea of autre fois convict or acquit. Thus, the accused had been earlier charge on same offence with a criminal charge before a court of competent jurisdiction and either a conviction or acquittal was obtained – ***Section 36(9) CFRN; Section 181 CPL; Section 223(1) CPCL***. Note that the four conditions stated above must be proved by the accused. It can be raised at any time before judgment.
5. **Plea of Pardon:** the accused can raise preliminary objection as to the fact that he has been pardoned for the offence for which he is being charged either by a Governor or President. See ***Okongwu v. State, Section 36(10) CFRN***. The certificate of pardon issued by either the President or Governor must be produced in court.
   Pardon is recommended by a Committee on prerogative of mercy. Therefore, where an accused person tenders an instrument of pardon in objection to his trial, and the Court is satisfied, the accused person will not be called upon to make a plea. The charge against him will be discharged.
6. **Offence been Statute Bar**: He can plead that the offence has been statute bar. Example is treason (2 years); Custom offence (7 years); Sedition (6 months); Defilement of a girl under 16 (2 months).

II. Refusal to Plead

After the charges have been read to the accused person (and he has raised preliminary objections which was not sustained) the accused can refuse to plea to the charges. Where the accused refuses to plead, which can be expressly or by conduct (implied), the court will do the following – ***Section 220 CPL, Section 215 ACJL, Section 188 CPCL & Section 276(1) ACJA***:

1. The court will inquire into his refusal to plead
2. If there are no valid reason for refusing to plead (out of malice), the court will ask him to plead again.
3. If the accused person refuses again to plead, the court will enter a plea of not guilty for the accused person. In ***Gaji v. The State*** where an accused refused to plead, the plea of not guilty entered by the judge was upheld at the Supreme Court.
4. If the refusal to plead is as a result of insanity, the court shall order that the accused be kept in custody at the pleasure of the Governor.

III. Standing Mute or Remaining Silent

An accused person can decide to stand mute. This is different from refusal to plead although regulated by the same provision. The accused in this instance remains mute or silent; more as if deaf and dumb. Where the accused adopts the option, the court is to do the following:

1. Investigate into the state of the accused/the reason for remaining mute.
2. If the court finds out that he is insane, then he is to be kept in custody at the pleasure of the Governor.
3. If not insane, the court will enter a plea of not guilty (remaining silent by malice).
4. It is due to the fact that the accused is deaf and dumb, an interpreter who can interpret in sign language, if the accused can follow in sign language, will be gotten.
5. If the accused being deaf and dumb cannot follow in sign language, he is to be kept in custody at the pleasure of the Governor. In ***R v. Ogor***, where the accused stood mute and the judge had merely observe him and concluded that he stood mute out of malice and entered a plea of not guilty on his behalf. He was tried and convicted. On appeal, the court held that the court should have properly investigated the accused to know the fitness of the accused person.

IV. Plea of Guilty

A. General Rule: An accused person can plead guilty to the charge read to him. This is in rare cases – ***Section 218 CPL, Section 162(1) CPCL*** and ***Section 213 ACJL***.

B. Non-Capital Offence: For every other offence except capital offences, when an accused pleads guilty, the court is to enter the plea of guilty and observe the following:

1. The plea of guilty of the accused must be recorded as clearly as possible in the words used by him.
2. Also, the court must be satisfied that the accused understands the charge against him - ***Ahmed v. Police***.
3. The court must call on the prosecution to supply the facts of the offence charged and the facts must be sufficient to show the guilt of the accused.
4. The court must also ensure that the plea of guilty of the accused is neither ambiguous nor equivocal otherwise a plea of not guilty must be recorded for the accused despite his plea of guilty. 'I am guilty' not 'I am guilty with reasons'. See ***Onuoha v. IGP***.

C. Offence that can only be constituted by Expert Evidence: Where the offence to which the accused has pleaded guilty can only be constituted by expert evidence, the evidence must be tendered before he is convicted on the plea. See ***Stevenson v. Police (Indian hemp), Essien v. State and Ishola v. The state***.

D. Lesser Offence: The earlier statement must be consistent with the charge – plea of guilty. See ***Aremu v. COP***. An accused instead of pleading guilty to the main offence, can plead guilty to a lesser offence. Where an accused pleads for (for instance, charged for rape and pleads guilty to attempt to rape) but not guilty to the one charged for. Before the court can convict him on the plea of guilty to the lesser offence, the court must obtain the consent of the prosecutor. If the prosecutor agrees, then the court can go ahead. If the court reject the plea of guilty to the lesser offence and proceed with the trial, the court cannot go back to convict him on the plea of guilty to the lesser offence. Under ***Section 275 ACJA***, where the defendant pleads guilty to a lesser offence, the court shall call upon the prosecution to amend the charge to include the lesser offence after which the defendant will be called to make a fresh plea to the amended charge or information.

E. Capital Offence: Where an accused pleads guilty to a capital offence, the court is to enter a plea of not guilty for him – ***Section 213(3) ACJL, Section 187(2) CPCL***.

F. Withdrawal of Plea of Guilty: A plea of guilty can be withdrawn at any time before conviction or before the court accepts the plea of guilty. Can the same trial judge proceed with trial? Once the court has given verdict and conviction, such plea can no longer be withdrawn – ***R v. Guest***.

V. Plea of not Guilty

This is the most common plea in criminal trials. This is known as pleading the general issue – ***Section 217 CPL; Section 212 ACJL*** states that every person by pleading generally the plea of not guilty shall without further form be deemed to have put himself upon his trial.

VI. Plea of not Guilty by Reason of Insanity

A. Concept: The plea of not guilty by reason of insanity indirectly admits doing the act or omission (physical element) but lacked the requisite mental element.

B. Considerations by the Court: When an accused raise the defence, the court is to consider the following:

1. Whether the offence alleged was actually committed. If the court determines that the offence was not committed then the accused will be discharged and acquitted. If the offence was committed then,
2. The court would determine whether the accused actually committed the offence. If the accused did not commit the offence, then he will be discharged and acquitted. If he did, then
3. The court would determine whether the accused was insane at the time of committing the offence.

C. **Relevant Stage of Pleading Insanity:** the relevant stage where insanity can be pleaded is at the time of committing the offence (time of commission) and not at the time of arraignment.

D. **Direction by Court upon Findings:** If accused was not insane at the time of commission, then the court would convict him accordingly. However, if he was insane at the time of commission, the court would order such accused to be kept in a safe custody, then send a report to the Governor – ***Section 230(1) CPL, R v. Ogor***. The Governor may order that such person be confined in lunatic prison or other suitable place of safe custody during the pleasure of the Governor – ***Section 230(2) CPL, Adams v. DPP***.

PLEA BARGAINING

I. Concept

Plea bargaining is an agreement in criminal trials between prosecutor and the accused person to settle the case in exchange for concessions. Plea bargaining is a recent development in the Nigerian Criminal Law and Lagos state blaze the trail by providing it in ***Section 75 & 76 ACJL*** and later FCT under ***Section 270 ACJA***. ***Section 75 ACJL*** is to the effect that the AG of the state have the power to consider and accept plea bargaining from a person charged with offence where he is of the view that the acceptance of such plea bargaining is in the public interest, the interest of the justice and the need to prevent abuse of legal process. Also, the prosecutor and a defendant or his legal practitioner may before the plea to the charge enter into an agreement with regard to the defendant pleading guilty to the offence charged or a lesser offence of which he may be convicted in the charge and an appropriate sentence impose by the court – ***Section 76(a) & (b) ACJL; Section 270(4) ACJA***.

II. Procedure before Entering the Agreement

The prosecutor may only enter into plea bargaining agreement:

1. After consultation with the police officer responsible for the investigation of the case and the victim if reasonably feasible; and
2. With due regard to the nature of and circumstances relating to the offence, the defendant and the interest of the community – ***Section 76(2) (a) & (b) ACJL***.

III. Essential Ingredients that must be Present

The plea bargaining agreement must contain the following:

1. The agreement must be in writing and contain the following specifics or state – s. 76(4)
   (a) That the defendant has been informed that he has a right to remain silent;
   (b) Also he has been informed of the consequences of not remaining silent
   (c) That he is not obliged to make any confession or admission that could be used in evidence against him
2. The full terms of the agreement and any admission made must be stated; and
3. The agreement must be signed by the prosecutor, the defendant, the legal practitioner and the interpreter (if used).

IV. Non-Participation of Judge or Presiding Officer

The presiding judge or magistrate before whom criminal proceedings are pending shall not participate in the plea bargaining agreement. However, he can give relevant advice to them regarding possible advantages of discussions, possible sentencing options or the acceptability of a proposed agreement – ***Section 76(5) ACJL***.

V. Procedure of Plea Bargaining

1. **Representations by the Complainant:** When the agreement is in progress, the prosecutor if reasonably feasible shall afford the complainant or his representative the opportunity to make representations to the prosecutor regarding:
   (a) The contents of the agreement; and
   (b) The inclusion in the agreement of a computation or restitution order – ***Section 76(3) ACJL***.

2. **Informing the Court of the Agreement between the Prosecutor and Defendant:** Where a plea agreement is reached, the prosecutor shall inform the court of the agreement – ***Section 76(6) ACJL***.
3. **Inquiry by the Court from the Defendant to Confirm the Correctness of the Agreement:** the judge or magistrate shall inquire from the defendant to confirm the correctness of the agreement – ***Section 76(6) ACJL***.
4. **Judge Ascertaining whether the Defendant admits the Allegations in the Charge & whether the Agreement was made Voluntarily:** If the answer is in the affirmative, the presiding judge or magistrate shall ascertain whether the defendant admits the allegations in the charge to which he has pleaded guilty and whether he entered into the agreement voluntarily and without undue influence – ***Section 76(7) ACJL***.
5. **Options Open to the Judge:** The court after satisfying itself on all of the foregoing will do one of the following:
   (a) Convict the defendant on his plea of guilty to the offence as stated in the charge and agreement.
   (b) If not satisfied, the court will enter a plea of not guilty and order that the trial proceed – ***Section 76(7) (a) & (b) CAMA***.

VI. Procedure after Conviction

1. **Imposition of Sentence Agreed upon:** In sentencing the defendant after the conviction, the judge or magistrate is to consider the sentences agreed upon in the plea agreement. If the sentence is considered appropriate, then the agreed sentence would be imposed on the defendant – ***Section 76(8) (a) ACJL***.
2. **Court Informing Defendant of Heavier Sentence:** However if the court decides that the defendant deserves a heavier sentence, the defendant shall be informed – ***Section 76(8) (c) ACJL***.
3. **Options Open to Defendant upon being informed:** Upon the defendant being informed, the defendant has two options – ***Section 76(9) (a) & (b) ACJL***.
   (a) One, the defendant can abide by his plea of guilty as agreed upon and agree that subject to the defendant's right to lead evidence and to present argument relevant to sentencing, the presiding judge or magistrate proceed with the sentencing.
   (b) The second one is that he withdraws from his plea agreement in which event the trial shall proceed de novo before another presiding judge or magistrate.
4. **Conditions to Observe after Withdrawal of Plea Agreement:** Where the trial proceed de novo before another presiding judge or magistrate, the following must be observed:
   (a) No reference shall be made to the agreement
   (b) No admissions contained therein or statements relating thereto shall be admissible against the defendant; and
   (c) The prosecutor and the defendant may not enter into similar plea and sentence agreement – ***Section 76(10) (a)-(c) ACJL***.

VII. Scope of Application and Meaning of Prosecutor

The prosecutor for the purpose of the foregoing provisions (Section 75 & 76) means a LAW OFFICER – ***Section 76(11) ACJL***. The plea bargaining agreement provided for under ACJL has no limitation to any offence – NOT LIMITED TO ANY PERSON. Plea bargaining is available for all types of offences.

VIII. Desirability of Plea Bargaining

1. It saves time and cost of litigation in prolong trial
2. It decongests the cases in the court. It helps both the prosecution and the court to decongest their case.
3. It helps avoid public trial and protect innocent victims especially in sexual offences.
4. It helps prosecution to concentrate on more serious offences having settled lesser ones

5. It helps in bringing satisfaction to all the parties that justice has been done.
6. It brings the victim to a focal point by providing for actual compensation for the victim

Note that there has been argument against it.

(Week 14)

TRIAL II: TRIAL PREPARATION AND EVIDENCE

BURDEN AND STANDARD OF PROOF

I. Burden of Proof

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

II. Standard of Proof

A. Standard of Proof in Legal Burden: Under ***Section 135(1) Evidence Act***, the legal burden of proof on the prosecution is to be proved beyond reasonable doubt. Sub-section 3 states that if the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on to the defendant. It is pertinent to note that the sub-section did not say that the legal burden shifts to the accused person only that once the prosecution has proved beyond reasonable doubt the guilt of the accused, then it is left for the defence counsel to call evidence in rebuttal that would cast doubt on the guilt of the accused.

B. Standard of Proof in Evidential Burden: Evidential burden which can be on the accused is to be discharged on the balance of probabilities. ***Section 137 Evidence Act*** provides that where in any criminal proceeding the burden of proving the existence of any fact or matter has been placed upon a defendant by virtue of the provisions of any law, the burden shall be discharged on the balance of probabilities.

COMPETENCE AND COMPELLABILITY OF WITNESSES

I. General Rule

Section 175(1) Evidence Act provides that all persons are competent to testify, unless the court considers that they are prevented from understanding questions put to them, or giving rationale answers to those questions, by reason of tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

The word competence as it relates to witnesses in a trial refers to the ability or fitness to give evidence in a court of law. Compellability on the other hand, is the legal obligation to be brought to court by legal means to give evidence whether one desires to do so or not. While every person is a competent witness as a general rule, not everybody is compellable. In other words, while every compellable witness is a competent witness, not every competent witness is a compellable witness.

II. Child

A. General Rule: by virtue of ***Section 175(1) Evidence Act***, a child is a competent witness to testify unless such a child is prevented from understanding the questions put to him or giving rationale answers to those questions by reason of tender years. A child in this context is a person who has not attain the age of 14 years.

B. Unsworn Evidence of a Child below 14 Years of Age: A child who is above the age of seven years but has not attained the age of fourteen years (8-13 years). A child below 14 years must give unsworn evidence that needs to be corroborated to sustain a conviction if he is a witness for the prosecution. While a child from 14 years and above can give sworn evidence. ***Section 209(1) EA*** provides that: In any proceeding in which a child who has not attained the age of 14 years is tendered as a witness, such child shall not be sworn and shall give evidence otherwise than on oath or affirmation, if in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking the truth. To determine whether a child under 14 years is possessed of sufficient intelligence, the court will consider whether in line with Section 175, he understand questions put to him and able to give rational answers to those questions.

C. Sworn Evidence of a Child of 14 Years: A child who has attained the age of 14 years shall, subject to sections 175 and 208 of the Act give sworn evidence in all cases - ***Section 209(2) EA***. By virtue of ***Section 208(1) EA***, the evidence of a child can be received without the child taking oath if such a child alleges that taking of oath is contrary to his religious belief.

D. Leading Questions in Examination in Chief: In examination-in-chief of the child, the counsel may also apply for leave of Court to ask the child leading questions, which is not ordinarily permitted.

E. Corroboration of Evidence of a Child below 14 Years: A person shall not be liable to be convicted for an offence unless the testimony admitted by a child below 14 years and given on behalf of the prosecution is corroborated by some other material evidence in support of such testimony implicating the defendant - ***Section 209(3) Evidence Act 2011***. The sworn evidence of a child may corroborate the unsworn testimony of another child; though the judge should be cautious in acting on such evidence – ***Queen v. Ekelagu.***

III. Accused Person

A. Prosecution: an accused person is not a competent witness for the prosecution, particularly, where is charge alone. He cannot be compelled to one – ***Section 180 EA***.

B. Defence: an accused person is a competent witness for the defence, but he is not compellable as he reserve the right not to testify for himself. See ***Section 36(11) CFRN; Section 180 EA***. By the combine effect of Section 36(11) CFRN and Section 180 EA, an accused person is not compellable at all.

C. Comment on Failure of Accused to Give Evidence: by virtue of ***Section 181 EA***, the court, prosecution or any other party to the proceeding can comment on the failure of the accused to give evidence, but that comment shall not suggest that such failure to do so is because he was or that he is guilty of the offence charged.

III. Co-Accused Person

A. General Rule: as a general rule, a co-accused is not competent to testify for the prosecution. A co-accused is one standing trial jointly with another in respect of a particular offence(s).

B. Exceptions: a co-accused may do so where he has been:

1. Tried separately; and
2. Acquitted; or
3. Convicted and sentence; or
4. Discharged on a nolle prosequi; or
5. Pleaded guilty and was convicted and sentenced – ***R v. Akpan***.

C. Incriminating a Co-Accused when testifying for oneself: apart from testifying directly for the prosecution, a co-accused person may, while testifying in his own behalf incriminate his co-accused person. The position of the law is that such incriminating evidence may be utilized by the court to convict either or both of them – ***Ajani v. R***.[186]

IV. Person of Unsound Mind

A. General Rule: a person of unsound mind is a competent witness whether for the prosecution or for the defence except he is prevented by his mental infirmity from understanding the questions put to him and giving rational answers to them – ***Section 175(2) EA***.

B. Lucid Moments: a lunatic can give evidence in his lucid moments.

V. Dumb Persons

A dump person, that is, a person who is unable to speak is also a competent witness. He may give his evidence in any other manner in which he can make it intelligible, such as by writing or by signs, but such writing must be done and signs made in open court – ***Section 176(1) EA***. Any evidence so given by the dumb witness though in writing or signs, shall be deemed to be oral evidence – ***Section 176(2) EA***.

VI. Spouse of a Valid Marriage (Exams)

A. General Rule: where a spouse of a monogamous Marriage is standing trial, both spouses are competent witnesses – ***Section 179 EA***. Both this is only in relation to testifying for the defence. This is because spouses of valid marriage are, generally, not competent witnesses for the prosecution where one spouse is standing trial.

B. Exceptions: the instances where a spouse is competent for the prosecution are:

1. Sexual Related Offences (indecent practices between males, defilement of a girl under 16, defilement of idiots, assaults on females, procuring the defilement of women by threat, fraud or administering drugs, indecent acts, etc.
2. Offences against property of the spouse subject to section 36 Criminal Code.

[186] (1963) 3 WACA

3. Offence inflicting violence on the spouse – ***Section 182(1) EA***; ***Section 191 ACJA; Section 144 ACJL***.
4. Consent of the spouse – ***Section 182(2) EA***.

VII. President, Vice President, Governor & Deputy Governor

These categories of persons are competent witnesses under ***Section 175(1) of the Evidence Act***, but are not compellable witnesses by virtue of the immunity given to them under ***Section 308 CFRN 1999***. The section is to the effect that:

1. No civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office;
2. A person to whom this section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and
3. No process of court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued.

VIII. Diplomats

A. General Rule: diplomats and members of diplomatic missions including foreign envoys, consular officers and members of their families and staff are immune from all legal processes – ***Section 1(1) Diplomatic Immunities & Privileges Act***. They are all otherwise competent witnesses but to the extent that they cannot be summoned to appear before any court in Nigeria, they are not compellable witnesses – ***Zabusky v. Israeli Aircraft Industries***.

B. Exception: by virtue of ***Section 2, 4 & 15 DIPA***, the persons to whom these privilges apply can waive them.

IX. Judge, Kadi, Magistrate or Any Other Person Who acted in a Judicial Capacity

A. General Rule: by virtue of ***Section 188 EA***, a Judge, Kadi, Magistrate or any other person before whom any legal proceeding is conducted is a competent witness but not a compellable witness in a case over which he adjudicates as to anything which came to his knowledge in court in such capacity. In ***Elebanjo v. Tijani***, it was held that the objections to a Judge being a witness are not based upon reasons of incompetence as a witness, rather the objections are based upon the impropriety of combining the capacities of a Judge and that of a witness in the same proceedings or even acting as a witness in respect of a matter over which he has previously presided.

B. Exceptions

1. Such persons may be examined as to other matters which occurred in his presence whilst he was so acting.
2. Matters such persons did not preside over.

X. Legal Practitioner

A. General Rule: ***Section 192(1) EA*** provides that: "no legal practitioner shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such legal practitioner by or on behalf of his client, or to state the content or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment or to disclose any advice given by him to his client in the course and for the purpose of such employment."

A legal practitioner is ordinarily a competent witness in the sense that he suffers no disqualification to prevent him from giving evidence in accordance with ***Section 175 EA***. However, he is not competent to give evidence in a case in which he is handling or has handled on behalf of his client. The cases of ***Gachi v. State*** and ***Horn v. Richard*** only considered that as unethical. Thus, it is only undesirable for him to act as a witness in a case he is handling. Where he considers his evidence as material, he should decline from conducting the case so he can give evidence.

B. Exceptions to the Rule of Privileged Communication between a Client and His Lawyer

1. Where the client consents – ***Section 192(1) EA***.
2. Where there is illegality, fraud or crime – ***Section 192(2) EA***

C. Continuation of Privilege after Employment has ceased: by virtue of ***Section 192(3) EA***, the obligation not to disclose any information obtained while acting as counsel continues after the employment has ceased.

XI. Public Officers

Section 191 EA provides that a public officer cannot be compelled to disclose communication made, him, official confidence where he thinks public interest dictate others, except, consent of the Judge which evidence, received in *camara*.

ADMISSIBILITY OF DOCUMENTARY EVIDENCE

I. Means of Proof

Where the facts had not been admitted, not been judicially noticed and has not been presumed, there is then need to prove it. The following are the means of proof of facts:

1. **Direct Oral Evidence**: all facts except the contents of documents may be proved by oral evidence – ***Section 125 EA***. Subject to the exceptions provided in the Act, evidence shall in all cases be direct. If it is a fact which could be seen, it must be the evidence of a witness who says he saw that fact. If it is a fact which could be heard, it must be the evidence of a witness who says he heard that fact. If it is a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived that fact by that sense or in that manner. If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those ground – ***Section 126 EA***.
2. **Real Evidence**: By virtue of ***Section 127 EA***, real evidence could be movable or immovable which is tendered in court and marked as exhibits or immovable which the court will adjourned to the place – visit to the locus in quo. The matter deliberated in such place is part of court's proceeding and the judge must be there personally to conduct the proceedings. Parties must also always be there because of fair hearing.
   In respect to movable real evidence, the court may require the production of such material thing for its inspection, while for immovable real evidence the court has two options:
   (a) Adjourned to the place where the subject matter of the said inspection may be and the proceeding shall continue at that place until the court further adjourns back to its original place of sitting or some other place of sitting or
   (b) Attend and make an inspection of the subject matter only and the evidence of what transpired there to be given in court afterwards.

   In both outside the court (sitting outside) or inspecting, the parties shall be present.
3. **Documentary Evidence**: ***Section 258(a) EA*** defines documents to include books, maps, plans, graphs, drawings, photographs and also includes any matter expressed or described upon any substance by means of letter, figures or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter. From specific items mentioned, it includes anything used to record information of which will qualify as document. Thus, a building can be documentary evidence if information is inscribed on it. Bill boards on the road will qualify as documentary evidence. It therefore means that the same object can qualify as a real and documentary evidence. When using object, as an object, it is real evidence but it if is used as a means of recording, it will qualify as documentary evidence (no matter how big the object is).

II. Types of Documents

A. Public Documents

According to ***Section 102 EA***, the following documents are public documents:

1. Documents forming the official acts or records of the official acts of the sovereign authority. For instance, a letter written by President Goodluck Jonathan congratulating the Super Eagles on their victory in the African Nations Cup is a public document.
2. Documents forming the official acts or records of official bodies and tribunals. For instance, the letter of admission given by the Council of Legal Education is a public document because it forms part of the acts of Council of Legal Education being official bodies.
3. Documents forming the official acts or records of public officers, legislature, judicial and executive whether of Nigeria or elsewhere. Examples include: Marriage certificate issued by the Registrar of Marriage, Certificate of incorporation issued by the Corporate Affairs Commission, Records of legislative proceeding, Statutes, Land certificate issued by Registrar of Land Registry.
4. Public records kept in Nigeria of private documents. For instance, Memorandum and Articles of Association of a company upon incorporation, particulars of director, annual returns and Deed of assignment, Deed of lease, Deed of Mortgage when registered under the Land Instrument Registration Law.

The list of public documents is not exhaustive but once a document emanate from a public officer just know that it is a public document (in his official capacity).

B. Private Documents

Section 103 EA, all documents other than public documents are private document. All preliminary agreement between members or investors is private document as they are excluded from documents to be incorporated.

III. Proof of Contents of Documents

A. General Rule

The content of documents may be proved either by primary or by secondary evidence - *Section 85 EA*.

B. Primary Evidence

By virtue of *Section 86 EA*, Primary evidence means either of the following:

1. Where the document itself is produced for the inspection of the court
2. Where a document has been executed in several parts, each part shall be primary evidence of the document
3. Where there are copies of agreement some have been signed and others have not been signed. To person signing it, it is a primary evidence but against the other person who did not sign it, it is secondary
4. Where a number of documents have all been made by one uniform process, as in the case of printing, lithography, photography, computer or other electronic or mechanical process, each shall be primary evidence of the contents of the rest but where they are all copies of a common original, they shall not be primary evidence of the contents of the original.

C. Secondary Evidence

By virtue of ***Section 87 EA***, secondary evidence includes (meaning not exhaustive) the following:

1. Certified copies given under the provisions contained in the EA.
2. Copies made from the original by mechanical or electronic processes which in themselves ensure the accuracy of the copy and copies compared with such copies.
3. Copies made from or compared with the original.
4. Counterparts of documents as against the parties who did not execute them; and
5. Oral accounts of the contents of a document given by some person who has himself seen it.

IV. Laying Foundation for Admitting Secondary Evidence of Document

Generally, documents shall be proved by primary evidence. However, if the primary evidence or original is not available for any reason, secondary evidence may be given of the existence, condition or contents of a document but proper foundation must be laid before the secondary evidence can be tendered and admitted in court. Proper foundation is the reason to be given for not producing the primary evidence. Failure to adduce reason for the absence of the original or primary evidence before tendering the secondary evidence of the document will meet with objection from opposing counsel and ultimately, with rejection by the court. It is only the original that can be tendered as of right. To tender a secondary evidence of a document, counsel must seek the leave of court to do so after having laid the proper foundationCases in which secondary evidence are used in proving documents. By virtue of ***Section 89 EA***, secondary evidence may be given of the existence, condition or contents of a document when:

1. The original is shown or appears to be in the possession of the person against whom the document is sought to be proved - ***Section 89(a) (i) EA***;
2. The original is shown or appears to be in the possession or power of any person legally bound to produce it. However, with regard to the above, two situation notice is required to be given to such person under section 91 EA requiring him to produce. Section 91 EA provides for situation where notice will be dispensed with viz:
   (a) When the document to be proved is itself a notice
   (b) When from the nature of the case, the adverse party must know that he will be required to produce it.
   (c) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force.
   (d) When the adverse party or his agent has the original in court or
   (e) When the adverse party or his agent has admitted the loss of the document.
   By virtue of ***Section 90(1) (a) EA***, any secondary evidence of the contents of the document is admissible.
3. The existence, condition or content of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest. By virtue of ***Section 90(1) (b)*****,** the written admission is admissible.
4. The original has been destroyed or lost and in the latter case all possible search has been made for it. By virtue of ***Section 90(1) (a)***, any secondary evidence of the contents of the documents is admissible.
5. The original is of such a nature as not to be easily movable. By virtue of ***Section 90(1) (a)*****,** any secondary evidence of the contents of the documents is admissible.
6. The original is a public document within the meaning of section 102. By virtue of section 90(1) (c), a certified copy of the documents but no other secondary evidence is admissible. A photocopy of certified public document should be re-certified – ***Ogboru v. Uduaghan***.
7. The original is a document of which a certified copy is permitted by this Act or by any other law in force in Nigeria to be given in evidence. By virtue of ***Section 90(1) (c)***, a certified copy of the document, but no other secondary evidence is admissible.
8. The originals consist of numerical accounts or other documents which cannot conveniently be examined in court and the fact to be proved is the general result of the whole collection. By virtue of ***Section 90(1) (d)*** evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.
9. The document is an entry in the banker's book. By virtue of ***Section 90(1) (e)***, the copies cannot be received as evidence unless it is first proved that the book in which the entries copied were made was at the time of making one of the ordinary books of the bank.

V. Custody of Documents

When a document is coming from where it should be coming from, it is used to be a proper copy and in proper custody. This relates only to authenticity and not relevancy as a document that is not genuine can be admissible. Genuineness only goes to weight to be attached to it. Admissibility before authenticity – ***Torti v. Ukpabi***.

VI. Evidence Admissible under Section 83 (Documentary Hearsay)

By virtue of ***Section 37***, hearsay evidence which is generally excluded includes statement contained or recorded in a book, document. Thus, oral testimony of another reduced into writing is hearsay evidence and not admissible. However, ***Section 83*** creates an exception to documentary hearsay. Before the statement reduced into document can be admitted, the following must be fulfilled

1. The maker of the statement had personal knowledge of the matters dealt with by the statement; or where the documents forms part of record made in the performance of a duty to record information supplied to him by a person who have personal knowledge of those matters; and
2. If the maker of the statement is called as a witness in the proceeding except the maker is dead, unfit by reason of his bodily or mental condition to attend as a witness or if he is outside Nigeria and it is not reasonably practicable to secure his attendance – ***Section 83(1) & (2)***.

Subsection 3 which makes inadmissible statement made by a person interested at a time when proceedings were pending or anticipated as such statement could de doctored to align with his own facts of the case. Also ***Subsection 4*** which states that a document can only be said to have been made by a person who wrote it (produced it with his own hands or signed such document. In defining documents – ***Section 230*** provides that it includes any device by means of which information is recorded, stored, or retrievable including computer output. Computer in this like will include desktop, laptop, ipad, GSM phones etc.

VI. Documents produced by a Computer

A. General Rule

Thus, ***Section 84(1) EA*** provides that statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it which direct oral evidence would be admissible provided the conditions stated are satisfied. ***Section 258 EA*** defines documents to include photographs, disc, tape, sound track, film, negative or any device for recording, storing or retrieving information including computers.

B. Conditions for Admitting Documents Produced by Computer

1. Evidence was produced by a computer which was at the material time in regular use for storing and producing information.
2. Evidence was produced by a computer in the ordinary course of business
3. Computer from which the evidence was produced was in good working condition at all material time.
4. Production of evidence sought to be tendered was not affected was not affected where it is shown that the computer did not work properly at any time.
5. Certificate or oral evidence by the person having control of the computer testifying to the above facts.

See ***Section 84(2) EA; Kubor v. Dickson***.

C. Contents of a Certificate Produced

Section 84(4) EA provides that certificate should be produced in court which would:

1. Identify the document containing the statement and describing the manner in which it was produced.
2. Give particulars of the device involved in the production so as to show that it was generated by a computer.

3. The certificate is to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities.

D. Electronic Signature

The Evidence Act recognizes the validity of electronic signature. Precisely, ***Section 93(2) EA*** provides that where a rule requires as signature or provides for certain consequences if a document is not signed, an electronic signature is sufficient to satisfy that requirement or to avoid any such consequence. Electronic signature may be proof in any manner, including by showing that procedure existed by which it is necessary for a person, in order to proceed further with a transaction, to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of the person.

CONFESSIONS (EXAMS)

I. Meaning of Confession

A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime – ***Section 28 Evidence Act 2011***. Thus, in ordinary usage, the term "confession" and "admission" may mean the same thing. In law, however, they are distinct as different legal consequences flow from each of them.

II. Distinction between Confession and Admission

The distinction are:

1. Only voluntary and direct acknowledgement of guilt is confession but when confession falls short of actual admission of guilt, it may nevertheless be used as evidence against the person who made it or his authorized agent as admission - ***CBI v. Shukla***.[187]
2. Confession is more common with criminal proceedings while admission is more common with civil proceedings.
3. While every confession involves admission, admission alone does not amount to confession. For example, in civil proceedings, an agent can admit liability on behalf of his principal – ***Section 21 Evidence Act 2011,*** but a confession is only admissible if made by the accused himself – ***R v. Inyang***.[188]
4. An admission may be used as corroborative evidence against the accused even while it may not qualify as a confession on the strength of which a conviction may be based solely – ***FRN v. Iweka***.[189]

III. Types of Confessions

1. **Formal/Judicial Confession:** this is a confession made in court before a judge or a Magistrate or other tribunal. For instance where the accused pleads guilty to the charge upon same being read to him by the court or where the accused admits guilt in a statement in a preliminary inquiry.
2. **Informal/Extra-Judicial Confession:** any statement made outside the court by an accused person or a suspect tending to show that he is guilty of the offence for which he is charged or suspected is called an informal confession. It may be oral or written – ***Arogundade v. State***.[190] All confessions made to the police or other law enforcement officers qualify as informal confessions.

IV. Confession obtained from a Defendant through an Interpreter in a Language Unknown to the IPO

An interpreter is normally employed when the Investigating Police Officer (IPO) who receives the confessional statement of the accused does not understand the language of the accused and the accused did not write the statement by himself. In this case, there is need to call the

[187] (1998) All MR (Cri) 629
[188] (1931) 10 NLR 33
[189] (2013) 3 NWLR (Pt. 1341) 285
[190] (2009) All FWLR (Pt. 469) 409

interpreter as witness to give evidence. Thus, in ***Bello v. State,***[191] the court held that evidence of an IPO about confession of a crime made by an accused person in a language the IPO does not understand but relayed to him by an interpreter amounts to inadmissible hearsay evidence where the interpreter is not called as a witness. Meanwhile, ***Section 17(3) ACJA*** provides for what the police shall do where the suspect does not understand English language.

V. Forms of Confession

A confession can be in a written form or made orally. In ***Igbinovia v. State,***[192] an oral confession made by the accused person to one of the police officers who pretended to be one of the criminals in the cell was admitted in evidence and used to convict the accused. ***Section 15(5) ACJA*** also provides that an oral confession of arrested suspect shall be admissible in evidence.

VI. Rationale for Admitting Confessional Statements in Evidence

Ordinarily, confessions are not admissible because they constitute hearsay evidence. However, the Common Law allowed the admissibility of confessions as exception to the hearsay rule due to the crucial role the play in the determination of criminal trials. The danger of unreliability traditionally associated with hearsay evidence is outweighed by the fact that a statement so clearly adverse to the interests of the maker is unlikely to be made unless the contents are true. The court in ***Fabiyi v. State,***[193] held that the confessional statement of an accused remains the best proof of what he had done. It constitutes a clear and cogent proof of an act of a person's own confession. This is so, since no rational being will say a negative thing against his own interest, all things being equal.

VII. Admissibility of Confessional Statements

The following principles are applicable in admissibility of confessional statements:

1. The statement must admit or acknowledge that the maker of the statement committed the offence alleged against him.
2. The confession must be direct, positive and unequivocal as to the guilt of the accused person – ***State v. Enabosi.***[194]
3. The statement must contain admission of both the actus reus and mens rea (where mens rea is required) – ***Omisade v Queen.***[195]
4. The confession must have been made voluntary – ***Section 29 Evidence Act 2011.***
5. The confession of an accused is admissible only against him and not against any other person – ***Mbang v. State.***[196] However, the confession may be admissible against a co-accused where the co-accused admits it by words or through conduct.

VIII. Challenge of Confessional Statements

Confessional statements may be challenged by a defendant in the following ways:

1. That he/she did not make the statement – retraction.
2. That the statement was made by him/her but that it was not made voluntarily.

A. Retraction

An accused person may object to a statement on the ground that it was not made by him. This is call retraction – ***Sule v. State.*** Retraction may arise where:

(a) The statement is not signed;
(b) The defendant denies that the signature belongs to him;
(c) The accused alleges that the statement was not properly or accurately recorded (where the accused did not write by himself);

---

[191] (2012) 8 NWLR (Pt. 1302) 207 at 238
[192] (1981) 2 SC 5
[193] (2015) All FWLR (Pt. 797) 777
[194] (1966) 2 All NLR 116
[195] (1964) 1 All NLR 233
[196] (2010) All FWLR (Pt. 508) 379 at 395

(d) The accused alleges that he did not make the oral confession accredited to him;
(e) The accused alleges that his written statement was altered by someone;
(f) The accused alleges that he did not make the statement;
(g) The accused alleges that he was unsettled in mind at the time he made the statement; or
(h) The accused alleges that his statement was involuntary but fails to raise objection when it is tendered. At this stage, the court will deem the statement as tantamount to a denial as such belated retraction would not affect the voluntariness of the statement – ***Ode v. State.***[197]

Where there is retraction, it does not affect the admissibility of the statement. The Judge may admit the confessional statement when same is tendered and then, decide later at the end of the case whether the accused made the statement and to ascribe probative value to same – ***Oguno v. State.***[198] However, it will be desirable to have a corroborative evidence no matter how slight before convicting on such retracted confessional statement that was admitted – ***Mohammed v. State.***[199] Thus, the court must scrutinize the statement to test its truthfulness or otherwise in line with other available evidence outside the statement in order to see whether they confirm, support or correspond with the statement.

The appropriate time to retract the confession is when it is sought to be tendered by the prosecution so that the court will note that the statement was denied by the defendant and will be more ready to entertain evidence of the retraction in the course of the defence. Any objection coming in the course of the defence (long after its admission and closure of the prosecution's case) will be regarded as an afterthought – ***Usung v. State.***[200]

B. Involuntariness or Oppression (Trial within Trial)

By virtue of ***Section 29(2) (a) & (b) Evidence Act 2011,*** the Court shall not admit a confession obtained by oppression or in consequence of anything said or done which will likely in the circumstance make such confession unreliable, except the prosecution proves to the court beyond reasonable doubt that the confession was not obtained in such a manner. ***Section 29(3) Evidence Act 2011*** went further and stated that the court can also *suo motu* require the prosecution to prove that the confession was not obtained in an oppressive manner. Where the court out of inadvertence or any other reason fail to fulfill this obligation, the defence counsel is required to object to such confession being tendered. ***Section 29(5) Evidence Act 2011*** defines "oppression" to include torture, inhuman or degrading treatment, and the use of threat of violence whether or not amounting to torture.

An accused person may challenge a confessional statement on the allegation of existence of (inducement, threat or promise) properly proved to emanate from a person before whom a confession is being taken. Where any of the factors is shown to exist before or in the course of obtaining a witness statement, it can be said that the statement is obtained in a way or manner considered oppressive.

The appropriate stage to raise an objection to a confessional statement is when it is about to be tendered in evidence. It must be made timeously. Any belated denial of the voluntariness of a confessional statement or its retraction is a mere after thought – ***Usung v. State.***[201]

Where there is an objection as to the voluntariness of the confessional statement, the court must stop further proceedings and determine the question of voluntariness of the confession before taking further step by way of admitting or rejecting it – ***Lateef v. FRN.***[202] The procedure whereby the court determines the voluntariness or otherwise of a confessional statement is known as "trial within trial". It is a trial within the main trial. While the main trial is concern

[197] (1974) 1 All NLR (Pt. 2) 24
[198] (2011) 7 NWLR (Pt. 1246) 314
[199] (2015) All FWLR (Pt. 793) 1926
[200] (2009) All FWLR (Pt. 462) 1203
[201] (Supra)
[202] (2010) All FWLR (Pt. 539) 1171

with determining the guilt or otherwise of the accused, the trial within trial is concerned with an interlocutory question of whether a confession statement sought to be tendered was obtained according to law. The procedure for conducting a trial within trial is as follows:

(a) The court halts the main proceedings;
(b) The court informs the parties that there is going to be a trial within trial to determine the voluntariness of the statement sought to be tendered;
(c) The court call on the prosecution to call witnesses to prove voluntariness. The burden is on the prosecution to prove that it was free and voluntary;
(d) Each witness called is sworn or re-sworn as the case may be;
(e) Each witness so called is liable to be examined in chief, cross-examined and re-examined if need be;
(f) Exhibits may be tendered;
(g) After all prosecution witnesses have testified, the court calls on the defence to call its own witness if any to refute the position of the prosecution;
(h) Defence witnesses are examined in chief, cross-examined and re-examined if need be;
(i) Parties are allowed to address the court based on the evidence;
(j) The court then delivers a ruling either admitting the statement or rejecting same;
(k) Whichever way the ruling goes, the main trial then resumes unless the court *suo motu* or on the application of parties, adjourns the matter to another day for continuation of hearing – ***Babarinde v. State***.[203]

At the end of the trial within trial, if the court is satisfied that the statement was not voluntarily made, then the statement is not admissible in evidence and would be so declared by the court. Where a confessional statement is admitted after a trial within trial, the ruling is a decision within the meaning of ***Section 318(1) CFRN 1999*** and therefore appealable. Where the defendant fails to appeal after the ruling within the time allowed for such interlocutory ruling, he cannot raise it at the appeal court after the final judgment without leave of court – ***Asimi v. State***.[204]

IX. Conflicting Confessions and Confession Implicating a Co-Accused

1. **Conflicting Confessions:** where the accused makes two voluntary confessional statements with full knowledge of what he was doing, it has been held that the trial judge will be right to take the one that is less favourable to the accused, particularly when that one is the first in time. The second statement will be taken to be an afterthought – ***Edoko v State***.[205]
2. **Confession Implicating Co-Accused Persons:** confession made by one accused person is a relevant fact against the person making it only and not against any other person the confession may implicate – ***Adebowale v. State***.[206] The rationale for this rule is that the marker may have his own motives for implicating any other person who may not have opportunity of refuting what has been alleged against him. However, the exceptions to this rule are –
   (d) Where the accused goes into the witness box and repeats on oath, the contents of his statement to the police, they become evidence for all purposes, admissible in law and can be acted upon by the court against the co-accused – ***Gbohor v State***.[207]
   (e) Where the co-accused voluntarily adopts a confessional statement made by the accused – ***State v. Gwangwan***.[208] The adoption can be done expressly or through

[203] (2014) All FWLR (Pt. 717) 606 at 622
[204] (2016) All FWLR (Pt. 857) 468 at 494
[205] (2015) All FWLR (Pt. 772) 1728
[206] (2013) 16 NWLR (Pt. 1379) 104
[207] (2013) All FWLR (Pt. 709) 1061 at 1089
[208] (2016) All FWLR (Pt. 801) 1470

conduct e.g. refusal to deny the allegation when the confessional statement was brought to him either before or at the trial.

(f) Where the confessional statement by the accused against a co-accused is corroborated by other evidence, a court can rely on it – ***Gbohor v. State***.[209]

A confessional statement implicating a co-accused, though not relevant against the co-accused, is still admissible in evidence as it is relevant against the marker. The appropriate thing for the counsel to the co-accused to do is to strenuously cross-examine the marker of the statement rather than fighting that the statement should not be admitted. It is worthy of note that, where the prosecution intends to use the confession made by one person against another person, then he must make a true copy of that statement available to that other person – ***Yongo v COP***.[210]

EXPERT EVIDENCE

I. Opinion Evidence

A. General Rule: ***Section 67 EA*** provides that the opinion of any person as to the existence or non-existence of a fact in issue or relevant to the fact in issue is inadmissible except as provided in sections 68 to 76 of this Act. Opinion evidence is evidence of what the witness thinks, believes or infers in regards to facts in dispute as distinguished from his personal knowledge of the facts themselves.

B. Exceptions (Opinion of Experts): ***Section 68(1) EA*** provides instances where opinion of an expert will be admissible in evidence as follows -

1. **Foreign Law:** opinion of foreign law experts – ***Section 169 EA***
2. **Customary Law or Custom:** opinion of traditional rulers and chiefs – ***Section 170 EA***
3. **Science or Art:** opinion of persons skilled particularly in area they are called to give evidence – ***Oguonze v. State***.
4. **Identity of Handwriting or Finger Impression:** opinion of a person skilled in identity of handwriting and finger impression – ***Section 72 EA; R v. Silver Lock***. Non-expert opinion on handwriting and finger impression may also be admissible – ***Lawal v. COP***. The court is also permitted to form opinion about disputed writing by virtue of ***Section 101 EA***.

II. Evidence of Qualification & Experience in the Relevant Field & Reasons for Opinions

Where the evidence of an expert is relevant, he may be called as a witness and he must state his qualification and experience otherwise any conviction secured upon the opinion of such an expert shall be set aside on appeal – ***Fasugba v. IGP; Wambai v. Kano NA***. The court determines who to consider as an expert having regard to his qualifications and experience. In addition to stating his qualification and experience, the expert must state the reasons for his opinions for the court to rely on it – ***Banjo v. Alli Jammal***.

III. Impeaching the Credibility of an Expert

The credibility of an expert witness may be impeached in any of the following ways:

1. Cross examination
2. Calling another expert witness in that field to give a contrary evidence
3. Challenging the professional or academic competence of the witness

IV. Conflicting Expert Opinions

Where there is conflicting evidence of opinions on an issue, it is the duty of the court to accept one and reject the other based on the reasons given by each – ***Banjo v. Alli Jamaal***.

---

[209] (Supra)

[210] (1992) 9 SCNJ 113

V. Cases Where Non-Expert Opinion is Admissible

1. **Opinion as to Age:** evidence of person present when he was born e.g. mother
2. **Opinion as to Identity:** evidence of person who saw the accused
3. **Opinion as to Insanity:** evidence of mother, father, friend or care giver as to sanity or otherwise of the person in question.
4. **Opinion as to Intoxication (Drunken Driving):** evidence of a police officer
5. **Opinion as to Speed:** evidence of passer-by but corroboration may be required.

POLICE REPORT

The police report is the statement of the investigation that the IPO carried out in relation to the offence in question. Such report by virtue of ***Section 83(1) EA*** are admissible through the IPO. However, in his absence, such police report can be admitted through another person if proper foundation has been laid as to the inability of the IPO to come to court. It may either be the IPO is dead, unfit by reason of his bodily or mental condition to attend as a witness or if he is outside Nigeria and it is not reasonably practicable to secure his attendance.

HEARSAY EVIDENCE

I. General Rule

Hearsay evidence refers to statement oral or written made otherwise than by a witness in proceeding – ***Section 37 EA***. Hearsay evidence is generally inadmissible – ***Section 38 EA***.

II. Exceptions

1. **Statement by Persons who cannot be called as Witness:** This could be due to the fact that such person is dead, cannot be found, or becomes incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense - ***Section 39 EA***.
2. **Dying Declarations:** A statement made by a person as to the cause of his death or as to any of the circumstance of the event which resulted in his death in cases in which the cause of that person's death comes into question is admissible where the person who made it believed himself to be in danger of approaching death although he may have entertained at that time of making it, hope of recovery - ***Section 49(1) EA***.
3. **Evidence of a Witness Given in a Former Proceeding:** can be given in present proceeding where the witness cannot be called in the present proceeding. The following are the conditions to be fulfilled
   (a) The proceeding was between the same parties or their representatives in interest
   (b) The adverse party in the first proceeding had the right and opportunity to cross-examine; and
   (c) The question in issue were substantially the same in the first as in the second proceeding - ***Section 46(1) (a)-(c) EA***.
4. **Confessional Statement**: the confessional statement which is made by an accused is made outside the court and the person seeking to tender it before the court is not the maker - ***Section 28 & 29 EA***
5. **Opinion of Expert Expressed in Treaties:** opinion of experts expressed in treatise is admissible without calling the expert as a witness - ***Section 68 - 71 EA***.
6. **Affidavit Evidence:** affidavit evidence is also admissible without calling the deponent as a witness.

REFRESHING MEMORY

A. **General Rule:** where an event had taken place for a long time such that it becomes difficult for a witness to recollect any detail, such a witness is permitted to refer to any document made by him or any other person for purpose of refreshing his memory.
B. **Forms of Refreshing Memory**

1. Reference to writing made by the witness
2. Reference to writing made by any other person which the witness at the time read it and knew it to be correct.
3. Reference to professional treatises.

See ***Section 239 EA***.

C. Conditions for Refreshing Memory

1. Application for and obtaining leave of court by the party seeking that his witness refresh his memory.
2. The document to be used in refreshing memory must be relevant to the fact in issue.
3. The witness is to only glance or peruse through the document and not to read from it.
4. The document must have been made by him or made by another person which he had the opportunity to read it when the facts of the case was still fresh in his memory or reference to professional treatises.

D. Stage of Refreshing Memory: any stage of examination (examination in chief, cross-examination or re-examination).

E. Importance of Time at which Transaction/Event Occurred: it would enable the court to know whether the event was still fresh in the memory of the witness at the time it was made.

F. Right of the Adverse Party to be Shown the Document and Cross-Examination: if the adverse party is not satisfied with the document, he has a right to be shown the writing, and if he so desires, cross-examine on same – ***Section 241 EA***.

HOSTILE WITNESS

A. Concept: ***Section 230-233 Evidence Act*** makes provisions on hostile witness. The court in ***Esan v. State*** defined a hostile witness as a witness who bears hostile animus against the party calling him and so does not give his evidence fairly or with desire to tell the truth.

B. General Rule: As a general rule, a party who called a witness is not allow to impeach the credit by showing that the witness is unworthy of believe unless the witness is hostile.

C. Rationale for the Rule: in ***Babatunde v. State*** it was held that once a party presents a witness, it is presumed that the party is holding out the witness as a witness of truth.

D. Procedure

1. **Application to Court to Declare Witness as Hostile:** The party that called him can then apply for leave to court for the witness to be declared hostile witness – Section 230 EA. In applying for the leave, it must be shown to the court that the two conditions exist.
2. **Conditions:** There are two conditions which makes a witness hostile viz:
   (a) Being bias or testifying against a party who called him; and
   (b) Refusal to testify or testifying but not willing to tell the truth.
3. **Considerations by the Court:** where such an application is made, the court is to consider the following:
   (a) Demeanour of the witness
   (b) Approach or disposition to giving answers to questions put to him
4. **Forming Opinion by Court and Declaring Witness as Hostile:** the court after the considerations is to form an opinion and declare witness as hostile.
5. **Statement True in Fact:** where the statement is true in fact although adverse to the interest of the party who called him, such witness will not be declared as a hostile witness.
6. **Cross-Examination by Party who called the Witness:** Where a witness is declared a hostile witness, the party calling him can cross examine him**.**
7. **Ways of Impeaching Credit of a Hostile Witness:** The easiest way is by bringing to court previous inconsistent statements – ***Section 230 EA***. The credit of a witness may

be impeached in the following ways by any party other than the party calling him or with the consent of the court by the party who calls him

(a) By evidence of persons who testifies that they, from their knowledge of the witness, believe him to be unworthy of credit;
(b) By proof that the witness has been bribed or has accepted the offer of a bribe or had received any other corrupt inducement to give his evidence; or
(c) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

E. Stage at which a Witness can be declared as Hostile: A witness can only be declared hostile in examination-in-chief and re-examination and not in cross examination because the party cross examining is not the party that called him.

F. Evidence given by a Normal Witness Supporting the Case of the Other Party: it will be treated as admission upon which the adverse party may rely on reinforce his case.

G. Effect/Consequence of a Witness being declared as Hostile

1. Less weight will be attached this evidence
2. The witness can be contradicted using his previous statement

CORROBORATION

A. General Rule: Corroboration is confirmation of a witness testimony by independent evidence. Generally, no particular number of witnesses shall in any case be required for the proof of any fact – ***Section 200(1) Evidence Act***. However, under ***Section 201-204 EA*** corroboration of a witness testimony is required.

B. Corroboration as a Matter of Law

1. Evidence of an accomplice – ***Section 198(1) EA***
2. Treason and treasonable felony – ***Section 201(1) EA***
3. Exceeding speed limit – ***Section 209(3) EA***
4. Sedition – ***Section 204 EA***
5. Perjury – ***Section 119 Criminal Code***
6. Unsworn Evidence of a child – ***Section 209(3) EA***

C. Corroboration as a Matter of Practice

1. Co-Accused evidence – ***Section 199 EA***
2. Sexual offences other than those stated in section 218-221 of the Criminal Code
3. Confessional statement
4. Tainted witness – ***Moses v. State***
5. Agent provocateur
6. Deposition of an absent witness – ***Section 46 EA***

D. Effect of a Conviction in the absence of Corroboration where it is Required

1. **Corroboration as a Matter of Law:** any conviction secured on such uncorroborated evidence will be set aside on appeal – ***Oyediran v. Republic***.
2. **Corroboration as a Matter of Practice:** such conviction will not be set aside provided the Judge warn himself of the danger of convicting on such uncorroborated evidence before convicting the accused – ***Mumuni v. State***.
3. **Failure of Court to Warn Itself:** such conviction will not be set aside except it occasioned a miscarriage of justice.

CASE THEORY AND TRIAL PLAN

I. Case Theory

A. Concept: case theory is line of argument of a party on the basis of the facts being gathered which is then presented to the court. That is the advocate's version of the case to be presented to the court. A case theory can be developed before proffering a charge as this

can inform a prosecutor of the charge to lay. Note that the theory is an idea that has not been tested.

B. Advantage: it is the most practical and effective way to present the case along the line of argument developed.

C. Strategy Adopted Determines

1. Witnesses to be called
2. Order of calling the witnesses
3. Issues to be proved by each witness

D. Qualities: A successful case theory must be –

1. Logical
2. Stick to legal element of the case that is the elements to be proved.
3. Sufficient materials
4. Simple and easy to believe.

E. Considerations in Forming a Case Theory (Both Prosecution & Defence)

1. What is the charge against the accused?
2. What are the ingredients having regard to the statute creating the offence?
3. What are the facts available to prove this offence?
4. What are the basic principles guiding the offence?
5. Are there likely defences available to the accused in this case?

II. Trial Plan

A. Concept: Trial plan is an action plan prepared by a counsel showing how he intends to prove his case or establish his defence.

B. Content

1. Charge
2. Law
3. Evidence (Prosecution and Accused)
4. Penalty
5. Prayer (Prosecution and Accused)
6. Remarks

C. How to Develop a Trial Plan for a Prosecution Counsel

1. Stage One

(a) Examine the charge sheet
(b) The law under which the charge is brought
(c) List of witnesses
(d) Proof of evidence
(e) Exhibits and documents to be tendered

2. Stage Two

(a) Outline the ingredients of the offence
(b) See whether what you have in the proof of evidence is enough to sustain the charge.

3. Stage Three: Identify the possible defences of your opponent

4. Stage Four: Draw up the questions you intend to ask in proof of your case and questions to ask in cross examination

5. Stage Five: Identify and study the case law and statute you may use in court.

6. Stage Six: Plan your fall back options

7. Stage Seven: Hold pretrial chambers meeting (Preparation of witnesses for trial)

(a) Pre-trial Briefing and Coaching of Witnesses - Note that briefing or prepping is not the same as pre-trial coaching. Example of pre-trial briefing include: taking witnesses to court to witness an actual trial; enlighten the witness that the court is

there to protect them e.g. opposite counsel will not be allowed to badger them or abuse them.

(b) Preparing the IPO as a Witness - the service number and rank of police officer are relevant as introductory issues in examination in chief. IPO to state how the report by Mrs Agbo was made and interviewing her. Did he arrest anyone and take their statements and how the statements were taken (i.e. no torture). The report of the identification parade and how it will be introduced in court. Exhibit keeper will have assigned a number to the bike recovered – so IPO has to explain the chain of custody (where was the bike recovered, who did he hand it over to, what is the assigned number to the bike). In his investigation, the bank would have given the IPO a statement of account and this would form part of the evidence.

D. Obligations of Defence Counsel

1. Find out from the accused whether he knows of any witness that might be of help
2. Request for and study of the proof of evidence, including statement of accused
3. Critical look at the charge sheet
4. Inspection of proof of evidence like photographs, tapes and objects by expert witness
5. Informal visit to the crime scene

Sample Draft of Trial Plan (Ene Agbo Scenario)

Prosecution'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 Elements of the Offence

1. Testimony of Mrs Ene Agbo
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

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 5 years 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
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

SECURING THE ATTENDANCE OF WITNESSES IN COURT

I. Witness Summons

A. Concept: this is an order of court issued to a person whose presence is required for purposes of testifying in a matter before the court. It is used in the Magistrates' Court as a convention but any other court can issued it. The ACJA did not expressly state the court that can issue a witness summons. Thus, any court can do that.

B. Procedure

1. Application to Registrar
2. Issuance of summons by the Registrar upon payment of the prescribed fee
3. Service of summons on witness (personal service unless leave obtained for substituted service) – ***Section 187 CPL; Section 178(2) ACJL; Section 242(3) ACJA***.
4. Appearance of witness in court
5. Failure to appear: where a witness fails to appear, it will be regarded as contempt of court – ***Section 191(a) CPL***. However, unless the prosecutor is a law officer or public officer, any person served with a witness summons may refuse to attend court unless his travel costs are paid – ***Section 186(2) CPL; Sections 191 & 192 ACJL; Section 241(2) ACJA***.

II. Subpoena

A. Concept: this is the commonest method by which the attendance of a witness is secured in trials before the High Court – ***Section 188 ACJL***. It is said to be peculiar to the High Court. In ***Police v. Jane***, it was held that a Magistrate has no power to issue a subpoena. However, ***Section 241(1) ACJA***, provides that any court may issue a subpoena. A subpoena is a writ in an action or suit requiring the person to whom it is directed to be present at a specified place and time and for a specific purpose under a penalty under the law.

B. Types of Subpoena

1. **Subpoena Ad Testificandum:** this is for the purpose of compelling a witness to attend court and give evidence. The witness will be sworn on oath and liable to cross-examination.

2. **Subpoena Duces Tecum:** this is used to compel a witness to come to court or before an examiner or referee to bring with him/her certain documents in his/her possession specified in the subpoena. The witness is not liable to give evidence on oath and cannot be cross-examined – ***Olaniyan v. Oyewole***.
3. **Subpoena Duces Tecum Et Ad Testificandum:** this is used to compel a witness to come to court to give evidence and also to bring with him/her certain documents in his/her possession specified in the subpoena – ***Lasun v. Awoyemi***.

C. Procedure

1. Application to the Registrar
2. Issuance of the subpoena by the Registrar upon payment of the prescribed fee
3. Service on witness by court bailiff (personal service unless leave has been obtained for substituted service)
4. Appearance of witness in court
5. Failure to appear: warrant of arrest will be issued for the apprehension of such witness unless the witness applied for the subpoena to be set aside or gives reasonable excuse for non-attendance – ***R v. Agwuna***.

III. Warrant

This is not a common means of securing the attendance of a witness in court at first instance. It is usually resorted to after a witness summons or subpoena has been disobeyed – ***Section 188 CPL; Section 186 ACJL***. However, ***Section 189 CPL*** permits the use of warrant at first instance where the court is satisfied upon oath that the person is likely to give material evidence but that he would not attend court unless he is compelled to do so – ***Section 244 ACJA***.

In practice, this procedure is hardly resorted to. The ACJA further provides that such a witness shall not be detained in the same place as the defendant if the defendant is in custody and shall not be allowed to make contact with the witness – ***Section 246(1) ACJA***. Where a witness brought to court refuses or neglects to attend court without reasonable cause or leaves the court premises without leave, he is guilty of an offence – ***Section 245 ACJA***.

PREPARATION OF WITNESSES FOR TRIAL (PRE-TRIAL INTERVIEW)

A. Concept: The prosecution is not bound to call the entire member of witnesses that is in the proof of evidence (used in the high court in south). What is entailed in preparing a witness for trial is different from client interview. Preparing a witness for trial is regarded as the pre-trial interview. The questions to be asked in pre-trial interview are different from that asked at the client's interview. At the pre-trial interview, the counsel is already well acquainted with the facts of the case.

B. Important Considerations for Pre-Trial Interview: The following are thus important.

1. Ask the witness to come to the chambers to get acquainted with the sequence of questions to be asked in examination-in-chief. If an accused is to testify and if not on bail, the counsel can go to where the accused is being detained.
2. Acquaint the witness with the basic formalities in the court room.
3. Importantly, tell the witness to dress appropriately that is a complete native attire or suit.

OPENING ADDRESS (OPENING STATEMENT/SPEECH)

I. Concept

This is the summary of the facts as the prosecution perceives them. It is not a summary of evidence. ***Section 268 ACJL; Section 240 CPL; Section 189(1) CPCL; Section 300(1) ACJA*** provides that the prosecution would normally commence its presentation with an opening address (also called opening statement/speech). Although it is clear that statutes provide for the use of opening address, it is important to note that in practice, it is hardly ever used in Nigeria. The use of opening statement is more consonance with jury trials where the jurors are generally

not lawyers and the opening statement serves the purpose of directing their attention to the high points of the case for the parties.

II. Contents

1. **Brief Statement of Facts:** the facts constituting the offence
2. **Offence Alleged:** the allegations against the accused and probably the law(s) contravened
3. **Summary of Evidence to be relied upon:** the evidence (documents, exhibits and witnesses) available to proof the offence.
4. **Conclusion:** the concluding statement.

III. Tips to be borne in Mind when making an Opening Address

1. The opening address is merely an outline of the case not the full submission.
2. It is advisable that the advocate should be moderate, not opening too low or too high
3. References should not be made to evidence which the advocate knows, or ought to know, is inadmissible in evidence
4. Personal opinions should be relegated to the background
5. The advocate should give out signposts of what the judge or jury should look out for in the course of the trial.
6. The advocate should indicate what the witness are coming to say (only if he is sure what they are coming to say)
7. The advocate should use good plain and simple English.
8. The advocate's theory of the case should give the most rational account of the events.
9. The advocate should be confident but not arrogant.

(Week 15)

TRIAL III: TRIAL ADVOCACY - EXAMINATION OF WITNESSES (EXAMS – 2ND TO CHARGES

CALLING OF WITNESSES

I. Number of Witnesses

1. **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.
2. **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.
3. **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.

II. Oaths & Affirmations

A. **General Rule: Section 205 EA** provides that subject to Section 208 and 209, all oral evidence shall be given on oath or affirmation.

B. **Failure to Take Oath:** the CPL; ACJL and ACJL makes refusal to take oath an offence, while under the CPCL, it is not an offence and the witness need not give reasons for the refusal.

C. **Procedure**
   1. **Muslim:** place both hands on a copy of the Koran
   2. **Christian:** hold in his right hand a copy of the Holy Bible or of the New Testament.
   3. **Jew:** hold in his uplifted hand, a copy of the Old Testament.
   4. **Any Other Instance:** any other manner which is lawful according to any law, customary or otherwise, in force in Nigeria.

   Example: "*I, Killi Nancwat, do hereby solemnly swear that the evidence I shall give in this case before this court shall be the truth, the whole truth and nothing but the truth. So, help me God.*"

D. **When Evidence not given on Oath may be Received**
   1. Where the witness is not a believer of any of the known religions or whose religion forbids oath taking – ***Section 208(1) EA***.
   2. Evidence of child below 14 years – ***Section 209(1) EA***.

E. **Caution before Witness gives Evidence on Oath:** ***Section 206 EA*** calls for cautioning of a witness before he gives oral evidence on oath. Example: "*You, Killi Nancwat, are hereby cautioned that if you tell a lie in your testimony in this proceeding or willfully mislead this court, you are liable to be prosecuted and if found guilty, you will be seriously dealt with according to law.*"

III. Order of Calling Witnesses

Section 210 EA provides that the order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and in the absence of any such law, by the discretion of the court.

IV. Ordering Witnesses out of Court & Hearing

A. General Rule: As soon as the first witness is called, the Registrar would normally announce that all witnesses in the court should be out of court and out of hearing. ***Section 238(1) ACJL; Section 356(3) ACJA; Section 212 EA; Section 285 CPL*** permits the announcement to be made either on the application of either party or by the court suo motu. This instruction does not however include the accused persons as well as expert witnesses and legal practitioners.

B. Rationale for the Rule: so that witnesses may not tailor their own evidence to tally with what other witnesses called by their party have said to their hearing. Communication with witnesses within the court premises is generally not allowed.

C. Failure of the Court to Order Witnesses out of Court & Hearing: it does not vitiate the proceedings – ***Proviso to Section 238(1) ACJL; 2nd Proviso to Section 285(3) CPL; Section 356(3) ACJA***.

D. Failure to go Out of Court after Order was made: if a witness remains in court while other witnesses are testifying, the testimony of the witness does not become inadmissible thereby. Rather, it goes to the question of the weight which the court would attach to such testimony – ***Falaju v. Amosu***. However, under ***Section 133(2) Criminal Code***, such refusal to go out may be treated as contempt of court punishable by imprisonment.

V. Order of Examination of Witnesses

Section 215(1) EA provides that witnesses shall be first examined-in-chief then, if any other party so desires, cross-examined, then if, the party calling his so desires, re-examined.

EXAMINATION IN CHIEF

I. Meaning

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.

II. Role/Purpose of Examination in Chief

1. To obtain from the witness, first hand, all the facts that he can prove in support of the case of the party calling him.
2. Aids to elicit the admissible, relevant, material and favourable evidence in relation to the issues.
3. To elicit facts with which to cross-examine the witness of the adverse party
4. To prove or disprove a disputed fact
5. To corroborate evidence of another party
6. To lay proper foundation for tendering of documents or real evidence
7. To establish the credibility or competency of a witness especially an expert witness.
8. The evidence elicited from examination – in – chief fine tunes the parties' theory of the case.
9. The court tends to see the true position of events from the witnesses' evidence in chief.
10. It aids in the extraction of truths from the facts of the case.

III. Procedure

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.

IV. Rules Governing Examination in Chief

A. Questions not to be asked in Examination in Chief

1. Leading questions – ***Section 221(1) & (2) EA***.
2. Question's tending to give hearsay evidence

3. Questions eliciting evidence of opinion.
4. Questions eliciting oral evidence from the contents of a document.
5. Irrelevant questions should not be asked.

B. Questions Used in Examination in Chief

1. Open Ended questions: Here, 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.
2. Transitional Questions: use questions that leads to another material aspect of the testimony.

V. Leading Questions

A. Meaning: A question suggesting the answer, which the person putting the question wishes or expects to receive - ***Section 221 (1) Evidence Act 2011*****.** Leading questions assume facts within the evidence.

B. General Rule: It is not allowed in examination in chief and re-examination - ***Section 221(2) EA 2011*****.**

C. Circumstances when Leading Questions will be Permitted by the Court: the court shall permit leading questions in the following instances:

1. Introductory matters (Note: that where introductory facts are disputed, then leading questions of these facts are not allowed) or
2. Undisputed facts or
3. Matters which in the opinion of the court have already been sufficiently proved before the court **–** ***Section 221(3) EA*****.**
4. With leave of court

D. Failure to Raised Objection to a Leading Question: where an objection is not raised to a leading question and same is answered by the witness, the Court can act on it - ***Garba v. R (1959) 4 FSC 162*****.**

E. Avoiding Error of Leading Question: use open-ended questions like how, who, what, where, why, describe, explain, etc.

CROSS-EXAMINATION

I. Meaning

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 - ***Kpokpo v. 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.***

II. Order of Cross-Examination in a Joint-Trial

1. Where more than one defendant is charged at the same time each defendant shall be allowed to cross-examine a witness called by the prosecution before the witness is re-examined – ***Section 216 EA*****.** However, where all the defendants are represented by a single counsel, the cross-examination can be once by the counsel.
2. A co-accused is allowed to cross-examine the witness brought by another accused person. This must be done before cross examination by the prosecution – ***Section 217 EA*****.**

III. Witness Summoned to Produce Document

A person, whether a party or not in a cause, may be summoned to produce a document without being summoned to give evidence, and if he causes such document to be produced in court the court may dispense with his personal attendance – ***Section 218 EA*****.** A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness – ***Section 219 EA*****.**

IV. Effect of Failure to Cross Examine a Witness on Material Point

Failure to cross examine a witness on a vital point he raised during examination – in – chief, may be regarded as an admission of such issue - ***Oforlete v. State.***

V. Purpose of Cross Examination

1. To contradict, destroy, discredit or quality of the opponent's case – ***Oforlete v. State***
2. To establish the party's case through the opponent's witnesses - ***Awopeju v. State***
3. To test the accuracy, veracity or credibility of the witness – ***Section 223 EA.*** In ***Onuoha v State*** it was held that in considering the questions of veracity and credibility of a witness, the court should consider the following:
   (a) The witness knowledge of facts to which he testifies
   (b) The witness' disinterestedness
   (c) The witness' integrity
   (d) Whether his evidence is contradictory or contradicted by surrounding evidence
4. To discover who the witness is and his position in life – ***Section 223 EA***
5. To shake the witness credit by injuring his character – ***Section 223 EA***

VI. Effect of Refusal to be Cross-Examined

Where a witness refuses to be cross-examined after his evidence in chief, the court shall not act on such evidence – ***Shofolahan v. State***.

VII. Limitations in Cross Examination

The right to cross-examine may be limited by the following circumstances:

1. **Improper Questions Relating to Credit Alone that are not Relevant or Too Remote:** ***Section 224(2)(b) EA*** provides that such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies; and ***Section 224(2)(c) EA*** such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence. Questions relating to credit but are not relevant or too remote to the proceedings may be disallowed by the court. The court is under an obligation to warn the witness that he is not obliged to answer.
2. **Scandalous an Indecent Questions:** Where a question is indecent or scandalous the court may disallow it - ***Section 227 EA*****.**
3. **Annoying, Insultive or Needlessly Offensive Questions:** Where a question is apparently intended to insult or annoy or to needlessly offensive, the court may not allow it **-** ***Section 228 EA*****.**
4. **Question without Reasonable Cause: Section 226 EA** provides that the judge is empowered to report a counsel who asks baseless questions or questions adjudged to be without reasonable cause to the Attorney General of the Federation or any other authority to which the legal practitioner is subject.
5. **Irrelevant Questions:** Cross examination must relate to relevant facts but which are not directly facts in issue - ***Section 215(2) EA 2011*****.**

VIII. Questions which may be asked in Cross Examination

1. Leading questions may be asked in Cross – Examination - ***Section 221(4) EA*****.**
2. Questions to test his accuracy, veracity or credibility – ***Section 223 EA*****.**
3. Questions to discover who he is and his position in life – ***Section 223 EA*****.**
4. Questions to shake his credit by injuring his character – ***Section 223 EA*****.**

IX. Techniques/Strategies for Cross Examination

1. Probing technique: pin down the witness to get a direct answer
2. Insinuation method/technique

3. Confrontational technique: confronting witnesses with facts to either answer or decline.

X. Tips in Cross-Examination useful to an Advocate (Ten Commandments for Cross Examination)

1. Not good to cross examine without a definite purpose
2. Cross examine only when it is necessary to do so
3. Do not cross examine by merely going over the evidence in chief, hoping that the witness will miss out or mix up something
4. Avoid suggesting or putting it to a witness that he is lying or mistaken unless you have properly laid foundation for that.
5. Do not cross examine on trivial issues
6. Do not attempt to discredit obviously truthful evidence
7. Abreast self with rules of evidence, obligations under the law and consequence of non-compliance.
8. Do not cross examine if you do not fore see any significant or helpful result.
9. Failure to challenge adverse and material evidence can be fatal
10. Avoid aimless cross-examination

XII. 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. Structure your questions to:
   (a) Elicit favourable answers by first asking questions you are sure the witness will agree with.
   (b) Narrow the issues putting against each witness in your note paper, the information you want from a particular witness.
   (c) Avoid "I put it to you." Instead, put a challenge.
8. Control your witness in the following manner:
   (a) Know your purpose – use your case analysis
   (b) Identify your version of events and put those facts to the witness
   (c) Avoid getting into arguments with the witness, put your point calmly and move on
   (d) Do not interrupt the witness
   (e) Insist on an answer to the question asked – never let witness get away without answering. It is a constitutional right of an accused person to cross-examine a witness as provided under ***Section 36(6) (d) CFRN***.
   (f) Maintain an eye contact with the witness always
   (g) Put previous inconsistent statement made by him to him if you think there are material contradictions.

XIII. Contradiction of a Witness by Previous Inconsistent Statement

A. General Rule: Section 232 EA provides that a witness can be cross-examine or contradicted in respect to a previous statement made by him in writing and relevant to matters in question in the suit in which he is cross-examine without such writing being shown to the witness or being proved.

B. Drawing Attention of Witness to Part Sought to be Used to Contradict His Testimony & Giving Him Opportunity to Explain: where a party intends to impeach the credit of a witness by showing that what the witness has said in the previous proceedings contradicts his evidence in the current proceedings, his attention must be specifically drawn to those

part of his evidence which are to be used for the purpose of contradicting him. He must be reminded what he said on that previous occasion and he must also be given an opportunity of making an explanation – ***Emenegor v. State***.

C. Effect of Contradiction: the evidence of such a witness will be treated as unreliable – ***Gabriel v. State***.

D. Where Discrepancies are not Material: the credibility of the witness cannot be said to have been impeached – ***Ogunlana v. State***.

XIV. Inconsistency Rule and Statements made by an Accused

1. **General Rule:** Where a witness made a statement before trial and the statement is found to be inconsistent with his testimony, his testimony should be seen as unreliable and the previous statement should not be acted upon by the court – ***Ladan v. State***.
2. **Exception (Retracted Extra-Judicial Confession):** However, this rule does not apply where the accused gives evidence. Thus, where the accused retracts his confessional statement, the court can still act on it and convict him – ***Usung v. State***.

RE-EXAMINATION

A. Meaning: 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*****.**

B. Purpose: The aim of re-examination is to clear ambiguities, inconsistencies doubts or haziness that arise out of cross-examination.

C. 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.

D. Leading Questions: Leading questions shall not be asked in re-examination – ***Section 221 (2) EA***.

POWER OF COURT TO PUT QUESTIONS TO WITNESS

A. General Rule: The Court has the power to put questions to any witness before it and also order for the production of documents – ***Section 246 EA 2011*****.** The Judge or magistrate is allowed under CPL/CPCL to put questions to witnesses in order to reach a just delivery of the case.

B. Rationale: The aim is to clear up ambiguities or a point left obscure in his testimony for the just determination of the case.

C. Condition: The questions asked must be relevant under the Act and must be duly proved - ***Section 246 (2) EA*****.**

D. Limitation: the Court is not to descend into the arena by taking over the case of a party, most especially prosecution, or ask damaging questions to the witnesses or an accused person - ***Tulu v. Bauchi NA; Okorie v. State.***

E. Objection & Cross-Examination by the Other Party: A counsel cannot raise objection to the Court's power to call/recall witnesses and cannot to put questions to the witness – ***Section 246 of the Evidence Act 2011; Onuorah v. State*****.**

F. Compelling a Witness who is not Compellable to Answer a Question: the Court cannot compel a witness who is not compellable (most especially accused person standing as a witness) to answer its questions - ***Section 36 (5) & (11) CFRN; Akinfe v. The State*****.**

CALLING AND RE-CALLING OF WITNESSES

I. Power of Court to Call and Re-Call Witnesses

A. General Rule: the court has power at any stage of the proceedings before verdict to summon and examine or re-call and re-examine witnesses already called by the parties – ***Section 237(1) CPCL; Section 200 CPL; Section 197 ACJL; Section 256 ACJA***.

B. Rationale: to clear hazy areas or ambiguities with a view at arriving at a fair and just determination of the case.

C. Recalling after Close of Defence: where the re-calling is after the close of defence, the examination shall be restricted to only matters arising *ex-improviso* i.e. evidence which arose during the case for the defence which the prosecutor could not have foreseen. Thus, alibi cannot be said to have arose ex-improviso – ***Onuoha v. State***.

D. Applicability: only in criminal trails – ***Bellgam v. Bellgam***.

E. Cross-Examination by a Party: while the CPL doen not recognize the power of a party to cross-examine a witness called by the court, the CPCL provides for such questions as well as re-examination – ***Section 237 CPCL***.

F. Limitations

1. The Judge shall not descend on the arena of the conflict
2. The judge cannot ask probing, searching and demanding questions – ***Akinfe v. State***.
3. The judge shall not aid a party to build its case – ***Onuoha v. State***.

II. Power of a Party to Recall a Witness

A. General Rule: the general rule is that a party is not allowed to call a witness once parties have closed their case as it would be unfair to call evidence to strengthen the case against the adverse party.

B. Application to Re-Call a Witness: the application is made to the court disclosing sufficient facts as to why the party wants to recall the witness and what he intends to put to the witness.

C. Purpose of Application: adducing evidence to rebut evidence or matter raised ex-improviso by the defence and not for the prosecution to strengthen its case.

D. Finding of Scope of Questions to put: the court shall in consideration of the application to call or recall a witness, find out from the party, the scope of the questions to be put.

E. Grant or Refusal of Application: where the question in view of the court, is material, the application is usually granted. Where it appears to the court not to be material to the matter, the court may refuse the application. Where it is not possible to tell on the face of it, the materiality of the question or the scope of same until the witness is called, it behoves the court to allow the application – ***Ogbodu v. State***.

OBJECTIONS THAT CAN BE RAISED AT TRIAL

1. Leading questions
2. Involuntary confession
3. Privilege statement
4. Opinion evidence
5. Lack of proper foundation
6. Indecent and scandalous questions
7. Questions that intend to insult or annoy
8. Hearsay
9. Witness not competent

(Week 16)

TRIAL IV: PRESENTATION OF CASE FOR THE DEFENCE

OPTIONS AVAILABLE TO AN ACCUSED PERSON AT THE CLOSE OF THE CASE FOR THE PROSECUTION

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

I. Meaning

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***.[211] 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.***

II. General Rule

At the close of the case of the prosecution, the law enjoins the court either suo moto or upon application of the accused person, to consider whether from the case put forward by the prosecution, a prima facie case has been made out to justify calling on the accused to make a defence. Where no prima facie case has been made, the court is to discharge the accused person – ***Section 286 CPL; Section 191(3) CPCL; Section 239(1) ACJL; Section 302 ACJA***. Thus, it is evident from the provisions that where prima facie case has not been made after the presentation of the case of the prosecution, the court is to discharge the accused person whether he is represented by a counsel or not and whether any application has been made in that regard or not.

III. Purpose of a No Case Submission

To prevent the accused from entering his defence and prove his innocence and to save the Court's time - ***Emedo v. The State; Section 36(5) CFRN 1999*****.**

IV. Conditions for No Case Submissions

What the applicant must satisfy in an application for no case submission is as stated under ***Section 239(1) ACJL, Section 286 CPL, Section 191 CPCL, Section 303(3) ACJA, Ibeziakor v. COP*** as follows:

[211] (2014) All FWLR (Pt. 724) 74

1. **Where there has been no evidence to prove an essential element in the alleged offence:** in ***R v. Coker***,[212] it was held that all that a defence counsel needs to prove to sustain a no case submission on this ground is that an ingredient of the offence charged has not been proved by the evidence adduced by the prosecution.
2. **When the evidence adduced by the Prosecution had been so discredited during cross-examination – (refer to the specific portions of the evidence that are unreliable e.g. evidence of PW1 etc.)** In ***Edakarabor v. State***, it was held inter alia that the test for determining whether a prima facie case has been established is whether at the end of the prosecution's case and after the prosecution witnesses have been cross-examined by the accused, the accused person is seen to be blameless of the charge he is confronted with. The entirety of the evidence adduced by the prosecution is not necessary to establish a prima facie case against the accused person sufficient for him to be called upon to defend himself.
3. **When the evidence is so manifestly unreliable that no reasonable Tribunal/Court can safely convict upon it –** in ***Okafor v. The State***,[213] if a submission is made that there is no case to answer, the decision should depend, not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit, but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might on the evidence might convict on the evidence so far before it, there is a case to answer… at the stage of no case submission, the question as to whether the evidence is believed is immaterial and does not arise. The credibility of the witnesses is also not in issue.

RULING ON A NO CASE SUBMISSION

After the judge has taken arguments from the defence and the prosecution on the no case submission, he is enjoined to deliver a ruling either upholding the no case submission or overruling it. If he upholds it, that is, that the accused has no case to answer, the accused is discharged. If he overrules it, that is, holding that the accused has a case to answer, he orders the accused to enter upon his defence. At the stage of no case submission, what the court is called upon to do is not the determination of guilt or otherwise of the accused but the determination of a simple question whether the evidence led so far is sufficient to justify calling on the accused to make a defence. It is therefore wrong for a Judge at this stage to hold that the prosecution has proved its case beyond reasonable doubt or that the prosecution has failed to prove the guilt of the accused – ***Ekanem v. R***.

I. Nature of a Ruling of No Case Submission When It is Rightly Upheld

1. The decision upholding the no case submission is a final decision within the meaning of Section 386 CFRN 1999.
2. Upholding the no case submission marks the end of the trial.
3. The ruling must be detailed and contain the reason for the decision, just like any other judgment of a court. This is because after the ruling, the judge becomes *functus officio.*

II. Nature of a Ruling of a No Case Submission When It is Rightly Overruled

1. The ruling of a court is not a decision on the substantive case.
2. The proceedings will still continue
3. The ruling must be brief so as not to fetter the judge's discretion at the hearing of the defence and when giving judgment at the end of the trial - ***Odofin Bello v. The State***. However, the court can give a lengthy ruling if it intends to acquit the accused. It is not the length of a ruling per se that determines that a judge has fettered his discretion. Rather, it is the contents of the ruling that shows whether the judge has fettered his discretion - ***Atano v. Attorney General Bendel*** (15 page ruling).

[212] 20 NLR 62
[213] (1977) 5 SC 197

4. Ruling must be confined to the issues raised by the Defence in the submission such as veracity or insufficiency of evidence and not go into the live issues of the main proceedings - ***Abru v. State; R. v. Ekanem***.
5. The court should refrain from expressing any opinion on the evidence already before it - ***The State v. Audu*.**
6. The accused is entitle to go on appeal on a ground that by Section 36(5) CFRN 1999, to ask him/her to enter upon a defence when the prosecution has not made out a prima facie case would amount to calling upon him/her to prove his/her innocence.

EFFECT OF A DISCHARGE UNDER NO CASE SUBMISSION

I. When Rightly Upheld By the Court

1. **South:** it is a discharge on the merits and the accused will be acquitted. A Bar plea will avail him – ***Section 286 & 301 CPL; IGP v. Marke; Nwali v. IGP, Emedo v. States***.
2. **North:** This depends on the Court – ***Section 159 and 169 CPCL***.
   - **(a) High Court** - discharge on the merit and therefore an acquittal - ***Section 191 (3) & (5) CPCL***.
   - **(b) Magistrate's Court -** a discharge but not on the merits – ***Section 159(3) & 169(3) CPCL***. A discharge in the magistrate's court shall not be a bar to further proceedings against the accused on the same charge. A plea of autrefois acquit based on it will necessarily fail.
3. **Lagos:** A Discharge on a no case submission operates as an acquittal – ***Section 239(1) ACJL; Emedo v. The State.***
4. **Abuja:** a discharge here also operates as an acquittal - ***Section 303(3) ACJA***.

II. When Wrongly Upheld by the Court

The appellate court will:

1. Quash the order of the trial Court acquitting the accused and
2. Order for a retrial for the accused to defend himself - ***Police v. Ossai; COP v. Agi***.

III. When Rightly Overruled by the Court

1. The accused will enter his defence.
2. Any subsequent evidence adduced before the court is proper and material to the case - ***Chuka v. The State***.
3. Where such evidence implicates an accused person, he can be safely convicted on it.
4. The Conviction above will be valid irrespective of the accused taking further part in the proceedings - ***Chuka v. The State; Okoro v. The State*.**
5. In the Magistrate Court (North), if no case to answer is overruled, the accused person can apply to recall prosecution witnesses to cross-examine them before opening his defence.

IV. When Wrongly Overruled by the Court

1. The accused may enter his defence or rest his case on the Prosecution's case.
2. Any conviction based on incriminating subsequent evidence will be quashed on appeal as it is a nullity - ***Mumuni & Ors v. The State***.
3. The fact that he took further part in the proceedings or withdrew after his no case submission is irrelevant - ***Okoro v. The State; Daboh v. The State***.

OPTIONS AVAILABLE TO THE ACCUSED WHEN A NO CASE SUBMISSION IS OVERRULED

The options open to the accused person where his no case submission was overruled is to either:

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

I. Resting Case on that of the Prosecution

A. Meaning

This implies that he is calling the Court to convict or acquit him based on the evidence led by the Prosecution. Where accused does not call any witnesses or adduce any evidence, then he is said to have rested its case on the prosecution. The Court can come to a valid decision solely on that basis. The Accused is assumed to have accepted the evidence as truly and exactly stated by the prosecution - ***Akpan v. State***. Under this procedure, the court is enjoined to consider the whole case of the prosecution including the issue of credibility of witnesses as well as ascription of weight to evidence before delivering judgment after the accused has rested his case on that of the prosecution. Where the trial court fails to evaluate, the appellate court would, in the interest of justice, interfere.

B. Procedure

1. The counsel to the accused person would inform the court and then proceed to address the court. This address is wider and is expected to address all issues concerning the case as a whole.
2. After such address by the defence counsel, the prosecution if represented by a Law officer is entitled to reply.
3. Accused person can tender documents through the prosecution witness in course of cross-examination but in such a case, cannot rest case on that of the prosecution because he would have entered a defence.

C. When Can an Accused be Said to Rest His Case on the Prosecution

This occurs when; He refused to call any witness nor give evidence in his trial.

D. Instances where the Accused should and should not Rest His Case on the Prosecution

An accused person can rest his case on the prosecution in the following instances:

1. A no case submission was wrongly overruled.
2. The prosecution's case is manifestly weak either in law or in fact or both - ***Igabele v. The State***.

However, when there is overwhelming compelling evidence against the accused he is advice not to rest his case on the prosecution. In ***Babalola v. The State*****,** the court held that it is reckless for a defence counsel where there are compelling evidence against the accused to rest the case of the defence on the prosecution. Where the case of the Prosecution calls for some explanation from the accused and the accused chooses to rest his case on that of the Prosecution, the trial judge is entitled to draw necessary inference from the tale told by the Prosecution - ***Nwede v. State***. The court should not be dissuaded from reaching a firm conclusion by speculating on what the accused might have said if he testified – ***Akpan v. State***.

E. Duty of the Court before Consideration of an Accused's Request to Rest Case

The court should consider the whole case of the Prosecution including credibility of witnesses and weight to attach to evidence before delivering judgment after the accused has rested his case on that of the Prosecution - ***Akpan v. State***.

F. Difference between No Case Submission and Resting Case on Prosecution Case

1. Where a no case submission is overruled, the accused is given leave to enter his defence. But where the accused rests his case on that of the Prosecution; the accused has no further opportunity of calling witnesses or to enter upon his defence.
2. Resting case is used where defence alleges that there is INSUFFICIENT EVIDENCE to warrant a conviction but no case submission is used where there is NO PRIMA FACIE EVIDENCE linking the accused person to the crime.
3. The address in resting of case is a final address and expected to cover wider area than submission of no case to answer.

4. While a court merely delivers a ruling on whether a prima facie case has been made out in the no case submission, in resting case what the court delivers is a final judgment and the accused has to take what he is given subject of course, to his right of appeal.

II. Entering upon his Defence

After a no case submission has been overruled, the accused may choose to enter upon his defence. He would decide to either testify for himself by entering into the witness box or by calling other witnesses to testify on his behalf or both.

CASE FOR THE DEFENCE

I. Commencement/Opening Address

This arises at the end of the case for the Prosecution i.e. after the re-examination of all the Prosecution witnesses. The Prosecution may close its case in this manner thus, "My Lord, the Prosecution wishes to close its case or My Lord that is the case the Prosecution". If prima facie case is established, the accused will open his case for defence. The accused person may commence with an opening address by giving a summation of the case for the defence, its witnesses and evidence to be adduced. In practice, the defence usually dispenses with an opening address and simply proceeds by calling his first witness.

Where the accused person chooses to lead evidence, that is, to testify and to call witnesses, the case for him is required by the law to commence by an opening address. ***Section 192 CPCL*** provides: when the court calls upon the accused to enter upon defence, the accused or his counsel may open his case stating the facts or law on which he intends to rely and making such comments as he thinks necessary on the evidence for the prosecution, and the accused may then give evidence on his own behalf, examine his witnesses, if any after their cross-examination and re-examination, if any, the accused or his counsel may sum up his case.

II. Options Open to an Accused in Opening His Defence

A. General Rule

Section 240(1) ACJL; Section 287(1) CPL; Section 236 CPCL; Section 358(1) ACJA makes provision for the following: At the close of the evidence in support of the charge, if it appears to the court that a prima facie case is made out against the defendant sufficiently to require him to make a defence, the court shall call upon him for his defence, and

1. If the defendant is not represented by a legal practitioner, the court shall inform him that he has three alternatives open to him viz:
   (a) He shall make a statement, without being sworn, from the place where he then is, in which case he will not be liable to cross-examination; or
   (b) He shall give evidence in the witness box, after being sworn as a witness, in which case he will be liable to cross-examination; or
   (c) He need say nothing at all if he so wishes and in addition the court shall ask him if he has any witnesses to examine or other evidence to adduce in his defence and the court shall then hear the defendant and his witnesses and other evidence, if any; and
2. If the defendant is represented by his legal practitioner, the court shall call upon the legal practitioner, to proceed with the defence. If he is represented by a counsel, the duty on court to inform the accused of the alternatives is dispensed with as the Lawyer is deemed to have informed him accordingly - ***Edet v. The State.***

B. Making of Statement Unsworn from the Dock

1. **Effect:**
   (a) He will not be sworn on oath to testify
   (b) He is not liable to be cross-examined
   (c) He is not seen or treated as a witness
2. **Advantage:** if accused is a doubtful witness he is spared the rigors of cross-examination
3. **Disadvantage**: the court will not attach much weight to his evidence

C. Giving Sworn Evidence from the Witness Box

1. **Effect:**
   (a) He will give sworn evidence in the witness box
   (b) He is liable to cross-examination but not compellable
   (c) Much weight will be attached to his evidence
2. **Advantage**: this is advisable for a credible and stable accused person as his evidence can withstand cross examination

D. Remaining Silent

1. **General Rule:** the accused person has the right to remain silent as he cannot be compelled to give evidence in his trial - ***Section 36(11) & (5) of the 1999 Constitution*****.**
2. **Effect:**
   (a) He will not adduce any evidence whatsoever
   (b) He is deemed to have rested his case on the Prosecution's case and the court can give a valid conviction on that basis - ***Akpan v. State***.
   (c) There will be written addresses and then judgment
   (d) If accused chooses to say nothing in his defence, the prosecution and court may comment on his silence, but prosecution must not argue that it amounts to an admission of guilt – ***Section 236(1)(c) CPCL; Section 236(1) (c) CPCL; Section 36(11) CFRN; Section 181 Evidence Act 2011; Garba v. State***. The court may make any necessary inferences it thinks just.

E. Failure of the Court to Read and Explain the Implications of the Options

The Court must read out and explain the implications of each of the 3 options available to him. The Court must record that it has complied with this requirement - ***Josiah v. State***. However, Section 288 CPL; Section 360 ACJA provides that failure to comply with the duty will not vitiate proceedings if the court did the following:

1. Called on the defendant for his defence;
2. Asked the defendant for his defence;
3. Heard the defendant and his witnesses and other evidence, if any.

Thus, failure of the Court to do so (e.g. court explained but didn't record that it explained) will not vitiate the trial except it occasioned a miscarriage of justice resulting in the conviction - ***Josiah v. The State; Section 288 CPL; Section 240 ACJL*****;** ***Saka v. State; Kajola v.Cop; Ema v State; Adio v The State***.

EX-IMPROVISO RULE

I. Concept

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***.

II. Conditions for Reliance on the Ex Improviso Rule by the Prosecution

1. It must come at the end of the defence case.
2. Leave of court must be sought by prosecution
3. The defence must have raised a new matter which human ingenuity could not have foreseen (could not have reasonably foreseen) - ***Onuoha v. The State; Bala v. COP***.

III. Limitations of the Ex Improviso Rule

1. The rule will not apply to the defence of alibi - ***Onuoha v. The State***.
2. The evidence of the prosecution witness must only be used to rebut the new evidence adduced by the defence – ***Bala v. COP*****.**

IV. Options Open to the Prosecution When the Rule Arises

1. The Prosecution in that case may with the leave of Court be allowed to call witnesses in rebuttal of such new evidence led by the defence.

2. The Prosecution may be allowed to respond on point of Law by way of a Reply - ***Section 194 CPCL*** (North Only)

NB: CPCL permits AG to apply and call additional witnesses. This is not the same as the ex-improviso rule.

VISIT TO THE *LOCUS IN QUO* (THE SCENE OF AN OFFENCE)

I. General Rule

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.***

II. Rationale for Visit to Locus in Quo

A visit to locus in quo is not a sine qua non in any legal proceedings. It is undertaken at the discretion of the court, when in its view, the visit would help in resolving an issue which could not otherwise be resolved – ***Ewulu v. Nwankpu***.[214] It is not embarked upon as a matter of course. It is imperative to visit the locus in quo where such inspection is material for the proper determination of the question in dispute. Where the court is of the opinion that the visit would be no more than an unproductive venture, it may decide not to embark on such visit even where a party applies for it – ***Ehikioya v. COP***.[215]

III. Time to Visit Locus in Quo

It can be made at any time before judgment - ***Arutu v. R*** **(**done after final address). But the earlier the better as it is to assist the court to come to a better understanding of the matter.

IV. Procedure for the Conduct of a Visit to the Locus in Quo

There are two (2) ways as follows:

1. **Adjourn to the Locus and Continue Proceedings there:** The Court may adjourn to the locus to inspect and continue trial there by taking witnesses in evidence and later the Court will reconvene in the regular Court to continue the trial, without recalling the witnesses – ***Section 127(2) (a) of the Evidence Act; COP v. Olaopa*.**
2. **Adjourn the Case and Proceed to the Locus for an Inspection:** the court may adjourn the case, proceed to the locus in quo and then evidence of what transpired at the locus would be given in Court when the Court reconvenes – ***Section 127(2) (b) of the Evidence Act; R v. Dogbe, Aremu v. AG Western Nigeria, Oguntola v. State.***

V. Effect of Non-Compliance with the Above Methods

Mere non-compliance with the procedure discussed above would not vitiate trial unless such failure occasioned a miscarriage of justice - ***Aremu v. AG Western Nigeria*.**

VI. Summary of the Principles of Visit to Locus in Quo

1. **Presenting Fresh Evidence:** It is not an opportunity for **either of the parties** to present a fresh evidence different from the one already adduced before the court - ***Odiche v. Chibogwu*.**
2. **Aim:** a court should undertake a visit to the locus in quo where should visit will clear doubt as to the accuracy of a piece of evidence when such evidence is in conflict with another piece of evidence – ***Shekse v. Plankshak***.[216]
3. **Time:** a visit to the locus in quo may be undertaken at any stage of the proceedings – ***Shekse v. Plankshak***.[217]

---

[214] (1991) 8 NWLR (Pt. 210) 487
[215] (1992) 4 NWLR (Pt. 233) 57
[216] (2008) All FWLR (Pt. 439) 422
[217] (2008) All FWLR (Pt. 439) 422

4. **Evidence of a Witness:** where the trial judge undertakes a visit to the locus in quo, it is not proper for him to treat his perception at the scene as a finding of fact without evidence of such perception being given by a witness either at the locus or later in court after the inspection – ***Shekse v. Plankshak***.[218]
5. **Record of What Transpired at the Scene:** on a visit to the locus in quo, it is necessary for the trial judge to make a record of the proceedings of what transpired at the scene. But where he fails to do so, a statement of what transpired made in his judgment would be taken as accurate account of what happened unless the contrary can be established by the party seeking to impugn the record – ***Bello v. Kassim***.[219]
6. **Opportunities afforded to Parties:** where a visit is made to the locus in quo, evidence of witnesses may be received at the scene or in court later. But, the parties, in that case, must be given the opportunity of hearing the evidence of the witnesses and where necessary be offered the opportunity of cross-examining the witnesses and commenting on the evidence – ***Shekse v. Plankshak***.[220]
7. **Presence of Accused Persons:** The accused persons **must all be present** at the locus criminis – ***Section 207(2) CPL, Section 243 CPCL, Adunfe v IGP***. No matter the number of accused persons or difficulties, this must be complied with. However, non-compliance will not vitiate the trial unless it occasioned a miscarriage of justice. In ***Adunfe v. IGP***, where there were 125 accused persons and not all were taken to the locus. The appeal was dismissed that there was no miscarriage of justice – particularly if their counsel was present at the locus.

FINAL OR CONCLUDING ADDRESSES

I. Concept

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*.**

II. Purpose of Final Address

Addresses by counsel at the conclusion of a case are meant to assist the court. While a final address intelligently and forcefully delivered could easily sway a judge to give judgment to the party on whose behalf same was delivered, it does not constitute evidence. In other words, no amount of brilliance in a fine speech can make up for lack of evidence to prove and establish or disprove and demolish a point in issue – ***Adekanmbi v. Jangbon***.[221]

III. Order of Presenting Final Address

1. The accused is to address the Court first, and
2. Then the Prosecution may reply and
3. Accused has a right to further reply on points of law.

IV. Legal Status of Final Address and Reply

1. The final address and reply is not part of evidence and will not vitiate the trial if not done - ***Hassan v. Unam***.
2. The Court can write its Judgment before the final addresses of the parties – ***Ndu Vs. The State***. In ***R v. Cobolah*,** it was held that this is not advisable.
3. Normally in writing and delivered in public – ***Section 294(1) CFRN*; *Section 273(2) ACJL*.**

[218] (2008) All FWLR (Pt. 439) 422
[219] (1969) 1 NMLR
[220] (2008) All FWLR (Pt. 439) 422
[221] (2007) All FWLR (Pt. 383) 152

V. Effect of Denial of a Party's Right to Address by a Judge

Generally, the right to address is a constitutional right of the accused and the court cannot deny the parties - ***Isheru v. Ayoade*****.** However, where the right to address is denied and it occasioned a miscarriage of justice, the proceedings may be set aside - ***Obodo v. Olanwu***.

VI. Prosecution's Right of Reply

A prosecutor's right of reply depends on the conduct of the defence and the status of the prosecutor. He could be a law officer, police officer or private prosecutor

A. Law Officers

Where the Prosecutor is a law officer, he has an automatic right of reply to the final address of the accused - Proviso to ***Section 202 CPL and Section 243 CPL; Section 194(3) CPCL; Section 271 ACJL; Awobutu v. The State; Osahon v FRN***.

A Law Officer include the AG, Solicitor-General, DPP, Pupil/Senior/Principal State Counsel, even a Private Legal Practitioner (with fiat) – **Section 1 CC; Section 2CPL; State v. Okpegboro**.

The right of reply of a law officer is at his discretion. He cannot be compelled by the court to reply to a final address. He cannot be refused the exercise of this right of reply - ***Adamu v. AG Bendel State***.

A police officer who is a legal practitioner equally has a right of reply. However, he does not need fiat under CPCL and CPCL.

B. Police and Private Prosecutors

The right of reply of a police officer and a private prosecutor (With AG's Fiat) depends on the following;

1. If no witness was called for the defence Except the accused himself or a witness testifying as to the accused's character Only and accused does not tender any documents in evidence, then the Prosecution has No right of reply – ***Achaji & Ors v. COP, Section 241 CPL***. In the NORTH, though no reply, they may adduce evidence of the accused's previous conviction – ***Section 194(2) CPCL***.
2. If the defence introduced a new matter in his address which is not supported by the evidence adduced in his defence, the Prosecution may reply with the Leave of Court – ***Section 194 (1) of the CPCL*****,** ***Section 241 of the CPL and Section 269(1) of the ACJL***.
3. If the accused called witnesses other than as to character or tenders any document not relating to character in support of his case, the Prosecution Shall have a right of reply - ***State v. Sanusi, Section 242 CPL, Section 194(1) CPCL***.

For the purposes of determining a right of reply, testimony of the accused is not treated as testimony of witness to enable prosecutor acquire a right of reply - ***Achaji v Police***.

(Week 17)

JUDGMENT (VERDICT) AND SENTENCING

JUDGMENT

INTRODUCTION

I. 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 courts 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. In criminal trials, judgment is regulated by ***Section 245 CPL; Section 268(1) & 269 CPCL; Section 275 ACJL*****;** and ***Section 294 CFRN***, which provide the essential attributes of a valid judgment.

II. Differences between the CPL, CPCL, ACJL and ACJA Provisions on Judgment

1. **Oral Judgment:** under the CPL and ACJA, a Magistrate can deliver an oral judgment. This allowance is absent in the CPCL and the ACJL. It must be noted that the CPL and ACJA does not conflict with the Constitution because the constitutional requirement that every judgment be in writing under ***Section 294(1) CFRN*** applies only to "every court established under the constitution). The Magistrate court is not established under the constitution as it is not listed under ***Section 6(5) of the CFRN***. Magistrate courts are established by the Laws enacted by the Houses of Assembly of each State.
2. **Explaining Substance of the Judgment to the Accused:** under the CPCL, the substance of the judgment shall be explained to the accused in the language he understands. Under the CPL, ACJL and ACJA, there is no such express provision. However, since by ***Section 36(6) (e) CFRN***, one of the constitutional requirements for fair hearing is that the accused must be provided with an interpreter, it follows that the substance of the judgment would be interpreted to him by the interpreter in a language he understands. See ***Ajayi v. Zaria NA***.
3. **Pronouncing Judgment in Open Court:** under the CPCL and the ACJA, the judgment must be pronounced in open court. Under the CPL and the ACJL, there is no such provision although same may also be implied. However, since all these laws, including the constitution, expressly provide that criminal trials must be held, conducted and concluded in public, except in certain circumstances, it necessarily follows that judgment must also be delivered in public/open court, except otherwise required as in the case of juveniles, public interest, etc. See ***Section 36(4) CFRN***.
4. **Time to Deliver Judgment:** under the CPCL, the time when judgment should be delivered is stated (that is, the day on which proceedings terminates or at some subsequent time). There is no such direct provision in the CPL or the ACJL and the ACJA. In practice, this is the case across the country. The ACJA specifically allows the court a discretion to either pass sentence immediately or adjourn for same.
5. **Notice of Judgment:** under the CPCL, if judgment is to be delivered on any day subsequent to the day that the proceedings terminated, notice of the day of Judgment shall be given to the parties. There is no such provision in the CPL, the ACJL and the ACJA although that is generally done in practice.
6. **Signing and Sealing of Judgment:** under the CPCL, judgment may be signed or sealed. Under the CPL, ACJL and ACJA, there is no provision for sealing.
7. **Presence of Accused:** under the CPCL, the accused is entitled to be present to hear the judgment. The CPL, the ACJL and ACJA are silent on this point.

CONTENTS AND FORM OF A VALID JUDGMENT

I. Contents/Essential Attributes of a Valid Judgment

A. 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. See ***Okoruwa v. State; Osayende v. State***. A Magistrate is permitted to deliver oral judgment but he shall record briefly in the book his decision and where necessary his reasons for such decision, or record such information in the prescribed form. See ***Section 308 (2) ACJA***. It was held in ***Napoleon Osayande v. The COP***[222] that the judgment of a Magistrate is not invalidated for failure to comply strictly with Section 245 Criminal Procedure Law. Only a minimum compliance is required. The Supreme Court held that this was not sufficient to invalidate the proceedings.With respect to judgment being in writing, note the following principles:

1. **Pronouncing in Open Court before reducing into Writing:** Any judgment that is pronounced in open court before it is reduced into writing is an oral judgment and remains invalid. That is, where a judge reduces his judgment and the reasons therefore into writing after it has been delivered orally in open court, the judgment is still void because once the judge delivers his judgment, he becomes *functus officio* and can no longer amend it by subsequently reducing it into writing. See ***Unakalamba v. COP; State v. Lopez***.
2. **Judgment Read from Notes:** A judgment which was read from and based notes which the judge made in the course of the trial, which notes were not his official record was held invalid. See ***R v. Fadina***. Thus, the requirement that a judge must reduce his judgment into writing before delivery shall not be satisfied by a judge delivering his judgment from notes he made in the course of the trial. See ***R v Fadina***.
3. **Oral Judgment Dictated to a Stenographer:** An oral judgment dictated to a stenographer to type in open court is not a written judgment and is invalid. See ***Okoruwa v. State***.
4. **Judgment Delivered from Notes made by Judge's Son:** A judgment delivered from notes made by the judge's son was declared invalid. See ***Ajayi v. State***.
5. **Writing Judgment before Final Address:** A judge can write his judgment after close of evidence but before final addresses. See ***R v. Cobolah***. This is because final address is not evidence. However, the judge cannot deliver the judgment until final addresses by the parties and he can make any amendments in his judgment while listening to the final address, but before delivering his judgment. See ***R v. Cobolah***.
6. **Delivery of Judgment Written by another Judge:** A judgment written and signed by a judge may be delivered by another judge if the judge who wrote and signed the judgment is not available to deliver the judgment himself for any reason, whether, death, transfer, illness, transfer, promotion etc. See ***Section 251 CPL; Section 262 CPCL*****; and** ***Section 281 ACJL; AG Federation v. ANPP***. However, that other judge should only pronounce the judgment in open court after stating the reasons why the judge who wrote the judgment is prevented from delivering it himself. It must be noted that the judge who tried the matter must have written his judgment and signed it before the unavoidable occurrence took place. Therefore, this rule above will not be applicable to any judgment written after the unavoidable event took place or after the trial judge has vacated office or elevated to a higher bench. See ***Iyela v. COP***, where the trial magistrate was transferred to another jurisdiction after concluding the hearing but before his judgment. Nonetheless, the

[222] (1985) 3 S.C. 154

magistrate delivered his judgment, convicted and sentenced the accused. It was set aside on appeal. Note that the transfer of the judge will work hardship on the parties. Thus, where the judge was merely transferred from one judicial division to another, the parties can apply to the Chief Judge or Administrative Judge to allow the judge to come back for the sole purpose of their proceedings. But they will bear the expenses of the judge.

B. 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. The court determines this based on what constitutes the offence. These points for determination are usually the ingredients of the offence and the court has a recourse to substantive law for this purpose. Reference must be made to the evidence adduced, the law and the ingredients of the offence. See ***Tanko v. State***.[223]

C. 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. The judge must analyse and review the evidence before him. See ***Onafowokan v. State***.

D. Reasons for Decision

If the judgment of a court does not contain the reasons for the decision, that judgment will be upturned on appeal. The reasons for a decision are usually a direct result of the evaluation of evidence. Thus, the court state why it believes the evidence of one party, while it disbelieves the evidence of the other party. Where the court prefers a particular piece of evidence to another, the reasons must be stated. See ***State v. Ajie***. Failure to give reasons for the decision will lead to the quashing of the judgement on appeal. See ***Nwaefule v. State***

E. 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 judgement. 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***.

Where the judgment is pronounced by another judge, the requirement that it must be dated and signed (or sealed) at the time of pronouncing it must also be complied with, notwithstanding an earlier signature of the trial judge who wrote the judgment on it. The judge who pronounced the judgment must also sign (or seal) and date the judgment at the time of pronouncing it.

Any judgment that does not bear the signature of the judge and the date of pronouncement is null and void, and will be set aside on appeal. See ***Bakoshi v. Chief of Naval Staff***.

In ***Obareki v. The State***,[224] it was held that because the two were made at the same time, although the judgment was not signed so long as the order was signed, it was sufficient. Note that it was suggested in this case that it is neater for the Magistrate to sign the judgment

[223] (2009)

[224] (1982) 2 N.C.R.63

separately and the order for the conditions of appeal separately. See also ***Tsalibawa v. Habiba***.[225]

II. Effects of Failure to Comply with Contents

The contents are mandatory requirements. Effect of failure to comply will render the judgment a nullity. See ***Bakoshi v Chief of Naval Staff; Willie John v. State***. The Orders a court can make upon a finding of non-compliance depends on the circumstances of each case. The court may:

1. Order a retrial - ***Section 36(9) CFRN***.
2. Order an acquittal.

III. Form of Judgment

1. **Delivery of Judgment and Filing Reasons Later:** A Judge cannot deliver his judgment and file reasons thereof later: In ***Unakalamba v. The Police***,[226] where the reason for the judgment was filed latter, the Court warned against the practice. 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:** Judgment dictated in open Court is not written judgment. In ***Okoduwa v. The State***.[227] 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, subject to any amendment he may wish to make on the bench during or after final addresses. However, he must wait till after the final addresses before he can deliver the judgment - ***R. v. Cobolah***.[228]
4. **Judgment on Every Count**: Judgment must be given on every count, where there are more counts than one. Also, if the judgment is a judgment of conviction it shall specify the offence for which and the Section under which the accused is convicted and sentenced. See ***Section 269(2) Criminal Procedure Code***. In ***Yesufu v. IGP***,[229] the accused was charged with some counts of stealing for which he was found guilty. The Magistrate did not however specify the particular kind of stealing he was talking about; neither did the judge specify the punishment allotted to such counts of which he found the accused guilty. Therefore, the accused was discharged and acquitted. See also ***Aigbe v. State***.[230] See however ***Bankole v. The State***;[231] ***Section 382 Criminal Procedure Code***.
5. **Conviction before Sentencing**: The judge must convict the accused before sentence. In ***Oyediran v. The Republic***,[232] the judge did not convict the accused on some of the counts before passing sentence. The sentence was held null and void. It was also held that where there are more than one accused a separate verdict must be returned in respect of each accused person. For this proposition, see ***Bankole v. The State***;[233] ***Police v. Yesufu***.[234]

---

[225] (1991) 2 NWLR 461
[226] (1958) FSC 7
[227] (1975) 5 SC 23
[228] 10 WACA 283
[229] (1960) LLR 140
[230] (1976) NMLR 184
[231] (1980) 1 NCR 334
[232] (1967) NMLR 122
[233] (1980) 1 NCR 334
[234] (1960) LLR 140

MODE, ARREST, AMENDMENT AND TIME LIMIT TO DELIVER JUDGMENT

I. Time for Delivery of Judgment

1. **General Rule:** Judgment must be delivered within ninety (90) days after conclusion of evidence and final address. See ***Section 294(1) CFRN***.
2. **Effect of Failure to Deliver within Time:** However, failure to deliver a judgment within 90 days will not ipso facto nullify the judgment unless the party complaining has suffered a miscarriage of justice by reason thereof. This is to be so determined by the appellate court or court reviewing the decision. See ***Section 294(5) CFRN***. Thus, only miscarriage of justice can vitiate a judgment for non-delivery within 90 days. The onus of proof of such miscarriage is on the party alleging it – ***Akposi v. State; Ogbu v State***.
3. **Furnishing Parties with Copies of Judgment within 7 Days of Delivery:** It should be noted that ***Section 294(1) CFRN*** places a duty on the court to furnish the parties to the proceedings with duly authenticated copies of its judgment within seven (7) days of the its delivery.
4. **Call for Further Address:** The court may call for further address before the 90 days elapses. See ***Sodipo v Lemminkainem***.

II. Modes of Delivering of Judgment

1. A judge may be transferred, elevated, retired. In such a case, he cannot deliver a valid judgment. See ***Iyela v COP***.
2. The trial judge may write and sign a judgment and another judge will deliver and date it. See ***AG Fed v ANPP; Section 251 CPA; Section 262 CPC***; and ***Section 281 ACJL***.
3. Another judge who delivered the judgment must date and sign it, irrespective of the previous signing and dating. See ***AGF v. ANPP***.
4. Each justice of SC or CA shall express or deliver his opinion in writing or state in writing that he adopts the opinion of another judge who delivers a written opinion. See ***Section 294(2) CFRN***.
5. All the justices need not be present in court when the judgment is being delivered. See ***Section 294(3) & (4) CFRN***.
6. Opinion of a justice of CA or CA who heard the appeal but ceases to be a justice of the court before judgment, another justice cannot read or deliver is judgment or opinion in the case. See ***Shitta Bey v. AGF***. The opinion may be pronounced.

QUERRY: can a member who did not sit at the panel deliver the judgment? YES, see Proviso to Section 294(2) and Section 294(4) CFRN.

III. Arrest of Judgment

The practice of arresting judgment is usually a delay tactic used by counsel when they discover that they have a bad case. At common law, this procedure was available in both civil and criminal cases and was used to stay the delivery of judgment due to some patent error or defect appearing on the face of the record which could render such judgment erroneous or a nullity if delivered.

The practice of arresting judgment is alien to the Rules of court in Nigeria as there is no provision for it and it is therefore not applicable in civil proceedings. See ***Newswatch Communications Ltd v. Atta***;[235] ***Shettima v. Goni***.[236] However, in ***Shettima v. Goni (supra)***, it was held that although there is no provision for arrest of judgment in our Rules, there is an exception under which the judgment of a court may be arrested in order to prevent an abuse of court process, since every court has a duty to prevent the abuse of its process. See also ***Dingyadi v. INEC***.[237]

[235] (2006) 12 NWLR (Pt. 993) 144
[236] (2011) 18 NWLR (Pt. 1279) 413
[237] (No 1) (2010) 18 NWLR (Pt. 1224) 1

Although counsel may not tag his application as one for arresting a judgment, since such procedure is alien to the Rule of Court, a proper application before the court objecting to procedure or to a defect In procedure, albeit brought at the point of delivering judgment, must be considered by the court as the court has a duty to consider all motions filed before its judgment is delivered, in order to do real justice in the case. If such a motion is considered, it would have the same effect of arresting the judgment of the court by staying the delivery of the judgment until the determination of the motion.

Although a judge has a duty to consider every application properly filed before it, no matter how worthless; where the application is a cynical attempt to taunt the court or to hamstring the court in the face of losing a bad case, it will be rejected by the courts.

IV. Amendment

A. General Rule

Once a judge pronounces judgment, he becomes functus officio – ***Section 234 ACJA***. Thus, as a general rule, whenever a court delivers a judgment, every person concerned with the judgment including the judge himself is bound by the said judgment. The judge cannot alter or amend a judgment he has delivered – ***Bakare v. Apena***.[238]

B. Exceptions

1. Where there is need to correct clerical errors. Although not specifically stated, it would appear that a judge can correct such error under ***Section 254 CPL***.
2. Where there is need to correct errors arising from accidental slip in the judgment.
3. Where it is necessary to do so to carry out the court's own meaning and to make its intention plain – ***Ovenseri v. Osagiede***.[239]
4. Where, before the execution of a sentence of caning, medical evidence reveals that the offender is not in a fit state of health, an amendment may substitute any other sentence which the court could have passed at the trial – ***Section 309(1) CPCL***.
5. Upon a conviction for contempt in the face of the court, the court may in its discretion discharge the offender or remit the punishment where the offender complies with the request of the court or tenders an apology – ***Section 317 CPCL***.

CONVICTION AND ALLOCUTUS

I. Conviction (Verdict)

1. **Meaning:** 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.
2. **Failure to Record Conviction Expressly:** Failure to record expressly the conviction of an accused person would be considered as an irregularity which can be reviewed by an appellate court of record. The appellate court can do this by looking at the record set before it to see whether the accused is actually guilty or not. In ***Ekpo v. R***, the appellant was sentenced to death for murder. His appeal was predicated mainly on the ground that the court did not convict him before sentencing him. It was held that although no "verdict of guilty of murder" was seen on records, evidence and findings shows conviction for murder. Thus failure to expressly record finding of guilty or not guilty is an irregularity. This is because the irregularity may be cured by the appellate court taking a cursory look at the record of proceedings and the findings of guilt is clear from the record. See ***Onyejekwe v State*****.** However, where the guilt of the accused is not discernible from the record, then the court may acquit him or order a retrial. See ***Adamu v. State***.

[238] (1986) 6 SC 460
[239] (1998) 7 SCNJ 188 at P. 202

3. **Several Accused and Several Counts of Offences:** where several persons are tried together, separate verdicts should be returned in respect of each accused and where there are several counts, separate verdicts should be delivered in respect of each count. However, the error in failing to return a separate verdict on each count against each accused will not result in the quashing of the verdict, unless there is a miscarriage of justice – ***Solola v. State***.

II. Power of Trial Court to take Other Offences into Consideration

A. General Rule

The other charges need not be before the same court. Thus, where an accused is found guilty of an offence, the court may in passing sentence take into consideration any other charge then pending against the accused if the accused admits the other charge and desires that it be taken into consideration and if the prosecutor of the other charge consents. See ***Section 249(1) CPL; Section 258(1) CPCL and Section 279(1) ACJL***.

B. Conditions for the Applicability of Rule

1. He must have been found guilty of the offence for which he is standing trial before the present court.
2. The convict must have admitted his guilt of those other charges.
3. The convict must have agreed/consented that these other pending charges be taken into consideration in passing sentence on him in respect of the instant offence for which he has been convicted.
4. In the south, the prosecutors handling those other charges, or in the north, the AG, must consent to such consideration.

C. Effect of Court taking Cognizance of Such Offences

Once the above conditions have been fulfilled, the convict can no longer be charged or convicted on those other charges. However, this is subject to ***Section 182 & 183 CPL*** and the conviction being set aside on appeal. See ***Section 249(2) CPL***. Once the court has taken cognizance of those other offences, the convict cannot be tried on those other offence(s) unless the conviction was set aside on appeal, as the rule against double jeopardy will avail them.

D. Passing Sentence Greater than the Maximum Sentence for the Offence which the Accused was Found Guilty

In passing its sentence, the court must not pass a greater sentence than the maximum sentence which it could have passed on the accused person on conviction for the offence in respect of which he has been found guilty or which he has admitted. It must also not impose a judgment which exceeds its jurisdiction to impose punishment.

III. Conviction for an Offence Not Expressly Charged (Red Pencil Rule)

A. General Rule

The general rule is that an accused person can only be convicted for an offence or charge which he has been informed in the language he understands, he has been charged with and to which he has pleaded to. To this general rule, there is an exception which is the power of the court to convict for an offence not expressly charged. This exception is created by statutes.

This exception is borne out of the fact that the quantum of evidence adduced by the prosecution is grossly insufficient to establish the offence charged and to which the accused person has pleaded not guilty to, even that quantum of evidence may have established such other offence(s) with which the accused is not charged and to which his plea has not been taken as required by law.

B. Exceptions

The exceptions under which an accused/defendant may be convicted for an offence not expressly charged are provided for under ***Section 169-179 CPL; Section 216 -219 CPCL*** and ***Section 160 – 171 ACJL***. They are:

1. **Charged with Offence but Only Attempt to Commit the Offence was established:** Where a person is charged with an offence but the evidence only establishes an attempt to commit that offence, he may be convicted of having attempted to commit the offence, although the attempt is not separately charged. See ***Section 169 CPL; Section 160 ACJL;*** and ***Section 219 CPCL***. It must be noted that by ***Section 171 CPL*** and ***Section 162 ACJL***, where a person has been convicted of an attempt above, he cannot be subsequently tried or prosecuted for the offence of which he was convicted of attempting to commit.
2. **Charged for Attempt but Full Offence is proved:** Where a person is charged with an attempt to commit an offence, but the full offence is proved by the evidence adduced, the accused person shall not be acquitted but he may be convicted of the attempt and punished accordingly. See ***Section 170 CPL, Section 225 ACJA*** and ***Section 161 ACJL***. It must be noted that by ***Section 171 CPL*** and ***Section 162 ACJL***, where a person has been convicted of an attempt above, he cannot be subsequently tried or prosecuted for the offence of which he was convicted of attempting to commit.
3. **Accessory after the Fact of Offence even though not charged:** ***Section 171 CPL; Section 227 ACJA*** and ***Section 163 ACJL*** provide for conviction as accessory after the fact to the offence charged or connected, even though the accessory was not specifically charged.
4. **Evidence establishing Felony where Misdemeanour was charged:** ***Section 172 CPL*** and ***Section 164 ACJL*** provides that a person charged for misdemeanour, but the evidence proves a felony which was not charged, the accused is not to be acquitted unless the court directs otherwise.
5. **Kindred Relating to Property even though not charged:** ***Section 173 CPL*** and ***Section 165 ACJL*** provide for conviction of kindred/relating to property, even though not specifically charged. These kindred offences are:
   (a) Stealing
   (b) Obtaining or inducing the delivery of property by false pretence, and with intent to defraud
   (c) Obtaining or inducing the delivery or payment of any property or money by means of fraudulent trick or devices
   (d) Receiving property obtained by means of any act constituting a misdemeanour or felony
6. **Charged for Burglary but Conviction for Kindred Offence not Charged:** By ***Section 174 CPL; Section 230 ACJA*** a person charged with burglary may be convicted with a kindred offence even if he was not charged for it.
7. **Conviction for Offence Proved but not Charged:** By ***Section 166 ACJL***, if at any trial, the facts proved in evidence justify a conviction for some other offences, and not the offence for which the accused was charged, he may be found guilty of the said other offences and shall be punished as if he had been convicted on a charge of that offence.
8. **Charged for Rape but Conviction for Indecent Assault:** By ***Section 175 CPL; Section 231 ACJA*** and ***Section 167 ACJL***, a person charged for rape or defilement of girl under thirteen, may be convicted for indecent assault if the evidence supports it, even though he was not charged for that offence. See also ***Section 176 CPL*** and ***Section 168 ACJL***.
9. **Charged for Infanticide but Conviction for Concealment of Birth:** By ***Section 177 CPL*** and ***Section 169 ACJL***, where upon the trial of any person for murder of a new child or infanticide, but the evidence shows that the person is not guilty of those offences, but is guilty of concealment of birth, the court will convict him of concealment of birth even if not charged with it.
10. **Charged for Murder but Conviction for Infanticide:** By ***Section 178 CPL and Section 170 ACJL***, same rule applies where murder is charged and infanticide is not charged. That

is where a person is charged for murder, but the evidence shows that the person is not guilty of murder, but is guilty of concealment of birth.

11. **Lesser Included Offence:** by ***Section 179(1) CPL; Section 171(1) ACJL*** and ***Section 218(1) CPCL***, whenever a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete lesser offence in itself and such combination is proved, but the remaining particulars are not proved, he may be convicted of such lesser offence or may plead guilty thereto although he was not charged with it. ***Section 179(1) CPL; Section 171(1) ACJL and Section 218(1) CPCL. Babalola v. State***.
12. **Lesser Offence not Included/Charged:** ***Section 179(2) CPL; Section 171(2) ACJL*** and ***Section 218(2) CPCL*** when a person is charged with an offence and facts are proved which reduce it to a lesser offence, he may be convicted of the lesser offence although he was not charged with it. ***Section 179(2) CPL; Section 171(2) ACJL*** and ***Section 218(2) CPCL***. ***Babalola v. State***. See also ***Nwachukwu v. State*** where it was held that an accused who is charged with a graver offence, is deemed to have notice of lesser offence. However, an accused charged for a lesser offence cannot be charged for a more superior offence. See ***Uguru v. State***. The lesser offence must be hinged on and derivable from the one the accused person is standing trial on. That is, the offence charged for must be carrying a higher punishment.

IV. Allocutus

1. **Meaning:** 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 Registrar that calls for Allocutus. However, the court can ask for allocutus.
2. **Failure to Call for Allocutus:** Failure to call for allocutus does not vitiate the proceedings as allocutus if successful, only mitigates the sentence and does not absolve the conviction**.** Failure to call on the convicted person to make Allocutus does not affect the validity of the sentence. So, it cannot be used as a ground of appeal.
3. **Effect of Allocutus:** The effect of an allocutus is to mitigate a pending sentence. It does not have any effect on the verdict of guilt (conviction) already entered against the accused person. Allocutus is a plea in mitigation and cannot absolve the accused from all punishment. See ***Ogbeide v COP***. An Allocutus, no matter how beautiful can only mitigate. It also does not have any effect on a mandatory sentence. However, in passing the mandatory sentence, the court may make a recommendation for prerogative of mercy to the appropriate authority.
4. **Calling Witness to Testify as to Good Character of Convict:** Under the CPCL, the convict can call any witness to testify as to his good character or make statement himself. The prosecution is allowed to call evidence of previous conviction unless such is already before the court – ***Section 197(2) CPCL***.
5. **Non-Cross Examination on Statement of Allocutus:** Statement made by a convict in an allocutus is unsworn and not subject to cross-examination.
6. **Non-Application to Capital Offences:** Allocutus does not apply to capital offences. It must be noted that where the sentence is a mandatory death sentence, an Allocutus would be useless and of no moment.
7. **Guidelines in Drafting Allocutus:** In drafting Allocutus, refer to the convict as your client or call him by his name. You should mention the punishment section and urge the court to give minimum or non-custodial sentence or fine (if applicable), apologise for the crime, remind the court of the dangers of allowing him mix with hardened criminals in the prison.

8. **Pleading below Minimum Punishment:** Also where there is a minimum punishment you cannot use Allocutus to urge court to go below minimum punishment. Read ***Section 197(2) CPCL***.

SENTENCING

INTRODUCTION

I. Meaning of Sentence

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.

II. Modalities of Sentencing

1. **Pronouncement in Open Court & in Presence of Accused:** The sentence of the court must be pronounced in open court - ***Section 198 CPCL, Section 248 CPL*** and must be pronounced in the presence of the accused person – ***Asakitipi v. The State***.
2. **Prescribed Sentence by the Law:** The sentence of the court must be the sentence prescribed for the offence by the law which created it - ***Section 377 CPL***.
3. **Non-Obligation to give Reasons for Sentence:** The court is not under a duty to inform the convicted person of the reason for the sentence of the court - ***Ekpo v. The State*.**
4. **Sentence for Every Count of Offence:** The court must pronounce a sentence for every count of offence for which the accused is convicted - ***Yesufu v. IGP***.
5. **Taking Effect Immediately:** The sentence of the court takes effect immediately. It may in some circumstances be postponed but it is never suspended.
6. **Retirement by after Conviction to Consider Sentence:** Under the CPCL, a court after conviction may retire to consider the sentence, but the court is enjoined to pronounce the sentence in open court at a later date - ***Section 198 CPCL***.
7. **Discharged of Convicted Person on Self-Recognizance to Appear & Receive Sentence at a Later Date:** Under the CPL a convicted person may be discharged upon self-recognisance with or without sureties on the condition that he shall appear and receive the sentence of the court at a future date - ***Section 250 CPL*.**
8. **Suspended Sentence:** Suspended sentence is unknown to our criminal procedure - ***State v. Audu*.**

III. Consecutive and Concurrent Sentences

A. **General Rule:** If more than one sentence of imprisonment is imposed on the different Counts of the Charge, it is deemed to run consecutively if not specifically mentioned to be concurrent. The Court can also order that the term of imprisonment run concurrently or consecutively - ***Section 380 of the CPL, Section 24 of the CPCL and Emone v. COP*.**

B. **Exception (North Only):** However, under ***Section 24 & 312 CPCL*,** multiple terms of imprisonment shall be deemed to run consecutively unless the court orders that they run concurrently.

C. **Limitation of Power of the Magistrate to Order Consecutive Sentences of Imprisonment:** ***Section 380 CPL*** provides that where a magistrate court orders consecutive sentences, term of imprisonment must not exceed 4 years or the limit of the jurisdiction of the magistrate court, whichever is greater.

D. **Concurrent Sentence**: is a sentence imposed which is to be served at the same time as another sentence imposed in the proceedings. The sentences start running at the same time (i.e. serving 2 sentences at the same time).

E. **Consecutive Sentence**: is a sentence imposed which is to be served one after the other. Each sentence begins at the expiration of another. Serving a sentence at the end of another.

III. 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 centres

DISCRETION OF THE COURT IN IMPOSITION OF SENTENCES

I. Circumstances where the Court Has Discretion to Impose Sentences

1. **Minimum Sentence:** the Court has discretion to impose a higher sentence but cannot go below this sentence.
2. **Maximum Sentence:** the Court can impose a lesser sentence but cannot sentence above the prescribed number of years.
3. **Prescribed Sentence:** The prescribed sentence for any offence is the maximum sentence, which the law creating the offence prescribes. However, in imposing sentences, a court has discretion to impose a sentence less than the prescribed punishment or a fine in lieu of a sentence of imprisonment - ***Slap v. AG Federation***.

II. Circumstances Where the Court Lacks Discretion in Imposing Sentences

The discretion of the court to impose a sentence which is less than or different from the prescribed penalty is limited in three instances:

1. **Mandatory Sentences:** The court cannot impose less than a penalty prescribed for an offence. All capital offences are punishable with the death penalty. Death penalty is the mandatory penalty for murder, culpable homicide punishable with death, treason, armed robbery. The death penalty is not permissive but mandatory for capital offences. Therefore, a court does not have the discretion to impose any other penalty upon conviction for a capital offence.
   Similarly, the mandatory penalty for attempted armed robbery is life imprisonment by virtue of ***Section 2(1) Robbery and Firearms (Special Provisions) Act, Balogun v. AG Ogun State***. The penalty for armed robbery under ***Section 402 CC*** is 21 years imprisonment (for other arms) – firearms - death penalty – ***Section 402(2) CC***. Penal Code is life imprisonment – ***Section 298 Penal Code***.
2. **Minimum Penalties:** Where the law, which creates an offence, prescribes a minimum penalty for offenders upon conviction, the Court can impose a higher penalty but cannot impose a penalty less than the minimum. Also, where the minimum penalty is a term of imprisonment, the court cannot impose a fine in lieu of imprisonment - ***Section 23 (5) CPCL, Section 382 (5) CPL, Dada v. Board of Customs & Excise***.
3. **Penalties without Option of a Fine:** Where the law which creates an offence prescribes a penalty without option of a fine, upon conviction, the court does not have the discretion to impose a fine in lieu of the penalty - ***Dada v. Board of Customs & Excise***. However, where a law prescribes a penalty and is silent on the option of fine, the court has the discretion to impose a fine in lieu of the penalty - ***Section 23(1) CPCL, Section 382 (1) CPL*****.**

DEATH SENTENCE

I. Meaning

The death penalty is the prescribed punishment for persons convicted of capital offences and it is mandatory to impose same – ***Section 367(1) & (2) and 368 of the CPL, Section 273 of the CPCL, Section 305 of the ACJL, Kalu v. State, Okoro v. State*****.** Offences such as murder /culpable homicide punishable with death, treason and armed robbery are punishable with the death sentence. Terrorism Act has not prescribed the death penalty for terrorism offences. Edo and Akwa Ibom States have prescribed the death penalty for kidnapping

II. Mode of Execution of Death Sentence

The death sentence shall be by hanging - ***Section 367 CPL, 273 CPCL*****.** However, in respect of armed robbery convicts, the death sentence shall be by firing squad - ***Section 1 (2) (a) (b) Robbery & Firearms (Special Provisions) Act 1985*****.**

III. Dressing of a Judge When Delivering a Death Sentence

When pronouncing a sentence of death, the Judge is robe in red gown and black cap (barret).

IV. Form of Pronouncement of Death Sentence

It is passed using the following words: ***Section 367(2) CPL*** - "The sentence of this Court on you is that you be hanged on the neck until you be dead and may the Lord have mercy on your soul." ***Section 273 CPCL*** - "when a person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead."

V. Effect of Non Compliance

1. **CPL States:** Failure of the Court to comply with the statutory wordings/ procedure for its imposition is not fatal - ***Olowofoyeku v. State*****.**
2. **CPCL States:** Such omission is treated as an error which a Court of Appeal will direct the trial court to rectify - ***Gano v. The State*****.**
3. **ACJA: see** ***Section 402 ACJA, 2015***

VI. Exceptions Where Death Sentence Cannot Be Passed

A. Pregnant Women

1. **General Rule:** Pregnant women convicted of capital offences are to be sentenced to life imprisonment in lieu of death - ***Section 368(2) of the CPL, Section 270 of the CPCL, Section 306(2) of the ACJL and Section 211 of the Child's Rights Act*****.**
2. **Determination of Pregnancy:** The determination of pregnancy may be ordered by the court on its own volition or upon the allegation of the pregnant woman or the Prosecutor - **Section 376 (1) CPL, Section 271 (1) & 300 CPCL.**
3. **Appeal against Finding that a Woman is not Pregnant:** The finding that a woman is not pregnant by the trial court is subject to appeal; the appellate court may set aside the finding, quash the sentence of death and substitute a sentence of life imprisonment.
4. **Rationale for the Rule:** The rationale behind this rule is for the protection of the unborn child.
5. **Non-Institutional Sentence as Alternative to Life Imprisonment:** ***Section 221(2) of the Child Right Act*****,** suggest a non-institutional sentence as an alternative measure to imprisonment instead of life imprisonment and that where institutional sentence is necessary such women should be committed and held or detained at a special mother centre - ***Section 221(3) & (4) Child Right Act*****.**

B. Young Persons

1. **General Rule**: young person who are 14 years and below the age of 17 years (under ***Section 368(3) CPL***) or **18 years** (under ***Section 270, 272, 302(3) CPCL; Section 306 (3) ACJL; Section 2 CYPL/CPL/CPCL***) are not to be sentenced to death but detained at the Governor's pleasure. The young person shall be detained in such a place and under such conditions as the President or Governor may direct**.**

2. **Discharge on Licence by the President/Governor:** The president or Governor may at any time during his detention discharge the young person on licence.

VII. Prerogative of Mercy

A. Confirmation of Execution of Death Sentence by the President/Governor

A death sentence is not to be executed immediately it is passed. A sentence of death shall not be executed unless and until the President, Governor or the Specified appropriate authority has confirmed it. See ***Section 175(2) & 212(2) CFRN***.

B. Procedure

1. **Sending Report to Committee on Prerogative of Mercy to Confirm, Reduced or Pardoned Death Sentence:** The Court must send a signed report to the Committee on Prerogative of mercy in the Ministry of Justice of the Federation/State to decide if it is to execute it or not or that the punishment be reduced or pardoned – ***Section 368(3) CPL; Section 272(2) CPCL*****.**
   Note: An application for prerogative of mercy shall not be made to the Supreme Court - ***Okeke v The State*****.**
2. **Documents Accompanying Report:** The report must be accompanied by:
   (a) A certified true copy of the record of proceedings at the trial and
   (b) The certificate of death sentence - ***Section 371(1) of the CPL; Section 294(1) of the CPCL*****.**
3. **Consideration of Report by Minister/Commissioner:** The Minister or Commissioner (AG), as the case may be, shall consider the report made by the trial court in respect of the convicted person.
4. **Referring Report to Committee Responsible for Exercising Prerogative of Mercy:** The report is referred to the committee responsible for exercising prerogative of mercy.
5. **Recommendation by the AG to the President/Governor for Reduction or Pardon:** The Attorney-General may recommend to the Governor or President after considering the report of the Advisory Council that –
   (a) The sentence should be commuted to imprisonment for life; or
   (b) The sentence should be commuted to any specific period; or
   (c) The convicted person should be otherwise pardoned or reprieved.
6. **Confirmation of the Death Sentence by the President/Governor:** The death sentence will now be subject to confirmation by the president or Governor.
7. **Effect of not be Pardoned or Reprieved:** Where the convicted person is not pardoned or reprieved, the death sentence pronounced upon the convict must be carried into effect – ***Section 371F of the CPL; Section 298 of the CPCL*****.**

C. Advisory Councils on Prerogative of Mercy/National Council of State

1. **Concept:** There are Advisory Councils/committees on the Prerogative of Mercy in each of the States of the federation. They are part of the Ministry of justice. In respect of federal offences, the National Council of States is the body responsible for exercising the Prerogative of Mercy.
2. **Role:** The powers of the President are to be exercised by him after consultation with the Council of State, whilst the Governor's power shall be exercised by him after consultation with the Advisory Council of the State on Prerogative of Mercy.

IMPRISONMENT

I. General Principles

1. Imprisonment may be with hard labour or not. See ***Section 377 of the CPL, Section 316 of the ACJL***.

2. Where the court imposes imprisonment but is **silent on** whether it is with or without hard labour, it is **deemed to be with hard labour.**
3. The trial court may still sentence a convicted person who is already serving a term of imprisonment to another term of imprisonment.
4. The court may order that the sentence shall commence at the expiration of the previous term.

II. Jurisdiction of the High Courts to Impose Terms of Imprisonment

The High Courts have unlimited jurisdiction to punish. They are only limited by the term of imprisonment prescribed by the law, which creates an offence.

III. Jurisdiction of the Magistrate Court to Impose Terms of Imprisonment

1. **General Rule:** Magistrates' courts are limited to the punishment they can impose by the magistrates courts Law of the various states.
2. **South:** A Magistrate's Court in the South cannot exceed the limit of its jurisdiction to impose punishment when it passes consecutive sentences.
3. **North:** In the North, a Magistrate's court can exceed its jurisdiction to impose punishment but not by more than twice the limit when it passes consecutive sentences.

IV. When a Sentence of Imprisonment Takes Effect

A sentence of imprisonment takes effect **from and includes the whole day of the date** on which it was pronounced - Section 281 CPL.

V. Imposition of Fine in Lieu of Imprisonment

Usually, maximum punishment is prescribed for terms of imprisonment but the Judge need not impose it all as it can be substituted with fine. Once there is power to impose a term of imprisonment, the Judge can impose fine in lieu of imprisonment – ***Section 382(1) of the CPL, Section 320 of the ACJL and Dada v. Customs & Excise Board*.**

FINES

A. Meaning: This is a monetary payment as punishment - ***Section 389 of the CPL, Section 74 of the Penal Code and Section 322 of the ACJL*.**

B. Failure to Pay Fine: Where the convict is unable to pay the fine, he may be ordered to be imprisoned – ***Section 390(1) CPL & Section 75 Penal Code*.**

C. Consideration of Financial Means of Offender: Before the Court will impose this, the financial means of the offender when imposing fines is considered – ***Section 391 CPL; Goke v. IGP*.**

D. Scale of Fines to Terms of Imprisonment

1. Both the High Courts and the Magistrates Courts have the discretion to order a fine where the law creating the offence prescribes only a term of imprisonment.
2. Where only the payment of a specific amount as a fine is prescribed, the courts upon conviction must order the payment of that fine.

E. Recovery of Fine by Distress: this is provided for under ***Section 398 CPL; Section 304 CPCL*** viz -

1. In levying distress, the court may order the sale of movable or immovable property belonging to the offender as well as attachment of any debts due to the offender.
2. Where the proceeds of the distress fails to cover the full value of the fine, the convicted person shall be liable to a term of imprisonment for the balance of the fine.
3. He is still liable to pay the fine even after the expiration of his term of imprisonment for the default.
4. Even after the death of the convicted person, his estate is still liable to pay the fine - ***Section 75 Penal Code***

CANING

A. Concept: It can be imposed along with or in lieu of imprisonment. This has been abolished in Lagos State. In the South East, it is retained only for juvenile offenders.

B. Execution of a Sentence of Caning

1. No sentence of caning shall be executed by instalments. The caning must commence and end at the same execution.
2. It shall be done with no more than a light rod and not exceed 12 strokes – ***Section 386 (2) CPL & Section 308 (5) CPCL*****.**
3. This sentence of caning shall be carried out in the presence of an Administrative Officer or person prescribed by the Secretary to the Local Government – ***Section 388 (1) CPL; Section 308 (2) CPCL*****.**
4. The execution of a sentence of caning is subject to the health condition of the offender.

C. Stay of Execution of Conviction on Caning Due to Appeal: Where there is an appeal against conviction, the execution of the penalty of canning shall be stayed pending the determination of the appeal. An appeal shall be filed within 15 days from the date of sentence.

D. Persons who Shall not be Subject to Caning

1. The sentence shall not be passed on a woman – ***Section 385 CPL & Section 308 (4) CPCL*****.**
2. It shall not be passed on a man 45 years and above – ***Section 385 CPL & Section 308 (4) (c) CPCL*****.** But note an amendment in some CPCL states that sentence of caning cannot be passed for men above 40 years.
3. It shall not be passed on a man under sentence of death – ***Section 308 (4) (b) CPCL*****.**
4. It is to be administered with a light rod or cane and not more than 12 strokes to be given.

HADDI LASHING

A. Concept: This is passed only on Muslim offenders in the North for offences like adultery, defamation, injurious falsehood and drinking of alcohol.

B. Aim: The aim of the punishment is to inflict disgrace/shame and not to cause physical pain or injury – ***Section 307 of the CPCL, Section 68(2) of the Penal Code*** and the ***Criminal Procedure (Haddi Lashing) Order in Council 1960*****.**

C. Application to Women: Women are not spared.

D. Exception: the health of the person and season of the year

E. Difference between the Punishment of Canning and Haddi Lashing

1. Caning is provided for both in the North and South, that is, it is contained in the CPL and CPCL except as abolished in Lagos while Haddi Lashing is contained only in the CPCL and applicable only in the North.
2. Canning is enforceable against all classes of persons irrespective of their religion while Haddi Lashing is enforceable only against Muslims in the North - ***Section 307 (2) CPCL***.
3. Canning is not prescribed for any specific offence but the court may consider the prevalence of the crime within its jurisdiction or the antecedents of the offender (***Section 387 CPL***) while Haddi Lashing is prescribed for specific offences in the Penal Code, for example, adultery, defamation or injurious falsehood and drinking alcohol - ***Section 307 CPCL***.
4. Canning is enforceable only against persons who are liable to imprisonment for a period of 6 months or more. On the other hand, there is no such provision for Haddi Lashing.
5. Haddi Lashing unlike canning is meant to inflict disgrace, not physical pain nor injury.

F. Procedure for Carrying Out Haddi-Lashing

1. The punishment must be administered in an endorsed place which is accessible to the public.
2. It must be administered with a soft single thronged leather whip
3. The person administering it must be of moderate physique
4. The person administering it must hold the whip with the 3rd, 4th and 5th fingers of the right hand
5. The person must not raise the striking arm above his shoulder
6. The punishment must not be heavy and physical injury must be avoided.
7. The health of the accused must be put into consideration and haddi-lashing must be avoided during the period of harmattan.

MISCELLANOUS PUNISHMENTS

1. **Deportation**: only Aliens can be deported. See ***Section 402-403 of the CPL and Section 337 of the ACJL; Shuagba v. Min of Internal Affairs.***
2. **Compensation and Restitution of Stolen Property:** to the individual whose property was stolen. See ***Section 270 of the CPL, Section 365 of the CPCL***.
3. **Binding Over:** to be of good behaviour - ***Section 300 & 309 of the CPL and Section 24 of the CPCL*****.**
4. **Police Supervision**: order where the convict is ordered to report at a designated Police Station regularly. See ***Section 3 of the Prevention of Crime Act 1958*****.**
5. **Probation Order Releasing a Convict:** e.g. a juvenile under supervision of a Probation officer - ***Section 436 of the CPL*****.**
6. **Order to pay the cost of the Prosecution** (Private Prosecutors***). Section 255 of the CPL and Section 365 of the CPCL***.
7. **Forfeiture:** applicable in cases involving property and official corruption – forfeiture is to the state - ***Section 68(1) (b) Penal Code*****.**
8. **Conditional Discharge** e.g. discharged on condition that he be of good behaviour for a certain period of time – ***Section 433 CPL*****.**
9. **Corporal Punishment**
10. **Detention in a Reformatory/Rehabilitation Centre** (applies to juveniles)
11. **Community Service** – only in ACJL e.g. sweeping a particular public building for a period of time.

RESTORATIVE JUSTICE

A. Concept: Restorative justice of Reconciliation, Restitution, Reintegration and Restoration is encouraged rather than retributive justice as contained mainly in Nigeria's Laws. The criminal justice system being in practice in Nigeria is retributive in that the whole process is towards bringing the accused to face the full wrath of the law. The offender and the victim are not considered, the ultimate goal is for the offender to be punished if found guilty. Restorative justice is the direct opposite of retributive system. It is more concerned about the offender understanding the consequences of his act and making him a better person for the community. Thus, it has the following components.

B. Components of Restorative Justice

1. **Reconciliation:** restorative justice is reconciliatory in nature in that the offender, victim and the community are reconciled together. In this like, the victim is given attention.
2. **Restitution:** this is a vital component as the victim is compensated for the loss suffered by him. To an extent, the aim is to restore the victim back to his position before the crime as much as it is practicable.

3. **Reintegration:** restorative justice involves the offender being reintegrated and accepted back to the society. For instance, community service under the ACJL being a type of sentence. The offender in this like is sentenced to work in certain areas of the community.
4. **Restoration:** this is achieved when the foregoing had successfully been done. Thus the community is assured that the offence would not be repeated again. Unlike retributive justice, a lot of parties are involved. They are: Offender, Victim, Community and the State.

(Week 18 & 19)

APPEALS

INTRODUCTION

I. Meaning & Nature of Appeal

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***.[240] 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***.[241] 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.

II. Parties to an Appeal

The right of appeal is exercisable only by either the PROSECUTOR or the ACCUSED. A PARTY INTERESTED or the VICTIM does not have the right to appeal in Criminal cases. See ***Section 243(a) of the CFRN 1999 (as amended)*** and ***Akinbiyi v. Adelabu***.

The party who files the appeal is the APPELLANT (including the counsel representing the appellant), while the person against whom the appeal is filed is called the RESPONDENT. If the respondent equally wants to challenge the decision of the trial or lower court, he is required to file a Cross-Appeal in which case he would be called a CROSS-APPELLANT.

III. Types of Appeals

1. **Appeals against Final Decision:** an appeal against the final decision of a court is an appeal against the judgment of the court.
2. **Interlocutory Appeals:** An appeal against an interim order of a court is an interlocutory appeal. The court must rule on such applications or objections.

IV. Condition Precedent for Bringing Appeals in Criminal Trials

1. Before a person can file an appeal, he must have a Right of Appeal.
2. An appeal may be as of right or only with the leave of the court - ***Sections 241 & 242 CFRN***.
3. Right of appeal must expressly be stated in a statute or the constitution - ***The State v. Adio***.
4. No court has an inherent jurisdiction to entertain an appeal.
5. It can only hear an appeal if a statute confers such jurisdiction on it - ***Nunku v. IGP***.

V. Conditions Precedent for Filing of Appeals in Criminal Trials

1. Filing of Notice of appeal,
2. Payment of required fees,
3. Provision of recognizance and security for diligent prosecution of the appeal

VI. Appeal as of Right or with Leave

An appeal may be as of right or with leave of the court. When it is said that an appeal lies to another court as of right, it means no more than that the appellant requires nobody's nod to approach the appellate court. That is to say, as soon as the judgment or ruling or order of court about which he feels aggrieved is delivered, he may just approach the appellate court. On the other hand, when it is said that appeal lies with leave, it means that even though the appellant feels aggrieved by the judgment (whether the judgment be in his favour or not), he cannot

[240] (2013) 7 NWLR (Pt. 1353) 207 at 254
[241] (1995) 8 NWLR (Pt. 413) 292

approach the appellate court by way of appeal unless he has obtained the permission either of the court from which he is appealing or from the court to which he is appealing.

VI. Determinants of Proper Procedure to Make Appeal

The **Trial Court** from where the appeal arises and the **nature of the appeal** will determine the proper procedure to make the appeal competent.

OTHER INTERLOCUTORY PROCEEDINGS SIMILAR TO APPEALS

I. Case Stated

A. Concept

This is a procedure whereby in a criminal proceeding, a question of law which depends on the interpretation or application of the Constitution is referred to a higher court for an opinion. ***Section 295 CFRN 1999 as amended***.

B. When can a Case be stated?

1. For cases pending before the State High Courts, Federal High Courts and the Court of Appeal, a case can only be stated in the course of criminal proceedings in that case.
2. For cases tried by Magistrates' Courts, the court may state a case any time before judgment or after judgment only upon the application of the Attorney–General.
3. In respect of a case in which no public officer is a party, within 6 months from the date the judgment was delivered.

C. Who Can Initiate "Case Stated"

A case may be stated at the instance of the following:

1. The Attorney–General
2. The accused persons and
3. The Court on its own volition - ***Section 295 CFRN; R v. Eze***.

D. Duty of the Court When a Case Stated Application is made

When the application for case stated is made by either of the parties, the trial court is under a duty to state a case for the superior court. It is immaterial that the trial court is of the opinion that there is no substantial question of law or that it had earlier pronounced its decision on the question of law - ***Section 295 (1) (2) & (3) CFRN***; ***African Newspapers of Nigeria Ltd v. FRN***.

E. Conditions Precedent for Case Stated

The conditions precedents for a case to be stated are laid down by the Supreme Court in ***FRN v. Ifegwu*** as follows:

1. The question must be as to the interpretation or application of the constitution.
2. The question must arise in the proceedings in connection with an issue before the court making the reference.
3. The matter for reference must involve a substantial question of law.
4. The court making the reference of the higher court is not required to and must not give an opinion of law on the questions.

F. Contents of Case Stated

A case stated must contain the following information:

1. The charge, summons, information or complaint.
2. The facts found by the Magistrate/Judge to be admitted or proved.
3. Any submission of law made by or on behalf of the complainant during the trial or inquiry.
4. Any submission of law made by or on behalf of the accused during the trial or inquiry.
5. The finding of an in case of conviction, the sentence imposed by the court.
6. Any question of law which the Magistrate desires to be submitted for the opinion of the High Court and
7. Any question of law which the Attorney General requires to be submitted for the opinion of the High Court.

II. Prerogative Writs

These are writs issued by the Courts, in the course of proceeding when there is a direct interference with the rights or property of an accused person. They are not issued as of right. The accused person must show that his personal liberty or property rights have been violated by the proceedings or order of a court. This application may be made in the course of proceedings or after the judgment of the court - ***State v. Falade & Ors*****.**

A. Habeas Corpus

Habeas Corpus means "you have the body". The purpose of this writ is to order the release from custody or to procure the attendance to court of a person who is unlawfully detained. It is issued to the head of the prison or head of the detention facility where the accused is detained to come to court and show course why the accused should not be released from custody. Where a person is in lawful custody such as a person detained on the orders of a competent court or upon sentence of imprisonment, the writ of habeas corpus will not avail him - ***Gwaram v. Superintendent of Prisons***.

B. Prohibition

This is a writ of common law origin. It is used by the High Court in its supervisory role over magistrates' courts and other tribunals. By this writ, a superior court prohibits a lower court from conducting proceedings which are not within its jurisdiction. Thus, this order cannot be obtained from a court of coordinate jurisdiction - ***The State v. Chief Magistrate Aboh – Mbaise Exparte Onukwe***.

C. Mandamus

This is the opposite of writ of prohibition. It was originally used to check abuses of judicial powers. It was usually issued by a Superior Court to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so - ***Will v. United States***. An order of mandamus may now be issued to compel a court, a judicial or administrative officer to perform an act, which is its or their public, official or ministerial duty. In ***Fawehinmi v. Akilu & Anor***, it was held that the order of mandamus could be issued to compel the AG Lagos to issue a fiat to a private prosecutor to prosecute the accused persons.

D. Certiorari

A writ from a common law origin used also by the High Court in the exercise of its supervisory function over magistrates' courts. By this writ, a High Court may quash the proceedings order of a lower court where the lower court has acted without jurisdiction or there is irregularity in its proceedings.

The writ of certiorari cannot be issued to question or quash a legislative or executive act because they are not acts which are required to be done judicially. In ***The State v. Falade & Ors***, the High Court issued a writ of certiorari to quash the conviction of the accused persons because the trial magistrate convicted them without hearing their defence.

CONSTITUTION OF COURTS OF APPEAL

1. **High Court:** When hearing appeals from Magistrates' courts, the High Court shall be properly constituted by at least one judge. However, in the North, two judges usually constitute the High Court when the court hears appeals on criminal matters - ***Section 273 CFRN 1999*****.**
2. **Court of Appeal:** When hearing appeals from the State High Court or Fed. High Court the court of Appeal shall be constituted by not less than 3 Justice of the Court of Appeal - ***Section 247 CFRN 1999***.
3. **Supreme Court:** On appeals from Court of Appeal to the Supreme Court not less than 5 Justices of the Supreme Court properly constitute the Court - ***Section 234 CFRN*****. Note-** There is no right of appeal against a decision of the Supreme Court.

APPEALS FROM THE MAGISTRATE COURTS TO THE HIGH COURTS

I. Introduction

The power of the High Court to entertain appeals from the decision of the Magistrates' Court or other inferior courts can be seen to be recognized by Section 272(2) CFRN 1999 which provides that the reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction. See also, ***Section 279(1) - 282 CPCL; Section 28 High Court Laws of Lagos State***.

II. Procedure

1. **Filing of Notice of Appeal:** A party willing to appeal against the judgment of a Magistrates' court must file a notice of appeal.
2. **Giving of Notice to Registrar of the Magistrate Court:** The Notice of appeal must be given to the Registrar of the Magistrates' Court within 30 days from the date of the decision appealed against.
3. **Leave of the Magistrate Court to File Notice out of Time:** Leave of the Magistrates' court is required to file the notice after the lapse of 30 days.
4. **Preparation & Forwarding Record of Proceedings to the Registrar of the High Court:** After the conditions of appeal have been satisfied the Registrar of the Magistrates' Court shall prepare and forward the Record of proceedings and other documents to the Registrar of the High Court. However, in Lagos, the Registrar is to only to accept appeal processes for filing; he does not have the role of drafting or recording notice of appeal for an appellant.
5. **Service of Hearing Notices on Parties:** The registrar of the High Court shall serve hearing notices on all parties to the appeal.
6. **Hearing of Appeal:** At the hearing, Counsel for the appellant will argue only the grounds stated in his Notice of Appeal after which the Counsel for the Respondent may reply only on grounds argued by the appellant. After Respondent reply, the Appellant may respond to any points made in the Respondent's Reply.
7. **Dismissing Appeal for Lack of Sufficient Ground:** where the Court is of the view that there is no sufficient ground to interfere with the decision of the lower Court, it will simply dismiss the appeal without calling for the Respondent's reply.

III. Notice of Appeal

A. Form

1. **North:** The Notice of appeal must be on the prescribed Form and signed by the appellant or his Counsel. In all superior courts of records with appellate jurisdiction, notice of appeal in Criminal matters is usually in writing. In cases of appeals from the inferior, though there is allowance for oral notice of appeal to be given, the oral notice must still be reduced into writing before the appeal is heard – ***Section 280(1) CPCL***. However, where an oral notice is given in the presence of the other party, a written notice will no longer be required as the court will record the notice – ***Section 280(2) CPCL***.
2. **Lagos, South & FCT:** there is no provision for oral notice of appeal either in the presence of the respondent or in his absence under the ACJL, ACJA and CPL.

B. When Notice of Appeal is Deemed Filed

An Appellant in custody can give his Notice of Appeal to the officer in charge of the Prison and the day he did so is deemed the date of filing - ***Ewelikwu v. State***.

C. Contents of a Notice of Appeal

In Lagos State, the information required in the Form 1 are as follows:

1. District of the Magistrate;
2. The Cause Number;

3. Title or Parties;
4. The Registrar of the Appellate Court (Address);
5. Date of giving the Notice;
6. The offence of which the accused was convicted;
7. Date of conviction or order;
8. Sentence;
9. Date of Sentence;
10. Prison where the Appellant is;
11. Appellant's address for service in Lagos State;
12. Counsel representing the Appellant if any and his address for service;
13. Grounds of appeal; and
14. Signature or Mark of the Appellant. See ***Order 3 (Part 1) R.2 HCL Appeal Rules 1994*.**

IV. Time Limit within Which an Appeal Can Be Filed

1. **Final Judgments:** 30 days from the date of delivery of the final judgment.
2. **Interlocutory Decisions:** 14 days from the date of the delivery of the interlocutory decision.
3. **Sentence of Canning:** 15 days on a sentence of canning – ***Section 281 CPCL, Section 68 Magistrate Court Law of Lagos 2009***.
4. **Appeal Out of Time:** where the appeal is to be lodged out of the prescribe 30 days period, the appellant is to seek leave of court to appeal out of time. The application is made by Motion on Notice supported by an affidavit exhibiting the proposed notice of appeal and grounds of appeal. The affidavit must also state the reasons for failure to appeal within time.

V. Grounds of Appeal

A. Concept

A ground of appeal is an error of law or of fact alleged by an appellant as the defect in the decision appealed against upon which reliance has been placed to set aside the decision – ***Asogwa v. PDP***. A ground of appeal derives from the decision of the court appealed against. Where a ground is not derived from the decision of the court from which the appeal emanates, such a ground is incompetent – ***Asogwa v. PDP***.

B. Ground a Prosecutor can Appeal as of Right

A Prosecutor may appeal as of right on the ground that:

1. The acquittal or discharge of the accused is erroneous in Law or
2. The proceedings or any part thereof is in excess of the jurisdiction of the Magistrate - ***Section 67 MCL Lagos 2009; Section 279(2) CPCL***.
3. In Lagos, a Prosecutor may appeal against a Sentence that is below the minimum term prescribed by Law or failure to make an order prescribed by Law.

C. Grounds an Accused can Appeal with Leave

Under the ACJA and HCL (Appeal) Rules, the accused may appeal on the following grounds:

1. That the lower Court had no jurisdiction in the case;
2. That the lower Court exceeded its jurisdiction;
3. That the decision had been obtained by fraud;
4. That the case has been heard or tried and decided by or forms part of the subject of a hearing or trial pending before a competent Court; or
5. That admissible evidence has been rejected or inadmissible evidence has been admitted and that there is no sufficient evidence to sustain the conviction after rejecting the inadmissible evidence; or
6. That the decision is unreasonable and cannot be supported having regard to the evidence; or

7. That the decision is erroneous on points of Law; or
8. That other specific illegalities that substantially affect the merit of the case have been committed in the course of the proceedings; or
9. That the sentence passed on conviction is excessive. See ***Section 282(2) CPCL; Order 2, (Part 1) Rule 9 HCL (Appeal) Rules; Section 485(9) ACJA***.

In Lagos, the following additional grounds are present:

1. That the Magistrate was personally interested in the case; or
2. That the Magistrate acted corruptly or maliciously in the case – ***Order 2 Part 1, Rule 9(1) HCL (Appeal) Rules***.

D. Additional Grounds of Appeal

An appellant may apply for leave to file additional ground of appeal. It may happen that at the time the appellant files his appeal, the record of proceedings (record of appeal) is not ready and may not be ready within the time limited for appeal. Thus, he may have to file his grounds of appeal (original grounds of appeal) based on the notes he took during the trial and as much of the judgment as he can remember. This may warrant to filing additional grounds of appeal with leave of court.

It is usual for the appellant to include in the notice of appeal that additional grounds of appeal shall be filed upon the receipt of the record of proceedings. However, failure to state so shall not affect the competence of the appeal or the additional grounds – ***Esoh v. IGP***.[242]

E. Amendment of Defective Ground of Appeal

An appellant may apply for leave to amend defective grounds of appeal - ***Esoh v. Police; Okonkwo v. IGP*.**

F. Omnibus Ground of Appeal

The omnibus ground of appeal couched as "The decision of the trial judge is unreasonable and cannot be supported having regard to the evidence" is not a valid ground of appeal in criminal trials – ***Enitan v. State*.**

VI. Defendant Appealing after being convicted on His Plea of Guilty

A. General Rule

A convict who pleaded guilty to the offence can still appeal against his conviction especially where the procedure of the Prosecution calling expert evidence in prove of the offence as required by Law was not complied with - ***Essien v. R; Stevenson v. Police***.

Even where an accused has pleaded guilty, the law places burden on the prosecution to present all the facts constituting the offence charged before the court and making the accused to admit the facts as presented. Where the prosecution fails to do so, the judge is not expected to convict. Where the court convicts an accused without the prosecution complying with the requirement of presenting the facts, the failure would entitle the accused to appeal against his conviction in the circumstance.

B. Conditions

In ***Essien v R***,[243] it was held that an appeal court can only entertain an appeal on a conviction based on a plea of guilty if it appears to the court:

1. That the accused did not appreciate the nature of the charge and could not have intended to admit it; or
2. That upon the admitted facts, he could not have been convicted of the offence charged.

VII. Admissibility of Additional Evidence on Appeal

A. General Rule

Where the court considers it necessary or expedient in the interest of justice that additional evidence be adduced, it may either order such evidence to be adduced before the High Court

[242] (1956) 3 FSC 37
[243] 13 WACA 6

or refer the case back to the Magistrates' Court to take such evidence and adjudicate afresh in the light of the fresh evidence or report specific findings of facts for the information of the court. In such instance, the case shall be dealt with as far as practicable, as if it were being heard in the first instance – ***Order 45(b) HCL (Appeal) Rules; Oladipupo v The State***.

B. Reasons for Inadmissibility of New Evidence on Appeal

Generally, new evidence is not admissible on appeal because of the following reasons:

1. To put an end to litigation
2. A successful party should not be deprived of the benefits unless on material grounds;
3. A party who obtained judgment should not face a new case because of the appellant's failure to diligently prosecute the case - ***Esangbedo v. State***.

C. Conditions/Exceptions for the Admission of Additional Evidence on Appeal

1. If it is in the interest of justice
2. The evidence was not available at the trial or could not have been adduced at trial - ***Ariran v. Adepoju***.
3. The evidence sought to be adduced on appeal must be apparently credible though not incontrovertible - ***Ariola & Ors v. COP*****.**
4. Exceptional circumstances arise which will not lead to the rehearing of the case.

VIII. Security to Prosecute Appeal

An accused who has appealed against the decision of a court may be required to enter into a bond with or without sureties to prosecute the appeal with diligence. In some cases, he may be ordered to deposit a sum of money in court in lieu of sureties – ***Order 2 Rule 5 LHC (Appeal) Rules*****;** ***Section 283(1) CPCL***. The condition for the bond shall be for the due prosecution of the appeal and for abiding the result thereof, including all costs of the appeal - ***Section 283(2) CPCL***.

IX. Possible Orders the State High Court will make upon Hearing an Appeal.

A. Appeal against Sentence Only

Where appeal is against only the sentence imposed by the Magistrates' Court, the High Court in its appellate jurisdiction may:

1. Affirm the Sentence
2. Substitute any other sentence which may be more or less severe than the former sentence or different in nature - ***Section 39 (b) High Court Law, Lagos, 2004***.

B. Appeal against Conviction or Conviction and Sentence

The Court may:

1. Affirm the conviction or conviction and sentence
2. Quash the conviction or conviction and sentence in which case the court may either acquit or discharge the convicted person or order a retrial by the same Court or another Court of competent jurisdiction.
3. Alter the findings and maintain the sentence or with or without altering the finding, reduce or increase the sentence.
4. Alter the nature of the sentence with or without altering the finding and with or without such reduction or increase.
5. Annul the conviction and substitute a special finding to the effect that the appellant did act or made the omission charged but was insane at the time with the attendant consequences under Section 230 CPL.
6. On appeal against sentence only, affirm the sentence or substitute any other sentence, whether more or less severe and whether of the same nature or not. Note that in case of an increase, the sentence shall not be above the maximum the Magistrate can impose - ***Nworie v COP, Nwobu & Anor v COP***.

C. Appeal against an Order of Acquittal or Discharge

The High Court may:

1. Maintain the acquittal or discharge
2. If the appeal is from an order of discharge or acquittal, affirm the order or if the court is of the opinion that the order should not have been made, remit the case to the lower court for rehearing with specific directives.
3. Give such other directions as the Court thinks necessary - ***Section 39 (c) High Court Law, Lagos.***

D. Appeal that a Magistrate's Court failed to impose a Minimum Sentence or Make an Order Prescribed by a Written Law

The High Court may:

1. Affirm the sentence or order made by the Magistrate Court
2. Substitute, impose or make a sentence or order prescribed by the Written Law - ***Section 39 (d) High Court Law, Lagos.***

E. Appeal from any other Order made by Magistrate's Court

The High Court may;

1. Maintain the order made by the Magistrate's Court
2. Change the order made by the Magistrate's Court
3. Reverse the order made by the Magistrate's Court - ***Section 39 (e) High Court Law, Lagos.***

X. Constitution of the High Court to Hear Appeals

The minimum number required for the High Court when entertaining appeals from the Magistrate Court is at least one Judge – ***Section 273 CFRN 1999***. However, no maximum number of judges is required. Thus, High Courts in the CPCL states, when hearing appeals from the Magistrates' Court or other inferior courts is usually constituted by 2 Judges of the High Court – ***Section 63 High Court Law of Northern Nigeria, 1963***.

In Lagos state, ***Section 29 of the High Court Law Lagos*** provides that the High Court shall be properly constituted by one Judge, except that the Chief Judge may decide to direct that the appeal be heard by 3 judges. Such direction may be given before the hearing of the appeal or at any time before judgment is delivered. Where the court is constituted by 3 judges, the judgment or order of any two of them shall be deemed the judgment or order of the court. If no two such judges agree as to the judgement or order to be made, then the judgment or order appealed from shall be the judgment or order of the court.

XI. Abatement and Abandonment of Appeal

A. Abatement of Appeal

Abatement of appeal arises outside the will of the parties to the appeal. It arises out of circumstances beyond the control of either party, for example death of appellant. Where an appellant was convicted and he appeals and the appellant dies before the hearing of the appeal, the appeal abates – ***Ajilore v. The State***.[244] However, only the accused/appellant is held in contemplation here since the prosecution cannot die. It would appear also that where the accused was tried and acquitted and the prosecution appeals against the acquittal, if the respondent dies before the determination of the appeal, the appeal would also abate since the appeal court cannot make a personal order against the dead man.

In some cases, a criminal appeal may survive the appellant or the respondent as the case may be. For instance, where the judgment of the court can be satisfied by or executed against the estate of the dead appellant or respondent as the case may be, the appeal would not abate. A good example is where the appeal is against the sentence of fine – ***Section 291 CPCL; Section 75 Magistrates' Courts Law; R v. Rowe***.[245]

[244] (1993) 4 NWLR (Pt. 289) 572

[245] (1995) 39 CAR

B. Abandonment of Appeal

Unlike abatement of appeal that arises outside the will of the parties to the appeal, abandonment of appeal is signified by a notice of abandonment. The notice is usually signed by the party giving the notice or his legal practitioner. The notice shall be given to the Registrar of the Magistrates' Court at least two days before the date fixed for hearing of the appeal. The Registrar of the Court would notify the Registrar of the High Court of the abandonment of the appeal – ***Order 2 Rule 13 High Court Lagos (Appeal) Rules***.

APPEALS FROM THE HIGH COURT/FEDERAL HIGH COURT TO THE COURT OF APPEAL

I. Introduction

A. Concept

The procedure to be followed will be determined depending on whether the appeal is as of right or needs the leave of Court or it is a double appeal or an interlocutory appeal – ***Section 240 CFRN***.

B. Circumstances When Appeal is of Right

Instances where the right to appeal is as of right from a decision of the High Court/Federal High Court are as follows:

1. Final decisions of the High Court/ Federal High Court sitting at first instance
2. Where the grounds of appeal involves questions of Law alone
3. Decision on questions as to the interpretation of the Constitution
4. Decisions on questions as to whether any of the provisions of Chapter IV of the
5. Constitution has been contravened
6. Decisions in which the High Court/Federal High Court imposed a sentence of death
7. Where the liberty of a person or custody of an infant is concerned - See ***Section 241(1) of the 1999 Constitution as amended***.

C. Circumstances When an Appeal Must Be With Leave of Court

Appeals which must be with the leave of Court are as follows:

1. Appeals from a decision made with the consent of the parties
2. Appeals from decisions as to cost only – ***Section 241(2) (c) of the 1999 Constitution as amended***.
3. Double Appeal (which is an appeal coming from the Magistrate Court to the High Court and a further appeal to the Court of Appeal, not being an appeal against the decision of the High Court/Federal High Court sitting on first instance). This must be with the leave of Court - Section 241(1) (a) of the 1999 Constitution as amended.
4. An interlocutory decision appealed against on grounds of facts or mixed Law and facts.

Note: where a person requires leave to appeal, the application shall be made first to the High Court, except there are special circumstances (e.g. where the appellant is out of time to file appeal; only the Court of Appeal can grant extension of time to appeal) making it impossible to apply to the High Court – ***Order 6 Rule 4 CAR, 2016***. Where the application to the High Court is refused, then the appellant may apply to the Court of Appeal – ***Order 6 Rule 3 CAR, 2016***.

II. Procedure of Appeal to the Court of Appeal

1. **Filing of Notice of Appeal:** The appellant must file his notice of appeal in the prescribed **Criminal Form 1.** See ***2nd Schedule to the Court of Appeal Rules 2007; Order 16 Rule 3(1) CAR***.
2. **Time Limit for Filing Notice or Application for Leave:** The Notice or application for leave to appeal must be filed in the High Court Registry within 90 days of the decision appealed against. It is filed in the High Court Registry irrespective of the fact that it is headed in the Court of Appeal.

3. **Further Period for Application for Leave:** Where an appeal is with leave, the appellant is allowed a further period of 14 days from the date of the determination of his application for leave to bring another application for leave to the Court of Appeal (Criminal Form 2) - ***Kema v. The State***. The grant of the application is deemed to be the notice of appeal - ***Order 17 Rule 6 Court of Appeal Rules 2011*.**
4. **Satisfying other Conditions for Prosecution of Appeal and Payment of Filing Fees:** The Appellant is to satisfy other conditions for the prosecution of the appeal and pay filling fees except for an appellant convicted of a capital offence or appellants represented by the Legal Aid Council - ***Order 17 Rule 8 of the Court of Appeal Rules 2011***.
5. **Signing & Giving of Notice of Appeal to the Registrar:** The notice of appeal must be signed by the appellant or his counsel and shall be given to the Registrar of the FHC or State High Court which pronounced the decision.
6. **Compiling Record of Appeal & Forwarding Same to the Registrar of the Court of Appeal:** The Registrar of the High Court shall compile the record of appeal within 60 days of filing of the notice and forward same to the registrar of the Court of Appeal.
7. **Service of Notice of Appeal on Parties:** Parties to the proceedings are also served with the Record of Appeal.
8. **Filing of Briefs of Argument by Parties:** Upon receipt of the Record, parties are required to file their respective Briefs of argument beginning with the Appellant.
9. **Service of Hearing Notice on the Parties:** After the exchange of Briefs or on the expiration of the period allowed for the filing of Briefs, hearing notice will be served on the parties by the registrar of the Court of Appeal.
10. **Hearing (Oral Arguments):** On the hearing date, parties may present oral arguments to emphasise and clarify the issues raised in their Briefs - ***Order 17 Rule 9(1) CAR; Kim v. State*.** A party who, having been served with a hearing notice, fails to present an oral argument will be deemed to have duly argued his appeal – ***Order 17 Rule 9(4) CAR*. Forty** minutes is allowed on each side for the presentation of oral argument unless it is otherwise directed – ***Order 17 Rule 9(3) CAR*.**

III. Persons Who can Appeal

Unlike in civil cases where a party interested may appeal with leave of the court, in criminal cases, only the prosecutor and the accused have the right of appeal – ***Section 243 CFRN 1999***.

IV. Notice of Appeal

A. Concept

Notice of appeal is the process that initiates the appeal – ***Order 17 Rule 3(1) CAR 2016***. Where the notice of appeal is defective, the appeal is a non-starter and any proceedings taken on such defective notice will be null and void – ***Nigerian Army v Samuel***.[246] The notice shall be filed at the Registry of the High Court even though the notice is headed in the Court of Appeal.

Although the Notice of Appeal is the process that initiates the appeal, however where leave of court is required before the appeal is filed, then, the appeal process commences with the application for leave. Where on the other hand, the appellant is out of time to appeal, then, the appeal process commences with the application for extension of time within which such notice shall be given – ***Order 17 Rule 3 CAR 2016***.

B. Contents of Notice of Appeal

1. Heading of the court
2. Names of the parties
3. Date of decision
4. Whether the whole or part of the decision is appealed against
5. Grounds of appeal

[246] (2013) 14 NWLR (Pt. 1375)

6. Persons directly affected by the appeal
7. Address for service
8. Reliefs sought

C. Authority to Sign Notice of Appeal

By virtue of ***Order 17 Rule 4(1) CAR 2016***, every notice of appeal or notice of application for leave to appeal or notice of application for extension of time shall be given, shall be signed by the appellant himself or by his legal representative.

D. Form of the Notice

The notice of appeal shall be writing as in Criminal Form 1 contained in the 2nd Schedule to the CAR 2016 and shall state the following:

1. Offence committed
2. Whether convict is in custody
3. The fact of the convict being in custody must be stated in addition to stating which prison if convict is in custody
4. Convict's address for service if convict is not in prison.
5. Grounds of appeal
6. Particulars
   (a) Date of the trial
   (b) Court of the trial
   (c) Sentence
   (d) Whether the question of law now raised on appeal was raised at the court of trial and whether the appellant would want to be present at the trial.
7. Signature of the appellant

E. Computation of Time for Filing Notice of Appeal

If the appellant was in court when the judgment was delivered, then the time to appeal begins to run from the date of the judgment. If on the other hand, the appellant was in custody when the judgment was delivered, then time would begin to run from the date the judgment is brought to his notice - ***Ohuka v. State***.

F. Consequence of Failure to File a Notice of Appeal

The consequence of failure to file a Notice of appeal is an order of striking out of the appeal for being incompetent. Such an appeal is null and void - ***Amusa v. The State***.

G. Effect of Notice of Appeal on Wrongly Headed Form A

Notice of appeal given on a wrongly headed form is not null and void. It only amounts to an irregularity, which does not render the notice of appeal invalid - ***Etuk Udoh v. The State***.

H. When a Notice of Appeal Will Operate As a Stay of Execution

Generally, an appeal does not operate as stay of execution of the judgment of the lower court. Therefore, after filing an appeal, an appellant may need to apply for a stay of the execution of the judgment of the court. In an interlocutory appeal, the Appellant may also need to apply for a stay of proceedings. This is usually necessary where the decision of the appellate court may affect the final judgment of the trial court.

The sole exception is an appeal against a sentence of death. In the case of a death sentence, the filing of a notice of appeal operates as a stay of execution - ***Bello v. AG Oyo State***.

V. Time for Filing of Appeal

A. General Rule

1. **Final Decisions:** 90 days from the date of delivery of the judgment of the High Court.
2. **Interlocutory Judgment:** 14 days from the date of delivery of such interlocutory decision.

B. Extension of Time to Appeal

Where the appellant is out of time to appeal, he can apply to the Court of Appeal for leave to appeal out of time. The application is by notice of motion supported by affidavit setting forth the reason for the delay in appealing within the prescribed period. The affidavit must also have

accompanying it, the proposed ground of appeal which must prima facie show good cause why the appeal should be heard – ***Chukwu v. Omehia***.[247]
When the time is enlarged by order of the court, a copy of the order enlarging time shall be annexed to the notice of appeal.

VI. Bringing of Appeal and Entering of Appeal

An appeal is deemed to have been brought when the notice of appeal has been filed at the registry of the lower court or leave to appeal has been granted and before the appellate court has become seised of the whole proceedings. At this stage both the appellate court and the lower court have concurrent jurisdiction to deal with interlocutory applications. On the other hand, an appeal is said to be entered when the record of appeal has been transmitted to the appellate court and entered on the cause list. It is at this point that the lower court will cease to have jurisdiction to hear any application – ***Bariga v. PDP*.**

VII. Grounds of Appeal

A. Concept

Every notice of appeal must be accompanied by a ground or grounds of appeal except where the ground is the omnibus ground. The ground may be ground of mixed law or a ground of facts or a ground of mixed law and facts. A ground of appeal is the reason why the decision of the inferior court is considered wrong by the aggrieved party – ***Okponipere v. State***. An appellant does not need leave where the ground of appeal is that of law, but where it is on facts or mixed law and facts, then leave must be sought.

B. Classification of Grounds of Appeals

The classification of grounds of appeal was made in the case of ***Abdul v. CPC*** viz:

1. **Grounds of Law**
   (a) Misunderstanding by the lower court of the law or misapplication of the law to the facts already proved and admitted.
   (b) Lower court holding that a particular event occurred without admissible evidence showing that the event did occur
   (c) Erroneous construction of statute by the court on the basis that the statutory wordings bear its ordinary meaning.
   (d) Lower court or tribunal applied the law to the facts in a process which requires the skill of a trained lawyer
   (e) Lower court reaches a conclusion that cannot reasonably be drawn from the facts as found – i.e. misconception of the law
   (f) Where the court of appeal interferes in a case and there is a further appeal to a higher court of appeal on the application of the facts.
2. **Grounds of Facts**
   (a) Raises a question of pure facts
   (b) Complain about the assessment of admissible evidence
   (c) Conclusion of the lower court is one possible resolutions but one which the appeal court would not have reached if seised of the issue
   (d) Complains that the decision of the trial court is against the evidence or weight of evidence of witnesses is purely a ground of fact
   (e) Complain on affidavit evidence
3. **Grounds of Mixed Law and Facts**
   (a) Questioning the evaluation of the facts before the application of the law

C. Particulars of Error

1. **General Rule:** apart from stating the grounds of appeal, the appellant is also required to set out for each ground of appeal, in a separate paragraph, each error, omission, irregularity

[247] (2013) 7 NWLR (Pt. 1354) 463 at 482

or other matter on which he relies or of which he complains, with particulars sufficient to give the respondent due notice thereof – ***Section 282(1) CPCL***.

2. **Failure to State Particulars of Error:** the ground will just be general statement, vague and disclosing no reasonable ground of appeal. Thus, such ground of appeal especially that of misdirection, would be liable to be stroke out – ***Asogwa v. PDP***.
3. **Exceptions**
   - **(a) Including Particulars of Error in the Error Itself:** However, where a ground of appeal is couched in a way so as to leave no one in doubt as to the errors complained of, such a ground may be countenanced – Koya v. UBA Ltd. There is nothing wrong with including particulars of error in the error itself once it gives sufficient notice to the other party of the case it has to meet in the appellate court.
   - **(b) Omnibus Ground of Appeal:** this requires no particulars of errors because it complains of almost everything but complaining of nothing with any level of specificity or certainty. E.g. *"The decision of the trial court is unreasonable and cannot be supported having regard to the evidence before the court."* However, an omnibus ground can only succeed where the error is obvious – ***Ali v. State***.

D. Additional or Amended Grounds of Appeal

1. **Concept:** the appellant is permitted to file and argue additional grounds of appeal and to apply to amend his grounds. The court may on its own amend the notice or grounds of appeal – ***Order 17 Rule 3 Court of Appeal Rules***.
2. **Failure to Obtain Leave to file Additional Grounds of Appeal:** the appellant cannot argue those grounds unless the court gives leave to that effect – ***Maraire v. State***.
3. **Striking out Appeal without waiting for the Normal Hearing:** under the ***Rule 4(a) Court of Appeal Practice Direction 2013***, the court may strike out an appeal where it feels that the appeal lacks merit without waiting for the normal hearing. All the court is to do is to invite the parties within 15 days of the transmission of the record of appeal to address the court as to why such appeal should not be struck out.

VIII. Preliminary Objection

A. Concept: a respondent may object to the appeal by way of PO. A preliminary objection is a form of opposition to the hearing of an appeal, either partly or completely. The fundamental objective of a PO is to essentially contend that the appeal or ground of appeal is incompetent and fundamentally defective and should therefore be discountenanced by the court – ***Okada Airlines Ltd v. FAAN***.

B. Procedure: a respondent shall give the appellant 3 clear days' notice thereof before the hearing, setting out the grounds of objection, and shall file such notice together with 20 copies thereof with the Registrar within the same time.

C. Grounds of Objection

1. Challenge to the grounds or a ground of appeal and
2. Challenge to the competence of the appeal itself.

IX. Brief of Argument

A. Concept

This is a succinct statement of the argument of a party at the appeal. The brief of argument contains the arguments that the party intends to canvass at the appeal. There are three types of briefs: Appellants brief, Respondent brief and Reply brief.

B. Form and Contents of Brief of Argument

1. Heading of the Court
2. Appeal number
3. The Parties
4. Title of the Brief
5. Table of content

6. Introduction or Preliminary Statement
7. Issues for determination - An issue must be based on the grounds of appeal or it will be struck out. - ***Omodara v. State***
8. Brief Statement of facts (summary)
9. Arguments, based on issues raised
10. Conclusion
11. List of authorities
12. Signature, usually that of the Counsel
13. Address for service.
14. Not more than 35 pages unless the court directs otherwise – ***Order 19 Rule (3) (6) (a) CAR 2016***.
15. Prepared on A4 size paper in clear typographical character with the typeset being Times New Roman or Tahoma of 14 font size with at least single line spacing - ***Order 19 Rule (3) (6) (b) CAR 2016***

Note - The contents of both the Appellant's and the Respondent's Briefs are the same. The contents are also required to feature in the Reply Brief except the Statement of fact and the issues for determination.

Note - A party shall not be allowed to argue or raise an issue that is not contained in his Brief of Argument during the hearing of the appeal.

C. Types of Brief of Argument & Time for Filing

1. **Appellant's Brief of Argument:** this shall be filed within 45 days upon receipt of the record of appeal from the High Court - ***Order 19 Rule 2 CAR 2016***. However, where the appeal is a fast track appeal, it shall be filed within 14 days of the transmission of the record of appeal from the court below – ***Rule 8(3) Court of Appeal (Fast Track) Practice Direction 2014***.
2. **Respondent Brief of Argument:** after the receipt of the appellant brief of argument the respondent is to file a respondent brief of argument within 30 days - ***Order 19 Rule 4(1) CAR 2016***. However, where it is fast track appeal, it shall be within 10 days – ***Rule 8(5) Court of Appeal (Fast Track) Practice Direction 2014***.

   The respondent brief shall answer all the material points of substance contained in the appellant's brief and contain all points there in which the respondent wishes to concede as well as reasons why the appeal ought to be dismissed. If the respondent has a cross appeal, then his argument in support of the cross appeal must be contained in the RB. Any issue raised in the AB which the RB fails to respond to it taken as conceded by the respondent – ***Olley v. Tunji***.

   A respondent who does not cross appeal must confine himself to the appellant's ground of appeal in formulating his issues for determination of the appeal.
3. **Reply Brief:** this is only meant to answer new points raised in the RB and not to repeat or raise new arguments in the AB otherwise it would be discountenanced by the court. Thus, it is filed only where the need arises. The appellant may within 14 days of the service upon him of the RB, file and serve or cause to be served on the respondent a reply brief - ***Order 19 Rule 5(1) CAR 2016***. If the appeal is a fast tract appeal, then within 5 days – ***Rule 8(7) Court of Appeal (Fast Track) Practice Direction 2014***. Hearing of appeal without giving time for the filing of a reply brief has been held to be a denial of fair hearing – ***Audu v. FRN***.

F. Failure to File Brief of Argument

1. **Failure to File Appellant's Brief of Argument:** the respondent may apply to the court for the appeal to be dismissed for want of prosecution unless the court in the exercise of its powers under Order 19 Rule 11 decides to waive filing of brief - ***Order 19 Rule 10 CAR 2016.*** Where it is a fast track appeal, the court may so dismiss the appeal without a

prompting from the respondent - ***Rule 8(4) Court of Appeal (Fast Track) Practice Direction 2014.*** Such dismissal for failure to file brief of argument is irreversible as the appeal cannot be relisted.

2. **Failure to File Respondent Brief of Argument:** the respondent will not be entitled to be heard in oral argument - ***Order 19 Rule 10 CAR 2016.*** Where it is a fast track appeal, the court may proceed with the hearing - ***Rule 8(6) Court of Appeal (Fast Track) Practice Direction 2014.***
3. **Failure to File Reply Brief:** the appellant shall be deemed to have conceded all the fresh issues or points raised by the Respondent in his brief – ***Olley v. Tunji***.
4. **Failure to Comply with the Form and Contents in Regards to Page Limit and Size:** such brief shall not be accepted for filing by the registry – ***Order 19 Rule 3 (6) (c) CAR 2016***.

G. Close of Briefs

Briefs are deemed closed on the 8th day after the service of the RB whether or not a reply on points of law has been filed or is forthcoming - ***Rule 8(10) Court of Appeal (Fast Track) Practice Direction 2014.*** Once briefs are deemed closed, the court is enjoined to proceed to set down the appeal for hearing.

10 copies of all briefs shall be filed and endorsed for service. In addition, 2 electronic copies duly preserved shall also be filed in court – ***Order 19 Rule 8 CAR 2016***.

H. Joint Brief of Argument

All parties whose interest are identical or joint shall file joint briefs and separate briefs may be filed only by those parties whose interests are separate or are in conflict – ***Order 19 Rule 6 CAR 2016***.

I. Issues for Determination

1. **Concept:** these are the central questions distilled from a ground or grounds of appeal for determination by the court. They are usually propositions of law or facts which are in dispute between the parties. It is the issues that represents the questions which the parties want the court to answer.
2. **Effect of Failure to Formulate Issues:** makes the brief incurably bad as the decision of the court revolve round the resolution of the issues formulated by the parties – ***Nigerian Airforce v. Shekete***.
3. **Determining Appeals on Issues and not on Grounds:** although issues are formulated from grounds of appeal, appeals are determined on the basis of the issues formulated and not on the basis of the grounds – ***Okponipere v. The State***.
4. **Object of Formulating Issues:** delimit questions to be decided by the appellate court – ***Okponipere v. The State***.
5. **Ground of Appeal not relating to Issues:** deemed abandoned and liable to be struck out – ***FRN v. Iweka***. Thus, there must be a close relationship between issues formulated and the grounds of appeal filed.
6. **Reframing or Re-Couching Issues by the Court:** both the CA and SC have the power to reframe or re-couch issues for determination where such issue is important to make it comprehensible or easy to deal with where a party fails to properly formulate issues for determination – ***Ugwu v. State***.

J. Power of Court to Dispense with Brief of Argument

It is not the law in all cases that where a party does not file a brief of argument, his appeal will not be heard. The court has power to dispense with the requirement of filing written brief of argument. The court may consider the circumstances of the appeal and decide to accelerate hearing by dispensing with strict compliance with the provisions of Order 19 dealing with filing brief of arguments – ***Order 19 Rule 11 CAR 2016.*** Thus, when the provision of Rule 11 is read alongside that of Rule 10 (effect of failure to file brief of argument), it would seem that the

overall effect will be that briefs of argument are a requirement of all appeals before a CA except otherwise directed by the court.

K. Oral Argument

1. **Concept:** oral arguments are allowed at the hearing of appeals. Oral argument is the adumbration of the written brief.
2. **Purpose:** The purpose of the argument is to emphasize and clarify the written argument appearing in the briefs already filed in court and not an alternative to the brief – ***Order 19 Rule 9(1) CAR 2016.***
3. **Failure to File a Written Brief:** party cannot be heard in oral argument except with leave of court.
4. **Time Limit of Oral Argument:** oral arguments of 15 minutes are allowed for each party to argue its brief unless the court directs otherwise – ***Order 19 Rule 9(3) CAR 2016.***
5. **Fast Track Appeals:** oral argument are excluded but the court may request clarification from a party – ***Rule 8(8) Court of Appeal (Fast Track) Practice Direction 2014.*** Thus, once briefs are filed and served, they are deemed adopted on the date set down for hearing and the court would proceed to decision without further recourse to the parties.

L. Absence of Parties or Their Counsel at Hearing

1. **Failure of Party or Counsel to Appear at Hearing:** will not affect the hearing. There is no requirement that the appellant shall be present at the hearing of his appeal. All that is required is that the appellant or his counsel has to sign the notice of appeal – ***Duru v. FRN***.
2. **Failure of Counsel to Present Oral Argument:** appeal will be deemed as having been properly argued – ***Order 19 Rule 9(4) CAR 2016.***
3. **Failure where Appellant was admitted to Bail:** where the appellant was admitted to bail, he must be personally present at each and every hearing of his appeal until final determination. Where he is absent, the court may also dismiss the appeal summarily and issue a warrant for his apprehension although the court may also decide to hear the appeal in his absence and make appropriate orders – ***Order 13 Rule (5) CAR 2016***.

X. Record of Appeal

A. Concept: This is the record of what transpired at the court whose decision is challenged. It is also known as record of proceedings.

B. Time for Compiling and Transmitting Record of Appeal: the registrar of the lower court shall within 60 days after filing the notice of appeal compile and transmit the record of appeal to the court - ***Order 8 Rule 1 CAR 2016***. In case of fast track appeal, the time is 30 days.

C. Contents

1. Index
2. Statement giving brief particulars of the case including a schedule of the fees paid
3. Copies of the documents settled and compiled for inclusion in the record
4. Copy of the notice of appeal and other relevant documents filed in connection with the appeal.

D. Person who has the Duty to Compile Records of Appeal: the REGISTRAR or the APPELLANT where the registrar fails or neglects to do so.

E. Failure of Registrar to Compile and Transmit Record of Appeal: the appellant is empowered to do so within 30 days of the Registrar's failure or neglect - ***Order 8 Rule 4 CAR 2016***. Where it is fast track appeal, it is within 15 days – ***Rule 13(13) Court of Appeal (Fast Track) Practice Direction 2014.***

XI. Court of Appeal Practice Direction

The ***Court of Appeal (Fast Track) Practice Direction 2014*** seriously affected the time for doing virtually everything relating to hearing of appeal including amendment of notice or grounds of appeal, listing of the appeal for hearing, preliminary objection, briefs of argument,

compilation and transmission of records and determination of appeals when the appeal relates to matters dealing with Fast Track Appeals. Rule 2 CAPD 2014 defines fast track appeal to include:

1. Corruption
2. Human trafficking
3. Kidnapping
4. Money laundering
5. Rape
6. Terrorism
7. Appeals by or against such national human rights, intelligence, law enforcement, prosecutorial or security agencies such as the EFCC, ICPC, Human Rights Commission and the State Security Service.

APPEALS FROM THE COURT OF APPEAL TO THE SUPREME COURT

I. Instances where Appeal may lie from the CA to the SC

Appeal against the decision of the Court of Appeal to the Supreme Court may lie as of right or with leave - ***Section 233 (2) & (3) CFRN 1999*****.**

A. Appeal as of Right

Appeal will lie as of right in the following cases:

1. Decisions in any Criminal proceedings where ground of appeal is on question of Law alone;
2. Decisions in any Criminal proceedings on question as to interpretation of the Constitution;
3. Decisions in any Criminal proceedings as to whether the provision of Chapter IV of the Constitution relating to Fundamental Rights has been, is being or is likely to be contravened in relation to any person;
4. Decisions in any Criminal proceeding in which any person has been sentenced to death by the Court of Appeal or which the Court of Appeal has affirmed a sentence of death imposed by any other Court;
5. Such other cases as may be prescribed by any Act of the National Assembly **–** ***Section 233 (2) CFRN 1999*****.**

B. Appeal with Leave

In other cases, appeal will lie with leave of the Court of Appeal - ***Section 233 (3) CFRN 1999*****.**

II. Procedure of Appeal to the Supreme Court

The procedure of appeal from the decision of the Court of Appeal to the Supreme Court is substantially the same as the procedure of appeal to the Court of Appeal **except** the differences in the periods for the filing of the Notice of Appeal and the Briefs of Argument – ***Order 2 of the Supreme Court Rules (SRC)*****.**

III. Period for Filing Notice of Appeal & Extension of Time

A. Period for Filing

1. **Final Decision:** Notice of Appeal must be filed within 30 days of the delivery of the decision of the Court of Appeal appealed against**.**
2. **Interlocutory Appeal:** Where it is an Interlocutory decision: within 14 days of the delivery of the ruling - ***Section 27(2) (b) SCA*****.**

B. Extension of Time

Application may be brought to the Supreme Court for an extension of time within which to file a Notice of Appeal where a party fails to file within time - ***Section 31 (4) SCA*****.**

C. Person Who Can Sign a Notice of Appeal

The notice of appeal or notice of motion for leave to appeal shall be signed by the appellant. The notice shall be given to the Registrar of Court of Appeal (filing of notice) who shall thereafter forward the notice to the Registrar of the Supreme Court (entering of notice) – ***Order 9 Rule 3 of the Supreme Court Rules*****.**

IV. Presentation of Appeals at Supreme Court & Time Limit for Filing Briefs

A. Mode of Presentation: Hearing of the appeal is by adoption of the briefs filed by the parties.

B. Time Limit for Filing of Brief of Argument at the Supreme Court

1. **Appellant's Brief of Argument:** must be filed within ten weeks of the receipt of the record of appeal from the Court below - ***Or. 6 R. 5 (1) (a) SCR***
2. **Respondent's Brief of Argument:** must be filed within eight weeks of service of the appellant's brief on him - ***Or. 6 R. 5(2) SCR*****.**
3. **Appellant's Reply:** if any, must be filed within four weeks of the receipt of the respondent's brief - ***Or. 6 R. 5(3) SCR*****.**

V. Possible Orders to be made by Court of Appeal and Supreme Court

A. Appeal against Sentence Only

1. Allow the appeal i.e. quash the sentence and substitute another sentence
2. Dismiss the appeal i.e. Affirm the sentence of lower court.

B. Appeal against Conviction

1. Allow the appeal i.e. quash the conviction and acquit the Appellant or order a retrial
2. Dismiss the appeal i.e. affirm judgment of Lower (High) Court
3. Set aside the sentence of High Court and substitute another sentenced.
4. Substitute another conviction
5. Affirm the judgment in part

C. Appeal against Order of Acquittal, Discharge or Dismissal: Allow the appeal i.e. return a verdict of conviction either sentence the accused according to limit of trial court or order a retrial - ***S. 19&23 CAA 2004; S. 26 SC Act***

VI. Application for Extension of Time within Which to Appeal –made at Trial Court first (i.e. Court of Appeal first)

The court has discretion to grant or refuse an application for extension of time.

1. The application shall be by motion supported by affidavit.
2. The affidavit must disclose reasons, which justify the delay in filing the notice of appeal or leave to appeal within time.
3. The affidavit shall exhibit a copy of the proposed notice or leave.
4. The application for extension of time shall be made to the High Court in case of appeals to High Court. (note)
5. For appeals to CA; the application for extension of time shall be made to the CA.

VII. Amendment, Abandonment and Abatement of Appeal

A. Amendment of Grounds of Appeal

1. Where the appellant observes a defect in the grounds of appeal, he may amend the defect.
2. If the time for filing an appeal has not elapsed, he may file amended grounds of appeal without the leave of court.
3. If the time limit has elapsed, he must apply for leave to amend the grounds of appeal by motion on notice

B. Abandonment of Appeal

An appeal may be abandoned either expressly or impliedly.

1. Implied Abandonment of Appeal: An appeal is impliedly withdrawn if the Appellant fails to file his grounds of appeal or fulfil other conditions of appeal after filing his Notice.

2. Express Abandonment of Appeal

(a) Where it is express, the appellant must submit a Notice of his intention to abandon in CRIMINAL FORM 11 OR FORM 11A to the Registrar of the Court of which decision is being appealed against (the lower Court) - ***Or. 16 R. 18 (1) CAR*****.**

(b) The Notice must be submitted NOT LATER THAN 2 DAYS from the date set down for hearing of the appeal.

(c) Upon submission of notice of abandonment the Registrar of the High Court will notify the Registrar of the Appeal Court on receipt of the Notice - ***Or. 2 (Pt.1) R. 13 (3) (4) & (5) HCL (Appeal) Rules*****.**

(d) The Notice may be given to the Registrar of the Court of Appeal by filling Criminal Form 11 or 11A or to Registrar of the Supreme Court as the case may be who shall notify the Registrar of the Court below, the respondent and the prison authority in Criminal Form 12 - ***Or. 16 R. 18(1) & (2) CAR; Or. 9 R. 9(1) & (2) SCR*****.**

3. **Withdrawal of Notice of Abandonment:** A party may withdraw his Notice of abandonment with leave of the Court of Appeal by filling Criminal Form 13 or 13A or the Supreme Court as the case may be. See ***Or. 16 R. 19 CAR; Or. 9 R. 9(3) SCR*****.**

C. Abatement of Appeal

1. **Concept:** An appeal will abate where an appellant whose ground of appeal is based on a sentence of imprisonment dies before the appeal is heard - ***Or. 8 R. 9 (5) SCR; S. 64 MCL Lagos 2004; S. 291 CPCL; R. v. Rowe; Bello v. AG Oyo***
2. **Sentence of Fine:** However, appeal will not abate on the death of the appellant where the ground of appeal is founded on sentence of fine. This is because the fine may be levied on the deceased/appellant's estate notwithstanding his death - ***R. v. Rowe*****.**

VIII. Order of Retrial

A. When A Re-Trial May Be Ordered: An Appeal Court may order a re-trial where all the following cumulative conditions are present –

1. That there has been an error in Law or an irregularity in procedure such that although the trial was not rendered a nullity, it cannot be said that a miscarriage of justice has been occasioned;
2. That leaving the error or irregularity, the evidence taken as whole discloses a substantial case against the appellant;
3. That there are no special circumstances as would render it oppressive to put the appellant on trial a second time;
4. That the offence(s) of which the appellant was convicted or the consequences to the appellant or to any other person of the conviction or acquittal of the appellant, are not merely trivial; and
5. That to refuse an order for re-trial would occasion a greater miscarriage of justice

See ***Yesufu Abodunde & Ors. v. R; Okafor v. State; Aigbe v. State***

B. When Retrial will not be Ordered: An order of retrial will not be ordered if it would enable the Prosecution to adduce evidence as the missing link to succeed in obtaining a conviction – ***Ankwa v. State, Kajubo v. State; Adeoye v. State***.

C. Difference between Retrial and Trial De novo:

1. **Re Trial –** Most often goes to a different court or a different judge to hear all over again a case which has been tried and determined by a judgement.
2. **Trial De Novo:** This is a fresh trial of a case that was partly heard by another judge but was not determined by a judgment.

D. Notice of Final Determination of an Appeal: The decision or outcome of every appeal must be communicated to the following persons:

1. The Appellant; if he is in custody
2. The Respondent;
3. The Prison Authority; and
4. The Registrar of the court whose decisions was appealed against

BAIL PENDING APPEAL

A. Concept: A convicted person who has appealed against his conviction may apply to be released on bail pending the determination of his appeal. The grant of bail is now at the Court's discretion and not as of right - ***S. 54 (2) (a) Magistrates' Courts Law of Lagos***

State; S. 283 (4) & 340 (2) CPCL in respect of appeals from Area to Upper Area Court; ***S. 28 & 29 (1) Court of Appeal Act; S. 31(1) SCA; Or. 9 R. 4(6) SCR; Kuti v. Police*.**

B. Conditions for the Grant of Bail Pending Appeal: The Appellant is required to show EXCEPTIONAL OR SPECIAL circumstances why bail should be granted - ***Ajayi v. State*.** At this stage, the appellant is a convict, and has lost the presumption of innocence guaranteed by the Constitution - ***O. 17 R. 18 of the Court of Appeal Rules 2011 and Forms 11 and 11A of the Rules*.** The conditions are –

1. There must be a valid Notice of Appeal
2. The grounds of appeal are likely to succeed against the conviction on point of Law - ***Fawehimi v. State***.
3. That the duration of appeal may out last the duration of the sentence - ***R. V. Tunwase; Okoroji v. The State; Madike v. The State; Olamolu v. Frnobi v. State.*** The real case is so complex that constant consultation between the convict and his counsel is required for the preparation of the appeal - ***R. v. Starkie***
4. The appellant's health is seriously in jeopardy and cannot be taken care of at the prison facility - ***Fawehinmi v. State***: appellant had to prove from the nature of his illness, he needed constant medical attention and the type of treatment required is not readily movable. See ***Chukwunyere v. COP***.
5. The conduct of the appellant during trial in relation to the bail earlier granted (not jumping bail) - ***Munir v. FRN***.
6. Where the appellant is a first time offender
7. Where the sentence is manifestly contestable
8. The severity of the offence - ***George v. FRN***
9. Where there is a mistrial on the face of the records

C. Procedure For Applying For Bail Pending Appeal: The application is made by a motion on notice to be supported with –

1. Affidavit showing special circumstances for its grant
2. CTC of the judgment of the Court convicting him
3. CTC of the Notice of appeal.

D. Notable Points on Bail Pending Appeal

1. The proper procedure to be followed when bail application is refused by the High Court is to appeal to the Court of Appeal - ***The State v. Uwa***
2. Where several accused persons are charged together and they file a joint application for bail pending appeal by way of motion, the motion must be supported by separate affidavits sworn to by each accused person personally or by some other person - ***Atigbu v. COP***.
3. The application is first made to the trial court before it can be made to the appellate court if it is refused - ***Offiong v. COP***
4. If an application for bail pending appeal is refused by the trial Court, the subsequent application to the Appeal Court should be made exhibiting the following:
   (a) Copy of the Judgment of the trial Court
   (b) Copy of the Notice of Appeal
   (c) Copy of the order/Judgment of the Court refusing the application by the trial Court
   (d) Copy of a medical report, if the application is on the ground of ill health.

SAMPLE DRAFTS

Notice of Appeal

IN THE COURT OF APPEAL OF NIGERIA
HOLDEN AT ABUJA

CASE NO: CR/213/2018
APPEAL NO……...

BETWEEN:
RAMPAM ALECHENU……...APPELLANT
AND
THE FEDERAL REPUBLIC OF NIGERIA……..RESPONDENT

NOTICE OF APPEAL

To: the Registrar
Court of Appeal
Abuja.

I, RAMPAM ALECHENU 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 30TH APRIL, 2019

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:
RAMPAM ALECHENU…….. 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 the …….day of …….2019 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 THIS ……DAY OF ……. 2019.

……
Killi Nancwat
Appellant's Counsel
No 139 B Abacha Road Agbani, Enugu Sate
07031112732
Knanchwat2020@yahoo.com

FOR SERVICE ON:
The Attorney-General of the Federation,
Federal Ministry of Justice,
Maitama
Abuja, FCT

Abaji Ekon
Applicant's Counsel
Adamu & Co
No 15 Broad Street Abuja

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:
RAMPAM ALECHENU…….. APPLICANT/APPELLANT
AND
THE FEDERAL REPUBLIC OF NIGERIA……COMPLAINANT/RESPONDENT

AFFIDAVIT IN SUPPORT OF MOTION FOR BAIL

I, RAMPAM ALECHENU, Male, Adult, Christian, Student 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 June 2011.
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 13 day of June 2011 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,
This …….day of …… 2011.

BEFORE ME
……
COMMISSIONER OF OATHS

Appellant's Brief of Argument

IN THE COURT OF APPEAL OF NIGERIA
SITTING AT ABUJA

APPEAL NO:…….

BETWEEN
RAMPAM ALECHENU……..…APPELLANT
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 25th day of March 2019 by Hon Justice Maza Maza. The Notice of Appeal was filed on 20th day of March, 2019. 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 MARCH, 2019

Killi Nancwat
Killi & Co
No 3 Abacha Road, Abuja
Knanchwat2020@yahoo.com
07031112732

FOR SERVICE ON:
The Attorney General of the Federation

Federal Ministry of Justice
Maitama
Abuja, FCT