



NLS

SAMPLE DRAFT

on

CRIMINAL LITIGATION



Highlights

- ▶ Motions
- ▶ Charges
- ▶ Trial plan
- ▶ Search warrant
- ▶ Bail pending Appeal
- ▶ Ex-parte Applications
- Appeal ▶
- Summons ▶
- Letters ▶
- Bail Applications ▶
- Warrants of Arrest ▶
- Legal Aid Application

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Week 3

INTRODUCTION TO CRIMINAL LITIGATION

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

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

Laws Applicable to Criminal Litigation

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

a. Principal Enactments

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 These states domesticated the now repealed Criminal Procedure Act, thus giving each one a Criminal Procedure Law.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

Abuja. Therefore, where a Federal Offence is being tried in a State High Court, the ACJA will also apply.

b. Secondary Enactments

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

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

Week 4
ARREST, SEARCHES & CONSTITUTIONAL RIGHTS

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

Sample Draft of Summons

SUMMONS TO DEFENDANT/ACCUSED

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

Charge No: EB/HC/2021/032

SUMMONS TO DEFENDANT

To: All Police Officers in charge of criminal prosecution

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

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

Dated this 6th day of January, 2021

Judge

SUMMONS TO WITNESS

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

Charge No: EB/HC/2021/032

SUMMONS TO WITNESS

To: Ugwu Dominic (Inspector of Police)

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

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

Dated this 6th day of January, 2021.

Judge

Sample Draft of Warrant of Arrest

WARRANT FOR APPREHENSION OF DEFENDANT IN FIRST INSTANCE

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

Charge No: EB/HC/2021/032

WARRANT FOR ARREST OF DEFENDANT IN FIRST INSTANCE

To: Each and all Police Officers.

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

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

Dated this 6th day of January, 2021.

Judge

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

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

Charge No: EB/HC/2021/032

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

To: Each and all Police Officers.

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

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

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

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

Dated this 6th day of January, 2021

Judge

SEARCHES

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

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

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

Sample Draft of Search Warrant

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

CASE NO.....

SEARCH WARRANT

To: Corporal Abdurrazak Bello or any other police officer.

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

Dated This 6th Day of January 2021

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

Week 5

PRE-TRIAL INVESTIGATIONS AND POLICE INTERVIEW

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

The power of the police to investigate crimes and in the process, arrest and detain persons suspected to have committed an offence derives from the provisions of **Section 4 of the Police Act. Section 23 Police Act** went further and gave the police power to prosecute an offender in any court of competent jurisdiction, whether or not the information or complaint is laid in his name. The Supreme Court reiterated the power of the police to investigate in the case of **Onyekwere v State**¹ as follows, "If a complaint is made to the police that an offence has been committed, it is their duty to investigate the case not only against the person about whom the complaint was made, but also against any other person who may have taken part in the commission of the offence.

Types of Bail

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

POLICE BAIL

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

¹ (1973) 8 NSCC 250

Sample Draft of Police Bail Application

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

Our Ref:

Your Ref:

Date: 6th January, 2021

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

APPLICATION FOR BAIL

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

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

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

Thanks for the anticipated cooperation.

Yours faithfully,

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

LEGAL AID SCHEME

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

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

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

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

DRAFT: APPLICATION FOR LEGAL AID

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

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

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

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

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

Dear Sir,

APPLICATION FOR LEGAL AID

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

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

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

Thank you.

Yours faithfully,

(signature)

Temitope Veronica Babare

Week 6

JURISDICTION & VENUE OF CRIMINAL COURTS

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

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

DETERMINATION OF VENUE OF COURTS

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

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

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

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

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

Week 7

INSTITUTION OF CRIMINAL PROCEEDINGS

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

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

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

MODES OF INSTITUTING CRIMINAL PROCEEDINGS

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

Magistrate Court

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

Area Courts (Same like Magistrate Courts in the North)

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

Customary Courts (Same like Magistrate Courts in the South)

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

Sharia Courts

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

State High Court

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

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

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

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

Sample Applications

Application for Consent to File an Information (Formal Letter)

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

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

6th January, 2021

My Lord,

APPLICATION FOR CONSENT TO FILE AN INFORMATION

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

NLS DRAFTS ON PROFESSIONAL ETHICS

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

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

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

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

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

Yours faithfully,

Nwosu Juliet

Director of Public Prosecution

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

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

CASE NO: _____

BETWEEN

STATE.....COMPLAINANT/APPLICANT

AND

ATIKA ABDULLAHI.....ACCUSED PERSON/RESPONDENT

MOTION EX-PARTE

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

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

NLS DRAFTS ON PROFESSIONAL ETHICS

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

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 deemfit to make in the circumstances.

DATED THIS DAY OF.....2021

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

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

Affidavit in Support of Application for Leave

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

CASE NO: _____

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

AFFIDAVIT IN SUPPORT OF APPLICATION FOR LEAVE

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

NLS DRAFTS ON PROFESSIONAL ETHICS

1. I am the Director of Public Prosecution in the Jigawa State Ministry of Justice and by virtue of which I am conversant with the facts of this case and the circumstances leading to this application.
2. I have the consent of the Attorney General of Jigawa 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 during the EndSARS Protest by the police on the 10th day of October, 2020 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 Jigawa State.
5. The Honourable Attorney General of Jigawa State has decided to prosecute the accused persons for the said offence. A copy each of the proposed charged, proof of evidence, list of witnesses as well as the unedited statements of the accused persons are hereby attached and marked respectively as Exhibits A, B, C, D1 and D2.
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 Jigawa State

This..... day of 2021

BEFORE ME

COMMISSIONER FOR OATHS

Written Address in support of Application for Leave to Prefer Charges

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

CASE NO: _____

BETWEEN

STATE.....COMPLAINANT/APPLICANT

AND

ATIKA ABDULLAHI.....ACCUSED PERSON/RESPONDENT

WRITTEN ADDRESS

INTRODUCTION

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

SUMMARY OF CASE

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

ISSUES FOR DETERMINATION

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

LEGAL ARGUMENT

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

CONCLUSION

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

INDEX OF AUTHORITIES CITED

1.....

Dated this ____ day of _____ 2021

.....

Muazu Umar Muazu

Director of Public Prosecution

Ministry of Justice, Jigawa State

For: Attorney General, Jigawa State

Week 8

CHARGES I

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

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

Contents of a Charge Sheet

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

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

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

2. Reference Number: this is written beneath the heading. Its importance is on proper identification of a case/charge against an accused. It is possible that an accused has against him different charges in the same court. In the southern courts, FHC, NIC, and HC of FCT it is *CHARGE NO*.....
In the northern courts reference number is *CASE NO*.....

3. Parties: this refers to the litigants in a criminal matter. The accused is known as DEFENDANT in the FHC, NIC, HC of FCT, and HC of Lagos, or ACCUSED PERSON in southern courts and northern courts. The prosecutorial authority is the FEDERAL REPUBLIC OF NIGERIA in the FHC, NIC, HC of FCT, and SHC when it is a federal offence; in Lagos state, it is THE STATE OF LAGOS; in other SHCs, it is THE STATE; and in the Magistrate Court in both north and south it is the COMMISSIONER OF POLICE or INSPECTOR GENERAL OF POLICE (only Abuja).

The name(s) by which the accused person is known must be stated. His surname and forenames must be stated in the charge sheet so that no one is left in doubt that it is the accused person and no other person being charged. In addition, the accused may be describe by adding alias if he has any so as to sufficiently describe him.

BETWEEN

THE STATE OF LAGOS.....COMPLAINANT
AND

IGWEOGU MAXWELL (alias Palliative)DEFENDANT

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

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

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

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

One Paragraph

CHARGE 1

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

Two Paragraphs

COUNT 1

STATEMENT OF OFFENCE

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

PARTICULARS OF OFFENCE

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

Three Paragraphs

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

CHARGE

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

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

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

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

DATED THIS _____ DAY OF _____, 2020

Selzing Fabong
Chief Magistrate Grade I

Week 9 CHARGES II

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

SAMPLE DRAFT OF CHARGES IN THE VARIOUS COURTS

Checklist of Information on Drafting of Charges

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

NLS DRAFTS ON PROFESSIONAL ETHICS

(North) Taraba/Adamawa				(Count) 1. Statement of Offence 2. Particulars of Offence	
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.ABARKAKA AHMED
2. AHMED IBRAHIM (alias Scorpion).....ACCUSED PERSONS

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

1ST CHARGE

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

2ND CHARGE

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

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

Dated this _____ day of _____ 2020

Selzing Fabong
Chief Magistrate Grade 1
Magistrate Court of Kano State

Magistrate Court in the South

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

Charge No:.....

BETWEEN

COMMISSIONER OF POLICE..... COMPLAINANT

AND

FEMI JUDE (alias BrodaZone)..... DEFENDANT

COUNT 1

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

COUNT 2

That you Femi Jude on or about 2nd March 2020at Epe Market Square, within Epe Magisterial District assaulted Warefiniere Rachael thereby committed an offence contrary to Sections 169 and 170 Criminal Code Law of Lagos State2011.

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

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

High Court in the North

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

Case No:.....

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

CHARGE 1

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

CHARGE 2

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

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

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

High Court in the South

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

Charge No:.....

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

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

COUNT 1

STATEMENT OF OFFENCE

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

PARTICULARS OF OFFENCE

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

COUNT 2

STATEMENT OF OFFENCE

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

PARTICULARS OF OFFENCE

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

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

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

High Court of Lagos State

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

Charge No:.....

BETWEEN:

THE STATE OF LAGOS..... COMPLAINANT

AND

FEMI JUDE... DEFENDANT

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

COUNT 1

STATEMENT OF OFFENCE

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

PARTICULARS OF OFFENCE

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

COUNT 2

STATEMENT OF OFFENCE

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

PARTICULARS OF OFFENCE

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

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

Eyeke Kenneth Esq.

Senior State Counsel

Ministry of Justice Lagos State

For: Attorney General of Lagos State

High Court of FCT Abuja

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

Case No:.....

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

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

COUNT 1

STATEMENT OF OFFENCE

Stealing, punishable under Section 287 of Penal Code Act

PARTICULARS OF OFFENCE

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

COUNT 2

STATEMENT OF OFFENCE

Assault, punishable under Section 265 of the Penal Code Act

PARTICULARS OF OFFENCE

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

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

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

Federal High Court

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

Charge No:.....

BETWEEN

FEDERAL REPUBLIC OF NIGERIA..... COMPLAINANT

AND

FEMI JUDE..... DEFENDANT

COUNT 1

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

COUNT 2

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

Eyeke Kenneth Esq.

Director of Prosecution

Economic and Financial Crime Commission

For: Attorney General of the Federation

Week 10 BAIL PENDING TRIAL

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

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

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

FACTORS THAT GOVERN GRANT OF BAIL BY THE COURT

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

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

SAMPLE DRAFTS OF BAIL APPLICATION

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. NWEYENE STANLEY _____ DEFENDANT

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

MOTION ON NOTICE

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

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

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

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

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

FOR SERVICE ON:

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

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

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

CASE NO _____

BETWEEN

FEDERAL REPUBLIC OF NIGERIA _____ COMPLAINANT/RESPONDENT
AND

1. NWEYENE STANLEY _____ DEFENDANT

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

AFFIDAVIT IN SUPPORT OF APPLICATION FOR BAIL

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

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

NLS DRAFTS ON PROFESSIONAL ETHICS

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

Deponent

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

BEFORE ME

COMMISSIONER FOR OATHS

Motion for Bail at the High Court

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

CHARGE NO: HCA/020/006
MOTION NO.....

BETWEEN

FEDERAL REPUBLIC OF NIGERIA _____ COMPLAINANT/RESPONDENT
AND

1. NWEYENE STANLEY _____ DEFENDANT

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

MOTION ON NOTICE

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

TAKE NOTICE that this honourable court will be moved on the 4th day of
December, 2020 at the hour of 9 O'clock in the forenoon or so soon afterwards

NLS DRAFTS ON PROFESSIONAL ETHICS

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 December, 2020

DEFENDANT/APPLICANT'S COUNSEL:
Nwokeke Chidera Esq.
Eyeke Kenneth & CO.
No. 11 Law School Street, Bwari,
Abuja.

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

Affidavit in Support of Motion for Bail at High Court

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

CHARGE NO: HCA/020/006
MOTION NO.....

BETWEEN:
FEDERAL REPUBLIC OF NIG.....COMPLAINANT/RESPONDENT
AND

1. NWEYENE STANLEY.....DEFENDANT
2. EZE VICTOR [alias IG].....DEFENDANT/APPLICANT

AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE

NLS DRAFTS ON PROFESSIONAL ETHICS

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

1. I am the brother of the defendant/applicant by virtue of which I am quite conversant with facts of this case.
2. I have the authority and consent of the defendant/applicant to depose to this affidavit.
3. I know the defendant was arrested by men of Nigerian Police on the 2nd day of October, 2020 on the allegation of stealing and I know that the applicant was arraigned before this honourable court on the 20th day November, 2020 and the court directed that he be remanded in prison custody.
4. On the 25th day of November, 2020, at about 4.00pm I was at the Kuje Central Prison, Abuja with the applicant where I was informed by the applicant of the following fact which I verily believe to be true:
 - (a) He was arrested by police at the Bwari Shopping Complex but he did not commit the alleged offence.
 - (b) In the morning of the said robbery, he was at the Gwagwalada Specialist Hospital and after a series of tests, he was given the laboratory test reports showing that he has Symptom of Corona Virus, 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 9th day of December, 2020

BEFORE ME

.....
COMMISSIONER FOR OATHS

Written Address in Support of Motion for Bail at High Court

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

CHARGE NO: HCA/020/006
MOTION NO.....

BETWEEN:

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

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

WRITTEN ADDRESS IN SUPPORT OF MOTION FOR BAIL

INTRODUCTION

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

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

STATEMENT OF FACTS

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

ISSUE FOR DETERMINATION

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

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

LEGAL ARGUMENT IN SUPPORT

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

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

- a. That by reason of the granting of bail, the proper investigation of the offence would not be prejudiced; and

- b. That no serious risk of the accused escaping from justice would be occasioned; and
- c. That no grounds exist for believing that the accused, if released would commit an offence.”

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

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

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

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

- 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 9th Day of December, 2020

DEFENDANT/APPLICANT'S COUNSEL:

Nwokeke Chidera Esq.

Eyeke Kenneth & CO.

No. 11 Law School Street, Bwari,
Abuja.

FOR SERVICE ON:

RESPONDENT'S COUNSEL

Director of Public Prosecution,

Office of the Deputy Director of Public Prosecution,

Federal Ministry of Justice,

Abuja.

Counter Affidavit Opposing Bail Application at the High Court

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY ABUJA

IN THE BWARI JUDICIAL DIVISION

HOLDEN AT BWARI

CHARGE NO: HCA/020/006

MOTION NO: HC/020/200

BETWEEN:

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

1. NWEYENE STANLEY_____DEFENDANT

2. EZE VICTOR [alias IG]_____DEFENDANT/APPLICANT

COUNTER AFFIDAVIT OPPOSING BAIL

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

1. I am a Counsel in the Federal Ministry of Justice and by virtue of which fact I am quite conversant with facts of this case.
2. I have the authority and consent of the respondent to depose to this affidavit.

NLS DRAFTS ON PROFESSIONAL ETHICS

3. I know the defendant/applicant was arrested by men of Nigerian Police on the 2nd day of October, 2020 on the allegation of stealing.
4. I know that the applicant was arraigned before this honourable court on the 20th day of November, 2020 and the court directed that he be remanded in prison custody.
5. He was arrested by police at the Bwari Shopping Complex for an alleged offence he committed.
6. Since he has been remanded, no report of illness has been made concerning the defendant/applicant either by the Prison officials or the Doctor in charge of the Prison Clinic.
7. The Controller of Prison affirmed that the facilities and personnel of the Prison Clinic were recently equipped for all ailments especially those common among prisoners. A copy of the memorandum duly signed by the Controller of Prison conveying this fact is hereby attached as "EXHIBIT M".
8. If the Applicant is granted bail, he will likely influence the course of investigation.
9. The offence in question is very rampant in the area.
10. The defendant/applicant is not a first time offender and he has records of criminal conviction on the same alleged offence.
11. I swear to this affidavit in good faith believing same to be true and correct to the best of my knowledge and in accordance with the Oaths Act.

.....
DEPONENT

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

BEFORE ME

.....
COMMISSIONER FOR OATHS

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

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

The constitutional safeguards are as follows

1. Right to fair hearing – **Section 36(1) & (2) (4) CFRN**
2. Right to be tried in public – **Section 36(3) & (4) CFRN**
3. Right to trial within reasonable time (speedy trial) – **Section 36(4) CFRN**
4. Right to be presumed innocent – **Section 36(5) CFRN**
5. Right to be informed of the crime alleged – **Section 36(6)(a) CFRN**
6. Right to be given adequate time to prepare for his defence – **Section 36(6)(b) CFRN**
7. Right to a counsel – **Section 36(6)(c) CFRN**
8. Right to examine witnesses – **Section 36(6)(d) CFRN**
9. Right to an interpreter – **Section 36(6)(e) CFRN**
10. Right against trial upon retroactive legislation and heavier penalty – **Section 36(8) CFRN**
11. Right to one trial for one offence – right against double jeopardy – **Section 36(9) CFRN**
12. Right against trial for an offence for which accused has been pardoned – **Section 36(10) CFRN**
13. Right to remain silent – **Section 36(11) CFRN**
14. Right to be tried only for an offence known to law – **Section 36(12) CFRN**
- 15.

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.

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 is allowed.
4. The appearance of an accused person against whom a summons is issued may be dispensed with if he has legal representation or pleads guilty in writing – Section 154(2) of the CPCL (NORTH ONLY). However, the accused person must be present for sentencing – Section 154(3) CPCL.

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

Week 14

TRIAL II: TRIAL PREPARATION AND EVIDENCE

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

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

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

A. Charge

1. Robbery
2. Theft
3. Conspiracy etc

B. Law under which the Charge is Brought

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

C. Evidence of Elements of the Offence

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

D. Documents to be relied on

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

E. Challenges/Weaknesses of Case

1. No eye witness testimony

F. Penalty

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

G. Prayers

1. Conviction on all charges

Defence's Trial Plan

A. Charge

1. Robbery
2. Theft
3. Conspiracy

B. Law under which the Charge is Brought

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

C. Evidence of Witnesses

1. Testimony of accused

NLS DRAFTS ON PROFESSIONAL ETHICS

2. Testimony of other witnesses

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

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

F. Strength of Case

1. No eye witness at the scene of the crime

2. Due process not followed – identification parade requires a minimum of 8 people for suspect and 12 people for 2 suspects of the same physical build

3. Stating that the bike doesn't belong to the defendant

G. Penalty

1. 21years imprisonment

2. Up to 5 years imprisonment

H. Prayers: Acquit the defendants on all charges

NLSSAMPLE OF TRIAL PLAN

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

Week 15

TRIAL III: TRIAL ADVOCACY - EXAMINATION OF WITNESSES

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

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

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

EXAMINATION IN CHIEF

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

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

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

CROSS-EXAMINATION

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

examination – in – chief is silent on a material point and did not say anything against the interest of the opponent cross examination would not be necessary- **Kpokpo v. Uko.**

Principles/Tactics of Cross-Examination

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

RE-EXAMINATION

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

Prohibited Forms of Re-Examination

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

Week 16

TRIAL IV: PRESENTATION OF CASE FOR THE DEFENCE

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

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

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

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

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

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

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

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Week 17

JUDGMENT (VERDICT) AND SENTENCING JUDGMENT

Meaning of Judgment Judgment, also known as verdict in criminal proceedings, is the final determination of the rights and obligations of the parties in a case. In a criminal trial, judgment is the process of delivering the 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

CONTENTS AND FORM OF A VALID JUDGMENT

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

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

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

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

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

Date, Signing or Sealing Judgment: The judgment must be signed or sealed (north) by the judge that wrote it. The signature may be affixed before the date fixed for delivering the judgment or he is preferably required to sign (or seal) and date the judgment in open court and in the presence of the accused immediately after delivering it. A judgment must bear the date of its delivery or pronouncement and not the day on which it was written. That is, the relevant date is the date of delivery of the 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**.

Form of Judgment

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

²10 WACA 283

³(1967) NMLR 122

CONVICTION AND ALLOCUTUS

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

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

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

Types of Sentences

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

Week 18&19
APPEALS

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

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

SAMPLE DRAFTS

Notice of Appeal

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

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

BETWEEN:

OJOH EMMANUELAPPELLANT

AND

THE FEDERAL REPUBLIC OF NIGERIA.....RESPONDENT

NOTICE OF APPEAL

To: the Registrar
Court of Appeal
Abuja.

NLS DRAFTS ON PROFESSIONAL ETHICS

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

GROUND ONE:

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

PARTICULARS OF ERROR:

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

GROUND TWO

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

.....
APPELLANT

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

DATED THIS 9TH DECEMBER, 2020

FOR SERVICE ON:

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

Bail Pending Appeal

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

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

BETWEEN:

OJOH EMMANUEL..... APPLICANT/APPELLANT

AND

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

MOTION ON NOTICE FOR BAIL

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

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

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

DATED THISDAY OF 2020.

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

No 64 Afikpo Street, Abakaliki, Ebonyi State

08102959631

Eyekekennethsamuel@gmail.com

FOR SERVICE ON:

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

Affidavit in Support of Motion for Bail Pending Appeal

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

CASE NO: CV/AF/345

APPEAL NO:.....

MOTION NO:.....

BETWEEN:

OJOH EMMANUEL..... APPLICANT/APPELLANT

AND

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

AFFIDAVIT IN SUPPORT OF MOTION FOR BAIL

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

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

NLS DRAFTS ON PROFESSIONAL ETHICS

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

.....
Deponent

Sworn to at the High Court FCT Registry,

Thisday of 2020

BEFORE ME

.....
COMMISSIONER OF OATHS

Appellant's Brief of Argument

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

APPEAL NO:.....

BETWEEN

OJOH EMMANUELAPPELLANT

AND

THE FEDERAL REPUBLIC OF NIGERIA.....RESPONDENT

APPELLANT'S BRIEF OF ARGUMENT

INTRODUCTION/PRELIMINARY STATEMENT

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

ISSUE FOR DETERMINATION

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

STATEMENT OF FACTS

The Prosecution called 25 witnesses

ARGUMENTS ON THE ISSUES FOR DETERMINATION

ISSUE ONE

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

CONCLUSION/SUMMARY

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

LIST OF AUTHORITIES

JUDICIAL...

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DATED THIS 30TH DAY OF DECEMBER, 2020

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