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COURSE: CRIMINAL LAW 1 (PUL 301)

CLASS: YEAR III

YEAR: 2025

1. The Police and Administration of Criminal Justice in Nigeria

Introduction

In its pursuit of good governance through justice, the state employs and relies on certain organs which it has created for that purpose. These organs include the police, the legal profession, the court and the prisons and these organs are in charge of administering criminal justice in Nigeria. It is a well-known fact that the prime object of the criminal law of which the police form an essential part is the protection of the public by the maintenance of law and order. To this end, it has been stated that the general purpose of the criminal law and the establishment of the police force, amongst others, is to forbid and prevent conducts that threaten harm to individuals and the public at large, as well as to subject to public control, persons whose conducts indicate that they are disposed to commit crimes. The role of the police is encompassed in crime control which includes apprehension of offenders, detection of crime, prevention of crime, protection of life and property and the enforcement of laws. The role of the police also entails the arrest and search of offenders and property, granting of bail and prosecution of offenders. Police stands as the entry point into the criminal justice system through reports from the public or its own investigations.

Police are primarily concerned with maintaining public safety, law and order; protect the lives and property of all persons in Nigeria and enforcing criminal law in order to administer justice to all citizens. See section 4 of the Police Act.

Roles of the Nigerian Police under the Administration of Criminal Justice in Nigeria

Section 214 (2)(b) of the 1999 Constitution provides that the members of the Nigeria Police Force shall have such powers and duties as may be conferred upon them by law. The major law which provides for such powers and duties of the police is the Police Act. But apart from the Police Act, sections 7 - 15 of the Sheriffs and Civil Processes Act (L.F.N.,1990), sections 3 - 11 of the Criminal Procedure Act, (L.F.N.,1990), amongst other laws, also provide for special and particular powers and duties of the police.
These roles are discussed hereunder:

1. **Police power to arrest:** The first contact a defendant has with criminal justice system is usually with the police or law enforcement agents, who investigate the suspected wrongdoing and make an arrest. Thus, the police must have the legal empowerment to play its role. In this regard, both the Nigerian Constitution and the Police Act give the police very wide powers in the performance of their duties. Thus, the role of the police in the administration of justice is one prescribed by law.

   In Nigeria, the Nigerian Police Force (N.P.F) is given jurisdiction to act towards the process of arrest and investigation bestowed on them by virtue of the Police Act.

However, if the suspect is dangerous to the whole nation, a national law enforcement agency such as the Economic and Financial Crimes Commission (EFCC), Criminal Investigation Department (C.I.D), State Security Services (SSS), the Nigerian Army and host of others can be called upon to help in a serious crime situation depending on the emergency and the expediency to apprehend the culprits. This is particularly manifested during the search for the kidnapped girls at Chibok in Borno State where all hands were on desk to locate the Boko Haram members suspected of kidnapping the children.

According to Webster's New Collegiate Dictionary, "arrest" means "to take or keep in custody by 'authority of the law ". It means the taking or restraining of a person's liberty in order to make him answerable to an alleged offence or a suspected crime. As a learned author put it, arrest means placing some restrictions on the liberty and freedom (especially of movement) of a particular person for the purpose of preventing him from committing an offence or, if he has already committed the offence, for purposes of apprehending him in order to keep him within reach to answer to the charges or complaint against him. But apart from this, an arrest may also be used in order to secure the appearance of an offender before a court of law. It is pertinent to note that by virtue of the provisions of section 3 of the Criminal Procedure Act, an arrest is effected by the person making the arrest actually touching and confining the body of the person to be arrested unless there is submission to custody by word of mouth or action. There must be some kind of restraint as arrest is the beginning of imprisonment. That is why section 35 of the Constitution provides for the time frame that a lawful arrest should not exceed.

The Police powers of arrest are derived mainly from two laws. These are the Criminal Procedure Act and the Police Act. This role of the police is essential because in order for justice to be done in each case of the commission of an offence, the offender must be available to answer to the complaint. In addition to their power to arrest, the police are empowered to take preventive measures whenever it is necessary, to nip any tendency to commit crime in the bud. Such preventive action taken by the police normally comes before arrest and it can be regarded as the foremost step within our criminal justice system towards stemming criminality in the society. Section 53(1) of the Criminal Procedure Act provides that: “Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent the commission of any offence”. See also section 86 of the Police Act.

Under the Criminal Procedure Act, police officers can arrest with or without warrant. See generally sections 3, (which explains how arrest is made), 10 (arrest without warrant).

Section 44 of the Police Act mandates a police officer to take immediate records of the suspect upon arrest whether with or without warrant. The Inspector-General of Police and head of every agency authorised by law to make arrests shall remit quarterly to the Attorney-General of the Federation a record of all arrests made with or without warrant in relation to Federal offences within Nigeria. The same procedure is applicable to the Commissioner of Police of a State and the head of every agency authorised by law to

make arrest within a State who remits quarterly to the Attorney-General of that State a record of all arrests made with or without warrant in relation to State offences or arrests within the State. See section 47 (1) and (2) of the Police Act.

2. **Police power to search/Investigate:** This is the power to conduct searches on persons, premises or things. When a person is arrested by the police for having committed an offence or when a complaint is made about the commission of an offence, it may be necessary for the police to investigate the matter and conduct a search of the person or for the premises of the offender to be searched. The search is made in order to obtain evidence to be used at the trial of the offender in the court. Similarly, when an offender is conveying anything unlawful or unlawfully obtained in a moveable thing or object, the police has the power to search the thing or object for the same purpose of obtaining evidence that may be used in the trial of the offender. The search may be conducted with or without a search warrant depending on the subject-matter of the search. The search is conducted, as is indicated above, in order to obtain and procure sufficient evidence for the successful trial of the offender. Sections 48, 49, 52, 53, 55 of the Police Act equip the Nigerian police with this power.
   Section 48 (4)of the Police Act provides that while searching the premises, a police officer shall not violate the human rights of persons found in the premises that is being searched. It should be noted that police can search any person or premises on reasonable suspicion of a crime. However, section 54 of the Police Act provides that the following shall not be grounds for reasonable suspicions-
   (a) personal attributes, including a person's colour, age, hairstyle or 1nanner of dress;
   (b) previous conviction for possession of an unlawful article ; or
   (c) stereotyped images of certain persons or groups as more likely to be committing offence.
3. **Power to take statement:** Under section 60 (1) of the Police Act, police are empowered to take statement of a suspect, if he so wishes to make a statement. The statement may be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a civil society organization or a justice of the peace or any other person of his choice, provided that the legal practitioner or any other person mentioned shall not interfere while the suspect is making his statement, except for the purpose of discharging his duty as a legal practitioner. – section 60 (2). Section 60 (3) provides that where a suspect does not understand or speak or write in the English language, an interpreter shall record and read over the statement to the suspect to his understanding and the suspect shall then endorse the statement as having been made by him, and the interpreter shall attest to the making of the statement. The interpreter shall endorse his name, address, occupation, designation or other particulars on the statement – section 60(4)
4. **Police power to grant bail:** Under the Criminal Procedure Act, police officers can grant bail. See generally sections 17 (power of police to grant bail to any person taken into custody without a warrant for an offence other than an offence punishable with death), 18 (power to grant bail where it appears to the officer that the inquiry into the case cannot be completed forthwith), 19 (power to discharge a suspect who is arrested

without warrant and for an offence other than an offence punishable with death, for want of evidence), of the Criminal Procedure Act. See also section 62 of the Police Act In exercise of the role assigned to them, the police have power, in appropriate cases, to release on bail, suspects under their custody. Bail has been defined as the procedure by which a person arrested for an offence is released, on security being taken for his appearance on a day and place certain. By virtue of section 17 of (he Criminal Procedure Act, when any person has been taken into custody for an offence other than one punishable by death, any officer in charge of a police station may, if it will not be practicable to bring such a person before a magistrate with jurisdiction with respect to the offence charged within twenty-four hours after he was so taken into custody, discharge the person upon his entering into a recognizance with or without sureties. See also sections 62 (2) and 63 of the Police Act which provides that the police officer in charge of a police station shall release the suspect on bail on his entering into a recognisance with or without sureties for a reasonable amount of money to appear before the court or at the police station at the time and place named in the recognizance. This means that in appropriate cases, the police has an obligation to grant bail to suspects under their custody. But from practical experience, the police is not ready and willing to give effect to the constitutional guarantee of personal liberty to the citizenry. They continue to detain suspects for weeks, months and in some cases years without charging them to court or releasing them on bail because the suspects are either unable or unwilling to pay their "price". This practice has been deprecated by the supreme courts since 1982 but it has not changed anything because the cankerworm known as "corruption" has eaten so deep into the society in Nigeria. Again, section 35(4) of the 1999 Constitution provides that a person arrested or detained shall be brought before a court of law within a reasonable time and section 35 (5) defined reasonable time but the police have more often than not, been reluctant to respect this constitutional provisions. It is either that they have not concluded investigation or they will prefer what they call "a holding charge" which has no basis on the constitution nor on any other known law in Nigeria. This is one of the ways by which the police deliberately seek to circumvent the constitution and thereby throwing spanners into the wheel of the administration of justice of which they are sworn to uphold.

Holden charge simply put is a situation where the police or any other law enforcement agency, arrest and detain a person suspected or alleged to have committed a crime and then rush to court especially the magistrate court to get a detention order to keep the person in prison custody for a long period of time beyond the constitutional provision pending trial.

The courts, have in a plethora and gazillion of decided cases held that the concept of “holding charge” is patently illegal and unconstitutional. In **Onagoruwa v The State** (1993) 7NWLR (Pt 303), the Court of Appeal, per Niki Tobi J.C.A, as he then was, held: “It is an elementary but most vital requirement of our adjectival law that before the prosecution takes the decision to prosecute, which is a forerunner or precursor to the charge decision, it must have at its disposal all the evidence to support the charge.” The court further stated that in a good number of cases, the police in this country rush to court on what they generally refer to as holding charge, even before they conduct investigations, though there is nothing known to Law as “holding charge”. Also in the case of **Shagari v C.O.P** (2007) 5 NWLR (pt 1027) 275 at 298 para c-g 302 the court

Per Ogbuagu J.C.A held "A holding charge is unknown to Nigerian law and any person or an accused person detained under an "illegal", 'unlawful' and "unconstitutional" document tagged holding charge, must be released on bail. Furthermore, in **Bola Kace v The State** (2006) INWLR (pt 962) 507 at P. 765, the court expressed the same views in the following words: "It is an aberration and an abuse of judicial process for an accused person to be arraigned before a Magistrate Court for an offence over which it has no jurisdiction, only for the accused person to be remanded in prison custody and not tried or properly charged before a competent court for trial. It will be an infraction on the right to fair hearing and liberty of the accused person."

Police should have in mind that the accused is presumed innocent and has his fundamental human rights adequately secured under the Nigerian constitution.

Where a suspect taken into custody in respect of a non-capital offence is not released on bail after 24 hours, a court having jurisdiction with respect to the offence may be notified by application (which may be made orally or in writing) on behalf of the suspect. See section 64 of the Police Act.

5. **Power to detain:** In what appears to be a legislative usurpation of the powers and authorities of the court, the National assembly via the enactment of the Administration of Criminal Justice Act 2015, in sections 293-299 of the Act, appears to render nugatory the decisions of the courts as regards to "Holden charge", by empowering the law enforcement agencies to arrest and detain a person in custody beyond the constitutional provisions.

   The former chief Justice of Nigeria, Mariam Mukhtar, on a session held to mark the 2013/2014 legal year decries the power of police to detain a suspect and stated that: "it is common knowledge that our security agencies usually rush to court with suspect before looking for evidence to prosecute them. This procedure is a far cry from what obtains in other democracies, where discrete surveillance is placed on crime suspect who are painstakingly stalked by security agent, until such a time when evidence would have been obtained for their arrest, arraignment and prosecution.

6. **Police power to prosecute an offender:** In administering justice, the police after arrest of an alleged crime offender, hands over to a prosecutor, who is usually an attorney or an officer of his department or in some cases, the director of public prosecution (D.P.P) is a lawyer who brings charges against a person, persons or corporate entity. It is the prosecutor's duty to charge the offender to court and explain to the court what crime was committed and tender detailed evidence (exhibit) which was found and which incriminates the accused, and then the court takes over and begin trial of the alleged offender.

   Police has the responsibility to conduct prosecution of offenders before any court whether or not the information or complaint is laid in the name of the prosecuting police officer. **Section 66 of the Police Act** provides: "subject to the provisions of **Section 174 and 211 of the constitution and section 106 of the Administration of criminal Justice Act 2015** which relates to powers of the Attorney-General of the Federation and of a state to institute, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria, a police officer who is a legal practitioner, may prosecute in person before any court whether or not the information or complaint is laid in his name."

Thus, the police also play the role of prosecutors in the courts. Pursuant to this, the police conducts most of the criminal prosecutions in the Magistrates' Court. But apart from this, there is evidence that the police also prosecute cases not only at special tribunals but also at High Courts, Court of Appeal and the Supreme Court. They also defend actions instituted against police officers or the police as a body. This they have done admirably and successfully. This is also done in order to attain justice.

With the enactment of the New Police act 2020 which repealed the old **Police Act, Cap 19, Laws of the Federation of Nigeria 2004,** police officers who are not legal practitioners can no longer prosecute offences at the superior Court of record. See Section 66(1) of the Police Act 2020.

Note that the police power to prosecute is subject to the overriding power of the attorney general under sections 174 and 211 of the Constitution:

(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly;

(b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.

Furthermore, in ***Ezekiel v A-G Federation*** **[2017] 12 NWLR (Pt. 1578) p.** 1, the Supreme Court held that by virtue of the provisions of **Section 174 of the constitution** all agencies with Prosecutorial Powers can institute and prosecute criminal offences in our courts. See also **Comptroller, Nigeria Prison services v Adekanye (2002) 15 NWLR (Pt. 790)318; Amadi v F.R.N (2008) 18 NWLR (Pt. 1119) 259.** It should be noted that under the police act 2020, police officers who are not legal practitioners were not expressly given Prosecutorial Powers.

7. **Power to serve summons:** In administration of criminal justice, the Nigerian police force has the power to serve summons lawfully issued by a court. See section 65 of the Police Act
8. **Power to take finger prints:** 44(1) mandates police to take immediate record of an arrested person and this record according to section 44 (1) (d) (iii) includes his full fingerprint impressions for purposes of identification
9. **Power to enforce Laws:** Apart from the above roles, the police also participate in the enforcement of all laws and regulations with which they are directly charged. Furthermore, under the Sheriffs and Civil Processes Act, the police is employed in the execution of the judgment of the court. They therefore extract the performance and obedience to orders made by the court and this enhances the respect that is accorded the court system in Nigeria. In doing this, they maintain peace and preserve law and order in the society.

When warranted, the law enforcement agencies or police officers are empowered to use force or other/ forms of legal coercion and means to effect public and social order.

Conclusion:

It is submitted that the power of the police to arrest and to conduct searches, is also subsumed in the duty to investigate every allegation of crime. In order to detect the commission of any crime and for the purposes of apprehending those who have committed the said crime, it becomes necessary that the police should investigate the crime by making a fact-finding exercise to determine the culprits and the extent of their involvement. The duty to investigate includes the duty to investigate office holders mentioned in section 308(3) of the 1999 Constitution as the immunity conferred by the said section 308 does not confer on any of such office holders, immunity from police investigation, as, in their duty to detect crime, the police should normally investigate allegations of crime committed by any person.

As has been shown in this note, the police play a very vital role in the administration of justice. In fact, one wonders what the polity would be without the police. The role of the police which is predicated on constitutional and statutory provisions, include the maintenance of law and order through the prevention and detection of crime, apprehension of offenders, the investigation of persons alleged to have committed an offence as well as through the exercise of the power to grant bail to suspects under police custody. The police also participate positively in the administration of justice by conducting prosecutions as well as defending police officers facing trials in court. Furthermore, the police is engaged in the execution or enforcement of court orders and judgments. In doing so, they enhance the honour, respect and integrity accorded the court by compelling the performance and obedience to orders made by the court. It can therefore be said without equivocation that no criminal justice system can operate effectively without the participation of the police. This is so even with the obvious and flagrant abuses committed by members of the police force.

2. BURDEN OF PROOF

Introduction:

Burden of proof is primarily a topic in the law of evidence; it is also connected with the substantive law, especially with the law relating to defense. Criminal law in Nigeria establishes the framework for defining and punishing criminal offenses. The burden of proof in criminal cases lies on the prosecutor and the quantum of proof according to Nigerian Evidence Act is proof beyond reasonable doubt but not proof beyond the shadow of a doubt. **See: Section 135 of the Evidence Act, 2011*; Ikpo v The State (2016) 2-3 SC (Pt. III) 88***. In ***Alabi v State (1993) 7 NWLR (pt. 307) 511,*** the Supreme Court held:

> "Before it can rightly be said that the prosecution has proved its case beyond reasonable doubt therefore, every ingredient of the offence charged, which in the instant case is robbery must be established. In other words, if one element is left out then there is no proof beyond reasonable doubt".

The Supreme Court also in ***Ikaria v State (2014) 1 NWLR (pt 1389) 639*** affirm the above position per Ogunbiyi, JSC thus:

> "By the use of the phrase "Proof beyond reasonable doubt," it presupposes that all the ingredients establishing the offences must be proved to such a degree that there would be no question or stone left unturned as to the certainty that it is the accused/appellant and none other than must have committed the act complained of. In other words, all fingers would irritably point towards the direction of the accused. The culpability of the appellant should not be in any shadow of doubt but a clear focus of attention. For such proof, to sustain, it must earn the credibility of witnesses' testimonies who must give a first-hand account of facts which are within their personal knowledge. Any other source of information would be rated a hearsay evidence and therefore not admissible.

The burden placed on the prosecution to prove the charge against the accused never shifts and failure on the part of the prosecution to establish even one of the ingredients of the offence will lead to the discharge or acquittal of the accused person. See; the case of ***Nweke v State (2001)4 NWLR (Pt. 704) 588; Tanko v State (2003) 16 NWLR (Pt. 114) 597 @ 636 and Aruma v State (1990) 66 NWLR (Pt. 153) 125.*** However, there are an instance where the prosecutor fails to prove all the ingredients of the offence but another offence is established and the accused person will be punished for that established offence. In ABDULFATAH MURTALA v. THE STATE (2022) LPELR-58945(CA), the Appellant was charged with two other accused persons, for armed robbery contrary to Section 298 of the Penal Code, Cap 105 Laws of Kano State. The fact of the case is that The Appellant and three other persons (one could not be arraigned, being at large) went to the house of the victim who was the PW1 to rob him. At the house of the PW1, they attacked him and threatened him to surrender his money and other valuables, but PW1 resisted them, and was beaten and stabbed, severally. He (PW1) raised alarm which attracted neighbours and the assailants ran away, without taking anything.

Three of them, including the Appellant, were arrested. Appellant was the 2nd accused person. The 1st accused was the first to be arrested at the scene and he gave the names of the others, who took part in the robbery attempt.

At the end of trial, the learned trial judge found the Appellant (and 2 other accused persons) guilty of the offence of attempted armed robbery, under Section 299 of the Penal Code of Kano State, and punished under Section 2(1) of the Robbery and Firearms (Special Provisions) Act Cap 398 LFN 1990, and sentenced him to 14 years imprisonment.

Sections 216 and 217 of the Criminal Procedure Code empowers the Court to substitute charge against accused person, if the main charge has not been proved. Also in SALISU VS STATE (2019) ALL FWLR (PT 972) 260, it was held that an accused person can be convicted for lesser offence, disclosed, if the principal offence is not proved.

Section 179(2) of the Administration of Criminal Justice Act is to the effect that: "When a person is charged with an offence and facts are proved which reduce it to a lesser offence, he may be convicted of the lesser offence although he was not charged with it."

Therefore, a Court has power to convict for a lesser offence, although not charged, if it is of the view that facts proved by the Prosecution do not establish the offence charged but constitute the lesser and related offence – **Ndukwu v The State** (1999) LPELR-CA/PH/96." Per AUGIE, J.C.A. (PP. 39-40, paras. F-B). Section 179 (2) of the Criminal Procedure Act provides: "Where a person is charged with an offence and facts are proved which reduce it to a lesser offence, he may be charged with the lesser offence although he was not charged with it." In OKOBI VS. THE STATE (1984) LPELR – SC 85/1983. The Court held that section 179 (2) of the Criminal procedure Act enables a conviction to be entered for a lesser offence which the main offence has been reduced to by the proof of facts having the effect of reducing the main offence to a lesser offence. It does not matter that the accused person so convicted should have been charged with the lesser offence initially.

It's clear that the position of the law is that an accused person can be convicted with an offence lesser than the one he was charged but there are conditions, that is, the offence charged and the one convicted have to be similar as it was held by the court in the case of ALIU v. STATE (2019) LPELR-CA/EK/49C/2018 where the court held that: "It is trite and the law as the Court found that, where the particulars, the facts and the circumstances of the original offence charged are the same or similar to the lesser offence, it could convict on the lesser offence." Per WILLIAMS-DAWODU, J.C.A. (P. 18, Paras. D-E).

Again, the Constitution presumed the accused person to be innocent until proved otherwise. **See Section 36(5) of the Constitution**

In ***Ugboji v State (2017) LPELR-43427 (SC), Sanusi, JSC at page 28*** held:

> "The law is well settled, that the prosecution always has the burden to prove the commission of an offence (See Section 138 of the Evidence Act 2011 (as amended). This tallies with time honored principle of law that who asserts must prove. In criminal cases the law places the burden of proof on the prosecution. The standard of such proof is proof beyond reasonable doubt, in order to establish that an accused person had really committed the offence or the wrongful act. See the case of ***Ani v State (2000) 6 SCNJ 98 at 107."***

It is further relevant to also restate that the purport of section 138 of the Evidence Act is to affirm the absence of duty on the accused person to establish his innocence in a criminal charge proffered against him. That duty squarely lies on the prosecution to establish the guilt of the accused beyond reasonable doubt. In the case of ***KIM v State (1992) 4 NWLR (Pt.233) 17*** for instance, Nnaemeka Agu JSC (of blessed memory) in his summation said: "The prosecution may still fail if the accused person does not utter a word in his defense if the prosecution fails to prove its case beyond reasonable doubt against the accused." It is mostly at this instance that the accused person can make a no case submission. One of the innovations of the Administration of Criminal Justice Act,

2015 which was unknown to our criminal jurisprudence but which aims at transforming the tedious and slow dispensation of criminal justice in Nigeria is the power of the court to raise the issue of no case submission suo motu. See section 302 of the ACJA and 309 of the ACJL, Rivers State No 7 of 2015. These sections enables the court to raise the issue of no case submission and rule on it. There has been issues on permitting no case submission to be at the instance of the court without affording the parties the opportunity to address her on the case submission. Some posits that it makes the court to descend on the arena of conflict. See Egbuchu v Continental Merchant Bant Plc. & Ors (2016) LER SC Q3Z2 per Kekere Okun JSC. Similarly, in the case of Olusanya v Olusanya (1983) 14 NSCC 97 @102, the supreme court stated the principle regarding raising an issue suo moto by the court thus: "this court has said on a number of occasion that, although a court is entitled to, in its discretion, to take point suo motu, if it sees fit to do so, yet that discretion must be exercised sparingly and in exceptional circumstances only: where the points are so taken, the parties must be given the opportunity to address the court before decision on the point is made." However, where the prosecution proves the case beyond reasonable doubt, the burden of proving reasonable doubt shifts to the accused person. Section 135(3) of the Evidence Act states that "If the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on to the defendant."

Therefore, the rule is that primarily, burden of proof in a criminal case rests on the prosecutor and never shifts to the defendant unless where:

(i) the law imposes upon him the burden of proving particular facts. See the proviso to section 36(5) of the Constitution FRN; or
(ii) the law requires him to prove the existence of any exception or exemption or qualification to the law creating the offence. See section 139 of the Evidence Act; or
(iii) any fact is especially within his knowledge. See section 140 of the Evidence Act. Section 136(1) of the Evidence Act places the burden of proof for any particular fact on the person who asserts the existence of that fact.

In criminal cases, there are two main burdens. The first is the legal burden on the prosecution to prove the offence against the defendant beyond reasonable doubt. The second is the evidential burden on the defendant to introduce sufficient evidence to prove the probability of the defense or to create a reasonable doubt in the case of the prosecution. Legal burden never shifts but evidential burden does. It was explained by Blackall P. in **Akosa v C.O.P (1950) 13 W.A.C.A. 43** that:

> … the burden of proof is used in two senses which are sometimes confused. The expression may mean the burden of introducing evidence. In the first instance it always rests on the prosecution, who must prove the guilt of the accused beyond reasonable doubt; but the burden of proof in the second sense, i.e. of introducing evidence, rests on the prosecution in the first instance, but may subsequently shift to the defense; e.g. where the subject matter is peculiarly within the accused's knowledge.

Thus, section 141 of the Evidence Act provides that when any fact is especially within the knowledge of any person the burden of proving that fact is upon him, e.g. to prove that he has a valid moneylender's license. See **Otti v I.G.P {1956} N.R.L.R. 1 (CA).** Or again, the definition of any offense might expressly put a specific burden on the accused, e.g. to show that persons are partners, landlord and tenant, or principal and agent. See section 142 of the Evidence Act. The quantum of this evidential burden on the accused is merely that the court must be "satisfied." See sections 121(a) and 139(2) of the Evidence Act.

In **Esangbedo v The State (1989) NWLR (pt. 113) 57 at 69**, Nnaemeka-Agu JSC explained the meaning of the burden of proof in criminal cases,

> "For the avoidance of doubt the expression 'burden of proof' is often loosely used to include the burden to prove the guilt of a defendant beyond reasonable doubt – a burden which is always in the prosecution and never shifts – and the burden of introducing evidence on an issue in the trial – which may be placed by law on either the prosecution or the defence"

The key to the success of a civil or criminal trial is meeting the burden of proof. A failure to meet the burden of proof is also a common ground for appeal. Burden of proof is all about a party's duty to produce sufficient evidence to support an allegation or argument. In civil cases, the quantum of proof is on preponderance of the evidence. However, in criminal cases, the quantum of proof is beyond reasonable doubt. Burden of proof can also be said to be an obligation to present evidence in a criminal charge.

In criminal case, the burden of proof is constantly on the prosecution and never shifts because of the constitutional presumption of innocence which the accused person need not prove. In ***State v Ajayi (2016) LPELR-40663 (SC), Okoro, JSC*** at page 50 held:

> "It is trite that in criminal law proceedings, the onus is always on the prosecution to establish the guilt of the accused beyond reasonable doubt and the prosecution will readily achieve this result by ensuring that all the necessary and vital ingredients of the charge or charges are proved by evidence.

However, while the burden to prove the guilt of the Defendant does not shift, there are instance in a criminal case when burden of prove shift. This is when, the Defendant makes an assertion over a fact in a criminal matter; the burden is on him to prove that fact. This is because the law is trite and it is that whoever alleges a fact is under obligation in law to prove the fact he alleges. This is a statutory burden of proving the facts required to establish any defense to the charge. Section 139(1) of the Evidence Act 2011 states that:

> Where a person is accused of any offence the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence which he is charged is upon such person.

The quantum of proof required from the defendant is not the same with the prosecution. In **Popoola v The State** (2013) 7 MJSC (pt.2) 191 the Supreme Court considered the defense of insanity. Ariwoola JSC said: "The standard of such proof is not as high as that cast on the prosecution. It is not proof beyond reasonable doubt but it is proof of reasonable probability, proof sufficient to create a reasonable doubt in the mind of a fair-minded jury as to the sanity of the accused."

Then Ngwuta JSC added, "…..the burden of proof on the accused who relies on a defense of insanity is less than the burden cast on the Prosecution to prove his guilt beyond reasonable doubt. The burden of proof is satisfied on a balance of probability or preponderance of evidence."

Section 137 of the Evidence Act 2011 states that "Where in any criminal proceedings the burden of proving the existence of any fact or matter has been placed upon a defendant by virtue of the provisions of any law, the burden shall be discharged on the balance of probabilities."

There a plethora of judicial authorities holding that the burden on the defendant must be discharged on the balance of probabilities. However, some writers disagree with those judicial authorities by positing that there is no imaginary scale and no weight of evidence in criminal trial, thus, a defendant does not discharge the evidential burden on the balance of probabilities or on the preponderance of evidence. That the standard of proof on the defendant can be found in section 121(a) of the Evidence Act which states that: "A fact is said to be proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, in the circumstances of the particular case, to act upon the supposition that it does exist." Therefore the burden is discharged if the defendant can satisfy the trial Judge of the reasonable probability of the existence of the facts. The position of satisfying the judge is equally supported by section 139 (2) of the Evidence Act which provides that: "the burden of proof placed by this Part upon a defendant charged with a criminal offense shall be deemed to be discharged if the court is satisfied by evidence given by the prosecution, whether on cross-examination or otherwise, that such circumstances in fact exist." **In *Oteki v The State* (1986) ANLR 371 at 392,** Oputa JSC said: "Where the facts deposed to by a witness look probable when considered in relation to all the surrounding circumstances of the case, they induce belief. Probability is always a safe guide to the sanctuary where truth resides." **See also, Ali v The State (1988) ANLR 1 at 28, Onuoha v The State (1989) NWLR (pt.101) 23 at 32.**

In ***Ozaki v The State*** (1990) ANLR 94 at 107, Obaseki JSC said:

> "It was therefore not a statement of law by the Supreme Court that the defendant's duty in relation to the defense of alibi is to establish the defense on the balance of probabilities. Balance of probabilities means a preponderance of evidence. In other words, the defendant person adduces evidence which outweighs the evidence of the prosecution on the issue of alibi. That is not the law. As stated above, the only onus on the defendant is the evidential burden. The effect of such evidence is not dependent upon its preponderance. It may be scanty or minimal but yet very effective in raising reasonable

> doubt in the minds of the tribunal." See also, **Ukwunnenyi v The State (1989) NWLR (pt.114) 131 at 155**

It is for this reason that there is nothing wrong with the trial court in criminal cases evaluating the evidence of the prosecution first and making findings before evaluating the evidence of the defense. Unlike in civil cases, the evidence of the prosecution and the defense are not placed side by side on an imaginary scale and decided on the preponderance of evidence. In **Oteki v The State (1986) ANLR 371 at 378,** the trial judge considered the evidence of the prosecution first and found that the charge had been proved before considering and rejecting the evidence of the defendant. The appellant complained that this procedure caused the trial judge to wrongly evaluate the evidence. The Supreme Court held that there was nothing wrong with the trial judge assessing the prosecution's case first and making findings of fact before considering and evaluating the appellant's defense. **See also, Kim v The State (1992) NWLR (pt.233) 17 at 44, Igago v The State (1999) NWLR (pt.637) 1, Ezeuko v The State (2016) LPELR 40046 (SC)**

In **NAF v Kamaldeen (2007) NWLR (pt.1032) 164 at 188**, a General Court Martial convicted the respondent of stealing money belonging to the Nigerian Air Force. In his defense, the respondent stated that the Chief of Air Staff authorized the withdrawal of the money. The Supreme Court held that the burden was on the respondent to prove the alleged authorization. Musdapher JSC said:

> "It is settled law that where a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption to the law lay within the accused. …… In the instant case, huge amounts of money were taken out from the Nigerian Air force and the money was shared amongst the officers who caused and participated in the withdrawal. If they had the authority to do so, the burden is clearly on them to prove the same, more so when the purpose of withdrawing the money was defeated." See also, **Abadom v The State (1997) NWLR (pt.479) 1 at 19, Ohuka v The State (1988) NWLR (pt.86) 36, Ariche v The State (1993) NWLR (pt.302) 752 at 769, Ohunyon v The State (1996) NWLR (pt.436) 264 (4)**

One must admit that several judicial authorities hold that the burden on the defendant must be discharged on the balance of probabilities. However, there is also judicial authority that the standard of proof on the defendant seeking to prove the defenses of alibi or insanity is not on the balance of probabilities but an evidential burden to establish the reasonable probability of the existence of the facts. That burden was explained in **Ukwunnenyi v The State (1989) NWLR (pt.114) 131 at 155**, where Oputa JSC said:

> "There is however an onus on the defendant – the onus of introducing evidence tending to show that he might not have been (not that he was not) at the scene and at the time the alleged offence was committed. If any trial court insists that the evidence tendered

> by the defendant (pleading the alibi) must show that he was not there, that will be casting the onus of proving his innocence on a defendant. That will be wrong. If the evidence tendered by the defendant merely raises a doubt as to whether he was present at the time and place of the offence that is enough to secure him an acquittal." See also, **Esangbedo v The State (1989) NWLR (pt.113) 57 at 70, Adio v The State (1986) NWLR (pt.24) 581, Peter v The State (1997) NWLR (pt.496) 625 at 642, Onafowokan v The State (1987) NWLR (pt.61) 538, Abudu v The State (1985) NWLR (pt.1) 55, Aliyu v The State (2013) 6/7 MJSC (pt.3) 64, Olaiya v The State (2010) 1 MJSC (pt.1) 73, Esene v The State (2017) LPELR-41912(SC)**

In proof beyond reasonable doubt, a party convinces a judge or jury to a certain standard by persuasion. This standard is simply a measuring point and is determined by examining the quantity and quality of the evidence presented. "Meeting the burden of proof" means that a party has introduced enough compelling evidence to reach the standard defined in the burden of persuasion. Generally, the prosecution's evidence must overcome the defendant's presumption of innocence, which the Constitution guarantees as due process of law. This fulfills the policy of criminal prosecutions, which is to punish the guilty, not the innocent. Where a slight chance exists that the defendant is innocent, the case most likely lacks convincing and credible evidence and the Judge should acquit the accused person. The underlying philosophy of the rule, which places a stringent but necessary onus on the prosecution, is that it is better that ten guilty men should escape than that one innocent man should suffer.

Conclusion:

The prosecutor generally has the burden of proving the case, including every element of it. The defendant often has the burden of proving any defense. The legal burden of proof on the prosecutor never shifts while the evidential burden does. The quantum of proof on the prosecutor is proof beyond reasonable doubt while that of defense is to satisfy the court.

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