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CONTENTS

Editors' Note	v
LASJOL Board Members	vii
CONVICTION ON THE UNCORROBORATED EVIDENCE OF A TAINTED WITNESS: A GROUND FOR CHALLENGE?	1
A CRITICAL APPRAISAL OF THE LEGAL FRAMEWORK ON HUMAN ORGAN DONATION AND TRANSPLANTATION IN NIGERIA	15
SEXUAL VIOLENCE; THE NEW PANDEMIC	30
THE LIABILITY OF INTERNET SERVICE PROVIDERS FOR COPYRIGHT INFRINGEMENT ON THE INTERNET; THE NIGERIAN VIS-À-VIS THE US POSITION	39
FRANCHISING IN NIGERIA: SCOPE AND MATTERS ARISING	56
THE AUTOMATION OF THE NIGERIAN ELECTORAL PROCESS: A SQUARE PEG IN A ROUND HOLE	66
DATA PRIVACY AND THE NIGERIAN STATE: TOWARDS AN EFFECTIVE DATA PROTECTION REGIME	75
WHY CHAPTER II OF THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA IS A GREEK GIFT	89

THE MISCONCEPTION OF NIGERIANS WITH
REGARDS TO STATUTORY MARRIAGE: EXISTENCE
AND VALIDITY OF CHURCH, COURT AND
CUSTOMARY MARRIAGES

105

Dear Reader,

This is Volume 2, Issue 1 of Lawrit of Journal for the year 2022. This issue contains a total of 10 original articles from different writers. As has been established by our previous volumes, the Lawrit Journal comprises only of law related topics both relating to Nigeria and beyond.

In this issue, we continued with this tradition and pattern, and this one in particular promises to be interesting, educative and engaging as usual.

We do hope that it meets your expectations and more. And we also reiterate our promise to continue to put out all stops to come up with more ideas and innovations to keep our readers on their toes with our articles.

On this note, I wish you the best and I hope you have a happy and gratifying reading.

Sincerely,

M. A Andoyi (LASU)
Editor-in-Chief
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**CONVICTION ON THE UNCORROBORATED
EVIDENCE OF A TAINTED WITNESS: A GROUND FOR
CHALLENGE?**

¹Gesiye-Emi Emiemokumo

¹ Faculty of Law, Niger Delta University, Delta State

gemiemokumo@gmail.com, 08147624946

ABSTRACT

It is well-established as a general rule that corroboration of evidence in the course of judicial proceedings is an absolute necessity only when the law demands it. This is true even in criminal trials. Trial Courts are free to convict on the evidence of a sole witness, as long as there is no statute which specifically calls for the contrary. Although this is the law, one cannot help but inquire as to whether the absolute requirement for corroboration extends also to tainted witnesses. Admittedly, judicial decisions generally posit that a trial Judge can convict on the evidence of a tainted witness if he warns himself as to the safety of doing so and is satisfied with the evidence; but is this true? Is corroboration not required all the time? This paper sets out to examine existing case law on the concept of a tainted witness and the nature of the evidence given by such a witness, in a bid to proffer an answer to these questions and determine whether a conviction will be quashed if it is based solely on the evidence of a tainted witness.

INTRODUCTION

Corroboration is an integral part of Evidence. It refers to independent pieces of evidence presented to support or reinforce some other piece of evidence; evidence supplementary to that already given tends to strengthen it. It is additional evidence of a different character to the same point.¹

The law is settled under **Section 200 of the Evidence Act, 2011** that except as provided in Sections 201 to 204 of the Act, no particular number of witnesses shall, in any case, be required for the proof of any fact.² This has been given credence in a myriad of judicial decisions³. The Evidence Act also provides for other instances where corroboration is required, such as the unsworn evidence of a child under 14 years in **Section 209**, as well as in actions for breach of promise of marriage in **Section 197**.

Essentially, the law is that the testimony of a single witness may suffice in all cases and corroboration is mandatory only where the law requires it⁴. However, circumstances abound in practice where although there is no statutory requirement for corroboration, the Courts, over time, have consistently leaned

¹ See *Saliu v State* (2014) LPELR-22998(SC)

² Mfoniso Katherine Ogunleye, 'Victim's Perspectives' Towards Rape, Sexual Violence and Abuse of Women during Internal Armed Conflicts in Nigerian' (2019), Doctoral thesis, University of Central Lancashire, available at <http://clock.uclan.ac.uk/34357/2/34357%20Mfoniso%2C%20Ogunleye%2C%20PhD%20Thesis.pdf> accessed May 23, 2021

³ See *Adamu v State* (2017) LPELR-41436(SC); *State v Ekanem* (2016) LPELR-41304(SC)

⁴ *Adepoju v State* (2014) LPELR-23312(CA)

towards the requirement thereof—such circumstances where it is considered unsafe or unreasonable to act upon the uncorroborated evidence of one witness.⁵ Such instances include where a witness giving testimony is declared to be a tainted witness. If corroborative evidence is not adduced in any of the instances statutorily provided, the conviction based on the evidence is irrefutably vitiated. Whether this is also the case for uncorroborated testimony of tainted witnesses is the issue of controversy, which this paper seeks to address.

WHO IS A TAINTED WITNESS?

The definition of a tainted witness is not provided for in the Nigerian Evidence Act, 2011, but a definition has been judicially propounded, receiving continued endorsement by the Courts. The renowned definition was stated in **Oluwatoyin v State**⁶, to wit: “a tainted witness is either an accomplice or one who, by his evidence, could be regarded as having some purposes of his own to serve.” **Ngwuta, JSC** explained in **Akindipe v State**⁷ that such a witness is one who testifies in a case with a purpose to serve and that is to see that the side for whom he testifies in the dispute is vindicated.

⁵ See *Posu v The State* (2011) LPELR-1969(SC)

⁶ (2018) LPELR-44441(CA)

⁷ (2012) LPELR-9345(SC)

The case of **Mbenu v State**⁸ aptly illustrates this position. The facts of that case reveal that on the morning of 8th July 1981, at 2 a.m., armed men, including the 1st and 2nd accused persons, besieged the premises of Miss Beatrice Abazie, a teacher, and shot her brother in the head. At the trial of the accused persons, Miss Beatrice testified as PW2. The presentation of evidence revealed the following facts: it was her brother who was killed in such gruesome circumstances; the 1st accused person was her ex-lover who seemed, on her evidence, to have resented the break-up of their relationship and threatened to kill her; the 2nd accused was a co-teacher who made unsuccessful attempts to make love to her and turned her enemy in school, even withdrawing his son from her class. The Supreme Court held that it was clear from her evidence that she was a tainted witness; the tendency that she was out in pursuit of a personal interest other than the interest of justice was high, and that her evidence needed to be carefully scrutinized.

It has been held that such a witness is not spontaneous but calculating. Accordingly, he must be watched closely and everything he says must be put to test because he “often speaks out of malice and he pours out venom as lethal as that of a

⁸ (1988) LPELR-1855(SC)

serpent.”⁹ In **Irrechukwu v. State**¹⁰, a tainted witness was described as one who is using the machinery of the trial to seek the punishment of his enemy and comes to use the opportunity of the trial to shout “*crucify him!*” It also happens where the witness is an accomplice in the crime and uses the opportunity of the evidence to divert attention from his involvement as long as the trial lasts, or to seek others to go down with him if he is indicted.

But, it is important to emphasize that whether or not a witness is a tainted witness is a matter of fact and not speculation. It is imperative that the interest be established. It is absolutely necessary. Otherwise, the witness cannot be regarded as tainted. It must be by evidence, not assumptions or insinuations. In **Tanko v FRN**¹¹, it was held as follows:

“...Now is PW8 a tainted witness? The basis of the allegation is because PW8 was initially arraigned along the Appellant but charges were later withdrawn and she was made a prosecution witness. Can that make her a tainted witness? That alone cannot make her a tainted witness, because there is no personal interest to her benefit from the entire trial. It was not shown that PW8

⁹ Adewunmi v Nigerian Eagle Floor Mills (2014) LPELR-22557(CA), Per Dongban-Mensem, JCA at Pp. 31 – 32, Paras. G – D

¹⁰ (2015) LPELR-25608(CA)

¹¹ (2020) LPELR-50294(CA)

is an accomplice or that she has an interest of her own. What could be the interest in this case? The burden to establish that the witness is a tainted witness rests squarely on the Appellant.... The burden was not discharged by the Appellant because all the insinuations are not within what Courts consider as evidence to label a witness a tainted witness. The primary element is to establish the interest that is sought to be served by the evidence.”¹²

Similarly, in **Egberetamu v State**¹³, the appellant merely alleged that PW1 was a tainted witness. There was nothing in all the evidence adduced by both parties to indicate, in the least, that PW1 had any other purpose to serve other than to be a witness at the trial of the appellant. The Court held that the allegation, not supported with grounded and solid facts and evidence, was insufficient.

A GROUND FOR CHALLENGE?

Say, an accused person has been arraigned for stealing a car. Trial is ongoing. The prosecution’s only eyewitness is called to the stand, takes the oath and testifies that he saw the accused steal the car. There is no other evidence to back this – not even

¹² Ibid, Per Nimpur, JCA at Pp. 37 – 38, Paras C – F; *See also* *Asuquo v State* (2016) LPELR-40597(SC)

¹³ (2014) LPELR-22615(CA)

circumstantial. The defence counsel then comes up to cross-examine the witness. Cross-examination reveals that the witness and the accused have been in deep quarrel over land for years. Subsequent evidence from the accused and other defence witnesses show that the witness and the accused are sworn enemies and that the witness had vowed to deal with the accused. The witness is apparently tainted. Evidence closes, final arguments are made, and judgment is delivered. The trial Judge finds that he believes the truth of the prosecution's uncorroborated evidence and convicts the accused. The accused appeals. IS THERE A GROUND FOR CHALLENGE?

Given that there is no statutory requirement for the corroboration of the evidence of a tainted witness, the answer, ordinarily, is No. In fact, cases reveal that there is no requirement for corroboration at all. What exists is a requirement for the trial Judge to warn himself as to the safety of convicting upon the uncorroborated evidence of a tainted witness. And even then, the requirement is not provided by law. Essentially, if the trial Court thoroughly scrutinizes the evidence of the tainted witness, is satisfied with it, and warns itself, the conviction is valid. **Nnamani, JSC** explained this in **Adekunle v State**¹⁴, thus:

¹⁴ (1989) LPELR-108(SC)

“In *Nathaniel Mbenu & Anor v The State* (1988) 3 NWLR (Pt. 84) 515, 625 to which learned counsel made reference, I did say that – “The court has always held that the evidence of such a witness (tainted witness) should be treated with considerable caution and should be examined with a tooth comb. Indeed, trial Courts have been advised to be wary in convicting on the evidence of such witnesses without some corroboration.” But I did say too, “The requirement that a trial Judge should in such circumstances warn himself as one would in the case of accomplices, is one dictated by prudence, not by law.” Admittedly, in the present case, the learned trial Judge did not warn himself, but I never suggested anywhere that such failure in every case must be fatal. The central point is that the learned trial Judge must be wary in such circumstances. In other words, he must be fully satisfied with such evidence before convicting on it.”¹⁵

The above position regardless, one cannot deny the reality that the evidence of a tainted witness is, from surrounding circumstances, not weighty; at least, not enough to solely ground a conviction. Surely, because of the ulterior motives for testimony that may be harboured by this kind of witness, a red

¹⁵ Ibid at Pp. 12 – 13

flag is raised as to the credibility and truthfulness of his evidence, which affects the probative value thereof. What the trial Court basically has to go on is the word of the tainted witness against that of the accused, who is innocent until proven guilty. Inarguably, the “I did not do it” of the accused carries far more weight than the “he did it” of the lone tainted witness. With the suspicion that lingers over the testimony, it just is not evidence enough to secure a conviction.

In **Egwumi v State**¹⁶, **Rhodes-Vivour, JSC** said, so long as the charge is not one that needs corroboration, the Court is only interested in the testimony of a quality witness. Is a tainted witness a quality witness? Certainly not. The fact of that he is tainted—the fact that there has been established an external interest or purpose to serve—casts doubt on the evidence, and deprives the evidence of conviction-worthy weight.

It need also to be pointed out that realistically, the trial Judge “warning himself” and then accepting the evidence as credible, cannot save the conviction. Quite frankly, that requirement is one of mere cosmetic importance, as exemplified in **Adiele & Ors v State**¹⁷. In that case, there was a shooting that led to the death of the deceased. The 1st Appellant was convicted at the trial Court primarily on the evidence of DW3, an accomplice,

¹⁶ (2013) LPELR-20091(SC), restated in *Isah v State* (2017) LPELR-43472(SC)

¹⁷ (2011) LPELR-8835(CA)

who was found tainted because he had his own purpose to serve, in that he wanted to save himself from the consequences of the shooting. **Ogunwumiju, JCA (now JSC)** held:

“There is no doubt in my mind that the evidence of DW3 should be regarded as tainted.... In such a case, the Court should have been circumspect before convicting solely on his evidence. I would, with great humility, say that the Court should have looked for any evidence to corroborate that of DW3.... The learned trial judge at page 201 of the record cautioned himself thus: “I have painstakingly and cautiously considered the evidence of DW1, DW2, DW3, DW4, DW5, and DW6 who are co-accused persons.” However, I have gone through the evidence at the trial Court, there is no direct and positive evidence from any other eyewitness that could serve as corroboration that the 1st Appellant actually participated in the shooting which culminated in the death of the deceased.”

Undoubtedly, the trial Judge warned himself in this case. But it was immaterial. The learned Justice of the Court of Appeal made it clear that although the authorities say the Court should be wary and warn itself before convicting on the uncorroborated evidence of a tainted witness, the cautiousness is one of substance, not of form. The judge must not merely indicate on

the record that he is aware of his duty to be cautious and that he has warned himself – which is a matter of form; he must demonstrate that he heeded the warning – that is a matter of substance.

Essentially, it was concluded that the learned trial judge did not substantially address the issue of the fact that the proof of only one tainted witness who was a co-accused with his own interest to serve in shifting the blame to the 1st Appellant, had proved the charge against the 1st Appellant. It was unequivocally held that **the evidence of an uncorroborated tainted witness cannot be proof beyond reasonable doubt.**¹⁸

The requirement that the trial Judge must demonstrate that he heeded the warning as a matter of fact was expounded in **Agbanyi v State**¹⁹. There have to be reasons for the Judge's findings. The Judge has to explain why the testimony is credible and why he believes it, and give pointers of truthfulness from the evidence. He has to give reasons as to why he was so sure that the witness was not just trying to settle scores; how he could tell, without any support, that this tainted witness was telling the truth, which is an impracticable undertaking. The Court in that case made it a point to stress that:

¹⁸ Ibid at Pp. 19 – 25, Paras. D – D

¹⁹ (1994) LPELR-14108(CA)

“...it was wrong for the learned trial Judge in such circumstances to say that he “disbelieved” the appellant and was “satisfied” that the prosecution had proved its case beyond reasonable doubt and thereby convicted the appellant. There is neither magic nor sanctity in the words “I believe or disbelieve” or “I am satisfied”. They should represent the Court’s reaction towards proven facts, possibilities and probabilities based on facts accurately assessed and established.... A judgment convicting a man of the offence charged must be seen to be a product of prudent and logical thinking, based upon admissible evidence, in which the facts leading to his conviction are clearly found, and the legal deductions therefrom, carefully and rightly made.”²⁰

According to the Court, the benefit of doubt, even a lingering doubt, must be exercised in favour of the accused, and that is precisely what the evidence of a tainted witness does – it raises doubt. It does not amount to prudent and logical thinking or reasonable reaction to proven facts, possibilities and probabilities, to evaluate such evidence as credible and ascribe so much probative value to it, that it warrants a conviction. Indeed, even in **Adekunle v State**²¹, conviction was not based on

²⁰ Per Orah, JCA at Pp. 25 – 29, Paras. A – B

²¹ Supra (n13)

the evidence of tainted witnesses. Page 14 of that judgment reveals that the witnesses in question were, in fact, held to be not tainted.

Of course, the fact that such a witness has other personal interest of his own to serve is, by itself, not sufficient to reject his evidence.²² Nonetheless, even if the evidence is not completely disregarded, it should be taken with a pinch of salt²³. That is the bottom line, in view of which the answer to the question initially put forward, as to whether a conviction on the uncorroborated evidence of a tainted witness constitutes a ground for challenge, becomes YES. Yes, it is a ground for challenge, irrespective of the absence of a statutory requirement for corroboration, simply because the evidence, by its very nature, is of too little probative value to secure a conviction uncorroborated. Corroboration is absolutely necessary in all such cases.

CONCLUSION

Theoretically, a trial Judge may elect to act on the uncorroborated evidence of a tainted witness, and where he so acts, his decision is not vitiated merely by the fact that the witness was tainted. After all, it is settled that the requirement that a trial Judge should in such circumstances, warn himself, is

²² Pius v State (2015) LPELR-24446(SC)

²³ Agu v State (2017) LPELR-41664(SC)

one dictated by prudence, not law. Noteworthy, nevertheless, is the reality that it is uncommon to find a judge acting upon the uncorroborated evidence of a tainted witness. So uncommon that it has become trite. The judicial practice, and quite honestly, common sense, dictate in actual fact, that corroboration is required for the evidence of any tainted witness. This is further reinforced by the fact that the Courts consistently warn against the unchecked extension of the concept of tainted witness, as doing so would operate to compromise the merits of many single-witness cases²⁴.

It is recommended hence, that the position be made clear and unequivocal. The use of the words “should”, “caution”, “is advised to be wary”, “warn itself” in decisions, is misleading and only operates to create confusion. It should be clear from judicial pronouncements that while statute does not require corroboration for tainted witnesses, corroboration is not just desirable, it is a necessity.

²⁴ See *Ogunlana v State* (1995) LPELR-2341(SC)



A CRITICAL APPRAISAL OF THE LEGAL FRAMEWORK ON HUMAN ORGAN DONATION AND TRANSPLANTATION IN NIGERIA

Ekhorutomwen Gabriel Ekhatör¹

¹ LLB (Hons) University of Benin, Edo State, Nigeria.

ekhatorgabriel@gmail.com, 08169678899

ABSTRACT

The advancement in medical sciences in recent times has brought succor to those suffering from the failure of vital organs. Organ transplantation has become a rapidly growing and imperative surgical specialty in the last four decades as transplantation of solid organs has become the preferred treatment for end-stage renal, hepatic, cardiac, and pulmonary disease. Although organ transplantation has been widely accepted in contemporary times all over the world as a safe medical procedure, it is fraught with some challenges in Nigeria, ranging from a lack of suitable structures and frameworks for snowballing the supply of needed organs to legal liability issues arising from the ruin or negligent misdirection of donated organs, commercialization of organs, organ trafficking as well as ethical, social and religious beliefs.

This paper examines the prevailing legal framework governing the practice of organ donation and transplantation in Nigeria highlighting the strength and weaknesses of the legislation. The work also gives a general overview of the concept of organ donation and transplantation and makes some recommendations.

1.0 Introduction

The widespread medical transplant technology across the world has saved many lives, particularly those in the final stages of diseases in which internal organs are entirely failing. This procedure, in addition to prolonging lives, also “enables better quality of life and is considered to be cost-effective because it makes more resources available for other sectors of the economy”.¹

Organ transplantation in the sense that it involves the use of human body parts as medicine is not a recent phenomenon as it enjoys historical antecedent in medicinal cannibalism or anthropophagy predominant in Europe in the Middle Ages, involving the use of body parts of young people that suffered violent deaths in therapeutic preparations known as *Mumia*.² However, organ transplantation as the contemporary standard form of medical care started in some parts of the Western world in the 1940s.³ What can be termed the first successful organ transplantation took place on 23 December 1954, when Dr. Joseph Murray and his colleagues performed a living-related-donor kidney transplant between two brothers in Hollywood,

¹ J. O. Fadare and B. L. Salako, ‘Ethical Issues in Kidney Transplantation: Reflections from Nigeria’ (2010) 2 *TRRM* 87.

² N.N. Remigius, ‘Organ Donation and Transplantation’ in Irehobhude O. Iyioha and N.N Remigius (eds), *Comparative Health Law and Policy* (1st ed, Routledge 2015).

³ World Health Organisation, ‘WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation (2010) 11(4) *Cell Tissue Bank* 413.

Florida.⁴ Because the brothers were identical twins, kidney graft rejection was not an issue and the brothers were discharged in good health several weeks later.⁵ This kidney transplant was a proof that it was now possible to replace diseased organs with healthy ones. However, without immunosuppressant drugs, the possibility of transplantation for diseased organs was restricted to identical twins.⁶ Further advancement in medical sciences in 1963 resulted in the development of Azathioprine, a drug that could alter the immune response to rejection, the possibility of transplantation for diseased organs was no longer limited to identical twins thus, permitting renal transplantation between non-identical living related donors.⁷ The amalgamation of Prednisone and Azathioprine became a cornerstone of organ transplantation, expanding the procedure's availability to related non-identical donor populations.⁸ The introduction of Cyclosporin A in 1983 had a massive impact on the availability of both cadaveric and living allograft transplantations.⁹ Organ transplantation was now a very real possibility for a broad range of individuals suffering from organ failure. Current medical

⁴ Arnold G. Diethelm, 'Ethical Decisions in the History of Organ Transplantation' (1990) 211 *ANN. SURG.* 505.

⁵ *Ibid.*

⁶ R. Ainley, 'Organ Transplantation: A Model Law Approach to Combat Human Trafficking and Transplant Tourism' (2011) 13 *Oregon Review of International Law* 427.

⁷ *Ibid.*

⁸ Arnold G. Diethelm, 'Ethical Decisions in the History of Organ Transplantation' (1990) 211 *ANN. SURG.* 510.

⁹ Cyclosporin A is a powerful immunosuppressant that drastically improves long-term graft survival.

technology and the acceptance of “brain death” have broadened transplantation procedures to include cadaveric and non-related living donors.

On 17 December 1986 there was a significant achievement in medicine in England when the first combined heart, lung, and kidney transplant was carried out.¹⁰ Years after the development of Cyclosporin A, the success rate of organ transplantation, especially kidney transplant procedures has been excellent. Advances in organ preservation, immunosuppression, xenografting, and surgical technology continue to expand the frontiers of transplantation.

The concept of organ transplantation was first conceived in Nigeria in 1980 but due to plodding deterioration in the public health care system, the concept did not actualise until 2000 when the first renal transplant was performed at St. Nicholas Hospital, Lagos.¹¹ Since then other medical centers began to emerge in the country. However, at that time, there was no legislation in place regulating such a procedure. This situation was remedied with the enactment of the National Health Act 2014 to regulate issues emanating from organ donation and transplant.

¹⁰ E. A. Okojie, *Medical and Forensic Law Companion* (Ambik Press 2020) 197.

¹¹ E. H. Emmanuel and I. F. Nabena, ‘Legal and Ethical Developments in the Regulation of Organ Donation and Transplantation in Nigeria’ (2020) 11 (1) *NAUJILJ* 122.

This paper examines the prevailing legal framework governing the practice of organ donation and transplantation in Nigeria highlighting the strength and weaknesses of the legislation. The work also gives a general overview of the concept of organ donation and transplantation and makes some recommendations.

2.0 Conceptual Clarification

2.1 Organ Transplantation

Organ transplantation is a medical procedure in which organs are removed from one body and implanted in another body or from one part of a body to another part of that same body.¹²

Organ transplantation can be broadly classified into three based on the resemblance between the site of transplantation and also between the donor and the recipient.¹³

- i. Autotransplant: it is the transmission of tissues or organs from one part of an individual to another part of the same individual.
- ii. Allotransplant: it involves transfer from one individual to a different individual of the same species, which is the most common form of solid organ transplants performed today. In allotransplant,

¹² Ibid.

¹³ A. A. Bakari, U. S Abbo Jimeta, M. A. Abubakar, S. U Alhassan, E. A Nwankwo, 'Organ transplantation: Legal, Ethical and Islamic Perspective in Nigeria' (2012) 18 *Nigerian Journal of Surgery* 53.

both the donor and the recipient are subjected to screening to establish compatibility between them.¹⁴

- iii. **Xenotransplant:** it involves transfer across species barriers. It involves the transplantation, implantation, or infusion into a human recipient of either (a) live cells, tissues, or organs from nonhuman animal sources, or (b) human body fluids, cells, tissues, or organs that have had *ex vivo* contact with live nonhuman animal cells, tissues or organs.¹⁵

Globally, kidneys are known to be the most commonly transplanted organ. Other organs that could also be transplanted include the liver, heart lungs, pancreas, intestine, and thymus.¹⁶

2.2 Organ Donation

Organ donation is the act of donating a healthy organ to a recipient whose own organ has failed or is failing. It is the process of surgically removing an organ or tissue from one person (the organ donor) and implanting it in another person (the recipient).¹⁷ Organs donated can either be from a deceased/cadaveric donor or a living donor. In the case of a deceased/cadaveric donor, the donor has to be brain dead, for

¹⁴ Ibid.

¹⁵ E. A. Okojie, *Medical and Forensic Law Companion* (Ambik Press 2020) 212.

¹⁶ E. H. Emmanuel and I. F. Nabena, 'Legal and Ethical Developments in the Regulation of Organ Donation and Transplantation in Nigeria' (2020) 11 (1) *NAUJILJ* 122.

¹⁷ E. A. Okojie, *Medical and Forensic Law Companion* (Ambik Press 2020) 199.

him to be brain dead he must have received either a traumatic or pathological injury to the part of the brain in control of his heartbeat and breathing. Since brain death means that the brain stops working, some specific signs must be identified to confirm brain death and they are mostly identified during the doctor's physical examination of the person. These signs include lack of movement and specific responses or reactions to tests being carried out on certain reflexes, lack of reaction to light by the eyes, and lack of an attempt to breathe. The tests that are carried out are to confirm brain death thereby making organ donation a possibility.¹⁸

In whatever form of donation, the donor must have given informed consent before the organ can be removed from the donor's body. In the case of deceased/cadaveric donors, before their death, the donors could choose to either opt-in or opt-out of donating their organs for transplantation after death.¹⁹

3.0 Legal Framework for Organ Donation and Transplant in Nigeria

In Nigeria, matters concerning human organ donation and transplantation are regulated by the National Health Act 2014.²⁰ The Act has many laudable provisions. Generally, the Act

¹⁸ Ibid.

¹⁹ B. Venter, 'A Selection of Constitutional Perspectives on Human Kidney Sales' (2013) (16) (1) *PER* 352.

²⁰ National Health Act No. 145, 2014.

provides a framework for regulating the removal and use of human organs donated for transplantation.²¹ The Act recognised the two sources of organs transplantation i.e the living and cadaveric donors²²

Part VI of the Act regulates the use of blood, blood products, tissue, and gametes in humans. The tissue under the Act refers to “human tissue, and includes flesh, bone, a gland, an organ, skin, bone marrow or body fluid, but excludes blood or a gamete”.²³ Just as applicable under the common law, consent is the superintending principle for living donation under the Act. However, consent may be waived for medical procedures such as investigations and treatment in emergency cases following prescribed protocols by the appropriate authority.²⁴ A consent so given can be revoked before the removal of the organ in the same manner it was given and in the case of a consent given by a Will through the revocation of that will.²⁵

Though the National Health Act provides for consent as a precondition before the use and storage of tissues and organs, it did not prescribe or offer an interpretation as to what constitutes an “appropriate consent” for organ and tissue storage and usage.

²¹ Ibid, Sections 47 – 57.

²² Ibid.

²³ Ibid, Section 64.

²⁴ Ibid, Section 48.

²⁵ Ibid, Section 57.

This is alarming as the doctrine of informed consent is one that is expected to be addressed and given an in-depth discourse as it is not only a prerequisite for organ donation and transplant²⁶ but the substratum upon which any medical interference with the body is anchored on.²⁷ Although informed consent is to some extent discussed in section 23 of the Act²⁸, the part discussed merely covers ensuring that a “user” in the language he understands, receives full knowledge of the medical services to be carried out and his rights to refuse such. How the heading of section 23 is worded does not make for clarity and certainty. Subsequently, what it seeks to clarify is the presence of informed consent before any medical interference is lost. It is essential that a statutory definition of consent be contained in the Act to ensure clarity. Furthermore, in defining the scope of free and informed consent, the Act should state the factors that need to be considered concerning adults, children, and persons who cannot consent as it is under the United Kingdom Human Tissue Act 2004 to arrive at proper consent under the law because an undefined scope of informed consent could lead to the illegal procurement of organs.

²⁶ Convention on Human Rights and Biomedicine (CHRB) 1997, Article 19.

²⁷ Ibid, Articles 5, 6 and 7.

²⁸ National Health Act 2014.

Still on consent, in accordance with section 55 of the National Health Act 2014 a deceased donor may give consent through a will, in any document signed by him/her and witnessed by two competent witnesses, or in a written statement made before two competent witnesses.²⁹ There appears to be a problem in ensuring the practicality of this provision given the Nigerian societal values and the laws that govern probate in Nigeria.³⁰ It is common knowledge that most Nigerians dislike the idea of making their wills.³¹ This stems from the notion that making such a testamentary statement is a signal that one is about to die. Again, even if a valid will exists, the bottlenecks and delays in the process of the deceased's lawyers trying to sort out all the formalities involved in getting a grant of probate to reveal the contents of the will, the proper time to harvest the organs would have lapsed, as organs deteriorate quickly once death occurs.³² Besides, organs are not harvested from persons who are dead but from persons who are clinically dead or brain dead. This is because at a person's death the organs immediately shut down due to lack of oxygen and thus, be of no transplantable use unless

²⁹ Ibid, Section 55, (a) (i) (ii) & (iii)

³⁰ Lagos State High Court Civil Procedure Rules, Order 55, Wills Law of Lagos state Cap W2 2004, Wills Act 1837

³¹ R Choji, 'Why 'Wills are hardly effective in Nigeria'(Leadership newspaper, 30 March 2014) <<http://leadership.ng/features/360889/wills-hardly-effective-nigeria>> Accessed 6 April 2022.

³² H. Kashi, 'Organ Transplantation' in M. Micheal, *et al* (eds), *Clinical Surgery* (1st edn, W B Saundersan Imprint of Harcourt Publishers Ltd 2001) 193.

kept alive by ventilators or other life support mechanisms.³³ As a barrier to deceased organ donation, most societies in Nigeria and Africa are largely impacted by cultural, social, and religious beliefs and practices, in most of these cultures, the dead body is venerated as such any deceased organ donation procurement procedure may be viewed as a vilification of the dead.³⁴

The Act also protects children from organ donation exploitations. Section 48(2) of the Act provides that “a person shall not remove tissue that is not replaceable by natural processes from a person younger than eighteen years”. Furthermore, the section provides for the punishment in the case of contravention of the provisions in this section. “In the case of tissue, a fine of ₦1,000,000 or imprisonment of not less than two years or both fine and imprisonment” is imposed. This section aims to protect children from exploitation by adults.

Section 49 of the Act prohibits the use of “tissue removed or blood or a blood product withdrawn from a living person”³⁵ for another purpose for which they were not removed. Similarly, “human organs obtained from deceased persons for transplantation or treatment, or medical or dental training or

³³ M. Hertl and P S. Russell, *Overview of Transplantation* (Merck Manual, Consumer Version, 2016) < <http://www.merckmanuals.com/home/immune-disorders/transplantation/overview-of-transplantation>> Accessed 6 April 2022.

³⁴ E. H. Emmanuel and I. F. Nabena, ‘Legal and Ethical Developments in the Regulation of Organ Donation and Transplantation in Nigeria’ (2020) 11 (1) *NAUJILJ* 122.

³⁵ Section 49.

research, shall only be used in the prescribed manner”.³⁶ For that purpose, the National Tertiary Health Institutions Standards Committee³⁷ is authorized to develop guidelines for the approval of organ transplant facilities, as well as the procedure for obtaining such approval.³⁸ “A person who contravenes a provision of this section or fails to comply therewith or who charges a fee for a human organ is guilty of an offense and shall be liable to imprisonment for a minimum of five years without the option of a fine”.³⁹

According to section 51 of the Act, “a person shall not remove tissue from a living person for transplantation in another living person or carry out the transplantation of such tissue except in a hospital authorised for that purpose; and on the written authority of the medical practitioner in charge of clinical services in that hospital or any other medical practitioner authorized by him or her; or in the case where there is no medical practitioner in charge of the clinical services at that hospital a medical practitioner authorized thereto by the person in charge of the hospital”. However, “the medical practitioner stated in this section shall not be the lead participant in a transplant for which he has granted authorisation under this

³⁶ National Health Act 2014, Section 54(1).

³⁷ Ibid, Section 9.

³⁸ Ibid, Section 54(3).

³⁹ Ibid, Section 54(4).

section”.⁴⁰ This Section has helped in upholding ethics as it excludes the medical practitioner who has approved a transplant from taking part in the process and this ensures that there is absence of conflict of interest.

The Act further provides that only duly “registered medical practitioners or dentists may remove any tissue from a living person, use tissue so removed for any of the purposes stated in this Act, or transplant tissue so removed into another living person”.⁴¹

The Act prohibits any form of commercialisation of human organs, thus it is an offence punishable with a fine, imprisonment or both for a person who has donated tissue or organ to receive any form of financial reward, except reimbursement for the reasonable cost incurred by the donor in connection with the organ donation. Any person found guilty of commercialisation is liable on conviction to a fine of ₦100,000(one hundred thousand naira) or imprisonment for a period not exceeding one year or to both fine and imprisonment. While the Act does not prohibit organ trafficking which is one of the fastest growing international organised crimes, this loophole was however remedied by Section 20 of the Trafficking in Persons (Prohibition), Enforcement and Administration Act,

⁴⁰ Ibid, Section 51.

⁴¹ Ibid, Section 52(1).

2014 which prohibits the procurement or recruitment of a person for organ harvesting with “imprisonment for a term of not less than 7 years and to a fine of not less than ₦5,000,000.00”.⁴²

It must be noted that the prohibition of financial gain with respect to donation aims to ensure respect for the dignity of living donors and recipients and their human rights; the indivisibility of the body of the deceased donor. It also contributes to the promotion of altruistic donation and the safety and quality of donated human body parts, thereby maintaining a donation system that people can trust. However, the prohibition of financial gain does not prevent the compensation of living donors for loss of earnings and settlement of any other justifiable expenses caused by the removal of organs, tissues, or cells, or by the related medical examinations; compensation in case of undue damage resulting from the removal of organs, tissues or cells.⁴³

4.0 Conclusion and Recommendations.

Globally, organ transplantation is now the best medical treatment for patients with end-stage organ failure. The procedure is now accepted in Nigeria and a law has been enacted

⁴² Trafficking in Persons (Prohibition), Enforcement and Administration Act, 2014, Section 20.

⁴³ National Health Act 2014, Section 53(1)(a).

to regulate the process but there are still rooms for improvement.

It is recommended that an amendment should be made to the National Health Act 2014 to clear grey areas that will reflect a detailed provision on informed consent. The definition of “consent” and “the elements that constitute a free and informed consent” should be included in the Act to offer a further safeguard statutorily.

Also, section 55 of the Act which provides for the donation of organs by deceased persons should be amended to include a more practical and effective means of organ donation for deceased persons who wish to donate their organs after death.

Lastly, the fine for violation of the provisions of the Act with regards to the commercialization of organs should be increased.



SEXUAL VIOLENCE; THE NEW PANDEMIC

¹Gbemisola D. Aladegbaiye, ²Faith O. Solomon

¹Faculty of Law, Adekunle Ajasin University.

gbemisolaaladegbaiye@gmail.com

²Nigeria Police Academy.

solomonfaith53@gmail.com

ABSTRACT

Sexual violence remains a vice which requires special attention. Whether in a developed, developing or under - developed country, the reality of this unpleasant act cannot be trivialized. It's an act which has probably existed as long as man, but was exacerbated by the lock down measures adopted during the COVID19 pandemic. Unfortunately, like the pandemic, it has grown to be an undeniable threat to the safety of the public; and one of the most dominant offences in the society, not sparing any country on earth. This places huge responsibility on governments, societies, religious organizations and civil societies to lend their voices to fight against this vice. This ugly act persists in Nigeria, and it threatens the safety of the vulnerable. This work examines sexual violence's reach in Nigeria; its effect on the society; the legal cover for victims; and also gives helpful suggestions.

Key words: *Sexual violence, its effects, legal framework, suggestions.*

INTRODUCTION

One out of three women are likely to encounter sexual violence from a close partner in countries across the globe.¹ This preceding statement offered by the World Health Organization was the reality before the COVID-19 pandemic reared its head. Occurrences of this nature, however, have increased, the lock down measures acting as it's propeller.

This everyday evil, elaborate in its scope, encompasses a number of sexual acts which all come under the umbrella of *unconsented or unwanted sexual activities*. That is, sexual activities that weren't agreed to, but got obtained by force or violence. These horrifying acts include, but are not limited to the infamous rape, abuse, assault, harassment and exploitation, which are sexual in nature.

While violence of a sexual nature is most prevalent against females, it affects both genders. Thus, any approach made to curb this issue should not be focused on females alone; a comprehensive approach should be implemented to quench this violence completely.

THE NIGERIAN CONTEXT TO SEXUAL VIOLENCE

The term "*sexual violence*" as shown in a WHO article refers to "*any sexual act, attempt to obtain a sexual act, unwanted sexual*

¹ WHO, Sexual violence < <https://www.who.int/news/item/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence> > accessed 13th September 2021

comments or advances, acts to traffic or otherwise, directed against a person's sexuality, using coercion by any person, regardless of their relationship with the victim in any setting, including but not limited to home and work."² Also, the Violence Against Persons (Prohibitions) Act, 2015 defines and criminalizes various forms of sexual violence.

A distinctive feature of this crime is that becoming a victim is not due to any prescribed reason, thereby making attempt of prevention and protection of likely victims difficult. The skin color, race, status in life, class, or relationship with the perpetrator is irrelevant and holds no water in regards to the set of people that can fall victim, as there are cases of violent sexual acts against; strangers, partners, elites and family members. Instead, research has shown that it depends on the psychology of the perpetrator.

Nigeria also struggles with sexual violence, and one common way this occurs is through intimate partner violence (IPV). Globally, one out of three women of reproductive age have had this ghoulish experience.³

Another common form of sexual violence in Nigeria is rape. Unfortunately, the society tend to blame the victim. They are

² *ibid*

³ Fawole, O.I., Okedare, O.O. Reed, E, Home was not a safe haven: women's experiences of intimate partner violence during the COVID-19 lockdown in Nigeria. *BMC Women's Health* 21, 32 (2021) <<https://doi.org/10.1186/s12905-021-01177-9>> accessed 14 September 2021

sometimes stigmatized, accused of being the cause of their misfortune, because of how they had dressed. In addition, child marriage is also a factor to consider in this regard because sexual intercourse with a child is sexual violence, yet some cultures permit it. Female genital mutilation is also a form of sexual violence which occurs in some societies. It is important to point out that, the act of sexual violence is actually an attempt to subjugate the victim, even though sexual satisfaction may be derived by the predator.

EFFECTS OF SEXUAL VIOLENCE ON THE SOCIETY

Sexual violence across the globe is a dreaded issue, this is because of the effects it leaves on its victims. Persons who have experienced sexual violence often have difficulty with delivering their best at work, they tend to distrust the opposite sex, and sometimes find it hard to cope with academics. In situations where the victim is underage, there is sexual orientation that is not age-appropriate. In addition, there are health implications to this act, some include; post-traumatic stress disorder(s), sexually transmitted disease(s), gynaecological trauma and unwanted pregnancy. In cases where the issue of pregnancy surfaces, a decision to abort may lead to complications.

The impact of sexual violence on the society cannot be overlooked. In certain societies, it is believed that a man can

maltreat a woman at no cost, this kind of thinking can promote sexual violence as seen in many intimate partner violence (IPV) cases. If sexual violence is allowed to linger, no doubt; wives, children, the vulnerable and retarded individuals will remain exposed to danger. Also, the victim, in maintaining the cycle of hurt, might also become a sexual predator. This is not only dangerous to the victim but the society at large.

CURRENT LEGAL FRAMEWORK AGAINST SEXUAL VIOLENCE

Several statutes on sexual offences have been enacted to kick against sexual violence. Some of these statutes include the Violence Against Persons (Prohibitions) Act, 2015, a recent enactment that is specific to this issue, the twin statutes; the Criminal Code and the Penal Code for both southern and northern Nigeria respectively, which make provisions on sexual offences and their punishments; however, the punishments they mete out differ.

There is the Cyber Crime Act, 2015 which protects children from paedophiles who watch child pornography; and also, the Childs Right Act, 2003. It shields those below 18 years from being forced to have sex. There are also other criminal laws of various states across the country. Using the Criminal Law of

Lagos State (CLL) as a case study, below is the overview of the standpoint of the law on various acts of sexual violence:

- ***Rape***: An offender is liable to imprisonment for life.⁴
- ***Sexual assault by penetration***: This is punishable by imprisonment for life.⁵
- ***Attempted rape or sexual assaults by penetration***: Its perpetrator is liable to imprisonment for fourteen (14) years on conviction.⁶
- ***Sexual assault (touching without consent)***: Such person is liable to imprisonment for three (3) years.⁷
- ***Sexual harassment***: Such person is liable to three (3) years of imprisonment.⁸
- ***Causing a person to engage in sexual activities without that other person's consent***: This is punishable by five (5) years of imprisonment. It is, however, important to note that where the sexual activity caused involves sexual penetration, the offender is liable to life imprisonment.⁹
- ***Abduction***: This is punishable by seven (7) years of imprisonment.¹⁰

⁴ Section 258 of the Criminal Law of Lagos State (CLL).

⁵ Sec. 259 of the CLL.

⁶ Sec. 260 of the CLL.

⁷ Sec. 261 of the CLL.

⁸ Sec. 262 of the CLL.

⁹ Sec. 263 of the CLL.

¹⁰ Sec. 266 of the CLL.

- ***Abduction of a girl under the age of eighteen (18) years from the custody or protection of her parent(s) or guardian without the consent of the girl:*** Such person is liable to ten (10) years of imprisonment. One must be cognizant of the fact that ignorance of the age of the girl or that consent was given is insubstantial and would not be considered as a defense.¹¹

On a larger scope, the constitution¹² protects the right to dignity of Nigerians, and purports to preserve citizens from unfair treatment. Provisions of other statutes also protect citizens from sexual violence.

However, our laws are lagging in their failure to hold the possibility of rape in marriage, this is because it is believed that both parties inherently agree to sex upon getting married¹³. Nevertheless, it is held to be a crime in some countries.

SUGGESTIONS

While there might be no permanent end to this pandemic, steps can be taken to limit its occurrence and effects in the society. Some of the steps that can be taken involve:

¹¹ Sec. 267 of the CLL.

¹² Sec 34 CFRN, 1999 (as amended)

¹³ THE HOPE, Is marital 'rape' punishable under the Nigerian law? (4 Aug 2019) <<https://www.thehopenewspaper.com/is-marital-rape-punishable-under-the-nigerian-law/>> accessed 15 September 2021

- Putting in place systems of educating members of the society that certain traditional practices against a person are unacceptable.
- Continuous appeal to victims to report any violation as soon as it occurs, and subsequently, accurate and adequate measures should be put in place to support the victims who are bold enough to report as this will encourage others.
- Taking victims to hospitals as early as possible for medical examinations, in order to help prevent some health complications. Therapy sessions can also be helpful.
- The laws that define, and provide sanctions for these offences should be strengthened. Expansion is also advisable, as some of these laws have restricted those that can fall victim of this violence to the female gender, which is not the reality. The VAPPA of 2015 may be used as guide for the expansion. Tabs should also be kept on sex convicts to keep them in check, and also prevent subsequent incidents.
- The 22-year-old UNIBEN student who was gang raped and murdered sparked the #justiceforuwa trend, showing the public's displeasure for the act. Hence, there

should be a continuous outcry against sexual violence on every media outlet available in Nigeria.

- Implementation of the available laws on the subject matter is key.

CONCLUSION

Sexual violence has not been accorded enough concern, considering how much nations of the world – especially Nigeria – have grappled with it. Furthermore, while available research shows it affects women more, every gender is affected. Hence, it is crucial that prompt efforts be made to address this matter so that change can begin without delay.



**THE LIABILITY OF INTERNET SERVICE PROVIDERS
FOR COPYRIGHT INFRINGEMENT ON THE INTERNET;
THE NIGERIAN VIS-À-VIS THE US POSITION.**

¹Padonu Daniel

¹Faculty of Law, Lagos State University, Lagos State

padonudaniel03@gmail.com

ABSTRACT

A prominent but yet controversial issue in the space of intellectual property law is the liability of Internet Service Providers for copyright infringements caused by third parties who were permitted to do such on the internet. This paper examines the definition and role of Internet Service Providers as intermediaries between private individuals, organizations and the government and the internet, the legal framework in Nigeria and also the legal approach in the US and lessons gotten from laws of the country. This paper also identifies Nigeria's path forward.

Keywords: Internet Service Providers, Copy right, Infringement, civil liability, defamation, criminal liability.

1.0. Introduction

The internet has become a popular means of communication and knowledge sharing. It is a massive network that carries, stores, and transmits data. It has made communication, interaction, and information sharing between people across all borders of the world easier¹. The internet's incredible ability to facilitate the global sharing of knowledge, information, and ideas has undoubtedly changed the way people communicate. The most significant feature of this medium is its ability to provide vast amounts of information to all individuals in seconds, hence facilitating information dissemination.

While the internet has aided artists, traders, educators, researchers, and publishers in their exploration and establishment as a globally recognized entity, it also allows copyright pirates to copy and share any Intellectual Property Owners² knowledge and information on the internet without their consent while remaining anonymous, untraceable, and undetectable. This has become a menace around the world and also a concern for IPOs. They complain of losing billions of naira, pounds, or dollars due to the online copy that the internet

¹ Bernard Jemilohun, "Liability of Internet Service Providers Under Nigerian Law", *African Journal of Legal Studies* 11 (2018) 352-370

² Herein after referred to as IPOs

facilitates. Consequently, it is a burden for copyright holders to locate the infringing materials online, hence the responsibility should be shifted to those that allowed the occurrence of such infringement³.

Therefore, copyrights holders target Internet Service Providers⁴ out of sheer pragmatism and claim that ISPs should be held liable for any online piracy with the view that they allowed information to be published on their websites without first confirming whether the original owner of such information had given permission. Therefore, they should pay for any loss suffered by the copyright holders. The ISPs, on the other hand, claim that they are just service providers, an institution that acts as a conduit between the internet and private individuals or organizations should be granted some level of immunity from copyright infringement claims.

Where the legal issue arises is the question of “Who should be responsible for the liability?”. Should the liability be on the individual or entity whose actions caused the copyright infringement? Or Should it lie with individuals, organizations,

³ Okitikpi Toritseju, “Liability of Internet Service Providers (ISPS) For Copyright Infringement in the Nigerian Context

⁴ Herein after referred to as ISPs

or institutions that contributed to the infringement by simply providing access to a third party to carry out such acts on the internet? In an attempt to achieve this, this paper discusses ISP, its role, and the legal approach of the liability in Nigeria, vis-à-vis, the United States legal framework.

2.0. Who is an Internet Service Provider

An Internet Service Provider (ISP) is a corporation that offers Internet connections and services to consumers and businesses. ISPs also offer software (such as browsers), e-mail accounts, and a personal web site or home page in addition to internet connectivity⁵.

They provide broadband services which refer to all services that supply high-speed internet, to subscribers⁶. It is a business that gives internet connectivity to third parties⁷. ISPs provide internet access to both home and commercial customers, and they play a critical role in internet transactions⁸.

⁵ Internet service provider (ISP) | Facts & Definition | Britannica;
<https://www.britannica.com/technology/Internet-service-provider>

⁶ Internet service provider (ISP) | Wex | US Law | LII / Legal Information Institute;
https://www.law.cornell.edu/wex/internet_service_provider_isp

⁷ Internet Service Providers Law and Legal Definition | USLegal, Inc.;
<https://definitions.uslegal.com/i/internet-service-providers/>

⁸ Olumuyiwa Oluwole Popoola, " Statutory Limitation of Liability of Internet Service Providers in Decentralized Peer to Peer File Sharing", PG 9

The **Digital Millennium Copyright Act**⁹ of 1998 gave two definitions for ISPs¹⁰. The first definition of ISP was provided for in section 512 (k)(1)(a), which states that:

“a service provider is an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user’s choosing, without modification to the content of the material as sent or received.”

The second definition in Section 512(k)(1)(b) provides that “a service provider” is “a provider of online services or network access, or the operator of facilities, therefore¹¹.”

Under Nigerian law, no legislation defines an ISP. The Copyright Act of 2004 proffers no definition for an ISP. In the same vein, the Nigerian Communication Act of 2004 failed to give any definition of ISP but gave guidelines for the conduct of ISPs¹².

3.0. Legal Framework of The Liability of Internet Service Providers in Nigeria

⁹ Hereinafter referred to as DMCA

¹⁰ Okitikpi Toritseju, “Liability of Internet Service Providers (ISPS) For Copyright Infringement in the Nigerian Context

¹¹ The Digital Millennium Copyright Act of 1998

¹² Okitikpi Toritseju, “Liability of Internet Service Providers (ISPS) For Copyright Infringement in the Nigerian Context

In contrast to the United States, which clarified its position under the DMCA, ISP liability is not clearly specified in any regulation or legislation. Also, there are no judicial decisions regarding the liability of ISPs¹³.

Although the liability of ISPs is not explicitly explained in any Nigerian law, this subject is covered by certain existing legislation. These laws include the Nigerian Communication Act, National Information Technology Development Agency Act, and the Nigerian Copyright Act. The Nigerian Communication Commission established by the Nigerian Communication Act with the responsibility of regulating the communication sector designed guidelines of operation for the ISPs. Similarly is the National Information Technology Development Agency established by NITDA Act is responsible for internet governance as well as all matters including data exchange. Also, the Nigerian Copyright Act protects the interest of copyright holders in Nigeria¹⁴.

3.1. Nigerian Communication Commission Guidelines

¹³ Okitikpi Toritseju, "Liability of Internet Service Providers (ISPS) For Copyright Infringement in the Nigerian Context

¹⁴ Gbenga Sesan, " Intermediary Liability in Nigeria" Paradigm Initiative Nigeria

The Nigerian Communication Commission guidelines published pursuant to **section 70(2)** of the Nigerian Communication Act 2003 applies to all licenses that provide internet access or other internet protocol-based telecommunications services. The guidelines ensure safe internet use and limit the liability of internet service providers (ISPs) as intermediaries.

Pursuant to paragraph 5 of the guidelines, ISPs must guarantee that users are informed of any statements made by the commission about cybercrime or acceptable internet use or any other commission concerning fraudulent use of the internet, theft, impersonation, unauthorized disclosure of access code, unlawful interception, or violation of intellectual property rights, which may lead to criminal prosecution. This provision entrusts the ISPs with the task of being watchdogs over internet users to reduce illegal internet use and increase the awareness of the penalty attached to the improper use of the internet¹⁵.

Paragraph 11, part III of the same guidelines provides for the liability of ISPs as content intermediaries. It is thoroughly explained in 3 subheadings: acting as mere conduit, caching,

¹⁵ Guidelines For The Provision of Internet Service Providers by the Nigerian Communication Commission

and hosting. The provision attempts to fill in the lacunae that should be filled by legislation. It doesn't only protect ISPs from the liability of infringement, but also gives rights to individuals, companies, and organizations¹⁶. It shields the ISPs from being liable if the information posted or distributed has not been modified or manipulated by it (ISPs) and on discovering such distribution, quickly act by removing and disabling access to the information. In addition, ISPs shall not obstruct any condition of information access and must follow any rules governing information updates. Thus, if ISPs can prove that they have no knowledge about the initiation, distribution, temporary or permanent storage of information and it takes down such information immediately detected, they won't be liable for such offense. However, a deviation from the stipulated rules, the liability falls on the ISPs.

ISPs must have a mechanism in place for receiving and immediately reacting to content-related complaints, including any notice to withdraw or block access to identified content issued by the Commission or other legal body, as specified in paragraph 12 of the guidelines¹⁷.

¹⁶ Bernard Jemilohun, "Liability of Internet Service Providers Under Nigerian Law", *African Journal of Legal Studies* 11 (2018) 352-370

¹⁷ Guidelines For The Provision of Internet Service Providers by the Nigerian Communication Commission

Despite how good the Nigerian Communication Commission Guidelines are, they are just a set of guidelines with no authority and have not been tested in the court of law. Though the regulatory authority can penalize Internet Service Providers that violate these rules, individuals' rights can still be enforceable at law, therefore making the guidelines have no legal effect.

3.2. Copyright Act

In Nigeria, the Copyright Act of 2004 is the primary law that governs and protects copyrights. It protects, transfers, and provides remedies for infringement in Nigeria¹⁸. It delineates the copyright owners' exclusive rights to do particular things that only they can or are authorized to do¹⁹. An aggrieved copyright owner can seek civil or criminal remedy in a court of law.

The Copyright Act doesn't expressly discuss the issue of the liability of ISPs concerning the copyright infringement of third

¹⁸ Overview Of Copyright Law And Copyright Registration In Nigeria - Intellectual Property; <https://www.mondaq.com/nigeria/copyright/983450/overview-of-copyright-law-and-copyright-registration-in-nigeria>

¹⁹ C C. Nwabachili, "The Infringement of Copyright in Nigeria: An overview"

parties, but some provisions of the Copyright Act are analogous to discussing the issue of liability²⁰.

Section 15(1) of the Copyright Act²¹ explains the infringement of copyrights which provides thus:

Copyright is infringed by any person who without the license or authorization of the owner of the copyright—

- (a) Does, or causes any other person to do an act, the doing of which is controlled by copyright;
- (b) Imports or causes to be imported into Nigeria any copy of a work which if it had been made in Nigeria would be an infringing copy under this section of this Act;
- (c) exhibits in public any article in respect of which copyright is infringed under paragraph (a) of this subsection;
- (d) Distributes by way of trade, offers for sale, hire or otherwise or for any purpose prejudicial to the owner of the copyright, any article in respect of which copyright is infringed under paragraph (a) of this subsection;

²⁰ Okitikpi Toritseju, "Liability of Internet Service Providers (ISPS) For Copyright Infringement in the Nigerian Context

²¹ The Nigerian Copyright Act of 2004

- (e) makes or has in his possession, plates, master tapes, machines, equipment, or contrivances used for the purpose of making infringed copies of the work
- (f) permits a place of public entertainment or of business to be used for a performance in the public of the work, where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be so used was not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright;
- (g) performs or causes to be performed for the purposes of trade or business or as supporting facility to a trade or business, any work in which copyright subsists.

The word “cause” means “to make something happen” can be seen in paragraphs (a),(b),(g). Thus where an ISP without the permission or authorization of the copyright owner allows a third party to disseminate information, performs a trade that is against copyright, or downloads copyrighted files that infringe the copyrights of the owner, could be held liable for such offense. Paragraph (c) of this act also provides that if an ISP exhibits or displays any article of which copyright is infringed, it will be liable for the offence. In the same vein, paragraph (d) provides that if an ISP in exchange for a fee gives out access to its

subscribers to download or distribute copyrighted works without the authorization of the copyright owner, the liability lies on it.

By the express wordings of **Section 15(3)** of the Copyright Act²², ISPs can be protected from being liable for copyright infringements. It provides that: “If an ISP can prove he was not aware and had no reason for suspecting the copyrighted work to which the action lies, he will not be liable for copyright infringements”.

The criminal liability of copyright infringement are provided for in **Section 18** of the Copyright Act. According to **Section 20(1)** of the act, “a fine of N1000 per copy or jail term of not more than 5 years will be given to anyone liable for causing or making, importing any infringing copy or has in possession any material or equipment used for the reproduction of any infringing copy unless he proves that he did not know such work or the materials or equipment were not to make infringing copies”.

Furthermore, **Section 20(2)** provides that “a fine of N100 per copy or jail term, not more than 2 years would be given to

²² The Nigerian Copyright Act of 2004

anyone who sells, distributes or has in ownership, any infringing copy unless he proves himself not liable for such offense as stipulated in the Act. In addition, the Act gives the court the power to destroy anything which appears to be infringing. This shows how grave the offense of copyright infringement is²³.

4.0. Legal Approach in the United States

The Common Law System governs the United States (US). As a result, under US Common Law, ISP liability is divided into two categories: Strict or Absolute Liability²⁴ and Vicarious or Contributory liability²⁵.

4.1. The Digital Millennium Copyright Act

The DMCA was passed in 1998 by the US Congress in accordance with the criteria of the **World Intellectual Property Organization Treaty (WIPO) of 1996**²⁶. The DMCA balances the interest of both Internet Service Providers and Copyright owners in the digital environment²⁷. This is addressed by **Title II of the Online Copyright Infringement Liability Limitation**

²³ A Critical Evaluation Of The Provisions Of The Nigerian Copyright Act – HARLEM SOLICITORS; <https://www.harlemsolicitors.com/2019/06/02/a-critical-evaluation-of-the-provisions-of-the-nigerian-copyright-act/>

²⁴ See the case of Playboy Enterprises Inc v. Frena for proper understanding

²⁵ See the Sega Enterprises Ltd v. Maphia for understanding

²⁶ Sani Usman, "Guideline On ISPS Liability Regime in the United States"

²⁷ Okitikpi Toritseju, "Liability of Internet Service Providers (ISPS) For Copyright Infringement in the Nigerian Context

Act (OCILLA), which assures that ISPs are rewarded for deleting illegal materials and prevents ISPs from being hesitant to engage in technological innovation²⁸. The DMCA protects ISPs from being held liable for copyright infringements if they meet specific “Safe Harbour” conditions.

An important provision of the DMCA relevant to this is **Section 512** which deals with the liability of ISPs. The following are cases where an ISP can be exempted from liability:

- (1) Where an ISP is involved in transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for it, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections
- (2) Where there is an intermediate and temporary storage of material on a system or network controlled or operated by or for the service provider;
- (3) Where information resides on systems or networks controlled or operated by or for the service provider at the direction of a user; and

²⁸ Sani Usman, “Guideline On ISPS Liability Regime in the United States”

(4) Where the ISP refers or links users to an online location containing infringing material or infringing activity by using information location tools²⁹.

If any of these requirements are fulfilled, an ISP will be exempted from liability.

4.2. Communication Decency Act

Concerned with the cases of **Cubby v. CompuServe**³⁰ and **Stratton Oakmont v. Prodigy Internet Services**³¹, the U.S Congress enacted the Communication Decency Act³² in 1996.

By the express wordings of **Section 230** of the CDA which provides that “No provider or user of an interactive computer service shall be treated as publisher or speaker of any information provided by another information provider³³”. As a result, Section 230 functions as a legal protection given by the “Good Samaritan” for, in good faith, blocking and screening of offending (third-party) content³⁴.

²⁹ Bernard Jemilohun, “Liability of Internet Service Providers Under Nigerian Law”, *African Journal of Legal Studies* 11 (2018) 352-370

³⁰ 776 F.Supp. 135 (S.D.N.Y. 1991)

³¹ 1995 WL 323710

³² Hereinafter referred to as CDA

³³ Section 230 (c)(1)

³⁴ Sani Usman, “Guideline On ISPS Liability Regime in the United States”

In the case of **Zeran v. America Online Inc**³⁵, it was stated that the goal of the aforementioned provision “was to promote the continued development of the Internet and other interactive computer services and to preserve the vibrant and competitive free market... for the Internet and other interactive computer services, unfettered by federal or State regulation”.

5.0. Conclusion and Recommendation

In terms of ISP liability, there is a significant difference between Nigerian and US legislation. Therefore, this writer submits that:

- The Nigerian Communication Commission’s guidelines for Internet Service Provider liability should be maintained and backed up by authority. As a result, only ISPs who break the rules should be penalized.
- Internet Service Providers in Nigeria should only bear the liability if found guilty of directly or indirectly infringing the copyrights of IPOs. They shouldn’t bear full responsibility for their users' infringing acts. Just like the DMCA, there should be statutes that protect ISPs from taking full liability.

³⁵ 129 F.3d 327, 330 (4th Cir. 1997)

- There should differentiation between Defamation and Copyright Infringement as it is in the United States.
- The Nigerian government should pay rapt attention to the communication sector because it is as important as other sectors. Thus, the legal liability of ISPs should be clearly defined.
- The Nigerian Copyright Commission should put efforts to arrest and prosecute copyright pirates.



FRANCHISING IN NIGERIA: SCOPE AND MATTERS ARISING

¹ Israel Adekunle Adeniyi

¹ Faculty of Law, University of Ilorin

israeladeniyil78@gmail.com

ABSTRACT

Franchising has proved, over the years, to be one of the most successful ways of conducting business. Like most parts of the world, quite a number of Nigerian businesses are exploring this upswing. With the growing presence of epicurean giants such as Coca-Cola (U.S.), Dominoes (U.S.), Johnny Rockets (U.S.), Kentucky Fried Chicken – KFC (U.S.), Krispy Kreme (U.S.), Pizza Hut (U.S.), The UPS Store (U.S.), Mr Price (South Africa), SPAR (South Africa), Ocean's Basket (South Africa) and Shoprite (South Africa) in Nigeria, coupled with the recent entry of Burger King, a top U.S. restaurant brand, into the Nigerian food and confectionaries space in April 2021, franchise operation in Nigeria is propelling to the upside.¹ As flourishing as the franchising industry seems, certain underlying matters and challenges becloud its future. The kernel of this paper is premised on the scope of Franchising in Nigeria, while laying emphasis on matters such as the lacuna created by the dearth of legal framework on the subject, other extant challenges and the prospects which the industry offers notwithstanding.

¹ International Trade Administration, 'Nigeria – Country Commercial Guide. Available at <https://www.trade.gov/country-commercial-guides/nigeria-franchise-sector> accessed 14 April, 2022.

INTRODUCTION

Put straight, franchising is a business and marketing technique where the owner of a business called the franchisor grants to an individual or group of individuals called the franchisee the right to run a business outlet where the franchisor's products or services are sold.² Franchising has been prominently defined by the International Franchise Association (IFA) as an “agreement or license between two legally independent parties which gives: a person or group of people (franchisee) the right to market a product or service using the trademark or trade name of another business (franchisor); the franchisee the right to market a product or service using the trademark or trade name of another business”.³ Through this commercial form, permission is given to franchisees to use the franchisor's tradename, trademarks and branding under the agreed contract or guidelines.

Franchising is by no means a new concept in Nigeria. With an estimated population of 210 million and an increasing number of businesses being registered annually, franchising is fast growing in Nigeria. The high rate of its success is evident in the proliferation of outlets of popular brands such as KFC,

² M.H. Bin Yunus, “‘The Tealive-Chatime’ Saga – Passing off Pending Arbitration/Dispute Resolution’ (A Paper submitted to the Faculty of Communication and Media Studies, *Universiti Teknologi Mara*) p. 12.

³ Rosenberg International Franchise Center, ‘What is Franchising?’ (University of New Hampshire, undated) <https://paulcollege.unh.edu/rosenberg/what-franchising> accessed 7 January, 2022.

Dominoes, Shoprite, Johnny Rockets, Coca-Cola among others in the various parts of the country.

In Nigeria, four main models of franchising operated include trade name franchise, business format franchise, master franchising and product franchising.⁴

This paper gives an introductory overview on the legal and regulatory landscape of franchising as a commercial activity in Nigeria. In the same vein, the challenges faced by the franchise sector, especially in terms of administrative and regulatory lacunae, are raised as subject of section three of this paper. This paper similarly amplifies the good tidings of franchising for the Nigerian commercial sphere, notwithstanding overbearing dearth of vibrant administrative and legal groundwork. The kernel of this paper, in its later section, proffers the pathway to achieving a sustainable franchising industry in Nigeria.

Legal and Regulatory Framework for Franchising in Nigeria

Regrettably, till date, there is no specific legislation on franchising in Nigeria. However, there are several other provisions, in bits and fragments, regulating the offer and sale of franchise in Nigeria.

⁴ Supra note 1.

The National office for Technology Acquisition and Promotion Act (NOTAPA) is the first point of call in the regulation of franchising in Nigeria⁵. While the Act is erroneously regarded as the regulatory Act for franchising in Nigeria, the Act only makes abundant provisions on the transfer of technology from foreign entities. A franchise agreement atypically involves technology transfer, and this makes it within the purview of the Act. The Act stringently provides that all such agreements must be registered with the National office for Technology Acquisition and Promotion (NOTAP).⁶ Section 4 of the Act provides for the various business purposes that fall within the purview of the Act. This includes the use of trademarks; use of patented inventions; supply of technical expertise in the form of technical assistance of any description whatsoever; supply of detailed engineering drawings; supply of machinery and plant; and provision of operating staff, managerial assistance and the training of personnel.⁷

Other matters regarding franchising agreement or other allied matters which are not contained in the Act are widely regulated by the various principles of the law of contract. Therefore, as a

⁵ Cap. N62 LFN, 2004. See also Franklin Okeke, 'Franchising: A Pathway to Entrepreneurial Success in Nigeria'. Available at <<https://www.legalnaija.com/2016/09/franchising-pathway-to-entrepreneurial.html?m=0>> accessed 14 April, 2022.

⁶ See NOTAPA, ss 1-3; see also supra note 1.

⁷ Supra note 1.

result of the dearth of a franchising law, case laws play a significant role in the regulation of franchise agreements in Nigeria.

Challenges facing the Franchising Sector

In spite of an evolving avalanche of prospects which the franchising sector holds for the Nigerian business and economic growth, there are significant challenges which the sector is embattled with.

To start with, the absence of a specific legislation regulating franchising in Nigeria is inimical to the franchise sector. Except the NOTAP Act, there are no other laws regulating franchise agreements in Nigeria, when, in fact, considerable amount of the national revenue is derived from the sector. The NOTAP Act, especially, lacks a transactional focus in respect of franchise agreements between local and foreign entities.⁸ As a result of this backdrop, pre-contract disclosure requirements do not apply to franchise agreements in Nigeria, rather the common law principle of misrepresentation under the law of contract is called for reckoning.⁹ Worst still, the absence of a franchise law neither avails a franchisee with the power to rescind the franchise

⁸ Paul Okwuobi, 'Franchising in Nigeria'. Available at <<https://www.linkedin.com/pulse/franchising-nigeria-paul-okwuobi/>> accessed 08 January, 2022.

⁹ Davidson Oturu, Tiwalola Osazuwa and Frances Obiogo, 'Nigeria: Franchise Laws and Regulations 2022'. Available at <<https://iclg.com/practice-areas/franchise-laws-and-regulations/nigeria>> accessed 09 January, 2022.

agreement nor provides remedies like damages in cases of breach by the franchisor, except as otherwise stated in the agreement. There is also no framework for the institution of class actions by wronged franchisees against their franchisors, except dispute resolution clauses are inserted in the franchise agreements or an aggrieved franchisee brings a class action under the civil law.¹⁰ Clearly, the dearth of franchise-specific laws in Nigeria puts franchise transactions in Nigeria at stake.

The sector is also faced with foreign exchange risk. The continuous devaluation of the Nigerian Naira has, without doubt, wreaked havoc on franchise businesses in Nigeria, especially those that are foreign-based. As the Naira continues to weaken against the dollar, franchise businesses encounter financial hurdles in importing raw materials from their franchisors, as well as increase in costs of production. Difficulties in accessing foreign currencies by these businesses also do not placate these challenges.

Poignantly, the sector is made to grapple with the low level of infrastructure in the country. Infrastructural deficit militates against the smooth and effective running of franchise businesses in Nigeria.¹¹ The lack of motorable roads and the low and

¹⁰ See Franklin Okeke, 'Franchising in Nigeria: Models and Legal Considerations'. Available at <<https://www.mondaq.com/nigeria/franchising/930530/franchising-in-nigeria-models-and-legal-considerations>> accessed 07 January, 2022.

¹¹ Supra note 1.

unstable electricity generation generally hinder economic growth and development in the country. For franchise businesses such as K.F.C., Coca-Cola, Shoprite, Dominoes and Johnny Rockets, the use of alternative power generation accounts for over 60% of their costs of production.¹²

Poor economic regulatory policies, lack of trust and lopsided dealings, poor awareness and limited knowledge of franchise business, inadequate government support as well as the declining consumer spending power are also extant challenges facing the sector.

Opportunities Amidst Difficulties

Notwithstanding the plenteous challenges confronting the franchising system in Nigeria, the sector proffers a lot of prospects to the Nigerian populace and economy, given a thriving and sustainable business environment. While it must be categorically stated that some franchises are experiencing a downtime as a result of the economic instability in the country, franchises in the food, cinema, transportation, logistics, education, interior, technology and medical space are, nonetheless, flourishing.

Franchising, being proved to be a success over the years, has benefitted a lot of SMEs, start-ups and businesses in Nigeria.

¹² *Ibid*

Ordinarily, by virtue of a franchise agreement, a franchisee benefits from economies of scale and significant and effective cost of production. Franchising has recorded huge success in the Nigerian business environment, as it is evident in the proliferation of outlets of these franchises all around the country. Despite the franchising sector still being at its natal stage, billions of dollars in revenue accrued from it have been channelled to the economic growth and development of the country.

The sector offers enormous employment opportunities for the unemployed labour force. Studies have shown that over the past years, the franchising sector has increased the generation of employment opportunities for the teeming unemployed populace in the country.¹³

Although franchising has not been sufficiently and relatively explored in Nigeria, its current wave has driven a large youthful population into entrepreneurship as a result of its increased success rate. In the overall, franchising has relatively developed the entrepreneurial drive, energy and capacity of the youths, the franchisees in this case.

Franchising in Nigeria: Quo Vadis?

¹³ Chiagozie Nwizu, 'Tackling Access to Finance: The Potential of Franchising in Nigeria' (FDBS Nigeria, November 2016).

Undoubtedly, the franchising sector is faced with challenges which significantly impede its expected ontogenesis. What then is the way forward for the industry to attain its bespoke transition?

As priorly stated, the absence of a franchise-specific legislation has greatly receded the expect growth and development of the franchising landscape in the country. The enactment of a specific franchising law will, no doubt, send an unequivocal message to both the local and international franchising community about the country's commitment to the promotion of the franchise sector as a mainstream sector with glaring potentials to immensely contribute to the overall GDP growth of the country. In the long run, this will bolster the generation of employment opportunities for millions of unemployed Nigerians. Withal, the enactment of a franchising law will also fill the lacunas in the current legal landscape of franchise agreements, most especially the franchising agreement terms and intellectual property protection.

Moreover, the importance of sensitization and awareness of the intricacies of franchise businesses cannot be overemphasized. To an extent, franchising is still a relatively unknown concept in Nigeria. There is a minimal knowledge of the franchise business with many local franchisors and franchisees having

very little knowledge to run a proper franchise business. Hence, there is the need for a thorough education, exposure and capacity building in this respect. This will invigorate the expansion and participation in the franchise industry.

Over the years, the government support received by the sector is nothing to write home about. Franchise businesses in Nigeria have been faced with an uncongenial business environment. Erratic power supply, security challenges, incessant high costs of production, unstable government policies and infrastructural deficits inhibit the growth of the industry. Against the backdrop, if the franchise sector is to experience its long overdue growth, adequate government support, favourable economic policies, infrastructural revitalization must be conjured.

Conclusion

Undoubtedly, the franchise sector is a potential ground for businesses, start-ups and SMEs to nurture and develop their entrepreneurial talent and promote good governance and transparency. The industry proffers tremendous opportunities for the country. However, the absence of a franchising law, among other challenges, militates against the growth of the sector. If there could be a more appropriate time to surmount these challenges, it is now.



THE AUTOMATION OF THE NIGERIAN ELECTORAL PROCESS A SQUARE PEG IN A ROUND HOLE.

¹ Sulayman Kamalideen Akorede

¹ Faculty of Law, University of Ilorin, Kwara State.

kamalacorede@gmail.com

ABSTRACT

Electoral process in Nigeria like other developing countries is subsumed with different malfeasances, thus earn global condemnation. Some these malfeasances are occasioned by corrupt leaders and political parties who took the advantage of manual electoral process to alter the result of the election to meet their selfish ambition. However, this inhuman practice is said to be reduced if not eradicated by the use of automated/electronic voting system. This paper examines the evolution of Nigerian electoral process, the adoption of automated electoral process and benefits and challenges accrued to it as well as the legal framework for its adaptation in the country. Lastly, the paper discusses the appropriateness in the automation of the Nigeria electoral process by considering the high rate of corruption in the country.

Keywords: *electoral, election, electoral commission, National Assembly.*

Introduction

The electoral process, for a liberal democratic nation, has to be integrated, transparent, cum free and fair for it to be acceptable by the electorate. While in abeyance of these qualities the faith of the electorate in the government of a nation becomes meagre. For instance, the ugly electoral malfeasances during Nigeria elections at all levels of government since the return of democracy in 1999 cum technology advancement are the reason why concern individuals and organizations have been calling for a more robust electoral process; automated voting as a substitute for manual voting in the country. Thus, this work tends to appreciate the automation of the Nigerian electoral process whilst trying to balance the scale between its silent benefits and side effect as to whether it should be adopted or not. The paper also briefly explains revolution of Nigeria electoral process and the menaces that situate in the process.

The Revolution of Automation of Electoral Process in Nigeria.

Nigeria electoral process has faced a series of revolution since her independence. Different voting technologies were employed by the different bodies established to oversee electoral process in the country; the Federal Electoral Commission (FEDECO), the National Electoral Commission (NEC) and the present

Independent Electoral Commission (INEC). The adoption of open ballot system of voting though with a little touch of fairness said to be detrimental especially to the electorates. The *PremiumTime* remarked that;

The open ballot system used after Ibrahim Babangida's transition was seen as making voters susceptible to prying eyes of politicians who can easily deduce electorates' choice of candidates by the queue they join during an election exercise.¹

Consequently, it became imperative to adopt a secret ballot system. It is no news that elections in Nigeria over the years were characterised with rigging and falsification the election results, thuggery, violence, and other form of electoral malpractices which pegged the country democracy on a reverse. Hence, the agitation by all and sundry which champions by the INEC for automation of the country's Electoral process.

Automated electoral process involves the use of electronic devices in an electoral process. It is otherwise known as Electronic voting or e-voting. It includes electronic registration

¹ Yusuf Akinpelu and other, Analysis: With more technology, Nigeria's electoral Process may get just Better, *Premium Times* [May 31, 2021] <www.premiumtimesng.com/news/headlines/464782-analysis-with-more-technology-nigerias-electoral-process-may-get-just-better.html> accessed December 4, 2021.

of voters, electronic voting using the Electronic Voting Machines (EVNs) and electronic transmission of results. In the summary of a meeting held by the Carter Center in March 2005, it was noted that “there are four voting technologies being used across the world: Paper Marking, Mechanical Lever System, Optical Scans, and Direct Recording Electronic Voting”.²

Many developed and developing countries across the world have put in place a very successful automated electoral process. Looking at Ghana for example, Joe Yalley, stressed at the end of a Ghana Presidential Election that “the deployment of technology during the election is pretty impressive compared with what we have in Nigeria. It’s easier, to an extent.”³ The United States has also adopted automated machines for different voting processes.

As noted earlier INEC and other concerned bodies and individuals in Nigeria have been calling for a full-scale automated electronic process in the country. The question now is that will the adoption of the electronic voting in Nigeria will not be a right step in a wrong place?

² The Carter Center, *Summary of proceedings, Automated Voting and Election Observation*, (2005).

³ Yusuf Akinpelu and other, *Supra*.

Firstly, automated electronic process is not novel to Nigeria. The Permanent voters' card (PVC) and the Smart Card Reader (SCR) are adorable revolution to the on manual systems. Secondly, the National Chairman of INEC, Prof. Mahmood Yakubu in a disclosure in 2020 expressed "the commission readiness to replace the manual voting system with automated voting system, as part of the efforts to migrate fully to electronic voting as soon as enabling legislation is put in place."⁴

For the automated voting to gain legal recognition the Electoral Act 2010 has to be amended by the National Assembly. The Assembly through a bill entitled, "A Bill for the Act to Amend the Electoral Act N0.6 2010 and Other Related Matters, 2019 (SB.122)" sponsored by the Deputy President of the Senate, Ovie Omo-Agege, and co-sponsored by Senator Abubakar Kyari at the senate,⁵ has fine-tuned the Act to afford the legal backing required for the automated voting and transmission of result effective in the country.

⁴ Chuks Okocha, INEC Begins migration to Electoral Voting, *This Day* [September 29, 2020] <www.thisdaylive.com/index.php/2020/09/29/inec-begins-migration-to-electronic-voting/> accessed December 4, 2021.

⁵ Ameh Ochojila, Revisiting controversial provision in Electoral Act Amendment Bill, *The Guardian* [Abuja, August 24, 2021] <www.guardian.ng/features/law/revisiting-controversial-provision-in-electoral-act-amendment-bill/> accessed 4 December, 2021.

The INEC, nevertheless, had, in addition to the PVC and the SCR adopted an electronic means for transmitting the election results of the polls in the recent Edo gubernatorial Election, Plateau, Nasarawa, and Lagos bye-election and Anambra gubernatorial Election. However, the bill was firstly passed in July 2021 for the president assent but relinquished by the public especially legal practitioners regardless of their long yearning for that because lapses in its provision.

Section 52(2) of the Amended Bill, for instance gives the INEC the discretion to adopt electronic voting or any other methods of voting it deem fit. While contrarily Section 52(3) of the same bill subjected the INEC power to announce elections results electronically to the approver of the National Assembly and the National Communication Commission (NCC) which according to legal experts' opinions, is not non-dysfunctional but also unconstitutional, as it goes against the Section 78 of the Constitution, which states that "the conduct of Elections shall be subject to the direction and supervision of the Independent National Electoral Commission."⁶ The National Assembly on October 11, 2021, however, re-amended the bill and totally removed Section 52(3) from the bill.

⁶ Ibid

The Dawn of Automated Electoral Process: A Right Step in a Wrong Place?

The conduct of elections (especially manual voting) in Nigeria like some other countries is characterized with violence, falsification of results, bloodshed, and other electoral malfeasances. Consequently, some African countries like Ghana, Sierra Leone, the Democratic Republic of Congo, Somalia, Senegal, and Rwanda among other have adopted fully an automated electoral process which Nigerians deemed imperative to follow suit.

The adoption of automated voting as expected to fully kick start in the coming elections is perceived by Nigerians to be more integrated and transparent. Unlawful printing of voters' card, possession of ballot boxes illegally, perverted declaration of election results, multiple voting, infant voting, and inflation of figures amongst other some electoral frauds as mentioned by Ibrahim⁷ would not be achievable by the power corrupt leaders and the bad-ill politicians as well as their political parties once the automated electoral process kick-off fully in the country. It will also enormously reduce the money and time wasting in the name of electoral logistics. Hence, with automated voting in

⁷ Nwokeke P. Osinakachuku and other, '*The Electoral Process and Democratic Consolidation in Nigeria*' [2011] 4 No 2, Journal of Politics and Law, 128.

place Nigerians await fast free and fair elections that will have transparency and peaceful transmission of the governance as it watchword.

Despite the whiteness of it sky, however, some corrupt politicians and their corrupt parties who don't want to leave their post or deadly thirsty of it can do anything to cloud this automated voting system. These politicians can bribe some corrupt INEC officials who are going to help them alter the commission database and inflate the name of voters registered and accredited and the elections results. Nevertheless, the automation of electoral process is not a square peg in a round hole. Only what have to be done is for the INEC and the electoral to embrace to the new normal in good faith and never allow the politicians to use them to achieve their satanic ambitions.

Conclusion

All in all, transparency and credibility remains the primary motives behind any system of voting the electoral commission choose to adopt in any electoral process. Giving the technology advancement in this 21st century, the adaptation of automated electoral process becomes imperative even inevitable. That is why this essay sees the significances of automated electoral process in Nigeria and some activities that if not cautioned will

cause a loophole in the new system, having discoursed briefly the revolution of Nigeria electoral process.



DATA PRIVACY AND THE NIGERIAN STATE: TOWARDS AN EFFECTIVE DATA PROTECTION REGIME

¹ Ibraheem .M. Mustapha & ¹ Abdulmalik Fawaz .O

¹ Faculty of Law, University of Ilorin, Kwara State

ibraheemustapha27@gmail.com

ABSTRACT

Unprecedentedly, data is infecting human life in a continually emerging and diverse form and has become the biggest asset regardless whether it is a business or an individual. Every bit of human life is now digitalized and added in a form of data as birth records, medical records, locations, bank or financial records, etc. mostly for our very own convenience compromising even the data security fundamentals. This sudden transformation has tipped nations of the World to find a solution to the use of emerging technologies without necessarily compromising of individual guaranteed rights. Given its sovereign nature, Nigeria has also made several attempts to protect the data of her citizen. Thus, this paper examines the Journey of Nigeria in enacting a law that will safeguard the privacy of its citizens, what the enacted laws have achieved and the challenges bedeviling its maximum implementation. The paper equally suggests ways to realize the full implementation of the law to better the lots of the nation and its citizens.

Keywords: *Data, Privacy Rights, Protection.*

1.0 INTRODUCTION

Data has acquired the status of being a valuable asset to human society today and as such, the world most valuable asset is no longer oil but data.¹ It is this significant status of data that informed legal scholars, data scientists as well as data analysts to assert that data has become inevitable to human existence. Thus, the increasing volume in use of personal data, together with the emergence of technologies enabling new ways of processing and using it, mean that regulating an effective data protection framework is more important than ever.² This has therefore led sovereign nations of which Nigeria is not left out to embark on provision of policies aimed at safeguarding the sanctity of the right to data privacy and protection of its citizens from interpolation, corruption and compromise as protecting data privacy is core to effective democratic and good governance.

Against this backdrop, this paper therefore set out to x-ray the concept of data privacy and protection, its importance in the Nigerian state and the regulatory framework put in place by the

¹ Introducing_a_Comprehensive_Data_Regime_in_Sri Lanka_Lesson_from_Jurisdiction available at <<https://www.academia.edu/26009366/>> accessed on 28 February 2021

² Carlos Affonso Souza and others 'from privacy to data protection: the road ahead for the Inter-American System of human rights' [2020], *International Journal of Human Rights*, available at <<https://doi.org/10.1080/136429879108>> accessed on 28 February 2021

government in a bid to achieve an effective data protection regime in the country.

1.1 DATA PRIVACY AND THE REASON FOR DATA PROTECTION

With the exponential growth in terms of number of connected devices and subsequent data traffic, arise the question of data protection.³ The term data protection and data privacy are often used interchangeably, they are nonetheless different. While data privacy defines who has access to data, data protection provides tools and policies to actually restrict access to the data. Data protection is the process of safeguarding important information from corruption, compromise or loss. It is the regulation designed to ensure the security of individuals' personal data and regulate the collection, usage, transfer and disclosure of the said data.⁴ A data protection strategy is vital for any organization that collects, handles, or store sensitive data. It is pertinent to emphasize here that a strong data protection framework can empower individuals, restrain harmful data practices, and limit data exploitation. It is essential to provide the much-needed governance frameworks nationally and globally to ensure

³ ibid

⁴ <https://www.financialexpress.com/industry/technology/what-is-data-protection-and-why-is-it-important/2076419/lite/> accessed on May 10 2021

individuals have strong rights over their data, stringent obligations are imposed on those processing personal data (in both the public and private sectors), and strong enforcement powers can be used against those who breach these obligations and protections.⁵ In essence, data protection law seeks to strike a balance between the rights of individuals to privacy and the ability of organizations to use data for the purposes of their business.

1.2 CURRENT LEGAL REGIME ON DATA PRIVACY AND PROTECTION IN NIGERIA

Whilst there available a pocket of industry specific legislations on data protection in Nigeria, the **Nigerian Data Protection Regulation (NDPR), 2019** constitutes the only comprehensive and holistic piece of data protection in Nigeria.⁶ This was as a result of the giant stride of the National Information Technology Development Agency (NITDA) who commendably came up with the Nigeria Data Protection Regulations (NDPR) in 2019 which specifically addresses Data Privacy and Protection in Nigeria.⁷ A copycat of the **EU GDPR**, the

⁵ ibid

⁶ Francis Ololuo , 6 Data Privacy and Protection under the Nigerian Law , *S.P.A. Ajibade & Co.* http://www.spaaajibade.com/resources/data-privacy-and-protection-under-the-nigerian-law-francis-ololuo/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration#_ftn35 accessed on March 1 2021

⁷ ibid

regulation touches on principles of data processing, the requirement of Data Compliance Officers, requirement of data subject's consent for collecting and processing data, requirements for international transfers of data and rights of data subjects, inter alia. It also prescribes penalty for non-compliance with the regulation.⁸

As indicated earlier, aside the NDPR, there are other laws which touch on Data Privacy and Protection in Nigeria, which are briefly highlighted below. Such other laws and regulations include; The Constitution of the Federal Republic of Nigeria, 1999 (as amended) **Section 37** thereof guarantees and protects the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic materials.⁹ Prior to the establishment of NDPR, all matters relating to privacy and data protection are enforced under this section; Cybercrimes (Prohibition, Prevention, etc.) Act, 2015¹⁰ (the Cybercrimes Act); National Identity Management Commission Act, 2007¹¹ ('the NIMC Act'); The NCC Consumer Code of Practice Regulation 2007;¹² The NCC Registration of Telephone

⁸ *ibid*

⁹ CFRN 1999 as altered

¹⁰ Cybercrimes Act 2015

¹¹ NIMC Act 2007

¹² The NCC Consumer Code of Practice Regulation Act 2007

Subscribers Regulation 2011;¹³ The Freedom of Information Act 2011;¹⁴ The Child Rights Act 2003;¹⁵ National Health Act (NHA) 2014;¹⁶ The Federal Competition and Consumer Protection Act 2019¹⁷ are industry-based laws and regulations that are put in place for different purposes on data protection. In addition, the Draft Data Protection Bill, 2020 ('the Bill') is currently going through the legislative process.¹⁸

The quick implementation and enforcement of the NDPR by NITDA has shown its seriousness not only in ensuring compliance with data privacy and protection laws by data controllers and processors in Nigeria but also to build an effective system in the enforcement of data protection rights.¹⁹

Since its coming into force, the NDPR has strengthened the nation's data protection framework by ushering in a number of laudable developments thereby enhancing the privacy right.

The NDPR most importantly, has articulated the privacy rights of Nigerian citizens guaranteed under Section 37 of the 1999 Constitution as amended. In a notable ruling, the court of appeal

¹³ The NCC Registration of Telephone Subscribers Regulation 2011

¹⁴ The Freedom of Information Act 2011

¹⁵ The Child Right Act 2003

¹⁶ National Health Act 2014

¹⁷ The Federal Competition and Consumer Protection Act 2019

¹⁸ Nigeria - Data Protection Overview | Guidance Note | DataGuidance
<<https://www.dataguidance.com/notes/nigeria-data-protection-overview>> accessed on 20th February 2020

¹⁹ *ibid*

Ibadan judicial division has, on the 24th of September 2021, expressly ruled that data protection under the NDPR falls under section 37 of the 1999 constitution [see *Digital Rights Lawyers Initiative (DRLI) v National Identity Management Commission (NIMC)*].²⁰ Similarly, in a landmark decision, the Federal High Court in Abuja, in 2019, affirmed the data privacy rights of Nigerians and ordered the Nigerian Information Management Commission to protect the data rights of Nigerians beyond merely having bogus security policies which it had prior to the suit, failed to implement. [See also *Incorporated Trustees of Paradigm Initiative for Information Technology (PIIT) & Sarah Solomon-Eseh v National Identity Management Commission (NIMC)*].²¹

A loan shack known as Soko Loan was recently penalized under the NDPR with an order to pay 10 Million naira in fine for the compromise of the data of its customers. This could conveniently be regarded as the Nigeria's debut on NDPR sanction on annihilators of citizens' privacy. Prior to this development, quiet a number of occasions have existed where the application of NDPR have been attempted.

A very notable instance was a laudable development in the Nigerian data protection industry that came to shore on

²⁰ Appeal No. CA/18/291/2020

²¹ *ibid*

Wednesday 19 August 2020, when the Federal Government took a very decisive step through the NIMC, by releasing draft data protection legislation in the form of the Bill for public reviews and comments in preparation for a validation workshop. In a very commendably transparent and unprecedented manner, the Bill was displayed on nine websites to aid accessibility and even distribution for the purpose of eliciting reviews and comments from stakeholders and interested persons. The Bill principally aims at establishing a data protection authority, to be named the Data Protection Commission like its Anglophone African counterparts in Ghana, Botswana, and Lesotho. In all, the Bill has 14 Chapters dedicated to 68 Sections and a Schedule containing supplementary provisions relating to the proceedings of the proposed supervisory authority.²²

On 4 October 2019, NITDA released a statement on the status of its investigation into a potential breach of privacy rights of Nigerians by Truecaller. However, NITDA is yet to commence enforcement actions against Truecaller for this possible breach of the NDPR.²³

Also, in a not-too-distance time, the investigation of the Lagos Internal Revenue Service (**LIRS**) for publishing some Lagos State taxpayers' personal information on its website is a

²² Ibid at 2 above

²³ ibid

manifestation of untiring effort of ensuring protection of citizens' data.²⁴

1.3 KEY CHALLENGES OF THE NDPR IN PROTECTING DATA RIGHTS

Although, the provisions of the NDPR are laudable and set the tone for much potential in Nigeria's efforts at achieving a world class data protection status in which all data rights are protected, nonetheless, there exist few challenges.

(1) Some quarters believe the NDPR being a regulation and not a statute enacted by the National Assembly lacks the requisite force of law sufficient for addressing such an important subject.²⁵

(2) Inadequate Awareness and Training on Data Privacy and Protection principles, roles and responsibilities.²⁶

(3) There are issues on enforcement's actions given that the NDPR is fairly recent, there is a dearth of decided cases and enforcement actions on the provisions of the NDPR.²⁷ A recent breach of the NDPR was the Nigeria Immigration Service's publication of the international passport data page of a Nigerian

²⁴ ibid

²⁵ Ibid

²⁶ Ibid (n25)

²⁷ <<https://www.mondaq.com/nigeria/data-protection/901494/data-protection-and-privacy-challenges-in-nigeria-legal-issues-#>> accessed on 14th of May 2021

resident in the UK. The data was published on the Service's social media pages without the Data subject's consent but we are not aware of any sanction meted to the Immigration Service under NDPR.²⁸ Also, regulators are faced with the challenge of how to commence enforcement actions against data processors that have no corporate presence in Nigeria. Practically speaking, it is almost impossible to sanction data processors that have no corporate existence in Nigeria.²⁹

(4) Breach reporting obligations are not taken seriously by organizations in Nigeria under the Data Protection Regulation.³⁰

(5) The regulation solely “applies to all transactions intended for the processing of personal data and to actual processing of personal data... and natural persons residing in Nigeria or residing outside Nigeria but of Nigerian descent”. The NDPR applying solely to personal data and natural persons means the regulation excludes other forms of corporate organizations respectively.³¹

²⁸ *ibid*

²⁹ Data Protection 2020 | Laws and Regulations | Nigeria | ICLG <https://iclg.com/practice-areas/data-protection-laws-and-regulations/nigeria#> accessed on March 1 2021.

³⁰ *ibid*

³¹ *ibid*

(6) Organizations are failing to own their compliance story by building data privacy compliance programmes.³²

1.4 ACHIEVING AN EFFECTIVE DATA PROTECTION REGIME IN NIGERIA: RECOMMENDATION

Nigeria's quest to achieving a compliant data protection status capable of securing database rights cannot be achieved overnight. Thus, the following are recommended for achieving a world class data protection law in Nigeria.

Passage of the data protection bill (2020)

As a foremost step, there is the need to subside the debate that the NDPR is merely a regulation brought up by a body and not a statute enacted by a law making body. This could be achieved by speeding up the enactment of the draft data protection bill (2020). The Act, if passed will not only crystallize the data rights of Nigerians it would also allay all fears pertaining to the genuineness of Nigeria's data protection regime.³³

Whistleblowing Disclosures

The Nigerian Senate passed whistleblower's Protection Bill into law in 2017. The bill was known as "An Act to Protect Persons Making Disclosures for the Public Interest and Others from

³² *ibid*

³³ <<https://barristerng.com/data-protection-and-intellectual-property-a-global-approac-todissecting-emerging-legal-issues/>> accessed on May 13 2021

Reprisals, to Provide for the Matters Disclosed to be Properly Investigated and Dealt with and for other Purposes Related Therewith”. Based on this law, the Data Protection Commission or Regulator should introduce whistle blowing policy to encourage the report of data breaches that are normally kept hidden or denied by the respective organizations. The information received through whistle blowing disclosure must be used to develop intelligence for further investigations and subsequent enforcement actions.³⁴

Unified Database

Data regulators are exploring ways to have a unified database that enables collaboration, such that regulators do not have to maintain separate databanks. For example, the NIMC manages the national identity database; the NCC manages telecommunication subscribers’ personal information, while the CBN maintains BVN data. A unified database will afford the regulators to manage data effectively.³⁵

Also, as data protection grow in importance to understand the world, the regulators will face the challenge of protecting them under the umbrella of many different cultural, economic and legal landscapes, it is therefore recommended that the regulators

³⁴ *ibid*

³⁵ *ibid*

always keep in touch with new trends and periodical review so as to meet standard of all material time.

Need to Improve Capacity

It is germane that NITDA as the principal body for data protection in Nigeria consolidates on its successes and takes steps to improve further. Whilst the agency must be applauded for opening investigations into a number of alleged data breaches, notably breaches by **TrueCaller, Surebet247 and the Lagos Inland Revenue Service**, the absence of sanctions or the non-publicity of same must be addressed.³⁶

The Use of Cryptography and Blockchain

The use of cryptography and blockchain as secure techniques of information management is strongly recommended. Regulators should be constantly engaging the stakeholders to use secure techniques to process and store personal data.

³⁶ Data protection in Nigeria – enforcement in post COVID-19 digital economy | Biometric Update <<https://www.biometricupdate.com/202101/data-protection-in-nigeria-enforcement-in-post-covid-19-digital-economy>> . Accessed on March 1 2021

1.5 CONCLUSION

Nigeria has by the introduction of NDPR, popped up her game in data protection regime. We expect a paradigm shift in the way corporations and individuals carry on business and interact with respect to data in their possession. While attempt has been made to identify key challenges in the effective enforcement of these laws and regulations, a robust enforcement framework primed to give teeth to its provision will enable realization of its promise.



**WHY CHAPTER II OF THE 1999
CONSTITUTION OF THE FEDERAL
REPUBLIC OF NIGERIA IS A GREEK GIFT.**

Stephen Peter Okangla¹

¹ Faculty of Law, University of Maiduguri, Borno State.

stephenokangla@gmail.com

08132040369

ABSTRACT

Chapter II of the Nigerian constitution contains provisions which are very important to both human and economic development. The Provisions of chapter II is technically called Fundamental Objectives and Directive Principles of State Policy, it is specifically and specially dedicated to socio-economic rights geared towards providing a mission which must be vigorously pursued by the Nigerian Government. The writer believes the draftsmen in 1978 saw the need to direct government's action by making a constitutional provision for it, hence chapter II. The birth of chapter II is the best thing that would happen to Nigerians, this is so because the chapter is citizen centered and economic favoured. It is an undeniable fact that if the provisions chapter II of the Constitution are jealously uphold and genuinely implemented Nigeria would have be been devoid of the various forms of criminality which threatens our corporate existence and future if not completely. However this article posits to explain the ills accompanying chapter II of the 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011. In this light, the writer tends to x-ray critically why chapter of the Nigerian constitution is a Greek gift.

Keywords: *Fundamental Objectives, Directive Principles of State Policy, Greek gift.*

1.0 Introduction

The argument has been that the 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011 is the product of the military and does not in reality command democratic principles and the interest of the larger Nigerian populace. This argument is further widened by the obvious usurpation of the Courts power to seat over issues, decisions, actions and inaction of Government from January 15th 1966 to the date of the commencement of the Constitution. This provision is clearly captured in section 6 (6) (d) of the Constitution. The implication of this is Courts by virtue of the above section cannot question arbitral decision during military regime. An essential chapter of the Constitution which tend to be people focused, fertile economic policy driven and embraces humane and responsible governance is chapter II of the Constitution. The writer holds the view that chapter II of the Constitution captures the best provisions in terms of socio-economic growth and welfare of the masses. There's no doubt if the provisions of chapter II is consciously pursued and rightly implemented Nigeria and Nigerians would be the envy of the rest of the world.

Howbeit, the provisions of chapter II is not only metaphorically nonexistent but also denied any form judicial interpretation and enforcement. Chapter II of the Constitution captures the

Fundamental Objectives and Directive Principles of State Policy. These fundamental principles as captured in chapter II were first in the Nigeria history provided in the 1979 Constitution. During the drafting of the 1979 constitution, the Constitution Drafting Committee (CDC) in its report defined the Fundamental Objectives and Directive Principles as:

*"By fundamental objectives we refer to the identification of the ultimate objectives of the Nation whilst Directive Principles of State Policy indicates the paths which lead to these objectives. Fundamental Objectives are ideals towards which the nation is expected to strive whilst Directive Principles lay down the policies which are expected to be pursued in the efforts of the nation to realize the national ideals."*¹

These fundamental objectives are the various socio-economic rights of citizens which the Government is expected to vigorously pursue and that is why the writer is of the view that the provisions of the said Chapter is the best for its citizens and economic development centered provisions. This article aim to x-ray the provisions of chapter II of the Constitution, examine why it is a Greek gift, to buttress why it should be subjected to urgent legislative work and to further make constructive recommendations.

¹ Report of the Constitution Drafting Committee (Report), Vol. 1, p .v (Federal Ministry of Lagos, 1976)

1.1 Provisions of Chapter II of the 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011.

As stated earlier, chapter II of the constitution contains the best provisions in our constitution. The opening provisions of this chapter in examination basically relates to duties of the three arms of government to ensure conformity observation and application of this chapter which is aptly referred to socio-economic Provisions of the Constitution. The chapter summarizes the philosophical basis for the institution of the Nigerian Government which are in line with the economic, social and cultural rights as adopted by the United Nations General Assembly in the Universal Declaration of Human Rights of 1948. The rights which were transformed as an instrument have been adopted by state parties in the form of the international covenant on Economic, Social and Cultural Rights they include the right to social security, the right to work, the right to an adequate standard of living, the right to education, the right to benefit of science and culture, the right to just and favourable working conditions amongst others.²

Some provisions of chapter II of the Constitution which is made up of 12 sections is reproduced herein for clarity and emphasis:

² <https://www.linkedin.com/pulse/critique-drafting-style-chapter-ii-1999-constitution-nigeria-nwoye> <accessed 21 November, 2021.

Section 13 provides that: It shall be the duty and responsibility of all organs of government and of all authorities and Persons, exercising legislative, executive or judicial Powers to conform to, observe and apply the provisions of this constitution.

Section 14 (1) The Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice. Section 14(2) (b) provides that security and welfare of the people shall be the primary purpose of government Section 14 (4) provides thus: The composition of government of a state, a local government council or any of the agencies and the conduct of the affairs of the government or council or such agencies shall be carried out in such manner as to recognize the diversity of the people. Section 15 (2) national integration shall be actively encouraged whilst discrimination on grounds of place of origin, sex, religion, status ethnic or linguistic associations or ties shall be prohibited.

Section 15 (3) provides that: For the purpose of promoting national integration, it shall be the duty of the state to: (a) Provide adequate facilities for and encourage free mobility of people, goods and services throughout the federation; (b) Secure full residence rights for every citizen in all parts of the federation (c) Encourage inter-marriage among persons from different places of origin, or of different religious, ethnic, or linguistic association. Section 15 (5) the state shall abolish

all corrupt practices and abuse of power. All these relate to the political objectives of governance.

Section 16 (1) (a) provides as follows: harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy; Control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity. Section 16 (2) provides that: The State shall direct its policy towards ensuring; (a) The promotion of a planned and balanced economic development. (b) That the material resources of the nation are harnessed and distributed as best as possible to serve the common good; (c) That the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group and (d) That suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens. While section 17 on social order provides thus: Section 17 (1) the state social order is founded on ideals of freedom, Equality and Justice. Section 17 (2) In furtherance of

*the social order: (a) Every citizen shall have equality of rights, obligations and opportunities before the law.*³

There is no doubt the strict pursue and adherence to the letters of chapter II of the Constitution would quell the fire burning in the country and help us as nation navigate path that would put us in rightful position in the world. The rationale according to the Constitution Drafting Committee for the incorporation of the fundamental objectives and Directive Principles in chapter II of the 1979 Constitution is that: *“Government in developing countries have tended to be pre-occupied with power and it’s material prerequisite with scant regard for political ideals as to how society can be organized and ruled for the best advantage”*⁴ This chapter constitute very important Provisions which is relevant for peace and stability to thrive and for the general welfare of Nigerians. However, our undoing in as much as these objectives and principles are to Nigerians, is that the do not confer right of action, nor right to seek enforcement against the Government in the Court of law except the cause action is traceable to another chapter of the Constitution which confers similar right. The implication of this is, Government’s action cannot be challenged

³ CFRN 1999 (Amended) 2011

⁴ Report of the Constitution Drafting Committee (Report), Vol. 1, p .v (Federal Ministry of Lagos, 1976)

neither can they be hold accountable so far as such actions or inaction borders on Chapter II of the Constitution.

This is how important but meaningless the Provisions of chapter II are. A lawyer, Mack Ogbamosa while speaking at a two day Marketing Communication Summit organized by the Nigerian Institute of Public Relations (NIPR), Lagos State chapter opined that chapter II of the Constitution must be made justiciable to ensure public governance and reduce corruption and poverty.⁵

1.2 Why Chapter II of the Constitution is a Greek Gift.

The Webster Dictionary defines the term Greek gift as a gift given or favour done with a treacherous purpose. Similarly, the Collins Dictionary defines Greek gift as a gift given with the intention of tricking and causing harm to the recipient. In this article, it is the metaphorical meaning and not the literal meaning that is attached to Greek gift in order to convey the writer's intention. As already established, chapter II of the Constitution contains goals, objectives and in fact mission which must be undertaken and complete by the government. Also, the chapter outlined paths which government must follow in order to accomplish the mission. However just as section 6 (6) (d) of the Constitution usurp the power of the Court in trying

⁵ <https://guardiang/features/make-chapter-2-of-constitution-justiciable-says-lawyer/> <accessed 17th November, 2021.

decisions of government from 15th January, 1966 to the commencement of the 1999 constitution, section 6 (6) (c) also contain an ouster clause which completely deny our Courts the requisite jurisdiction to entertain issues emanating from chapter II of the Constitution. Implicatively, this means all the rights enshrined in Chapter II cannot be challenged, Government cannot also be hold accountable for blatantly neglecting the Provisions of the chapter neither could they be call to order in respect of provisions in the chapter. This is indeed painful, retrogressive, challenging and cannot in any way foster economic growth nor effectively tackle the upsurge of insecurity and poverty in the country. The Government gave us chapter II with a right hand and took it with a left hand by virtue of section 6 (6) (c) of the Constitution. They only tricked us, they never meant well for us and that is why the writer opine that the gift of chapter II is tantamount to Greek gift. In India these rights are contained in part IV of the Indian Constitution, they are known as Directive Principles of State Policy. Although, these rights are not enforceable but there is no ouster clause denying Indian courts the jurisdiction to entertain matters arising therefrom. This position of the Indian Constitution is similar to those of many democratic societies including the Republic of

Uganda where these rights are known as National Objectives and Directive Principles of State Policy.

From the forgoing, it is crystal clear and a notorious fact that subjecting the Provisions of chapter II of the Constitution to Court's jurisdiction will help correct cases of misplaced priorities among political leaders and instill sanity in the country by the Provision of basic amenities for the masses. However, the outright usurpation of the Courts power to seat over issues emanating therefrom makes it a Greek gift which exist only in the realm of our utopian state.

Although, the Court through what seems to be judicial activism had at some point made several pronouncements on the justiciability and enforceability of the Provision of chapter II of the Constitution, still there is no automatic ticket to court's jurisdiction going by the Provision of section 6 (6) (c) of the Constitution. In the case of **OLASIFOYE V FEDERAL REPUBLIC OF NIGERIA**⁶ it was held that when section 15 (5) is read together with item 60 (a) of the second schedule, it can be justiciable. Also, it is the practice that the community reading of the Provision of the African Charter on Human and Peoples' Right (AFCHPR) domesticated in Nigeria, chapter IV of the Constitution which borders on Human Rights having similar

⁶ (2004) 4 NWLR (Pt. 804)

Provisions with chapter II can be employed to enforce the Provisions of chapter II of the Constitution.

1.3 Why Chapter II Should be Subject to Urgent Legislative Work.

It is a notorious fact that the current state of our country is nothing to write home about. With the rising cases and spreading of terrorism, banditry, arm robbery, violent agitations on one hand, and poverty holding sway on the other, Provisions of chapter II which captures people focused objectives and welfare should be moved quickly to chapter IV of the Constitution where it would command outright enforcement or better still the ouster clause should be repealed. If these is done, tension in the country would be greatly doused and funds will be channeled to implement policies and programs geared to lift the masses from poverty and improve their standard of living other than embarking on white elephant project. It is not disputable that the chunk of the vices and crimes crippling our economy today is the child of poverty and the effect of clueless policies of successive Government over the years. It is apt to point out at this point that these misplaced priorities and cluelessness which have given birth to joblessness, inflation, poverty, food insecurity, inequality, banditry and terrorism is what chapter II is designed to cure hence the legislative arm should work on it and make the provisions therein justiciable so it could serve its purpose.

1.4 Conclusion

It is apt to say that the Nigerian Constitution is supreme, it is the organic law as well as the grundnorm from which other laws originate and derives legality. Hence any provision of the constitution especially as relating to economic and social rights, good governance that is not justiciable is undesirous. As represented herein, chapter II of the constitution should be amended and make justiciable out rightly and section 6 (6) (c) repealed. Such will guarantee all categories of right as well as accord Nigerian citizens ideal constitutional rights and make good government of Nigeria accountable to the people in accordance with the CFRN 1999 (as amended) 2011.⁷

Making chapter II justiciable will in no doubt ensure good governance and sustainable development, reduce poverty, create employment opportunities, quell agitations, guarantee mass literacy and end violent extremism, arrest banditry and reduce hunger in Nigeria.

⁷ Non-Justiciability of Chapter II as Impediment to Economic Rights and Development by Oguga V.C Ikpeze

1.5 Recommendations

- The executive should as a matter of urgency commence the process of making chapter II of the constitution justiciable by presenting an Executive Bill to that effect.
- The legislature should also as a matter of importance and urgency commence repeal of section 6 (6) (c) of the CFRN 1999 (as amended) 2011.
- The judiciary as the custodian of the constitution should also keep burning the fire of judicial activism in a desirable approach to remove the ouster clause and guard its jurisdiction jealously.
- Nigerians and professional bodies such as the Nigerian Bar Association (NBA) should be bold to challenge infringement of the rights provided in chapter II of the Constitution even by Public Interest Litigation.



THE MISCONCEPTION OF NIGERIANS WITH REGARDS TO STATUTORY MARRIAGE: EXISTENCE AND VALIDITY OF CHURCH, COURT AND CUSTOMARY MARRIAGES

Temitope Mary A¹

¹ Faculty of Law, Lagos State University.

ashimirosellamary@gmail.com

Abstract

The rate at which Nigerians blindly celebrate their marriages in churches, after celebrating the same marriage at the marriage registry has become quite alarming. One cannot but wonder their reason for this, and it has been established that, couples intend to be married under the law, so that they may enjoy such benefit that comes with being married under the law, and because of the notion that marriage celebrated under the law is superior to all other kind of marriages, nevertheless, they want their marriage to be solemnized by a minister of God, but little do they know the implications of their actions, to crown it all, marriage need not to be celebrated in the registry before one can be said to be married under the law, and this is one of the focus of this paper. Also, although there seems to be no problem with parties, who having solemnized their marriage under customary law, go ahead to solemnize such marriage under the law, so long, the provisions of The Marriage Act is duly followed, but with regards, to the belief that celebration of marriage with another person under the law, while being married under native law and customs to another person, will render the marriage contracted under law superior to the one contracted under native law and custom, is very wrong, for as shall soon be seen, it is impossible to enter into a marriage contract under the law with another person, while being married under customary law, to another person.

Keywords: Marriage Act, Church Marriage, Court Marriage, Customary Marriage.

A. Introduction

According to *E.I Nwogugu* in his book, titled “*Family Law in Nigeria*”¹, the term “Marriage” is sometimes used to denote three different situations vis the agreement to marry, the act of being married (the ceremony by which a man and a woman become husband and wife), and finally, the state of being married (which is the relationship between a husband and a wife)².

Legally, two types of marriage are recognised under the Nigerian law, that’s Marriage under the Act, also known as Monogamous Marriage or Statutory Marriage, and secondly, Customary Marriage³.

Monogamous Marriage has been established in the English case of *Hyde v Hyde*⁴ as a voluntary marriage for life of one man and one woman to the exclusion of all others until divorce or death.

This does not however, mean that marriage celebrated in churches but not in accordance with the Marriage Act is a monogamous marriage, this definition only applies to Marriage celebrated in accordance with the provision of the *Marriage Act*

¹ Third edition, HEBN Publishers Plc p.5

² Black’s law Dictionary, 8th Ed. West Publishing Co.2004 p.992; The New International Webster’s Comprehensive Dictionary, 2010 Ed. P. 781

³ ss. 33 and 46 of The Marriage Act 1990

⁴ (1886) L.R.I.P & D 130, 133

1914⁵, so that, any marriage celebrated outside it, would operate based on *The* rules that applies in such church or to such other marriage, thus where the rules of the church allows for the marriage of more than one wife, then, the man may marry more than one wife, and the woman cannot claim to have celebrated a monogamous marriage, except such marriage was celebrated in accordance with the provisions of the Marriage Act⁶.

Thus, legally speaking, there is nothing like “Church Marriage”, any marriage not celebrated in accordance with the Marriage Act (hereinafter referred to as “the Act”) is one celebrated in accordance with the natives customs of the particular place or church.⁷

Customary marriage on the other hand, is the union for life of one man and one or several woman⁸, and for this purpose, Islamic law marriage is subsumed under customary law marriage.

It should be added here that parties whom after celebrating a customary marriage, had their marriage solemnized by the minister of church, but not in accordance with the provisions of the Act, are not married under the Act, so that the polygamous

⁵ Attah M., “Extending family Law Non-Marital Cohabitation In Nigeria” <
<http://www.deepdve.com/lp/oxford-university-press/extending-family-law-to-non-marital-cohabitation-in-nigeria-OkralaiOsu/>> Accessed on 16 April 2022

⁶ Per OTISI, JCA, in *Agbakoba vs. A.G of the Federation* (2021) LPELR-55 906 (CA)

⁷ *Obiekwe v Obiekwe* (1963) 7 ENLR 196

⁸ E.I Nwogugu “*Family Law in Nigeria* Third edition, HEBN Publishers Plc p.9

marriage so celebrated is not converted to a statutory marriage,⁹ such marriage remains a customary marriage, irrespective of whether they were granted the church marriage certificate by the Minister.

The question then is “When is a marriage celebrated under the Act?”, and this shall be discussed below

B. Formal Validity of a Statutory Marriage

For there to be a valid statutory marriage, which can be enforced, the Act requires the following:

- 1.0. *Under s. 7 of the Act*, one of the parties to the intended marriage must sign and deliver to the registrar of marriage of the district in which the marriage is proposed to take place, a notice as in Form A in the first schedule to the Act.¹⁰
- 2.0. *Under s. 11 of the Act*, The registrar may after twenty days and within three months from the date of the notice, on the payment of the prescribed fee, and after the party has disposed to an affidavit, issue his certificate (Form C in the first schedule to the Act) to the applicant;¹¹ OR

⁹ Law Authority Of Nigerian Family Law By Kasunmu And Salacuse Pgs 92 - 93

¹⁰ An Article on Family Law 1 | Kampala International University, Uganda <
<https://kiu.ac.ug/courses-catalogue-view.php?i=2457&code=LB2103&title=family-law-i§ion=outline/>> Accessed on 16 April 2022

¹¹ *ibid*

- 3.0. The parties may in place of a registrar's certificate, obtained special licence from the Federal Ministry of the Ministry of Internal Affairs.¹²
- 4.0. Armed with the registrar's Certificate, the parties may then, approach a recognised Minister of Religion of a Licence public place of worship¹³ (a church that is licensed by the Federal Ministry of Internal Affairs), or a Registrar of Marriage, in his office , where the marriage shall then be celebrated and a certificate of marriage (Form E in the first schedule to the Act) is issued, it is immaterial that the church certificate is issued in addition to the certificate in Form E; OR
- 5.0. The marriage may be celebrated under a special licence¹⁴ issued by the Federal Minister of Internal Affairs in accordance with s. 29 of *The Marriage Act 1914*.

The failure to comply with the provisions stated above render such marriage null and void, that's, it is not a statutory Marriage and cannot be enforced, and this is buttress under s. 33 (2) of the Act, which state as follows

¹² s. 13 of *The Marriage Act 1914*

¹³ ss. 21 – 23 of *The Marriage Act 1914*

¹⁴ s. 13 of *The Marriage Act*

A marriage shall be null and void if both parties knowingly and wilfully acquiesce in the celebration¹⁵ –

- In any place other than the office of a registrar of marriages or a licensed place of worship (except where authorised by the license issued under *s. 13 of this Act*); or
- Under a false name or names; or
- Without a registrar's certificate of notice or license issued under *s. 13 of this Act* duly issued; or
- By a person not being a recognised minister of some religious denomination or body or a registrar of marriages.¹⁶

s. 33 (3) of the Act attempts to save a marriage from being declared invalid by providing thus: “But no marriage shall after celebration, be deemed invalid by reason that any provision of this Act other than [those set out in *s. 33 (2)*] has not been complied with.”¹⁷

It surely won't be out of place to discuss what the Act meant by “Knowingly and wilfully” acquiesce in the celebration of the marriage:

¹⁵ An Article on Family Law 1.4 Legal Effects of Marriage> <http://isochukwu.com/2017/12/30/family-law-1-4-legal-effects-of-marriage/>> Accessed on 17 April 2022

¹⁶ *ibid*

¹⁷ An Article on Formality of Statutory Marriage in Nigeria> <https://www.nomos-elibrary.de/10.5771/2363-6270-2016-1-48/formality-of-statutory-marriage-in-nigeria-need-for-a-policy-driven-construction-of-the-marriage-act-volume-19-2016-issue-1?|de/>> Accessed on 17 April 2022

Following the old but standing maxim “*ignorantia legis neminem excusat*”, that’s ignorance of the law is no excuse, it is submitted that the Act could not have intended to displace this, and by adding knowledge as an element (*mens rea*), Knowledge referred to in s. 33 (2) of the Act refers to facts set out in the subsection, not of law. Also, *Araka J. In Ajih v. Ajih*¹⁸ stated that “The provisions of the Marriage Act are there for everyone. Ignorance of the Act cannot, and will not, be any defence in law.”

Thus, ignorance of law is different from ignorance of facts, the two are distinct, and should remain so. Bitterly, most of our judges who has made a spoken remark on this subject envisaged that the subsections refer to knowledge of law¹⁹. This is evidenced in the judgements of *AINLEY CJ IN ONWUDINJOH V. ONWUDINJOH*²⁰, *IDIGBE J IN AKWUDIKE V. AKWUDIKE*²¹, *PALMER J IN OBIKWE V. OBIKWE*²², and *AGBAKOB A J IN AKPARANTA V. AKPARANTA*²³.

¹⁸ (1975) 5 ECSLR @ 9.

¹⁹ An Article on Formality of Statutory Marriage in Nigeria> <https://www.nomos-elibrary.de/10.5771/2363-6270-2016-1-48/formality-of-statutory-marriage-in-nigeria-need-for-a-policy-driven-construction-of-the-marriage-act-volume-19-2016-issue-1?|de/>> Accessed on 17 April 2022

²⁰ (1957) 11 ERLR 1.

²¹ (1963) 7 ENLR 5.

²² (1963) 7 ENLR 196.

²³ (1972) 2 ECSLR 779

s.33 (2) of the Act pardons parties to a monogamous marriage from having their union rendered non-statutory if they can prove that they did not knowingly and wilfully acquiesce in not complying with the formalities required by the Act²⁴. Knowledge has been divided into actual, constructive and imputed knowledge. *Peter Gibson J*²⁵ stated that knowledge include any one of the following:

- a) Actual knowledge;
- b) Wilfully shutting one's eyes to the obvious;
- c) Wilfully and recklessly failing to make such inquiries as an honest and reasonable man;
- d) Knowledge of circumstances which would indicate the facts to an honest and reasonable man;
- e) Knowledge of circumstances which would put an honest and reasonable man on inquiry.²⁶

While Actual knowledge is a straight-forward thing, whether or not constructive knowledge should be applied to marriage should depend on whether or not the parties had sufficient time to obtain facts which good sense imposes on him.

²⁴ An Article on Formality of Statutory Marriage in Nigeria> <https://www.nomos-elibrary.de/10.5771/2363-6270-2016-1-48/formality-of-statutory-marriage-in-nigeria-need-for-a-policy-driven-construction-of-the-marriage-act-volume-19-2016-issue-1?|=-de/>> Accessed on 17 April 2022

²⁴ (1957) II ERLR 1.

²⁵ *Baden, Delvaux and Lecui v Soite General* [1983] All ER Annual Review 352

²⁶ An Article on Marriage and Divorce< <https://adelaidia.history.sa.gov.au/subjects/marriage-and-divorce/>> Accessed on 17 April 2022

Thus, any such person who runs into statutory marriage without inquiring into what the law demands would come within category c above, and knowledge will be constructed on his part.

Imputed knowledge on the other hand, arises where a person acts through the agency of another, and with regards to statutory marriage, it is submitted on the authority of *Martins v. Adenuga*²⁷, that a party who relies on a prospective spouse's assurances and fails to verify the truth should not be allowed to escape the legal consequences of his/her actions.²⁸

C. Celebration Of A Statutory Marriage

With regards to the phrase "CELEBRATION OF MARRIAGE" used in the Marriage Act²⁹, it is submitted on the authority of ss. 21-23, 27-28, and 29 of the Act respectively, that the Act does not involve marriage in accordance with native law or church sacrament or social feast³⁰, hence for a marriage to be tagged a marriage celebrated in accordance with the Act, and as

²⁷ (1946) 18 NLR 63

²⁸ An Article on Formality of Statutory Marriage in Nigeria> <https://www.nomos-elibrary.de/10.5771/2363-6270-2016-1-48/formality-of-statutory-marriage-in-nigeria-need-for-a-policy-driven-construction-of-the-marriage-act-volume-19-2016-issue-1?|de/>> Accessed on 17 April 2022

²⁸ (1957) 11 ERLR 1.

²⁹ s. 33 (3) of The Marriage Act 1914

³⁰ An Article on Formality of Statutory Marriage in Nigeria> <https://www.nomos-elibrary.de/10.5771/2363-6270-2016-1-48/formality-of-statutory-marriage-in-nigeria-need-for-a-policy-driven-construction-of-the-marriage-act-volume-19-2016-issue-1?|de/>> Accessed on 17 April 2022

³⁰ (1957) 11 ERLR 1.

a Statutory/Monogamous marriage, it must be in accordance with the provisions of the sections stated above, that's must be celebrated either:

- a) In a licensed public place of worship, not just any kind of public place of worship (church), and this can only be done after obtaining the registrar's certificate in Form C in the First Schedule to the Act or a special licence³¹ in Form D of the first schedule to the Act. Notably, the registrar's certificate is not proof of marriage or the certificate of marriage³² (Form E in the first schedule to the Act), and this marriage must be solemnized by an authorised recognised minister of the particular licensed public place of worship, not just any minister of the licensed place of worship, else the marriage will be invalid³³.

The marriage must be celebrated with open doors³⁴ between the hours of 8a.m and 6p.m, and in the presence of two or more witnesses besides the officiating minister, after which the certificate of marriage in Form E shall be issued to the couples; this is the valid certificate of marriage³⁵. Thus, if this is not

³¹ s. 13 of *The Marriage Act 1914*

³² ss. 24-26 of *The Marriage Act 1914*

³³ <http://ulii.org/akn/ug/act/ord/1902/5/eng%402014-03-10/>> Accessed on 17 April 2022

³⁴ Marriage Act Arrangement of Sections – Laws of Nigeria>

<https://lawsofnigeria.placng.org/laws/M6.pdf/>> Accessed on 17 April 2022

³⁵ An Article on the Overview of Statutory Marriage in Nigeria<

<https://www.mondaq.com/nigeria/family-law/985124/overview-of-statutory-marriage-in-nigeria/>> Accessed on 17 April 2022

issued, and only the church marriage certificate is issued, then, parties should know that the public place of worship is not a licensed place of worship, and the minister is not recognised as such, and the minister may be punished under s. 47 of the Act for officiating a marriage he is not licensed to solemnize, or for solemnizing a marriage that the registrar's certificate has not been issued to the prospective spouses³⁶.

This establishes the fact that parties who intend to be married both under the law, and in church, before a Minister of God, can do so, if they conform to the provisions of the Act.

- b) In a registrar of marriages' office and this must be after the parties had obtained the registrar's certificate (Form C in the first schedule to the Act) or special licence (Form D in the first schedule to the Act). Again, registrar's certificate is not marriage certificate.

The marriage may be solemnized by a registrar of marriages in his office, if the parties intend so, and do not wish to have their marriage solemnized by a minister of God, and the fact that the parties after celebration of marriage at the registry, still go to church to obtain the church blessing and the church marriage certificate, does not add any effect to the valid statutory marriage, nor does it render it void.

³⁶ The section prescribes a punishment of imprisonment for five years for such minister

In addition, two witnesses must witness the marriage in the registrar's office, with open doors, between the hours of 10:00am and 4p.m, after which the marriage certificate (Form E in the first schedule to the Act) will be issued to the parties

To this extent, it is established that there exist nothing called "Court Marriage" in Nigeria; marriage successfully celebrated at the Marriage Registry is a "Statutory/Monogamous Marriage, or better still, Marriage under the Act"

- c) The special licence issued under the Act³⁷ may direct how the marriage shall be celebrated after which the parties will obtain the marriage certificate (Form E in the first schedule to the Act)³⁸

The effect of a statutory marriage is that the marriage is bound by law³⁹ and can be enforced at law, and may only be dissolved by law and without its dissolution, neither of the parties may contract any valid marriage with a third party, doing that will render such person liable under criminal law for bigamy⁴⁰, and under the Act, is liable to five years imprisonment⁴¹, and the third party is also liable to five years imprisonment under s.39 of *the Act* if he/she contract such void marriage with knowledge

³⁷ s. 13 of *The Marriage Act 1914*

³⁸ <http://ulii.org/akn/ug/act/ord/1902/5/eng%402014-03-10/>> Accessed on 17 April 2022

³⁹ *ibid*

⁴⁰ s. 370 of *the Criminal Code* provides for seven years imprisonment as the punishment for bigamy.

⁴¹ ss. 46&47 of *The Marriage Act 1914*

that the other is still under a subsisting valid statutory marriage. What then is the status of parties who haven married under customary law; proceed to marry under the Act? The answer is given below

D. The Validity OF Conversion Of Customary Marriage To Marriage Under The Act

Going by the express provisions of *s.35 of the Act*, customary marriage is duly recognised and valid, and the parties are bound by such natives and custom, and by *s.33 (1) of the Act*, parties, that is husband and wife of a customary marriage may validly marry under the Act following the provisions of the Act, and such marriage shall become a statutory marriage bound by law, but the marriage must be between the very parties that married under customary law.

Where the man is married to more than one wife under customary law, then he must dissolve his marriage with all other wives, and marry one of the wives under the Act, he cannot proceed to marry under the Act without dissolving his other marriage(s), because marriage under the Act is a monogamous marriage, and same where the woman he wishes to marry under the Act is not yet married to him under customary law, he must dissolve all his prior marriages according to the native rules and

customs, the marriage dissolutions must be valid, where the dissolution is not in accordance with the particular customary law under which he was formerly married, then such marriage continue to subsist, and any marriage celebrated under the Act will be void.

s.33 (1) of the Act is the authority for this; it provides that “No marriage in Nigeria shall be valid, where either of the parties thereto at the time of celebration of such marriage is married under customary law to any person other than the person with whom such marriage is had.”

s. 46 of the Act then provides that “whoever contracts a marriage under the provisions of this Act, or any modification or re-enactment thereof, being at the time in accordance with customary law to any person other than the person with who such marriage is contracted, shall be liable to imprisonment for five years.”

The implication of these provisions are that any marriage under the Act by a party who is still validly married under any particular customary marriage is void, and such parties to the monogamous marriage may be punished under the law, while the customary marriage will continue to be valid, until a valid divorce. Where there has been a valid divorce of the customary marriage, then both parties may proceed to marry under the Act.

E. Conclusion

This paper has given a detailed information of the formalities of a valid marriage, and has been able to established the fact that legally in Nigeria, Marriages such as “ Church or Court marriage” do not exist, legally speaking, Marriage in Nigeria are of two types, thus, a person is either married under the Act or under customary law. The paper went further to establish that parties may be married under the law, and yet have their marriage solemnized by a minister of God. It was also able to ground the fact that parties may convert their customary marriage into a statutory marriage, but cannot do so with a third party, except where the subsisting customary marriage has been dissolved in accordance with the particular custom. Also, this writer is of the opinion that the judicial attitude to the formalities of statutory marriage needs to take a new turn, so that ignorance of law will be kept distinct from ignorance of facts.

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