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The Lawrit Journal of Law (LJL) is an online open accessible, peer-reviewed journal created to enable students of law to express their views on various legal issues and to encourage writing on ideas and emerging matters. This Journal will help to ignite the initiative and desire of law students to contribute to research in the field of law.

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Contact the Editorial Board:

publications.lawrit@gmail.com

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Editor's Note

Dear reader,

To further showcase our dedication to educating the public through legal articles, here is another issue of Lawrit Journal of Law (LJL), the first issue of volume three for the year 2023.

Just like the previous ones, this issue is packed with well-researched and beautifully-written articles from competent authors across the Federation.

This issue has a total of 11 original of law-related articles relating to Nigeria and beyond.

These works are diligently and patiently vetted for the purpose of giving you an interesting, gratifying and educative experience.

Lastly, I, and on behalf of the editorial board, wish you a pleasurable and edifying reading.

Sincerely,

Oluwaseun Ojo,

Editor-in-Chief,

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**THE LEGITIMACY OF USING OF PERSONAL
DATA BY ONLINE LOAN COMPANIES IN
NIGERIA**

ATER, SOLOMON VENDAGA

University of Abuja, Abuja Nigeria

soloater12@gmail.com

AND

TESTIMONY AKINKUNMI

University of Abuja, Abuja Nigeria

testimony.akinkunmi@gmail.com

ABSTRACT

This article examines the legitimacy of the use of personal data by loan companies in Nigeria within the prisms of the law on the protection of data privacy of individuals. The researchers found out that there is paucity of regulation on the area and the available provisions on data protection are grossly violated by the loan apps. Hence, they recommended total compliance and implementation of the extant laws.

1.0 INTRODUCTION

A teenage undergraduate obtains a loan from a loan app recommended by a friend. He agreed to all the requirements, but at the deadline, he fails to pay. A campaign by the loan company starts. With personal data, contact info, and details, he granted them access. They inform almost everyone in his contact list that he 'is a debtor, a liar, and satanic'. Apart from these text messages to close friends, his personal relationships were damaged. His personal details like age, address, name, and many more were also spread on the social media platform of the loan company. They tagged influential figures, potential employers, and news blogs. He attempts to respond to the claims, but this backfires as they repeatedly alleged he hadn't and didn't want to repay the money. He doesn't know what to do. Repay the loan, despite the public shame he has faced, or apply for the suicidal thoughts he is having.

The above story is based on a compilation of real-life cases in Nigeria. Real examples of this unscrupulous data exposure have involved legal practitioners,¹ students², and even preachers. These loan companies use social media³ to mount public shaming attacks

¹ 'Lawyer sues soko loan. Sahara Reporters (New York, 1 February 2022) <<https://saharareporters.com/2022/02/01/lawyer-sues-soko-loans-over-alleged-breach-data-privacy-unsolicited-messages-demands-n100>> accessed 2nd January 2023.

² Nigerian fintech companies shame, threaten customers for late payment of loans. Amos Abba (Nigeria, 29 August 2021) <<https://www.icirnigeria.org/nigerian-fintech-companies-shame-threaten-customers-for-late-payment-of-loans/>> accessed 2nd January 2023.

³ The Problem With Digital Loan Providers Harassing Defaulters' Friends and Families. Oluwadunsin Deinde-Sanya (Nigeria, 19 October, 2022) <<https://www.bellanaija.com/2022/10/digital-loan-providers-harassment/>> accessed 2nd January 2023

on those they allege have failed to meet up with their loan obligation. In this paper, we would ponder on the legitimacy of such data exposure against the backdrop of available data protection laws in Nigeria.

The idea of data privacy has gone through a long development. In 1890 Two US legal counselors, Samuel D. Warren and Louis Brandeis, composed The Right to Protection⁴, an article that contends the "right to be let be", using the phrase as a definition of privacy.

The UN in 1948 had the U.N. Declaration of Human Rights (UNDHR) Proclaimed by the United Nations General Assembly on December 10, 1948⁵. The UDHR was drafted by representatives from all over the world with a variety of legal and cultural backgrounds. Article 12 of the declaration states that:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

In the 21st century, the General Data Protection Regulation (GDPR) promulgated on May 25th, 2018 is a landmark law that still directs the evolution of data policy. The GDPR⁶ deal with data protection and privacy related to the European Union (EU) and the European

⁴ The Right to Privacy <[https://en.wikipedia.org/wiki/The_Right_to_Privacy_\(article\)](https://en.wikipedia.org/wiki/The_Right_to_Privacy_(article))> accessed 2 January 2023

⁵ Universal Declaration of Human Rights 1948

⁶ <<https://gdpr.eu/whatisgdpr/#:~:text=The%20General%20Data%20Protection%20Regulation,to%20people%20in%20the%20EU.>> accessed 1 January 2023

Economic Area, EEA). Interestingly, it also applies to the transfer of personal data outside the above jurisdictions.

In Nigeria, specific attention came to data protection in *the Consumer Code of Practice Regulations*.⁷ According to the Regulation, all licensees must take reasonable precautions to safeguard customer information against unauthorized or unintentional disclosure, as well as to make sure that it is properly safeguarded and not maintained longer than required. The Regulations further forbid the disclosure of customer information to other parties unless expressly authorized by the customer, as permitted or required by the NCC or other applicable laws or regulations, or as otherwise needed by the NCC.

The Nigerian Communications Commission issued *the Registration of Telephone Subscribers Regulations*,⁸ in 2011. It provides for the security of personal information, including biometric data, obtained from subscribers during registration for mobile phone services. These Regulations, however, do not apply generally and are powerless to stop the daily onslaught of commercial messages delivered to users' mobile phones.

It must be made clear that Section 37 of the 1999 Constitution⁹ provides that: 'The privacy of citizens, their homes, correspondence, telephone conversations, and telegraphic communications is hereby guaranteed and protected'. The provision is regarded by a lot of experts as too broad and full of loopholes that data processors and

⁷ The Consumer Code of Practice Regulations 200

⁸ The Registration of Telephone Subscribers Regulations, in 2011

⁹ Constitution of the Federal Republic of Nigeria, 1999

data controllers can circumvent.¹⁰ However, since then, more relevant laws have been promulgated. They include The Credit Reporting Act, of 2017, Cybercrimes (Prohibition, Prevention, Etc.) Act, 2015 and Nigerian Data Protection Regulation, 2019

The most recent is the Nigeria Data Protection Bill 2022¹¹ which is still in works. The bill created a new government agency, the Nigeria Data Protection Bureau. The NDPB would be in charge of consolidating the NDPR's successes and assisting in the creation of key laws for data protection and privacy. The NDPB is tasked to ensure that the terms of the Nigeria Data Protection Regulations 2019 are followed (NDPR).

2.0 DEFINITION OF KEY TERMS/CONCEPTUAL CLARIFICATIONS;

2.1 PERSONAL DATA

According to the GDPR¹², *'Personal data are any information that is related to an identified or identifiable natural person. The definition is simple and succinct'*.

In Nigeria, according to Section 1(3) (xix) of the NDPR, "personal data means:

Any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person

¹⁰ Olumide Babalola, Data Protection And Privacy Challenges In Nigeria (Legal Issues) *Mondaq* [2020] <<https://www.mondaq.com/nigeria/data-protection/901494/data-protection-and-privacy-challenges-in-nigeria-legal-issues>> accessed 2nd January 2023

¹¹ Nigeria Data Protection Bill 2022

¹² General Data Protection Regulation (GDPR) 2018

can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person. This can be anything from name, address, photo, email address, bank details, posts on social networking websites, medical information, and other unique identifiers such as MAC address, IP address, IMEI number, IMSI number, SIM, among others.

Data that may identify a person, not necessarily secret or sensitive information, is the core thing that drives data privacy and protection. It could involve seemingly insignificant information like a person's heart rate or body mass index. The data must remain private, regardless of its scope or apparent importance.

2.2 LOAN COMPANIES/APPS

The primary legislations governing banks in Nigeria are the Banks and Other Financial Institutions Act 2020 (BOFIA)¹³ and the Central Bank of Nigeria (Establishment) Act 2007 (CBN Act).¹⁴ Until now, no explicit statutes have enabled electronic banking in Nigeria. However, some previously enacted laws indirectly regulate the subject,¹⁵ like the Central Bank of Nigeria Act 2010, Banks and other Financial Institutions Act 2020, the Bill of Exchange 1990,

¹³ Banks and Other Financial Institutions Act 2020 (BOFIA)

¹⁴ Central Bank of Nigeria (Establishment) Act 2007 (CBN Act)

¹⁵ Oyetola Muyiwa Atoyebi, SAN, FCI Arb. (UK) 'Overview Of The Nigerian Fintech Market.' [2022] <<https://thenigerialawyer.com/overview-of-the-nigerian-fintech-market/>> accessed 2 January 2023

Nigerian Deposit Insurance Corporation Act 2006, the Cybercrimes Act 2015¹⁶, the Evidence Act 2011¹⁷, Federal Competition and Consumer Protection Act 2018 and National Information and Technology Development Agency Regulation (NITDA Regulation) etc.

The CBN, recognizing this vacuum, established The Central Bank of Nigeria Guidelines on Electronic Banking in Nigeria, in 2003. The Central Bank of Nigeria guidelines on Operations of Electronic Payment Channels in Nigeria, 2020 and the Central Bank of Nigeria Operational Guidelines for Open Banking in Nigeria, 2022.¹⁸

Personal loan apps are offshoots of the availability of electronic banking. These mobile applications allow users to apply for and manage personal loans through their smartphones. Personal loan apps typically offer a streamlined and convenient process for applying for a personal loan, with features such as online application forms, instant loan approvals, and the ability to track the loan process and make payments online. Some personal loan apps also offer additional services, such as credit score monitoring, financial planning tools, and personalized loan recommendations.

Personal loan apps offered by online lenders and some fintech companies have, however in recent times, done more than just lend money. They have intentionally exposed personally identifiable information.

¹⁶ The Cybercrimes Act 2015

¹⁷ The Evidence Act 2011

¹⁸ The Central Bank of Nigeria Operational Guidelines for Open Banking in Nigeria, 2022

3.0 THE LEGITIMACY OF THE USE OF DATA BY ONLINE LOAN COMPANIES

Loan companies use data for different reasons. The part we are however interested in is the vulgar referral or active utilization of data got from Nigerians for unscrupulous and badly intended goals.

In a Premium times investigative piece,¹⁹ it was discovered that according to 9credit's privacy policy, the platform seeks its customers to authorize the consent of "Personally identifiable information" that includes name, password, GPS location Information, civil status, SMS Logs, email address, telephone number, and other personal details.

We collect certain data to be able to provide the Service to you. We also collect data for use in verifying your identity and creating credit scoring models to determine what loans can be offered to you. We also use this data for purposes of collections e.g. communicate with your phone-book contacts to finish collection when you fail to repay...

It appears that 9credit's contentious policy gives the corporation free access to close connections, family, and friends to send them threatening communications when a client fails to pay back the loan.

A clear violation of section 2.4 of the NDPR:

¹⁹ Kunle Sanni, How digital loan providers breach data privacy, violate rights of Nigerians. *The Premium Times* (Lagos, 10 December 2021) <<https://www.premiumtimesng.com/news/headlines/499999-investigation-how-digital-loan-providers-breach-data-privacy-violate-rights-of-nigerians.html>> accessed 2 January 2023

DUE DILIGENCE AND PROHIBITION OF IMPROPER MOTIVES

(a) No consent shall be sought, given, or accepted in any circumstance that may engender direct or indirect propagation of atrocities, hate, child rights violation, criminal acts, and anti-social conducts;²⁰

Ms. Adeoye, an anthropology student at the University of Ibadan, claimed that she used the loan on August 25 to pay for her school acceptance fee and other urgent needs, but that she ultimately had to pay more than N26,000 due to the growing amount of past-due fees, which included the Lcredit company policy fee charges. She said the agent sent life-threatening messages to her current boyfriend and two of her former boyfriends, whom she had not spoken to in years.

Such usage of data goes against what the NDPR provides Under the Nigerian Data Protection Regulation (NDPR), if a data controller (an organization that processes personal data) wants to use personal data for a purpose other than the one for which it was originally collected, they are required to inform the individual (also known as the data subject) of the new purpose before further processing their data. This requirement is in place to ensure that individuals are aware of how their data is being used and can make informed decisions about whether to allow their data to be processed for the new purpose.

²⁰ Section 2.4 of the NDPR

4.0 HOW ARE LOANS MEANT TO BE RECOVERED IN NIGERIA?

According to the CBN consumer protection framework,

Section 2.2.4 debt collection;

The CBN shall set guidelines for ethical practices in the industry. These guidelines shall be based on dialogue, respect for the consumer's privacy, and the longevity of consumer-Fi relationships, among other things.²¹

4.1 COMMUNICATE WITH THE DEBTOR

Try to reach out to the debtor and discuss the situation. You may be able to agree on how the debt can be paid off. If you are unable to resolve the matter through communication, you may want to consider sending a demand letter.²²

4.2 CONSIDER MEDIATION OR ARBITRATION

If the debtor is unwilling to pay the debt, you may want to consider using alternative dispute resolution methods such as mediation or arbitration. It is less expensive and more efficient than going to court.

4.3 FILE A LAWSUIT

Taking legal action in court for debt collection is the last resort when a debtor fails to pay a debt owed after a Letter of Demand has been

²¹ Section 2.2.4 of CBN consumer protection

²² <<https://www.resolutionlawng.com/procedure-for-debt-recovery-in-nigeria/#:~:text=A%20lawyer%20acting%20on%20behalf,determination%20of%20the%20court%20proceedings.>> accessed 2 January 2023

issued. Legal action can be taken in Court if the debt is owed as a result of a service contract or loan arrangement. The court has the authority to hear and decide a debt collection case, as well as to compel payment from the debtor. The suitable court to file a legal action is determined by the total amount owing. In general, a debt collection case in Lagos State or most other regions of Nigeria can be initiated through the Magistrate Court, the State High Court, or the Federal High Court.

A debt collector must be careful not to employ any of the following means or methods for debt recovery: harassment, abuse or oppression of the debtor, use of threat or violence, use of obscene languages, employ the use of thugs, mystical, occultism or any diabolical methods; and most of all, the use of the police or other security agents to arrest a debtor. The Police are not empowered by any statutes to recover debts, as they are not debt collectors.²³

5.0 CONCLUSION

The growth of ICT in Nigeria has not led to a comparative evolution of the legal framework. And as data protection is constantly evolving, the relevant regulations need to regulate its developing form. In this article, we show that even in the present dispensation, the available relevant data protection laws are fragmented and are not overreaching in their application.

Secondly, we explore the legitimacy of this loan app through the spectrum of electronic banking. We noted the paucity of statutory provisions and the fact that only the CBN has actively provided

²³ Oceanic Securities Int. Ltd V. Balogun&Ors (2012) LPELR-9218

regulations to guide its operations. Again, we expressly pointed out the provisions violated by these loan apps and stressed that if this blatant data privacy violation isn't attended to, there would be far-reaching public shaming, cybercrime, and national sovereignty issues.

On the whole, this article concludes that data apps have the right to access the personally identifiable data of the data subjects. However, when such data are used to public shame, involve in unsocial acts, and go against the assumed purpose of its collection, it is illegal and must be punished.

6.0 RECOMMENDATIONS

It is an abuse of Nigeria's tech ecosystem to, first, have unlicensed loan apps freely operating over the years, and, second, for borrowers to be subjected to naming and shaming, with their privacy being violated in the name of loan recovery. This article thus recommends the following;

6.1. Proactive and Activist Jurist

The courts now more than ever need to give a response to this disputed alternative judicial response-public shaming that is done through data exposure. To do this, Judges need to be trained about what data privacy entails. This training should come in the form of research, seminars, advocacy, and postgraduate studies.

6.2 Increase the Level of Awareness of Data Privacy

Few Nigerians understand what "data privacy" means. In recent research, percent of Nigeria read when on websites or about to use

apps. Even worse, fewer understand the risk involved when their personal information is leaked or processed in ways that violate the law. Though NITDA has done a lot more efforts needs to be geared towards sensitization programs and mass enlightenment.

6.3 Implementation of Available Laws

Laws are made to be obeyed. However, despite the numerous reported acts of these data companies, judicial cases are unreported and punishment is rarely carried out. The NITDA should be praised for its fining of Soko loans²⁴ and its order to Google to take down some loan apps. However, for a long-lasting resolution, the plethora of laws and their punishment must be applied. One of the most effective means of obtaining judicial applications is through non-governmental organizations (NGOs) that can bring actions on behalf of the subjects.

²⁴ <<https://nitda.gov.ng/nitda-sanctions-soko-loan-for-privacy-invasion/4914/>> accessed 2nd January 2023



**CHALLENGES OF LEGISLATIVE DRAFTING
AND VIABLE MEANS FOR IMPROVEMENT
OF THE QUALITY OF BILLS & LEGISLATION**

ABDUL PELUMI GANIYU

University Of Ilorin, Ilorin Nigeria

pelumiabdul01@gmail.com

ABSTRACT

Legislation is not just a science, it is an art that involves skills and crafts. Legislative drafting is not just about drafting the law but also communicating the law to the society. As a result, drafting of legislations and quality bills involve a rigorous process to achieve the intention of the lawmakers and purpose for which the legislation is made.¹ In Nigeria like the rest of the world, there are challenges during the process of drafting quality bills. Therefore, the focus of this paper would be to discuss the challenges in Nigerian legislative drafting and viable and workable solutions would be provided herein for there to be improvement of the quality of bills and legislations in Nigeria.

¹ Modish Project 'Legislative Drafting in Law Making: An Analysis of Challenges in Light of the Constitution of Nigeria' available at <<https://www.modishproject.com/legislative-drafting-law-making-analysis/>> accessed 14th December 2022

INTRODUCTION

Legislative drafting is the process by which a legislative proposal is put in bill form ready for presentation to parliament for passage into law. Crabbe² described the importance of legislation as the government needs legislation to govern. In every democratic state, there is a need for well drafted, readable and understandable legislation. Legislation is important to every government for the maintenance of a stable society as it is equally important to the governed, whose rights and duties are embedded in them.

Legislative drafting is not a game of snakes and ladder that is subject to chance, it involves skills and highly technical discipline acquired and sustained not meant for children, amateurs or dabblers.³ This is why as a general rule, draftsmen follow stipulated rules and norms in drafting legislation. However, the environment where the law is drafted may affect and have impact that might be constraints that could lead to deviation from the drafting convention. This is the peculiarity of the situation in Nigeria democratic system. There have been challenges faced in the drafting processes of legislation in the country thereby constituting hindrance to having an effective and quality legislation in the country.

CHALLENGES OF LEGISLATIVE DRAFTING IN NIGERIA

- **The Constitution**

The foremost challenge to legislative drafting in Nigeria is the Nigerian constitution itself. The 1999 Constitution of the Federal

² Crabbe VCRAC, *Crabbe on Legislative Drafting* 2nd edition (Lexis Nexis 2008)

³ Reed Dickerson, 'Legislative Drafting: A Challenge to the Legal Profession' (1954) Article by Maurer Faculty 1492

Republic of Nigeria (as amended) provides that:⁴ “This constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria” Also in the case of *Olafisoye v FRN*,⁵ It was held by the Supreme Court that the Constitution is the ground norm of all laws in Nigeria and any law inconsistent with the constitution shall be null and void. The above provisions of the constitution and numerous decisions of courts in Nigeria have restricted the ability of drafting relevant laws and give room for most members of the drafting committees in the National Assembly (and State House of Assembly) not to draft quality bills in Nigeria. This is unlike what operates in the United Kingdom, where the parliament is superior to the constitution and could make laws for the public general benefits and interest contrary or not in line with the provisions of the constitution.

For example, the Public Order Act was enacted in 1986 in Nigeria when religious violence was rampant in the country.⁶ The Act subjects most religious activities to the authority of the state’ governor after rigorous readings and research into the best way to quash the anomaly. However, the Act was repealed and put on limited application in the case of *Inspector General of Police v All Nigerian People’s Party*.⁷ This among other repealed acts are discouraging the readiness of lawmakers to perfect and ensure quality laws are enacted in Nigeria.

⁴ Section 1(1)

⁵ [2004] 4 NWLR pt.864 580 SC

⁶ Enyinna Nwauche, ‘Law, Religion and Human Rights in Nigeria’ African Human Rights Law Journal vol.8 no22 2008

⁷ [2007] 18 NWLR pt.1066 457

- **Pressure**

Lawmakers are categorized as major tools of social engineering. This is because they have to write from the societal conduct from the past so as to deal with the present day and write from the present to deal with the future. Moreover, the lawmakers being employees of the government need to put the interest of their employer at the back of their mind and at same time need to meet up with societal expectations.

In Nigeria, there are instances where there is insufficient time to make important legislations or amendments and at same time, the lawmakers need to protect the government and the people's interest. They also have to take into consideration the interest of the legal practitioners that would read meanings to the law and that of the Judges that would interpret the laws. The pressure from these factors are too enormous for the lawmakers and it affects making quality laws in the country.

For instance, the reworked Electoral Act Amendment Bill 2022 before it was sent to the President for assent was said to be marred with overwhelming personal interest at the expense of the public expectation.⁸ This is due to the pressure on the National Assembly. Apart from pressure from the President, the two heights political parties (PDP and APC) also influenced various alterations to the bill by pressuring the assembly. The All Progressive People Congress (APC) have on 3 occasions pressured the National Assembly to make

⁸ Tony Akowe, 'National Assembly and Challenges of Lawmaking in 2021' available at <<https://thenationonline.ng/national-assembly-and-challenges-of-lawmaking-in-2021/>> accessed 14th December 2022

some alterations to the bill. First, they demanded for direct primary election, then they rejected such and opted for indirect primary election and later finalized that they would prefer a consensus.⁹ All these were inputted into the bill before it was finally halted at consensus. This shows the extent to which the law drafters are pressurized in the country.

- **The Reading Stages**

The reading stages involved in the law drafting processes is another impediment to quality bill making in Nigeria. For a bill to be passed into law in Nigeria, there are five rigid stages involved. There is the first reading, seconding reading, committee stage, the reporting stage and the third reading before assent by the President.¹⁰ Involved in these stages are rigorous tussle and bustle which cause waste of time in passing the bill into. Moreover, this has been making efforts of the lawmakers in making quality laws a futile exercise in the country. This is because there are some laws that need to meet up with exigencies at the time it was brought before the house, but could not achieve such due to the time wasted in passing such bills into law.

For example, the Petroleum Industry Act took 20 years¹¹ before it was finally enacted into law in 2021 and this could be attributed to

⁹ John Akubo & Matthew Ogune, 'Ignore Governor's Pressure, sign Electoral Act Now, PDP Lawmakers urge Buhari' available at

<<https://guardian.ng/news/ignore-governors-pressure-sign-electoral-act-now-pdp-lawmakers-urge-buhari/>> accessed 14th December 2022

¹⁰ Naija Task, 'Stages For Passing a Bill into Law in Nigeria' available at <<https://naijastask.com.ng/stages-passing-bill-into-law-nigeria/>> accessed 14th December 2022

¹¹ David Thomas, "What You Need to know about Nigeria's Petroleum Industry Bill" available at <<https://african.business/2021/07/energy-resources/what-you->

the stages involved. Now, soon Nigerians would be clamoring for amendment of the Act as it would no longer be able to cater for future needs. This is by particularly considering the fact that things are changing rapidly in the petroleum industry and existing frameworks are no longer able to cater for such. So also delay caused by the processes in the lawmaking has halted the passage into law the Mental Health Act that has been before the house since 2003.¹²

- **The Draft-Men, The Tools and Communication of Passed Bills**

Another challenge to legislative drafting is the law drafters themselves. Majority of the legislative draftsmen in Nigeria lack the relevant skills required of a draftsman and thus impact the quality of bills passed in the house. Unlike lawyers, majority of the lawmakers in Nigeria lack the research drafting skills and communication abilities and meticulous attention for details and criticisms. For instance, the Land Use Act 1978 has been criticized for inconsistencies in the use of words as a result of poor drafting skills of the drafters. Particularly, considering provisions of *section 36(2) of the Land Use Act*, it provides that:

Any occupier or holder of such land, whether under the customary rights or otherwise howsoever, shall if that land was on the commencement of this Act being used for agricultural purposes continue to be entitled

[need-to-know-about-nigerias-petroleum-industry-bill/](#)> accessed 20th February 2022

¹² Nicholas Aderinto, "Nigeria urgently needs a Mental Health Act" available at <<https://punchng.com/nigeria-urgently-needs-a-mental-health-act/?amp>> accessed 20th February 2022

to possession of the land for use for agricultural purposes as if a customary right of occupancy had been granted to the occupier or holder thereof by the appropriate local government and the reference in this subsection to land being used for agricultural purposes includes land which is in accordance with the custom of the locality concerned, allowed to lie fallow for purposes of recuperation of the soil.

There are inconsistencies in the provisions as a result of non-clarity in the use of words by the law drafters. The drafters intended that only the owner who is holder could obtain a customary right of occupancy in the land. However, due to the inconsistency by adding an occupier, many land occupiers who are not land owners tend to rely on the provision to hijack the customary land from the rightful owner (the holder). If not for well and calm interpretation by the Supreme Court in the case of *Garuba & Ords v Sa'adu Yakubu & Ords*¹³ that the drafters intended the holder as the owner not an occupier, hardship would be occasioned till date.

Also, the Nigerian legislature is unable to meet up with the other countries of the word as regards tools used in drafting their laws. Moreover, these tools are also one of the factors impeding communication of bills passed into laws to the general populace. The country's legislative house lacks technological advance tools that may facilitate communication of newly enacted laws to the public.

¹³ [1991] NGSC 1

Means for Improvement of Quality Bills and Legislation in Nigeria

The first prerequisite in curbing the challenges of legislative drafting in Nigeria so as to have quality bills and legislation is that legislative draft men must be lawyers. This is because they possess the knack for language use, research drafting skills and communicating abilities with meticulous attention to details and criticism. This is attributed to their knowledge of legal drafting and conveyance acquired at the law school and in their course of study as students of law in the university.¹⁴ Although the Nigerian National Assembly and states' legislative houses employ the services of the Directorate of Legal Services of the National Assembly and state House of Assembly respectively in drafting member's bills and private member's bills. However, all members are deliberately through the reading stages. Thus, ensuring the majority of the members are lawyers would ensure that bills passed into would be all encompassing with little or no lapses in such.

Moreover, it would also help ensure that plain language is used in the legislative drafting. It is evident that plain language is almost non-existent in Nigeria legislation.¹⁵ Plain language will help enhance communication to the audience as stack illiterates, laymen

¹⁴ Johnnie Uchenna, "Challenges of a Draftman in Contemporary Democratic in Nigeria" available at <https://www.google.com/amp/s/docplayer.net/amp/47517607-Challenges-of-a-draftsman-in-contemporary-democratic-nigeria-johnnie-uchenna-ejiogu.html> accessed 15th December 2022

¹⁵ Michael Duada, 'Plain Language in Drafting Legislation in Nigeria: The Possible Benefits' Institute of Advanced Legal Studies University of London 2015-2016

and Judges would understand the actual intention of the law drafters and purpose for which it is drafted.

Another viable means for improvement of quality bills and legislation in Nigeria is ensuring accessibility of legislations to the public. Having in mind the gross number of the people that would read and access legislation would trigger the draftsman to ensure that quality bills are passed into law. Moreover, accessibility of legislation is part of the rule of law.¹⁶ It gives citizens the right to know by which law they are governed and is a fundamental component of certainty.¹⁷ It will also help ensure that legislation receives democratic legitimacy as more people are likely to obey the law as they have access to it and its content.¹⁸

Also, there is a need to use advanced technology such as legislative information management software to help facilitate drafting, consolidating and publishing of quality bills and legislation in Nigeria. With implementation of conventions¹⁹ and standards, standardized applications, expressions and terminology would be introduced to ensure there is standardization of methods used to effect the drafting of new legislations and amending existing ones. Unlike using the traditional word processor in manually editing, formatting, correcting and managing legislative drafts, modern software technology would help remove non-drafting tasks as well as ensuring well-structured and standardized drafts.

¹⁶ Ronan Cormacain, 'Have the Renton Committee's Recommendations on Electronic Access to Legislation Been Fulfilled? (2013) 19(3) EJCLI

¹⁷ Black Clawson Ltd v Papierwerke AG (1975) AC 591

¹⁸ Merkur Island Shipping Company v Laughton (1983) 2 All ER 189 HL

¹⁹ That is convention pertaining to style, template layout and structure

Technology would also help ensure that international norms are inputted into the drafting process and would facilitate the reading stages before the legislative houses in Nigeria. This is because using the technological software tools as used in Canada²⁰, would help recognize which parts of legislation commands need to be applied, thus saving hours of copying and pasting as under the existing framework for amendment of legislations. In addition, technological tools will help in recognizing origin of modification and automatically create a historical repository of any legislative command. Thus, improving the quality of legislation.

CONCLUSION

Not that there have not been quality bills and legislation in Nigeria, efforts of the legislative draftsmen and the legislative houses are highly commended. However, there have been challenges in the legislative drafting processes and thus serving as impediment to having quality bills in Nigeria. The challenges have been discussed in this paper with relevant examples. Also, viable solutions and suggestions have been provided in this paper for there to be a means of improving quality bills and legislation in the country.

²⁰ Tonye C. Jaja & Chantal Lamarre, 'Application of Information Communication Technology (ICT) to Legislative Drafting: Case Studies of Legislative Drafting Assistant Softwares in Nigeria and Canada' *Periodico Internazionale Del*, CNR-IGSG Fascicolo 2-2020



**UNDERSTANDING THE CONCEPT OF SELF
DEFENCE UNDER NIGERIA LAW**

EGWU FRANCIS EBUBE

University of Nigeria Nsukka, Enugu State

egwufrancis222@gmail.com

ABSTRACT

Self-defence is a necessary right of every person in Nigeria. It is a right granted to every citizen under the constitution. This right enables a person to exercise defence to unlawful violence meted against oneself or property but in a reasonable manner. Although the right of self-defence may be pleaded by any person in a court of law to negate the existence and liability of an offence, it must however conform strictly to the standard of reasonability and necessity. Thus, this paper examines the scope of the right of self-defence under Nigeria law.

Keywords: Self-defence, Right, Nigeria

1.0 INTRODUCTION

It is long existing right that a person is justified in employing force to defend himself or his property from unlawful attack. The use of protective force is regarded as a fundamental and inalienable right of natural law or mortality. This concept stemmed from the Holy Book of Christianity 'The Bible', where in the face of violence, it was taken 'eye for an eye, a tooth for a tooth.'¹ By implication, it has long existed as a view of the people from this race.

However, the term 'self-defense' is derived from the Latin term 'se defendendo' meaning defending oneself. In other words, it means the use of force to protect oneself, liberty, family, and property from unjustifiable or threatened attack. This definition has been derived from the Black Law Dictionary 9th edition and was relied upon in *Oko v The State*².

Self-defence was defined in the case of *Ekpoudo v State*³ as:

the use of force to protect oneself, one's family or one's property from a real or threatened attack. Generally. A person is justified in using a reasonable amount of force in self-defence he or she reasonably believes that the danger of bodily harm is imminent and that force is necessary to avoid the danger.

¹ Alexander, L., *Self-Defense, Justification, and Excuse*. (1994) Philosophy & Public Affairs 23 at P. 53-66

²(2012) 4 NWLR (part 1290) at P. 351

³ (2021) LPELR-52826(CA)

The use of the term ‘self-defence’ or ‘private defence’ has no statutory definition in Nigeria.⁴ The term ‘private defence’ is used in Northern Nigeria under the Penal code, while the term ‘self-defence’ is used in Southern Nigeria under the Criminal code. This self-defence can be distilled into two contexts, where a person uses force to either obtain an object or repel an unlawful attack, in a bid to protect oneself, liberty or property. The corollary of these two contexts is that self-defence may serve different purposes.

2.0 APPLICABLE LAWS FOR SELF DEFENCE.

Different Nigerian laws provide for the self-defence of a person. These laws also provide the circumstances when an action is deemed ‘self-defence’. Among these laws are; the 1999 Constitution of the Federal Republic of Nigeria (as Amended), the Criminal code, and the Penal code. These laws for self-defence in Nigeria are further discussed.

2.1 THE 1999 CONSTITUTION OF FEDERAL REPUBLIC OF NIGERIA (AS AMENDED).

Nigeria’s Constitution protects the indispensable right of self-defence. In its express provision of Section 33, which guarantees the fundamental right to life of any person, a person is entitled to defend himself from any unlawful attack that may threaten his life.

Section 33(2) (a) the 1999 Constitution of Federal Republic of Nigeria⁵ (as Amended) provides thus:

⁴ Alfred Filani, An Examination of the Right of Self Defence and Others in Nigeria [2014] (28)

Journal Law, Policy and Globalization, 164

⁵ CFRN, 1999

A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by the law, of such force as is reasonably necessary- (a) for the defence of any person from unlawful violence or for the defence of property.

This provision of the constitution reaffirms that a person is entitled to protect himself from an unjustifiable attack from another. The aforementioned provision implies that the right of self-defense contained in the grundnorm document is constitutionally guaranteed.

2.2 THE CRIMINAL CODE

The Constitution of the Federal Republic of Nigeria is not the only law that provides for the right of self-defense, the Criminal code operating in Southern Nigeria also secures this right. The right of self-defense is provided in Section 286-293 of the Criminal Code⁶. A person has the right to protect his body or the body of any other person as provided in Section 32 (3) of the Criminal Code. This implies the protection of a person's right to life as provided under the Criminal Code.

Section 32(3) of the Criminal Code provides:

A person is not criminally responsible for an act or omission if he does or omits to do the act... when the act is reasonably necessary in order to resist actual and

⁶ LFN, Cap C 38 2004

unlawful violence threatened to him or to another person in his presence.

Under this provision, a person will not be liable for any criminal offence of having exercised his right of self-defense.

2.2 THE PENAL CODE.

The term 'private defence' is used under this act, rather than self-defense as used in Southern Nigeria. The right of a person to private defence was provided in Sections 59-67 of the Penal code. The explicit provision of Section 59 of the Penal Code⁷ provides as follows 'Nothing is an offence of which is done in the lawful exercise of the right of private defence'. This provision reiterates that a person will not be liable for any offence while he/she exercises the right of private defence.

3.0 FACTORS OF SELF DEFENCE UNDER NIGERIA LAW.

In the case of *Uwaekweghinya v State*⁸, the Supreme Court was of the firm view that:

Where a person kills another in defence of himself, such a killing is excused, and it does not amount to manslaughter under the Criminal Code or Culpable Homicide not punishable with death under the Penal Code.

Although the plea of self-defense has the power to negate the existence of an offence, it must however contain some factors to be successful.

⁷ LFN, Cap P3 2004

⁸ (2005) 9 NWLR (part 930) at P. 27

This implies that not all force a person employs in his/her defence would be considered reasonable to be a plea of self-defense. If the plea of self-defense does not possess these factors, it would not be regarded as such. These factors are the facts and circumstances surrounding the defence action that a person must prove to succeed in the plea of self-defense. A scenario of these factors was laid down in the case of *Ita & Anor v State*⁹, where the court held that:

A man is justified in using against an assailant a proportionate amount of force in defence of himself or other persons who he is under a duty to defend, where he considers his life or such person's lives to be in danger.

The above judicial decision explains that a plea of self-defense must contain such element to be successful.

Further discussing these factors, among them are:

1. Reasonableness: This factor entails that the plea of self-defense must be reasonable. In the sense, that the person making the plea must examine the circumstances in a way that a reasonable person would. The Court of Appeal explained this factor of self defence in the case of *Mohammed v State*¹⁰. Such person must understand what a reasonable person would have done if faced with that violent action. For instance, to determine whether the person making the plea acted as a reasonable person, such a person must have perceived an immediate threat of physical

⁹ (2013) LPELR-21392(CA)

¹⁰ (2020) LPELR-50919(CA)

harm. By implication, there must be a justification that a reasonable person with the feelings and experience of immediate threat would use such force.

2. **Necessity:** This factor is based on the need for such force. A successful plea of self-defense must show the urgency of the situation. The person pleading must prove within the circumstances that the danger was imminent and no other option was open to him than employing such force for his defence. A plea of self-defense under this factor would be unsuccessful if it is seen that the threat has ended already before the person retaliated with such force.
3. **Proportionality:** This factor is as important as every other factor. This factor supports the balance of proportionality in self-defense. The person making the plea of self-defense must prove that the force employed is proportionate to the force used against him/her. As such, self-defense of deadly violence would not be right, to reciprocate non-deadly violence. For instance, a plea of self-defense would be considered unsuccessful, when a person stabs the attacker who intends a slap. Such an instance is deemed not proportionate.

Hopefully, the Supreme Court has set the criteria for measuring the proportionality of self-defense in the case of *George v State*¹¹, where the court held that: *Proportionality can be determined by the nature of the weapon used in retaliation, and the obvious disparity in the relative physical strength of the parties.*

¹¹ (1993) LPELR-1320(SC)

The corollary of this is that proportionality in the use of self-defense can be determined by what weapon is employed by the person against the attacker and the amount of physical strength not being an exception.

4. **Innocence:** This factor must first be proved in a plea of self-defense as it is fundamental to its success. The plea of self-defense must show that the person who pleads such is innocent of instigating or initiating the violence and rather defending himself from harm. However, this is not to say that there are no instances in which a person may lose said innocence. The plea of self-defense would be unsuccessful when it is found that the person pleading started the violence or is deemed to be the aggressor.

4.0 RECOMMENDATIONS ON THE EXERCISE OF THE RIGHT OF SELF DEFENCE IN NIGERIA.

It is established that every citizen in Nigeria has the right to self-defense from any danger, harm and threat. This has been provided in the country's most superior law which is the Constitution, which implies that the right to self-defense is constitutionally guaranteed. When a citizen of Nigeria is confronted with danger or harm, such a person should first legitimately try to find a non-violent way out of the situation. If the danger is immediate and the person would resort to force, such a person must reasonably know what to use and how to use it against the attacker, in such a way that the force used would be proportionate and would not cause what was unintended by the attacker. Every citizen can get knowledge about self-defense from an

available criminal defence attorney in their area. Citizens must be careful about how they understand self-defense cases they hear from social media or news, as people's judgments are bound to be affected in the heat of the moment. Thus, self-defense cases must be explained to them by persons knowledgeable in the law.

5.0 CONCLUSION.

The concept of self-defense constitutes a right in Nigeria that permits persons under immediate threat or danger, to use force to defend themselves, their liberty, family, and property from unlawful attack. This tends to protect a person's right to life in Nigeria. With this, a citizen is entitled to protect his/her body from unlawful harm.

While the successful plea of self-defense may negate the existence of an offence, the exercise of the right of self-defense must be deemed reasonable, necessary, and proportional to the force used by the attacker. Notwithstanding, the innocence of the person pleading self-defense must first be proven to assure the success of the plea.



**THE SCOPE OF ARBITRATION AGREEMENT
IN NIGERIA: A GENERAL OVERVIEW.**

AUDU TAVERSHIMA WISDOM.

Ahmadu Bello University, Zaria Nigeria.

wisdomter2019@gmail.com

ABSTRACT

Arbitration is gradually gaining a strong footing in the resolution of disputes arising from corporate contracts within the Nigerian corporate space. While drafting commercial transactions, parties are at liberty to decide whether to include an arbitration clause to suffice as the first method to resort to in the event of a dispute in the course of executing such a contract. Therefore, taking cognizance of the influence of arbitration in the Nigerian Corporate Space, this research in summary establishes the relationship between arbitration and the contract in which the arbitral agreements are contained as well as the roles of the court in arbitral processes. Finally, this study highlights the areas of defects and weakness of arbitral agreements and makes comprehensive suggestions and recommendations for the effective practice of arbitration as an ADR mechanism in Nigeria.

Keywords: Arbitration Agreement, ADR, Arbitration, Disputes, Commercial transactions.

1.0. INTRODUCTION

It is without a doubt that arbitration has surpassed traditional litigation as the first point of resort for international commercial disputes. Arbitration is the method of choice for resolving disputes around the world, notably among commercial businessmen. This is due to its efficacy, convenience, adaptability, party autonomy, and cost-effectiveness.

The ACA (The Arbitration and Conciliation Act) is the legal framework applicable to commercial disputes in Nigeria. The scope of 'commercial' is broad and defined under Section 57 as 'all relationships of a commercial nature' including

Trade transaction for the supply or exchange of goods or services, distribution agreement, commercial representation or agency, factoring, leasing, construction of works, constructing, engineering licensing, investment, financing, banking, insurance, exploitation, agreement or concession, joint venture and other forms of industrial or business co-operation, carriage of goods or passengers by air, sea, rail, or road.¹

Thus, disputes arising out of criminal, tax, constitutional matters, and bankruptcy are not arbitral in Nigeria, as in many other States.²

¹Aceris Law LLC, 'Arbitration in Nigeria' (2020)
<<https://www.acerislaw.com/arbitration-in-nigeria/>> accessed 29 December 2022.

²Ibid.

Developing economies like Nigeria depend solidly on foreign investments to foster economic development. Hence, the urgent quest for the need to enhance infrastructural and economic development which has led to the influx of foreign companies entering into a lot of complex commercial agreements with federal and state governments and even private parastatals. Such commercial agreements contain arbitration clauses that serve as a means for resolving disputes that might arise, thus, the relevance of arbitration in commercial agreements. These arbitration clauses add confidence in contracting parties involved in any agreement as these clauses serve as means to resolve their disputes if it does arise. It is because arbitration is an ADR mechanism that enables disputes to be resolved effectively and speedily by an efficient and impartial arbiter, as not all contracting parties will love to trade on the long path of litigation. Hence, it becomes imperative to know the intricacies that lie in the framework of arbitration agreements in Nigeria. This therefore forms the crux of this study.

2.0. CONCEPTUAL CLARIFICATIONS

In light of the pertinent issues raised in the introduction, it becomes imperative to briefly explain certain key terms that constitute the framework of this research.

2.1 ALTERNATIVE DISPUTE RESOLUTION (ADR).

Alternative Dispute Resolution (ADR) conceptually refers to the diverse ways people resolve disputes without resulting into litigation. Some of its common mechanisms for resolving disputes are; arbitration, mediation, negotiation, and conciliation. These

processes are genuinely confidential, and stress-free, with fewer formalities than conventional court trials. Therefore, Alternative Dispute Resolution (ADR) is simply a process of initiating alternative methods and procedures for resolving a civil or commercial dispute without resorting to litigation, which can be expensive, cumbersome, and time-consuming.³ ADR is regulated by the Arbitration and Conciliation Act, Cap A18, LFN 2004. Section 19 of the Federal Republic of Nigeria's 1999 Constitution (as amended), which calls for the resolution of international conflicts by arbitral proceedings, mediation, conciliation, negotiation, as well as adjudication, also offers legal support for ADR.

2.2. ARBITRATION

Arbitration is a vast concept, which requires a lot of exposition to grasp its complete meaning. However, arbitration is a private dispute resolution mechanism established for the settlement of disputes by a neutral third party (the Arbitrator) or panel of neutrals referred to as the Arbitral Tribunal.⁴ The Black's Law Dictionary defines arbitration as the process of dispute resolution in which a neutral party, who is not a judge hears both sides of a case during the informal hearing and then decides who wins and loses.⁵ Arbitration

³Olusola John Jegede et al, 'Nigeria: Overview of Alternative dispute resolution process in Nigeria' (2021) Mondaq.com <<https://www.mondaq.com/nigeria/arbitration-dispute-resolution/1036840/overview-of-alternative-dispute-resolution-process-in-nigeria>>accessed 31 December 2022.

⁴Resolution Law Firm, 'Arbitration in Nigeria - The brief overview' <<https://www.resolutionlawng.com/brief-overview-of-arbitration-in-nigeria/>> accessed 31 December 2022.

⁵ Black's Law Dictionary (6th edn, St. Paul Min, West Publishing Co 1990).

is one of the most fast-growing forms of ADR. It is more formal than mediation, as most of its procedures are similar to that of conventional court proceedings, although less cumbersome. There exist different types of arbitration; national arbitration, international commercial arbitration as well as investor-state arbitration. Other types of arbitration and areas exist, such as post-M&A arbitration, construction arbitration, etc.

2.2.1. ARBITRATION AGREEMENT

A contract's settlement clause otherwise known as Arbitration agreement mandates that disagreements between the parties be settled through arbitration. Such a clause always obligates the parties to an Alternative Dispute Resolution process outside of the courts; hence it is regarded as a sort of forum selection clause even though it does not seem to specify where the arbitration takes place in a particular country. This verdict was made clear in the popular case of *Scott v Avery*.⁶

3.0. THE CONCEPT OF ARBITRATION IN NIGERIA.

Arbitration has been popularly defined by the Black's Law Dictionary as the process of dispute resolution in which a neutral third party, who is not a judge hears both sides of a case during an informal hearing and then decide who wins and loses.⁷ Arbitration is regulated under the Nigerian legal system by the Arbitration and Conciliation Act (ACA), Cap A18, Laws of the Federation of Nigeria 2004.

⁶(1855) 5 HL Cas 811.

⁷Black's Law Dictionary (6th edn, St. Paul Min, West Publishing Co 1990).

Before arbitration can be established, there must be an underlined agreement written by the disputants, basically to select the arbitrators of their choice and as well to be willing to accept the decisions of the Arbitration Tribunal and the enforcement of arbitral awards. The parties' agreement to arbitrate is one of the main components of the arbitration procedure. Any arbitration that is legal must be based on the arbitration agreement which is the tribunal's fundamental source of authority and power to arbitrate the conflict between the parties. Due to the arbitration's contractual basis, all parties must agree to it before it can take place. There would be no arbitration if there is no arbitration agreement. See the case of *Obioha v Akukwe*⁸ where it was held that the Nigerian Legal system recognizes and accepts the validity and binding effect of arbitration, hence the following was established;

1. That both parties must be submitted to the arbitration process.
2. That both parties accepted the terms of the arbitration.
3. That both parties agreed to the decision of the arbitral tribunal to have a binding effect on them.

The primary benefit and aim of arbitration is the avoidance of drawn-out and expensive court proceedings. In Nigeria, the arbitration process is more affordable and makes it simple for people to represent themselves, even though they are permitted to have legal assistance. The category of Alternative Dispute Resolution that includes arbitration comprises; Reconciliation, Mediation, and Negotiation.

⁸(2005) 8 NWLR (pt. 685) 35.

It is not without question that some organization's founding statutes require that squabbles between the organization and another party be arbitrated first. This clause restricts the ability of any party to file a lawsuit in court before the arbitration has begun and been resolved. For instance, the Model Arbitration Clause for Contracts of the United Nations Commission on International Trade Laws (UNCITRAL) provides that:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules.⁹ This hence guarantees the safe applicability of the concept of Arbitration as a mechanism of Alternative dispute resolution, thereby reducing the rigidity of the litigation process and spurring speedily delivery of justice.

4.0 ARBITRATION AGREEMENTS IN NIGERIA: A CRITICAL EXPOSÉ

Arbitration as the mechanism of Alternative Dispute Resolution has its origin in the common law. This dates back to the practices of the merchants and traders who referred their disputes arising from trading squabbles to selected competent individuals for resolution. However, these practices grew unsatisfactory and called for proper organization and structuring, as a result, laws were enacted; aimed at providing and improving the binding effect and nature of parties'

⁹The ICC, 'Arbitration Clause' <https://iccwbo.org/dispute-resolution-services/arbitration/arbitration-clause/> accessed 31 December 2022.

agreement to arbitrate. Hence, the celebrated case of *Doleman & Sons v Ossett Corporation*¹⁰ stated that for an arbitration agreement to be valid and legal, there must be an existing dispute and an actual agreement to reference for an arbitrator. In lieu of the above, it will be apt to say the concept of arbitration and arbitration agreements in its entirety is not alien to law and hence indispensable in commercial dealings.

The Nigerian legal system has also appreciated the above facts by enacting the Arbitration and Conciliation Act (ACA) which applies to commercial disputes. However, section 57 of the Act makes clear that disputes arising out of criminal, tax, constitutional matters, and bankruptcy are not arbitral in Nigeria. The Nigerian Judiciary has established the effect of parties' intent to submit to the crisis arising out of contractual relationship to arbitration. This was established in *Kano State Urban Development Board v Fanz Construction Ltd.*¹¹

Therefore, it is imperative to note that there exist five (5) technical doctrines that determine arbitration agreements in Nigeria, which are as follows;

- A. Validity
- B. Engagement of agreements
- C. Choice of law
- D. Consolidation
- E. Separability

¹⁰(1912) 3KB 257.

¹¹ (1990) 4 NWLR (pt. 142) 1.

A.) VALIDITY: An arbitration clause has to be in written form or otherwise supported by written documentation to be valid. Section 1(1) of the ACA provides for that practice. Additionally, the arrangement must have been mutually acceptable to both parties. The agreement must be entered into by parties who are of legal age. The agreement between the parties must then relate to a business relationship in that case.

B.) ENGAGEMENT OF AGREEMENTS: Arbitration agreements are typically upheld by Nigerian courts. A successful implementation fractionally in proceedings and a referral of the case to arbitration are required to enforce arbitration agreements. When the petitioner has demonstrated that it is prepared, capable, and ready to arbitrate the dispute, courts rarely deny such an application. The court will issue a subpoena to any witness to force their attendance if a side to arbitration requests it in court.

C.) CHOICE OF LAW: This doctrine arises most times in cases where the substantive law is been determined, specifically when the substantive law is unclear. Well in such a condition, the parties' agreement governs the dispute's substantive law. Domestic arbitration matters will be governed by Nigerian law if no other rules are in place. The applicable law in matters involving international arbitration will be decided by the tribunal's application of the conflict of law provisions.

D.) CONSOLIDATION: This doctrine depicts the combination of different arbitral cases to be heard concurrently. However, an arbitral tribunal is not specifically permitted by the Arbitration and Conciliation Act (ACA) to combine different arbitral cases.

However, pursuant to Section 40 of the Lagos Arbitration Law, parties are entitled to decide whether to hold concurrent hearings or to consolidate arbitral procedures with other processes. The Lagos legislation further stipulates that; with the approval of the other parties, a party who was not initially a party to the dispute may be added. Therefore, the implementation of consolidation in an arbitral agreement is based on the approval of the parties involved thus making the process discretionary.

E.) SEPARABILITY: The doctrine of Separability generally referred to as the doctrine or principle of autonomy or independence of the arbitration clause. The doctrine of Separability is enshrined in section 12(2) of the ACA, it states thus; “*An arbitration clause which forms part of a contract shall be treated as an agreement independent of other terms of the contract.*” See *Nnpc v Clifco Nigeria Ltd*¹², where the apex court relying on the English case of *Heyman v. Darwin Ltd (1942)*, made clear that an arbitration clause survives the novation of an agreement.

5.0 ARBITRATION AGREEMENTS IN NIGERIA: THE WAY FORWARD

Arbitration agreements is the crux of any medium of Alternative Dispute Resolution, hence its processes must be subdued to keen scrutiny. The principles of arbitrary agreements in Nigeria are largely controlled by misguided legislations and sections. For instance, section 4(2) of the ACA states that arbitration and court processes may both be ongoing simultaneously. This clause

¹²(2011) 10 NWLR (pt. 1255) 209.

contradicts the point of arbitration and is likely to cause misunderstanding and difficulty. Relying on the facts of the case, the court should either assume jurisdiction to hear the case or stay the proceedings in order to force the parties to abide by their arbitration agreement. The court's preference should always go in the direction of persuading the parties to submit to arbitration. It is not advantageous to keep both sections because section 5 of the said Act doesn't add much to section 4. Section 5 seems to be more specific than section 4.

Therefore, the Act must specify the circumstances under which a party may reject arbitration. These efforts will enhance the proficiency and significance of Arbitration in its entirety as a mechanism for Alternative Dispute Resolution.

6.0. CONCLUSION

It is evident that arbitration is still a satisfactory option to litigation for resolving disputes. As this paper has noted, it is an ancient institution. It is a well-known characteristic of common law, where it historically developed before receiving legislative effect within various English Acts. This paper has demonstrated that arbitration agreements are common in Nigeria. It has also examined the fundamental characteristics of arbitration agreement that set it above the head contracts. If the suggestions provided for the reform are followed, the above mentioned drawbacks of the arbitral process would be a faded narrative. Arbitration as a unique conflict resolution technique in Nigeria has a very promising future, hence must be guarded.



**DIGITALLY MATURE: RE-EXAMINING
INFANT CAPACITY TO ENTER ONLINE
CONTRACT IN TECHNOLOGICALLY SAVVY
WORLD**

EKHORUTOMWEN GABRIEL EKHATOR

LLB (Hons) Uniben, BL, AICMC.

ekhatorgabriel@gmail.com

And

ESTHER AILEMEN, LLB4, University of Benin

ailemenesther1@gmail.com

ABSTRACT

Every sane person is presumed to have the capacity to enter into a legal contract. However, the law places the risk of contracting with an infant on the adult by establishing an age rule under which the infant is irrefutably presumed incompetent to contract, but only if the minor raises the issue at the point of performance of the contract. The lack of minor accountability regarding contractual obligations must be reconsidered to advance electronic commerce.

Utilizing the doctrinal research methodology, this paper seeks to examine the principles relating to infant capacity to contract in light of the sophisticated nature of commercial transactions in which minors are regularly engaged in in today's society.

1.0 INTRODUCTION

The traditional principles of contract law specify who is incapacitated from entering into a contract. These include a minor and a person of unsound mind or in a drunken state of mind.¹ The power of an infant to enter into a contract is governed by rules of common law as limited by statute. At common law, an infant is a person who has not attained the age of maturity, 21 years according to the Infants Relief Act of 1874. With the enactment of the Child's Right Act 2003,² the contractual age has been reduced to 18 years in Nigeria. Section 18 of the Child's Right Act 2003 codifies the common law thus: 'any contract, except a contract for necessities, entered into by a child for repayment of money lent or for payment of goods supplied to the child, shall be void'.³

The continued application of the principle is based on the presumption that minors generally are easily exploitable and less capable of fully comprehending the nature of legal obligations associated with a contract.⁴ For ease of administration and clarity in the application of the rule, the rule was settled as a firm age line without regard to whether an individual is mature or not.

In contemporary times scholars have argued that the blanket protection given to the infant should be checked.⁵ One of the strong

¹ I. E. Sagay, *Nigeria Law of Contract* (3rd Ed., Spectrum Books Limited, 2018) 537.

² CRA 2003, Section 277 while some States Child's Right Law fix it at below 18 years.

³ Ibid, Section 18.

⁴ J. L. Daniel, 'Virtually Mature: Examining the Policy of Minors' Incapacity to Contract Through the Cyberscope' (2008) (43) (2) *GLR* 239.

⁵ I. M. Mehler, 'Infant Contractual Responsibility: A Time for Reappraisal and Realistic Adjustment?' (1963) 11 *UKLR* 361.

arguments against the rule is that the contractual age for infants is largely dependent on whatever the legislature says it is, not whether the person is competent or not.⁶ The statutory age of majority has nothing to do with whether a person is capable of giving consent to the transaction. This is illustrated by the lack of inquiry into whether the minor understood the nature and consequences of his actions. The fact that a 20-year-old person could be generally regarded as incapable of contracting on one day and legally capable of contracting the next day due to a legislative enactment highlights the lack of consideration given to a person's actual cognitive abilities under the extant laws. It is also surprising to grasp the concept that in the blink of an eye, a person sheds infancy and attains adulthood the moment the person's eighteenth birthday is realised based on the Child's Right Act 2003.

The harshness of the infancy doctrine has led courts to limit the doctrine with some exceptions. The commonest exception to the infancy doctrine is that a minor is not permitted to disaffirm a contract for necessities.⁷ The law wants to allow minors to obtain items necessary for their survival by assuring merchants that minors' contracts for necessities will be binding. However, whether the subject matter of the contract constitutes a 'necessity' is not so clear-cut as this is a question of fact depending on the minor's station in life.⁸ Section 2 of the Sale of the Goods Act 1893 defines necessary goods as 'goods suitable to the condition in life of such an infant or minor or another person, and to his actual requirement at the time

⁶ Daniel (n 4).

⁷ CRA 2003, Section 18(2); Infants Relief Act 1874, Section 1.

⁸ *Peters v Fleming* (1840) 6 M & W 42.

of sale and delivery’⁹ According to Alderson B in *Chappel v Cooper*¹⁰ ‘things necessary are those without which an individual cannot reasonably exist.... Thus, articles of mere luxury are always excluded, though luxurious articles of utility are in some cases allowed’. What is necessary for an infant from a rich and well-to-do family will not be for an infant from a poor family. Note however, that Goods supplied to an infant for trading, are not necessities. The infant is not bound to pay for them,¹¹ so also agreement for work or labour.¹² A married infant is liable for a contract made by his wife when she had the authority to pledge for his credit e.g. food or essential household goods.

Another common exception involves contract situations where the minor misrepresented his age in entering into the contract. The law is that a minor is stripped of his ability to disaffirm a contract he induced by misrepresenting his age, irrespective of how the misrepresentation was made but it requires more than a mere statement of inaccurate age.¹³ The adult has a duty to reasonably investigate age, notwithstanding the representation. Other exceptions are where the infant receives benefit from the contract and where he is emancipated.¹⁴

The advancement of technology has made it almost impossible for a minor not to enter into an online contract without the assistance of

⁹ SOGA 1893, Section 2.

¹⁰ (1844) 13 MdW 253.

¹¹ *Labinjo v Abake* 5 NLR 33.

¹² *Merchantile Union Guarantee Corp Ltd. V. Ball* (1937) KB 498.

¹³ *Gillis v. Whitley's Discount Auto Sales, Inc.*, 70 N.C. App. 270 (N.C. App. 1984) (holding that minor's misrepresenting his age does not bar him from disaffirming a contract).

¹⁴ Daniel (n 4).

his parent or guardian.¹⁵ The complex nature of online contracts makes it impossible for the person entering into a contract to know if the other contracting party is competent or not and this has continued to challenge the application of the infancy doctrine to electronic contracts.

This paper examines minors' capacity to enter electronic contract in today's technologically savvy society. The paper concludes by proposing a new approach to infant capacity to contract.

2.0 INFANTS AND ELECTRONIC TRANSACTION

In light of the proliferation of information technology and minors' use thereof, it is time to revisit the outdated notion that minors need to be protected from unscrupulous merchants seeking to take advantage of them at all times. It is suggested that the infant be bound by the online contract where he benefits from the contract and where he misrepresents his age to the online merchant who does not have the means of knowing the capacity of the online consumer.

2.1 BENEFIT PRINCIPLE

According to this principle, a minor would incur liability if he received a benefit from or was enriched by an agreement that he entered into without the assistance of his parent or guardian¹⁶ provided the terms of the contract are not onerous. Williston states the rule thus: 'If an infant enters into any contract subject to

¹⁵ Raghavendra S. Srivatsa and Sukruta R., 'Online Contracts' in S.K. Verma and Raman Mittal (eds), *Legal Dimensional on Cyberspace* (Indian Law Institute, 2004) 67.

¹⁶ *Clements v London and North Western Railway Company* [1894] 2 QB 482; *Chaplin v Leslie Frewin (Publishers) Ltd* [1966] Ch 71.

conditions or stipulations, the minor cannot take the benefit of the contract without the burden of the conditions or stipulations.’¹⁷ Thus in the case of electronic transactions, a child who entered an online contract and benefited from the contract should not be allowed to refrain from such contract. The court seems to favour this position in the United State case of *A.V. v iParadigms*¹⁸ The plaintiffs in the *AV v iParadigms*¹⁹ were four high school students who sued iParadigm for copyright infringement of their papers, turned in through iParadigm’s anti-plagiarism software, Turnitin. Each of the students belonged to schools that required students to submit their papers through Turnitin, which then produced plagiarism reports for the teachers. In addition, the schools had authorized Turnitin to archive the student submissions to be part of an ever-growing database against which to check future papers for plagiarism. Each of the students “read and clicked ‘I agree’ to the terms of the Clickwrap Agreement,” but did so with a written disclaimer on the copy of their submitted works that indicated they did not consent to the archiving of their works by Turnitin. Turnitin continued to archive the students’ works and the students subsequently sued for copyright infringement, after the students were disciplined by their schools for plagiarism offenses. In addition to claiming that the disclaimer changed the terms of the clickwrap agreement, the students argued that they could void the terms of the agreement under the infancy doctrine, thus they argued that they were not

¹⁷ RA. Lord, *Williston on Contracts* (4th ed. West 2007) 9:14.

¹⁸ 544 F. Supp. 2d 473(E.D. Va. 2008).

¹⁹ *Ibid.*

bound by the terms of the clickwrap agreement even if they had assented to it.

The Court had no trouble rejecting that argument. The court held that the minors cannot accept the benefits of the contract without also bearing its burdens: ‘Plaintiffs cannot use the Infancy defence to void their contractual obligations while retaining the benefits of the contract.’²⁰ Because plaintiffs had benefitted from their use of the defendant’s product. (they had, after all, satisfied their school paper requirements), they must accept any burdens imposed by the clickwrap agreement. The law is to be used ‘as a shield to protect the infant from injustice and wrong,’ and not as ‘a sword to be used to the injury of others.’²¹

It must be noted that a contract that is more onerous than beneficial to the minor will impose no liability.²² The benefit principle does not apply to ordinary trading contracts.²³

2.2 FRAUDULENT MISREPRESENTATION OF AGE

If a minor induces another person to enter into a contract with him, by fraudulently representing himself to have the capacity to contract, such a contract can still be enforced. It is argued that contracts concluded by fraudulent minors will be binding on them because in deliberately misrepresenting themselves to be of full age to contract, they induced the other party to believe this. In other words, neither

²⁰ Ibid at 481

²¹ Ibid.

²² *De Francesco v Barnum* (1890) 45 Ch D 430; Section 127 of the Federal Competition and Consumer Protection Act 2018.

²³ *Labinjo v. Abake* 5 NLR 33; *Anson’s Law of Contract* (29th ed, Oxford University Press Inc. 2010) 236.

party should be allowed to object at a later stage that the contract is unenforceable for want of competence on the part of one of the parties.²⁴ A minor who is old enough to convince another that he is an adult would also be old enough to bear liability arising from his fraud. The South African Consumer Protection Act 2008 in Section 39(2) provides a legislative framework in the case of a fraudulent minor. According to the subsection, the protection accorded infants:

does not apply to an agreement if the consumer or any person acting on behalf of the consumer, directly or indirectly, by act or omission (a) induced the supplier to believe that the consumer had an unfettered legal capacity to contract; or (b) attempted to obscure or suppress the fact that the consumer did not have an unfettered legal capacity to contract.

The doctrine of *uberrimae fidei* will have to be strictly adhered to in the case of an online contract and a party acting to his detriment on the representation of the other that he is competent to enter into a contract should not be put to any prejudice.²⁵ It must be noted that it is not in all cases where an infant misrepresents his age that he will be liable. This is because under the Nigerian criminal law ‘a person under the age of 7 is not criminally responsible for any act or omission’,²⁶ while ‘a person under the age of 12 years is not criminally responsible for an act or omission. Unless it is proved that

²⁴ R. S. Srivatsa and R. Sukruta, “Online Contracts” in S.K. Verma and Raman Mittal (eds), *Legal Dimensional on Cyberspace* (Indian Law Institute, 2004) 67.

²⁵ *Ibid.*

²⁶ Section 30 of the Criminal Code Act, Cap 38 LFN 2004.

at the time of doing the act or making the omission, he could know that he ought not to do the act or make the omission’.

We therefore suggest that the best way to overcome this difficulty is for the online retailer or service provider to require the users to use a valid credit card or any other age verification mechanism to access their content. This mechanism will go a long way in eradicating this menace. Such age verification mechanisms should be prescribed for all types of contracts or the law should raise a presumption as to the competence of both the parties. Alternatively, the parties should be allowed to make a provision in the contract itself that parties shall be estopped from repudiating the contract for want of competence on the part of one of the parties.²⁷ The age verification mechanism is however the best.

3.0 CONCLUSION

The right of a minor to disaffirm a contract no doubt plays an important role in protecting minors participating in commercial transactions, however, the voidability of minors’ contracts creates a risk for adults seeking to contract with minors. We suggest that instead of the sweeping treatment for all minors regardless of maturity level, it is worthwhile to consider adopting laws that reflect the demonstrated legal capacities of adolescents in the digital age. The law and the court should look at the issue of minor contracting online from their ability to navigate the internet in concluding the contract. There should be questions put to the minor to test his competence just as it is done under the law of evidence. Where it

²⁷ Raghavendra and Sukruta (n 25).

appears that the minor understood the consequence of his action, he should be bound by the electronic contract.



**THE DOCTRINE OF JUDICIAL PRECEDENT
AND CONFLICT OF SUPREME COURTS
DECISIONS IN NIGERIA**

GREATNESS EYONSA .E.

University of Calabar

eyonsagreatness@gmail.com

ABSTRACT

The Nigerian judicial system is one that is greeted with a hierarchical structure of court systems. Like the Yoruba culture, our judicial system demands that, all lower courts must always prostrate before the decision of the higher court, no matter the blood of error soaked with the decision of the higher courts. The doctrine of stare decisis compels all lower courts to respect higher courts decisions. However, the pertinent question that seeks answer is; what is the legal effect of conflict of decisions of the Supreme Court in Nigeria? Simply put; what happens when there are two conflicting decisions of the Supreme Court in Nigeria? This paper seeks to examine the doctrine of judicial precedent in Nigeria and issues of conflict of Supreme Court decisions in Nigeria.

Keywords; (Supreme Court, Judicial precedent)

INTRODUCTION

The phrase “judicial precedent” does not enjoy any particular definition. Judicial precedent has been defined as a legal case law establishing a principle or rule that a court or other judicial body may apply while deciding subsequent cases involving similar issues or facts.¹ It can also be seen as the process whereby judges follow previously decided cases where the facts are of sufficient similarity.² In practice, the doctrine of judicial precedent implies that all inferior courts must at all times, be bound by the decisions of the superior courts in all cases and apply the legal principles set out in the decision of the superior court. This doctrine is aptly captured by the maxim; *stare decisis et non quela movera*, which means; ‘standing by what has been decided and not to disturb and unsettle things already established’.³

Every court judgment is usually falls into two parts which are; Ratio decidendi and Obiter dictum.

The former is the principle of law on which a decision is based. It means ‘the reason for the decision’. When a judge delivers judgement in a case he outlines the facts which he finds have been proved on the evidence. Then he applies the law to those facts and arrives at a decision, for which he gives the reason (ratio decidendi). The latter are those remarks or comments made by the judge in the course of delivering a judgement or speculations about what his decision would have been if the facts of the case had been different.

¹ <https://definitions.uslegal.com/j/judicial-precedent/>

² <https://www.lawteacher.net/lecture-notes/judicial-precedent-1.php>

³ Per Eko JSC; in *Mumini V. FRN* (2018) 3 S.C. (PT.I) 55 at 68 para.30

It is important to note that the binding part of a judicial decision is the ratio decidendi. An obiter dictum is not binding in later cases because it was not strictly relevant to the matter in issue in the original case. However, an obiter dictum may be of persuasive (as opposed to binding) authority in later cases. It follows that the lower courts are bound by the “ratio decidendi” of the higher court and not the obiter.⁴

IMPORTANCE OF JUDICIAL PRECEDENT IN NIGERIA

The doctrine of judicial precedent is dependent on settled judicial hierarchy. This is because under the doctrine, decisions of courts higher up in hierarchy are generally binding on lower courts in the hierarchy.⁵

One of the merits of judicial precedent in Nigeria is that it guarantees consistency in the judgements handed down by courts.⁶ Also, it promotes certainty of the law. Additionally, compliance with the doctrine of stare decisis by the courts makes the task of law less burdensome and also makes adjudication more certain and readily acceptable.⁷

HIERACHY OF COURT SYSTEMS IN NIGERIA

Constitutionally speaking, by Section 6(5)(a)-(i) establishes superior courts of record in Nigeria, in the order of hierarchy. The following are the systematic structure of courts in the order of hierarchy;

⁴ Per Ogbuagu JSC; in *Osakwe V. F.C.E (Technical) Asaba & 2 ors.* (2010) 2-3 S.C. (Pt. III) 158 at 178-179 para. 35-15

⁵ Per Akaahs, JSC; in *Umar & 22 ors V. APC* (2018) 7-10 S.C. 195 at 217 Para.30

⁶ *ibid*

⁷ *Kalejiaye V. LPDC & Anor* (2019) 3 S.C. (PT I) 51 at 78 para.10

- a) *the Supreme Court of Nigeria;*
- b) *the Court of Appeal;*
- c) *the Federal High Court;*
- d) *the High Court of the Federal Capital Territory, Abuja;*
- e) *a High Court of a State*
- f) *the Sharia Court of Appeal of the Federal Capital Territory, Abuja;*
- g) *a Sharia Court of Appeal of a State;*
- h) *the Customary Court of Appeal of the Federal Capital Territory, Abuja;*
- i) *a Customary Court of Appeal of a State;*

It is apt to avert our minds to the fact that under Section 254 of the 1999 constitution as amended, it makes provisions for the National Industrial Court which is now a superior court of record and wears the garment of jurisdiction to hear and determine matters that touches on employer and employee relationship, and so forth.

Furthermore, the National Assembly under Section 6(5) (j) of the constitution is constitutionally anointed to establish other courts which constitutes as inferior courts and they include; Magistrate/District courts, Juvenile courts, Family courts, Coroner courts, amongst others.

The practical implication of stating out these courts in order of hierarchy is to the extent that it reveals the system of stare decisis under our judicial system. For instance, it shows that the Supreme Court is the apex court and can hear all appeals from all courts below it in terms of hierarchy. It also follows that the court of Appeal is the next court on the judicial ladder after the Supreme Court and can

hear appeals from all courts below it. Same thing applies to other courts in the hierarchy.

The other courts such as the Magistrate Courts and other courts solely established by the National Assembly or State House of Assembly are under a legal and constitutional spell to always be bound by the decision of the superior courts established by the constitution even though this decision was arrived in grave error. This was the decision of the court in *Board of Customs & Excise v Bolarinwa*⁸ where the court held that ‘the magistrate court must always be bound by the decision of the High Court even though the decision was arrived in error’.

Given that the constitution and the doctrine of judicial precedent mandates all courts of law in Nigeria to follow the decision of the Supreme Court, the nagging question that seeks for answer is; what happens when two decisions of the Supreme Court are in conflict with each other on a particular issue, which decision will the lower courts follow under such circumstance? This question shall be addressed below;

CONFLICT OF DECISIONS OF THE SUPREME COURT OF NIGERIA

The supreme court of Nigeria is the apex court of the land. Its decisions are final and cannot be appealed against. The jurisdictional powers of the Supreme Court as well as its composition and qualification of its justices are succinctly defined in Section 230-236 of the constitution. In exercising its original jurisdiction, the

⁸ (1968) NMLR 350 at 352

Supreme Court have the original jurisdiction to the exclusion of any other court of law in Nigeria to hear matters between States and between the Federation and the state. Owing to the fact that the Supreme Court is the final court of the land, its decisions is seen as one that has satisfied the ingredients of legal perfection. Most legal scholars have arrived at the conclusion that the decision of the Supreme Court are devoid of error. However, in the celebrated case of *Adegoke Motors Ltd. v Adesanya*⁹, Oputa JSC (of blessed memory) had this to say;

We are final not because we are infallible, rather we are infallible because we are final. Justices of this court are human beings capable of erring. It will certainly be shortsighted arrogance not to accept this obvious truth. It is also true that this court can do inestimable good through its wise decisions. Similarly, the court can do incalculable harm through its mistakes. When therefore it appears to learned counsel that any decision of this court has been given per incuriam, such counsel should have the boldness and courage to ask that such decision be overruled. This court has the power to overrule itself (and has done so in the past) for it gladly accepts that it is far better to admit an error than to persevere in error.

The above dictum suffices to say that the Supreme Court is not devoid of error and can overrule itself whenever it sees that its decision has been reached in grave error. However, what is legally

⁹ (1989) 5 S.C. 113 at 129 para. 25-35

obtainable where there are two conflicting decisions of the Supreme Court?

In the case of *Osakwe v F.C.E (Technical) Asaba & 20rs*¹⁰ it was held that; “*it is now settled that where there are two conflicting judgements of this court, the lower court or courts, is or are bound by the latter decision and must follow and apply it*”.- *Per Ogbuagu JSC*. See also the case of *Chief Okpozo v Bendel Newsier Corporation & Anor*¹¹

It is the law that when two judgments of the Supreme Court conflict each other, the latter should be followed. This is to guide lower courts to avoid getting into the realms of confusion when it is confronted with two conflicting decisions of the Supreme Court.

CONCLUSION

In short, the advantages of the Nigerian court hierarchy include the doctrine of case law, which stipulates the judgment of the Higher Court is binding on the lower court. Therefore, if there is no hierarchy of courts, this cannot be achieved.

Furthermore, considering the number of courts in Nigeria, it is worthy of note to state that there are competent judicial officers that are strategically positioned to handle and resolve disputes seamlessly in Nigeria.

The major disadvantage of the Nigerian court system is that there are inadequate judges in each court system, and the judges are thereby overwhelmed with a plethora of cases which causes

¹⁰ (2010)2-3 S.C.(PT.III) 158 at 178 para.30

¹¹ (1990) 5 NWLR (PT.153) 652 P.661, 663 CA.1

protracted delays in resolving simple disputes through a court process by the litigants.¹²

¹² <https://lawcarenigeria.com/hierarchy-of-courts-in-nigeria/>



**JUNGLE JUSTICE: ITS PLACE IN THE
NIGERIAN CRIMINAL JUSTICE SYSTEM**

CHUKWUNONSO STANLEY NDUKWE

Nnamdi Azikiwe University, Awka

ndukwenonso2018@gmail.com

ABSTRACT

It is an established fact in life that for us to survive in a sane society not girded with the cloaks and fabrics of anarchy, individuals must desist from perpetuating criminal and uncivilized acts such as “jungle justice”. This article basically examines the concept of jungle justice, its origin, and position of law, legality and the attitude of the courts towards it in Nigeria.

In carrying out this work, the author has adopted literature review, construction of cases and statute, critiques as methodology for this research.

1.0. INTRODUCTION

It is not a novelty that individuals who are in no position whatsoever to enforce laws (criminal) in Nigeria take these laws into their hands whenever they, in their opinions, perceive that a person has committed a crime. There is plethora of cases where jungle justice has played out in Nigeria. Individuals have, at various occasions, publicly executed suspects and as it may interest us to know, some of these cases turn out to be that the suspects were actually innocent.

There are various reasons and causes which make individuals indulge in the act of jungle justice. Such reasons may include lack of trust in the judicial system, need for dispensation of justice and some other reasons which are set out in the body of this article. The courts in Nigeria have variously frowned at jungle justice and have warned that the law does not in any way condone this act of self-help, on the premise that one cannot redress an unlawful act with an unlawful act. Perpetrators of jungle justice rant that it ensures speedy dispensation of justice. However, the court per *Olatawura, J.S.C. in Oshoboja v Amuda*¹ held that:

The rules of court are made to be followed and to avoid what in common parlance is referred to as "arbitrary or jungle justice." Consequently, it takes time to know the truth of a case. An error must be corrected so as not to perpetuate injustice. The long time spent before justice is done is better than the harm done in a

¹ (1992) 6 NWLR (Pt. 250) 690

shorter period and perpetuated forever. We should not sacrifice justice for speedy trial.

This study, therefore, discusses the legality of jungle justice in Nigeria under the criminal justice system in the country.

2.0. MEANING AND ORIGIN OF JUNGLE JUSTICE

Jungle justice, otherwise known as lynching is an act whereby an angry mob or private individuals publicly humiliate or execute suspects who, as it appears to them, were caught in an unlawful act. It is an extra-judicial act of killing, punishing or summarily executing a suspect by vigilantes or angry individuals, thereby causing them death or grievous bodily harm.

It is noteworthy that jungle justice in Nigeria (though it has no exact origin because it has been in existence) has been severally traced to the *Bakassi Boys*², a group which was established in the South-Eastern part of Nigeria in 1999 by some associations and backed up by the governors of these south-eastern states. Their duty was primarily to execute criminals for the purpose of reducing crime in the state.

There are a plethora of cases and examples where jungle justice has played out in Nigeria and even some of these cases have been given judicial pronouncement by the courts in Nigeria.

In *Olabode v State*³, the accused; a mechanic, came into his workshop and noticed that the deceased who is an apprentice to his neighbour

² Nonyelum Ossai, 'History of Jungle Justice in Nigeria, Causes, Cases, What the Law Says' <<https://www.skabash.com/jungle-justice-in-nigeria/#mobile-site-navigation>> accessed August 27, 202

³(2007) ALL FWLR (Pt 389) 1301 at 1323 - 1324

siphoned petrol from a vehicle parked in front of his workshop. He thereafter, poured petrol on the deceased and set him ablaze. After seeing what he has done, he absconded. The deceased who was rushed to the hospital died after 14 days, due to dehydration resulting from the burns. The trial judge, in a reserved judgement, found him guilty of murder and the appellate courts affirmed the judgement of the trial court.

The pertinent question that quickly comes to mind, putting into consideration the facts and circumstances of the above case is; can jungle justice be said to be the legal means of punishing criminals in Nigeria?

In answering the above question, it is pertinent to make recourse to the provision of the *Constitution of the Federal Republic of Nigeria, 1999 as Amended*, which is to the effect that every person who is charged with a criminal offence shall be presumed to be innocent until he is proven guilty.⁴ In as much as the express wordings of the constitution reads thus: ‘...*who is charged with a criminal offence...*’, indicating that it is a person who has been charged with a crime that is presumed to be innocent until the contrary is proven, it can also arguably be extended to a suspect who is yet to be charged with a criminal offence.

The above assertion is hinged on the Latin maxim ‘*Audi Auteram Partem*’, which translates to ‘*hear the other party*’. This principle of fair hearing is to the effect that every party is entitled to be heard in a competent court of law. Therefore, any individual or group of people

⁴ CFRN 1999, s36(5)

who commit the act of taking laws into their hands to punish suspects, usurp the power of a competent court.

Furthermore, in determining the legality of jungle justice, it is proper, at this instance, to make recourse to the provisions of the law. The constitution has made provisions to preserve the lives of every citizen of Nigeria. It is provided that every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.⁵ The provision of the constitution is very lucid in respect to this. It is therefore submitted that, a perpetrator of jungle justice is in gross violation of the constitution, as it is only a competent court that has the power to find a suspect guilty and thereafter punish and sentence such a suspect.

Again, the law makes provisions in the *Administration of the Criminal Justice Act 2015*, that a suspect shall be accorded humane treatment, having regard to his right, to the dignity of his person and not be subjected to any form of torture, cruel, inhuman or degrading treatment.⁶ Thus, a suspect is still entitled to his right to dignity as provided for in the constitution. Such a suspect does not, for the fact that he was alleged to have committed a crime, lose certain rights even as a citizen of Nigeria.

In furtherance, it can be said that the law in its wisdom has made adequate provisions for certain punishments to be meted out on a

⁵ CFRN 1999, s33(1)

⁶ ACJA 2015, s8(1)

person who has been found guilty of an offence. In essence, the law has, to a commendable extent, prescribed adequate punishment for certain offences and it will only be proper to allow the law to dish out these punishments to a convict in the right proportion.

3.0 REASONS PEOPLE RESORT TO JUNGLE JUSTICE:

There are certain reasons which make people indulge in Jungle Justice. Some of these reasons are seen below:

1. **Lack of Faith in the Government:** Nigerian citizens have lost so much faith and trust in the Nigerian government especially the judicial system of Nigeria and consequently, have elevated themselves to be the judges in their own cases. This is mostly so because there are no strong punitive systems that ensure that perpetrators of crime get punished for offending the law. It appears as though the police, which play a significant role in bringing offenders to book have been dipped into so much corruption that they at times fail to diligently prosecute offences, whenever commission or omission of same occurs. Thus, this has forced most Nigerian citizens to sort out justice even in the most uncivilized manner termed jungle justice.
2. **Speedy Execution of Justice:** Most perpetrators of jungle justice believe that justice delayed is justice denied. Thus, once a person is suspected to have committed a crime, surrounding individuals who are perpetrators of jungle justice would immediately execute the said suspect summarily, or publicly humiliate the said suspect. Having done this, they believe that justice was served at the most appropriate time.

3. Religion: This is also one of the main causes of jungle justice in Nigeria. Nigeria is a country with diverse religion and several of these religions have fanatics who are ready to protect their faith, once in their opinion, a blasphemy has been committed against the deity they believe in or once a person does an act contrary to their faith which they perceive provocative. The recent case of the killing of Deborah Samuel on May 12, 2022,⁷ is an example to further establish this point. However, it should be pointed out that the courts are against the use of religion in enforcing justice. For example, in *Kaza v. State*,⁸ the court held that:

Islamic religion is not a primitive religion that allows its adherents to take the law into their hands and to commit jungle justice. Instead, there is a judicial system in Islam which hears and determines cases including the trial of criminal offences and anybody accused of committing an offence against the religion or against a fellow Muslim brother should be taken to the court (either a Sharia or a secular [common law court]) for adjudication.

Despite the reasons stated above which are causes of jungle justice, there are, however, great disadvantages of this act. They include:

1. It Undermines the Laws of the Land: Jungle justice makes jest of the extant laws of the land. If left unchecked, jungle justice

⁷ Nonyelum Ossai, 'History of Jungle Justice in Nigeria, Causes, Cases, What the Law Says' <<https://www.skabash.com/jungle-ajustice-in-nigeria/#mobile-site-navigation>> accessed 27th August, 2022

⁸ (2008) 7 NWLR (Pt. 1085) 125

can make the country degenerate into a pool of anarchy. This can slowly turn the country into a banana republic where lawlessness reigns supreme

2. It Occasions Miscarriage of Justice: Innocent people may be killed for a crime which they never committed. There are two elements to be proved to show that a person is guilty of a crime and thereafter secure his conviction - *Mens Rea* (intention or state of mind of the defendant) and *Actus Reus* (the act itself). The common law courts came up with the Latin maxim '*actus non facit reum nisi men sit rea*' which means that "an act does not render a person legally guilty unless the mind is guilty". In *Danladi v State*⁹, the Court of Appeal per *Husaini, J.C.A* held thus,

In every criminal prosecution, an act complained of, is an offence only where the mental element, otherwise known as the mens rea and the physical element, otherwise known as the actus reus both concur to produce a given offence or crime."

Flowing from the above, the law requires (except in cases of strict liability where intention is not required to be proved) that the prosecution proves these two important elements that will secure conviction for an accused. Jungle justice on the other hand, makes no room for the proper testing and trial of an accused in finding whether he committed the said act. This is, therefore, hazardous to people's life because a person who has

⁹ (2017) LPELR-CA/YL/148C/2016

no intention of committing a crime can be summarily executed by angry mobs.

3. **The Punishment is not Commensurate with the Offense:** In most cases, jungle justice is not commensurate with the crime committed. However, the law has measured out adequate punishment for certain offences spelt out in our written laws. For instance, the Criminal Code Act provides that any person who steals anything capable of being stolen, is guilty of a felony and is liable, if no other punishment is provided, to imprisonment for three years (among other punishments provided by the criminal code in other cases of stealing).
4. It does not create room for rehabilitation as the person is already dead without having any second chance. The essence of some punishments pronounced by the court include the rehabilitation of the convict. Thus, a perpetrator of a crime loses his chance of rehabilitating, no matter how little his offence is.

4.0 RECOMMENDATION

- ❖ In order to ensure that jungle justice is curtailed in Nigeria, appropriate authorities should swing into action whenever a crime is reported. There should be due diligence of the prosecution in ensuring that offenders are brought to book.
- ❖ Furthermore, the judiciary should ensure speedy dispensation of justice and at the same time handle every criminal trial before it prudently and conscientiously to avoid miscarriage of justice.

- ❖ Finally, the government should ensure they provide adequate equipment for services, for the executors of the law, particularly the policemen in criminal cases in order to ensure that they carry out their duties in the proper procedure and without unnecessarily overly stressing themselves.

5.0 CONCLUSION

In view of the above study which basically is to determine the legality of jungle justice, it is lucid and without any ambiguity that the law leans against jungle justice. The courts have variously made pronouncements against it as seen above and, therefore, it must be submitted that jungle justice can only be considered barbaric and uncivilized. It is illegal and cannot be an ideal means of achieving justice in a sane society. Finally, for a society to remain safe for its citizens, illegal acts like jungle justice should be frowned at and reduced to barest minimum by those in authority.



**A CRITICAL EVALUATION OF THE LEGAL
REGIME OF ELECTRONIC PAYMENT
SYSTEMS IN NIGERIA, PAYMENT SERVICE
PROVIDERS (PSPS) IN CONTEMPLATION**

YAHAYA MOSHOOD KOLAWOLE

University of Ilorin, Ilorin Nigeria.

kolawolemoshood7@gmail.com

ABSTRACT

In recent years, the financial sector has witnessed the introduction and adoption of digital banking and other payment solutions other than traditional banking. Fintech Startups have sprung up to complement the existing participants by leveraging technology and the internet to ease the conduct of financial transactions. Consequently, traditional banks have transitioned in part to digital banking where they render digital services using mobile technologies such as mobile apps and websites. This has led to the rapid growth of the electronic payment system in Nigeria. Regulations must thus exist to administer the operation of this composite system of payment. This paper critically examines the available regulations and addresses the challenges in the regulatory regime of Payment Systems in Nigeria, paying requisite attention to Payment Service Providers.

1.0. INTRODUCTION

The currency in Circulation in Nigeria has risen to 3.2 trillion Naira as of September 2022, 2.7 trillion Naira out of which was outside the treasuries of commercial banks.¹ Data from the Nigerian Interbank Settlement System (NIBBS) has pegged the volume of financial transactions done through mobile devices to 1.8 trillion Naira as of August 2022.² A bulk of these transactions are carried out by Payments Service Providers. A Payments Service Provider (PSP) is a corporate entity licensed by the CBN to provide services involving direct interactions with the payment, settlement and clearing systems and payment system arrangements as may be authorized by the CBN from time to time and may include Banks, Mobile Money Operators (MMOs) and Other Financial Institutions (OFIs).³ Paystack, Flutterwave, GTPay, 9 PSB, MoneyMaster PSB, Paga, ALAT by Wema and KongaPay are a few examples of PSPs in Nigeria.

Realistically, it is important to note that PSPs, like conventional banks, are governed by regulatory frameworks that oversee their incorporation, license, and operations. They are largely governed by the Companies and Allied Matters Act 2020, the Banks and Other Financial Institutions Act (BOFIA) 2020, and the Central Bank of Nigeria (CBN) Establishment Act 2007 due to their designation as

¹Ignatius Igwe, 'CBN To Redesign N200, N500 and N1,000 Notes' *Channels TV* (October 26 2022) <<https://www.channelstv.com/2022/10/26/breaking-cbn-to-redesign-n200-n500-and-n1000-notes/>> accessed 13 December 2022.

² Editorial, 'Nigeria's Mobile Transfers Surge 151% in One Year' *NIBSS* (September 21 2022) <<https://nibss-plc.com.ng/news/4vr7p01acrgf7yqgqj5xcyvr49>> accessed 13 December 2022.

³CBN Regulation for Bill Payments in Nigeria 2018, s 4.5.

OFIGs under BOFIA 2020.⁴ These service providers are subject to the same laws and rules as conventional banks, including those that cover consumer protection, anti-money laundering, data privacy and protection, cybersecurity, and capital requirements.⁵ While these rules typically control how PSPs as a whole operate, it is crucial to investigate the rules that control how these financial institutions' payment systems are run.

Foremost, the 2020 amendment of BOFIA, unlike previous amendments took a new approach towards the definition of Other Financial Institutions by including Payment Service Providers.⁶ In its interpretation section, the Act interprets Payment Service Provider to mean “an entity licensed by the Bank (CBN) to provide payment services”.⁷ Payment Service on the other hand is interpreted to mean “technical or technology infrastructure, software solutions or services for facilitating end-to-end electronic payment to third parties and such other services as the Governor may by regulation designate”.⁸ This brings PSPs within the purview of fintech entities. The effect of the inclusion of PSPs as OFIs is that PSPs will be subjected to the CBN Act, BOFIA and regulations and guidelines incidental thereto.

In furtherance of the CBN's powers to make regulations to promote a sound financial system in Nigeria⁹ and in its bid to create a

⁴ Banks and Other Financial Institutions Act 2020, s. 57(2)(i).

⁵ G. Elias & Co. Global Legal Insights, 'Fintech 2020, Second Edition'. Pg 178-187.

⁶ Banks and Other Financial Institutions Act 2020, s. 57(2)(i).

⁷ Banks and Other Financial Institutions Act 2020, s. 131.

⁸ Ibid.

⁹ Central Bank of Nigeria Establishment Act 2007, s. 2(d), 33(1)(b), and 47(2).

financial system that complies with the Core Principles for Systemically Important Payment Systems, the CBN has issued various regulations and guidelines administering the payment system regime in Nigeria. While some of these are drafts and yet to receive the force of law, others have already been implemented.

2.0. LICENSE CATEGORISATION FOR PAYMENT SERVICE PROVIDERS

The CBN circular on the New License categorization For the Nigerian Payments System is a cardinal regulation in this regard. Issued on the 9th of December, 2020, the circular offers clarity to new and existing market participants by streamlining payment system licenses in four categories. In addition, it sets out the permissible activities and minimum capital requirements of each of these payment system categories. The first category - Switching and Processing Companies - are permitted to carry out Switching, Card Processing, Transaction Clearing and settlement agent services. Their minimum Share Capital is set at N2 Billion. The range of permissible activities for Mobile Money Operators - the second category - includes E-Money issuance, wallet creation and management, and pool account management, while their minimum share capital is also N2 Billion.

Payment Solution Services (PSS) constitute the third category under this circular. With a minimum share Capital of N250 Million, activities permissible under this license category are sub-categorized into three, to wit; Super Agents, Payment Terminal Service Providers (PTSPs) and Payment Solutions Service Providers (PSSPs). With a minimum Share Capital of N50 Million, Super

Agents are permitted to take on agent recruitment management and other activities as specified in the CBN regulatory framework for Licensing Super Agents. PTSPs with a minimum share capital of N100 Million are permitted to undertake POS Terminal Deployment and services, POS Terminal Ownership and Merchant/Agent training and support. The third sub-category, PSSPs with a minimum share capital requirement of N100 Million are permitted to carry out Payment processing gateway and Portals, Payment Solution/application development, Merchant Service aggregation and collections. It is to be noted that, in addition to their respective permissible activities, Switching and Processing Companies are permitted to carry out activities of Super Agents, PTSPs and PSSPs while MMOs are permitted to undertake Super-Agents' permissible activities.¹⁰

The fourth and last category of licensing - Regulatory Sandbox - provides an avenue for FinTech Startups and innovators to test their products and technologies under the supervision of the CBN. Although this category has no minimum share capital requirement, an applicant under this license must, as a requirement for all categories, obtain a no-objection letter from the Payment System Management Department of CBN.¹¹ Paramount to note is that the Circular provides that only MMOs can hold customer funds.¹² Also of importance is the provision that the object clauses in the

¹⁰ Circular on New License Categorizations for the Nigerian Payments System 2020, Appendix 1.

¹¹ Circular on New License Categorizations for the Nigerian Payments System 2020, Para 5.

¹² Circular on New License Categorizations for the Nigerian Payments System 2020, Para 2.

Memorandum and Article of Association of these companies shall be restricted to their permissible activities under the circular.¹³ Lastly, the circular introduces the concept of Payment Services Holding Company (PSHC) for companies seeking to combine Switching and MMO-permitted activities. The caveat is that the subsidiary companies under the PSHC must be demarcated to prevent commingling.¹⁴ This notwithstanding, On August 3rd 2021, the CBN issued a specific guideline regulating the licensing and operation of PSHCs.¹⁵

The 2020 circular was followed by the circular on the licensing requirements of PSPs issued on the 24th of May, 2021. This circular makes specific regulations for the licensing requirements of each category of license, including provisions for eligibility, capital requirement, contact, documentary requirements, application and licensing fees and license validity.

3.0. OPERATION OF PAYMENT SERVICE BANKS

Aside from these general regulations on PSPs, there also exist regulations for Payment Service Banks (PSBs) such as the CBN guidelines on Licensing and Regulations of Payment Service Banks in Nigeria, 2020 and Supervisory Framework for Payment Service Banks, 2021. The issuance of these regulations demonstrates the CBN's resolve to ensure adequate customer protection considering

¹³ Circular on New License Categorizations for the Nigerian Payments System 2020, Para 6.

¹⁴ Circular on New License Categorizations for the Nigerian Payments System 2020, Para 3.

¹⁵ Guidelines on Licensing and Regulation of Payments Service Holding Companies in Nigeria 2021.

that PSBs are classified as MMOs and, as earlier established, are the only PSP permitted to hold customer funds. The permissible activities of PSBs include accepting deposits from individuals and small businesses, payments and remittances, sale of foreign currencies, issuance of debit and prepaid cards, electronic wallet operation and financial advisory services.¹⁶ They are however prohibited from granting loans, accepting foreign currencies, dealing in the foreign exchange market, underwriting insurance, accepting closed scheme electronic value and any other transaction not prescribed by the guideline.¹⁷

As a result, PSBs are required to adhere to the CBN's Know Your Customer (KYC) and Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) regulations.¹⁸ The rules require them to abide by the rules of the Terrorism Prevention Act of 2011 and other current legislation as well as the provisions of the Money Laundering (Prohibition) Act of 2011. Additionally, PSBs are required to guarantee compliance with CBN policies regarding payment system security, risk management, and consumer protection.¹⁹ To avoid or lessen the likelihood of data breaches and cybercrime occurring while PSBs are in operation, there is also a

¹⁶ CBN guidelines for licensing and Regulation of Payment Service Banks in Nigeria 2020, para 4.1; See also Supervisory Framework for Payment Service Banks in Nigeria 2021, para 2.1.

¹⁷ CBN guidelines for licensing and Regulation of Payment Service Banks in Nigeria 2020, para 4.2; See also Supervisory Framework for Payment Service Banks in Nigeria 2021, para 2.2.

¹⁸ CBN guidelines for licensing and Regulation of Payment Service Banks in Nigeria 2020, para 11; See also Supervisory Framework for Payment Service Banks in Nigeria 2021, para 6.0.

¹⁹ CBN guidelines for licensing and Regulation of Payment Service Banks in Nigeria 2020, paras 12, 13 and 14.

provision relating to the expected data infrastructure and cybersecurity standards.²⁰

4.0. OPERATION OF MOBILE MONEY SERVICES

In July 2021, the Central Bank as the chief regulator issued a circular which aims to regulate the operation of Mobile Money Services in Nigeria. This circular, with the appellation 'Framework and Guidelines for Mobile Money Services in Nigeria' is an essential regulation in the discourse of Nigeria's legal Regime on Payment Systems. The circular has two sections. The first section is 'The Regulatory Framework for Mobile Money Services in Nigeria' (The Framework). The framework divides operable Models under mobile money into two categories: The Bank-Led Model and The Non-Bank Led Model, with the goal of creating a supportive and regulated environment for the operation of mobile money services in the country. When utilizing a mobile payment system, a bank or group of banks uses the "Bank-led Model" to provide banking services to customers. On the other hand, the Non-Bank Led Model permits a corporate entity that has obtained proper CBN licensing to offer its customers mobile money services.²¹

Furthermore, the framework outlined three mobile money service scenarios: stored value (wallet) account-based, card account-based, and bank account-based.²² On the one hand, Bank Account Based implies the use of a customer's bank account for transactions. A card-account-based situation is one in which a customer's mobile phone

²⁰ Supervisory Framework for Payment Service Banks in Nigeria 2021, para 9.0.

²¹ Regulatory Framework for Mobile Money Services in Nigeria 2021, para 3.0.

²² Regulatory Framework for Mobile Money Services in Nigeria 2021, para 6.0.

is used to make payment transactions using a payment card. On the other hand, Store Value Account-Based implies carrying out payment transactions using a system-based account (such as Mobile Wallet) that adheres to the framework's requirements. It's also important to note that the rules now allow MMOs to provide Savings Wallet Services. The CBN must first issue a letter stating that it has no objections to this.²³

The Guidelines require that all transactions conducted with the mobile payment system shall contain a unique transaction reference, payer and payee numbers, transaction amount, date and time stamps and all other relevant information peculiar to each transaction,²⁴ which shall be securely logged and archived for a minimum of three years and seven years respectively.²⁵ The summary of this information shall be displayed to the user and a conforming receipt issued.²⁶

The general obligations of MMOs in the conduct of mobile money services are also outlined by the guideline. MMOs must adhere strictly to standard technologies that are compliant with the requirements of international best practices for mobile money services. They must also comply with KYC/AML and Customer Due Diligent (CDD) requirements. Three tiers were outlined concerning the transaction limit of mobile money services. The first tier has a transactional daily limit of N50,000 with a cumulative transaction limit of N300,000. The amounts are pegged at N200,000 and

²³ Guideline for Mobile Money Services in Nigeria 2021, para 10.1.

²⁴ Guideline for Mobile Money Services in Nigeria 2021, para 7.4.

²⁵ Guideline for Mobile Money Services in Nigeria 2021, para 17.0 (d).

²⁶ Guideline for Mobile Money Services in Nigeria 2021, para 17.0 (c).

N500,000 for tier two while tier three can transact up to N5,000,000 daily with no limit to their account balance.²⁷

MMOs are also enjoined to emplace a dispute resolution mechanism and adhere strictly to risk management requirements.²⁸ They are simultaneously enjoined by the guideline to observe consumer protection measures, and ensure that; a channel of communication is available at all times to entertain complaints and enquiries,²⁹ adequate disclosures are made on every transaction,³⁰ there is adequate consumer protection against loss of service, fraud and customer information breach,³¹ and complaints are resolved not more than 48 hours after they are lodged.³²

5.0 INSUFFICIENCY OF REGULATIONS

While these regulations and many others have in the long-run structured the momentum of mobile money services and payments in Nigeria,³³ stakeholders of the system have asserted these regulations have not tended satisfactorily to the fintech payment ecosystem, being one of the most sophisticated fintech ecosystems in

²⁷ Guideline for Mobile Money Services in Nigeria 2021, para 16.0.

²⁸ Guideline for Mobile Money Services in Nigeria 2021, para 12, 13, 14, 15 &16.

²⁹ Guideline for Mobile Money Services in Nigeria 2021, para 18.0 (b).

³⁰ Guideline for Mobile Money Services in Nigeria 2021, para 18.0 (a).

³¹ Guideline for Mobile Money Services in Nigeria 2021, para 18.0 (d).

³² Guideline for Mobile Money Services in Nigeria 2021, para 18.0 (f).

³³ Other regulations include: Regulations for Bill Payments in Nigeria 2018; Regulatory Framework for the use of Unstructured supplementary service Data (USSD) for Financial Services in Nigeria 2018; regulation for Direct Debit Scheme in Nigeria 2018; Regulations for Electronic Payments and Collections for Public and Private Sectors in Nigeria 2019; Guidelines on Transaction Switching in Nigeria 2016; Guidelines on Operations of Electronic Payment Channels in Nigeria 2016; Framework for Quick Response (QR) Code Payments in Nigeria 2021; Nigerian Payments System Risk and Information Security Management Framework etc.

the country. These regulations are described as playing ‘catch-up’ with the fintech sector’s fast-paced growth trajectory. This has kept the regulators on their toes drafting, publishing and implementing new regulations.

6.0. ABSENCE OF A NATIONAL PAYMENT SYSTEM LAW

Despite this unbalance between the law and the system, the federal legislature appears to be a day late and a dollar short of their catching up. This is evident in its failure to pass to law either of the two bills on the National Payment System presented before it. The National Payment System Bill (NPSB) introduced in 2017 and the Payment System Management Bill (PSMB) introduced in 2016 but harmonized with a similar bill titled ‘Payment System Bill 2016’ in 2017 have yet to witness the light of the day as laws of the Federation. The longstanding reservation harboured against the National Payment System Bill of 2017 is that despite its aim to address the challenges of administration and operation of the Payment System of the country, through its provisions, it undermines the power of the CBN as the authority for regulation, oversight and management of the Country’s Payment System. Rather, it proposes the establishment of an association of payment service participants as regulators of the system.

This anomaly is addressed by the Payment System Management Bill 2017 (drafted by representatives of the CBN, Deposit Money Banks, the Federal Ministry of Justice, Payment System Service Providers, and the National Identity Management Commission), which recognizes the CBN as the sole authority to manage and oversee the payment system in accordance with international best practices.

Despite this benefit, the Nigerian Payment System Management Act has not yet been enacted. This violates international standards, making it necessary to pass a National Payment System Law as done by neighbouring African countries like Tanzania,³⁴ Kenya,³⁵ Zambia,³⁶ and Ghana.³⁷

7.0. CONCLUSION

The issuance of various regulations and guidelines by the CBN to regulate the fintech space of the Payments System in Nigeria is commendable. It has in no little way enabled the growth of fintech as it relates to Payment Service Provision in Nigeria. However, these regulations are still unable to meet up with the sector's high demands due to its fast-paced growth and need for instant regulations. A proactive approach towards these regulations must be taken to enable the implementation of swift regulations for every innovation in the payment service system. This will foster a serene regulatory environment for participants thereby driving the sector to its maximum potential.

This study further revealed the necessity for National legislation on the Payment System in the country. Notwithstanding the various guidelines, circulars and frameworks administering various subject matters under the Payment System, a National Legislation in form of an Act of the National assembly should be enacted to serve as an umbrella law under which all of these specific guidelines will apply. It is therefore recommended that the Federal Legislature in

³⁴ National Payment System Act of Tanzania 2015.

³⁵ National Payment Systems Act of Kenya 2011.

³⁶ National Payments System Act of Zambia 2007.

³⁷ National Payments Systems Act of Ghana 2003 (Act 662).

conjunction with the President enact the Payment System Management Bill into law as the Payment System Management Act. This is projected to guarantee a smooth regulatory framework for Payment Systems in Nigeria.



ROLES OF IP ON SMES IN NIGERIA

OLUWASEUN OJO

University of Ilorin, Ilorin Nigeria.

ojooluwaseunridwan@gmail.com

ABSTRACT

Intellectual property is a very important aspect of human life because it is the root of greatest innovations the world has ever experienced. Despite this, it has been recorded as one of the mostly-infringed human rights in this century. This is so because, although it usually come from unique perspective of people, it is nevertheless easy to steal without attracting much attention. The law, while performing its role of ensuring justice in the human society through protection of rights, attend to this problem by setting up some guidelines on how this property should be used. The impact of intellectual properties is mostly recognized in the economic aspect of human endeavour for it is the backbone of trading. In order to understand the importance of this property on businesses, Small and Medium Enterprises (SMEs) especially as this paper is concerned, and how the law has been seeking to protect it, this paper is written.

INTRODUCTION

Humans' intellect is the most sought-after source of creativity and innovation mankind has ever possessed. Behind every creation are some unique ideas (intangibles) which, in legal parlance, are known as Intellectual Property (IP), from which its creator enjoys some autonomy and credit. Small and Medium Enterprises (SMEs) as an integral part of the commercial sector, contribute significantly to the existence and thriving of the economy throughout the world, both in developing countries, such as Nigeria and the developed ones like the United States. To this effect, Nigeria has in place various legal frameworks for the protection of the recognized and protectable IP in the country. Because the important roles played by IP in maintaining the smooth running of SMEs cannot be overemphasized.

This article, therefore, seeks to discuss the roles of IP on SMEs. This is done by giving insightful explanations on; the meaning of IP in Nigeria, the importance of SMEs on the sustenance of the national economy, challenges facing SMEs in the course of protecting their intellectual assets, recommendations, and the author's final thoughts as the conclusion.

DEFINITION OF TERMS

Intellectual Property (IP): Creation of the human mind or product of intellectual creation.

Small and Medium Enterprises (SMEs): Entities with an asset base of N5 million and not more than N500 million excluding land and buildings with employees between 11 and 200.

RECOGNIZED IP UNDER THE NIGERIAN LAWS

At this point, Intellectual creations, rights, and regulations demand more attention than ever before. With the coming of the 21st century and all that it brought, countries' economies are becoming more of an idea based rather than resource-based¹ as they used to be in previous centuries. SMEs which are now running on the fuel of intellectual creations are believed to be the lifeblood of the national economy. According to a report from PwC, Nigerian SMEs contribute not less than 48% to the country's Gross Domestic Product (GDP).² And just like tangible properties, IPs are capable of being stolen if not properly safeguarded. On this note, no right is accrued to any IP which is not commercialized following relevant law of the land.

The recognized IP in Nigeria includes the following; Copyright, Trademark, Patent, and Industrial design, as briefly explained in the following paragraphs:

Copyright: This is an intellectual property that confers on the creator of original works, some exclusive rights to enable the doing of certain things or control such works. According to Copyright Act, the works³ under this category include; musical, literary, and artistic

¹ Oyinkansola Komolafe, 'Intellectual property, SMEs and economic recovery in Nigeria' (WIPO, September 2021) https://www.wipo.int/wipo_magazine/en/2021/03/article_0008.html# accessed 18 July 2022.

² 'Assessing current market conditions and business growth prospects' (PwC) <https://www.pwc.com/ng/en/events/nigeria-sme-survey.html> accessed 18 July 2022.

³ S. 1(1).

works among others. Once such works fulfil the twin requirements of “originality and fixation”, it's qualified for copyright protection.

Trademarks: Another intellectual property that has to do with labels, marks, signs, logos, and other designs that its owner ascribes to their products or services to distinguish them from other manufacturers.⁴ For any design to qualify for trademark registration, it must serve the right business purpose, be distinctive, and not be deceptive.

Patents: An exclusive right granted to the inventor of objects like machines, chemical composition, devices, and manufacturing processes. The purpose is to confer upon the inventor, a right to exclude others from transacting with such products without his consent for a definite period. For a subject matter to be deemed patentable it must be; new, result from inventive steps and be capable of industrial application.⁵ However, subject matters such as plants or animal varieties or ones that will be contrary to public order are not patentable.⁶

Industrial Designs: This is an IP that covers novel and original elements which are incorporated into mass-produced items to make their appearances attractive. Such elements serve as models to be multiplied,⁷ and therefore must be capable of mass reproduction. For an element to be registrable as Industrial design, it must fulfil the

⁴ Trademark Act, s. 67.

⁵ Patent and Designs Act, s. 1(1).

⁶ Patent and Designs Act, s. 1(3).

⁷ Patent and Designs Act, s. 12.

fundamental conditions of newness and not be contrary to public order.

Against this backdrop, for SMEs to enjoy the full benefits of IP rights, they need to register their IP under any relevant domestic IP law. The relevant IP laws⁸ in Nigeria include; the Copyrights Act, the Patents and Designs Act, and the Trademarks Act.

INSTANCES OF IP-RELATED DISPUTES

A review of the Sabinu's case,⁹ being one of the recent popular IP disputes in Nigeria has made the role of IP on SMEs in Nigeria more appreciated. The suit was instituted by the Talent management agency of the popular comedian and skit maker, Chukwuemeka Emmanuel, popularly known as Oga Sabinu, against the UAC Foods and Friesland Campina WAMCO Nigeria PLC, demanding from each of them, the sum of N1 million and N1 billion respectively, for infringing on his IP right.¹⁰ The management sued UAC Foods for using Sabinu's animated image in an advert for their Gala sausage roll without consent; while Friesland, for unauthorized use of "something hooge", a statement trademarked by Sabinu with the Federal Ministry of Trade and Investment.

⁸ Nosa J. Garrick, 'Intellectual Property In Nigeria: A Summary Of Protectable Rights In Nigeria' (Monday, date)

<https://www.mondaq.com/nigeria/trademark/1112730/intellectual-property-in-nigeria-a-summary-of-protectable-rights-in-nigeria> accessed 19 July 2022.

⁹ Joshua Adick, 'Mr Sabinu vs Friesland Foods and UAC Foods' *Punch* (Lagos, 8 June 2022) <https://punchng.com/mr-sabinus-vs-friesland-foods-and-uac-foods/>

¹⁰ Onu Stephen, 'opyright Infringement: Mr Sabinus slams N1 billion lawsuit against Friesland, UAC Foods' *Premium Times* (Lagos, 30 May 2022) <https://www.premiumtimesng.com/entertainment/naija-fashion/533682-copyright-infringement-mr-sabinus-slams-n1-billion-lawsuit-against-friesland-uac-foods.html>

Sabinu's sheds light on the practical meaning of IP, its importance to individual businesses, and the cost and kind of conflicts that may arise therefrom. The case is also a form of clarion call to other SMEs not to sleep on their rights. Apart from Sabinu's, there are hundreds of other decided Nigerian cases where the importance of the roles of IP on SMEs was affirmed. The like of them is the 2020 case of *Tv Xtra Production Limited & Anor v National Universities Commission & Zain Nigeria*.¹¹ In this case, the damages of N703 million were awarded to the plaintiff for infringement of his copyright. According to a review,¹² one of the important purposes of this case is that it shows the significance of IP on the existence of SMEs.

SOME ROLES PLAYED BY IP ON SMES

It is clear at this point that IP has a lot of roles to play in the day-to-day running of businesses. Some of the reasons the businesses' IP assets must be protected include the following;¹³

- IP enhances the growth of business entity, and promote economic development.
- Intellectual products like Trademarks can be licensed and therefore generate revenue for the owner's business in form of periodic royalty payments.
- SMEs with a registered IP are perceived as competent and thus reliable to collaborate with. Such businesses won't find it

¹¹ Fhc/Abj/Cs/680/2008

¹² Femi Olubanwo, 'Nigeria: N703 Million Damages For Copyright Infringement: An Affirmation Or Miscarriage Of Justice?' (mondaq, 2 August 2021) <https://www.mondaq.com/nigeria/trademark/1098178/n703-million-damages-for-copyright-infringement-an-affirmation-or-miscarriage-of-justice> accessed 20 July 2022.

¹³ Similoluwa Oyelude and Fidelis Oguiche, 'How intellectual property can help SMEs grow' *The Nation* (Lagos, 4 May 2021) <https://thenationonlineng.net/how-intellectual-property-can-help-smes-grow/>

difficult to attract prospective investors both locally and internationally.

- A well-maintained IP prevents unwarranted infringement of rights, as it keeps the competitors in check.
- It gives businesses certain exclusive rights which if breached will be assuaged.
- IP promotes innovative ideas, and at the same time, encourages more by recognizing and safeguarding the existing ones.
- Also, IP with its significance on businesses helps in alleviating poverty in the country by aiding economic sustainability.

According to a PwC report, SMEs "account for about 50% of industrial jobs and nearly 90% of the manufacturing sector, in terms of the number of enterprises".¹⁴ With standard IP maintenance and regulations, more of these can be achieved.

HINDRANCES RELATING TO THE ENJOYMENT OF BENEFITS OF IP IN NIGERIA

In Nigeria, many SMEs are seen running to Corporate Affairs Commission (CAC) to register businesses' names and companies, while giving little effort to the protection of their Intellectual properties. A report from the National Bureau of Statistics (NBS) shows that more than 70% of SMEs in Nigeria are yet to register their IP,¹⁵ and this may hinder them from enjoying the benefits attached

¹⁴ 'Assessing current market conditions and business growth prospects' (PwC) <https://www.pwc.com/ng/en/events/nigeria-sme-survey.html> accessed 18 July 2022.

¹⁵ Oyinkansola Komolafe, 'Intellectual property, SMEs and economic recovery in Nigeria' (WIPO, September 2021) https://www.wipo.int/wipo_magazine/en/2021/03/article_0008.html# accessed 18 July 2022.

to such registration. Some of the challenges facing IP commercialization for SMEs in Nigeria include;

- Lack of awareness;
- High cost of registration and legal services;
- Inadequate implementation of IP laws;
- Illiteracy and absence of layman-friendly registration procedure.

Recommended Solutions to the Challenges Facing IP Commercialization in Nigeria

Due to the challenges mentioned above, SMEs are losing the benefits attached to intellectual rights. According to a 2022 joint report¹⁶ by the Small and Medium Enterprises Development Agency of Nigeria (SMEDAN) and NBS, between 2017 to December 2020, the number of Micro, Medium, and Small Enterprises (MSMEs) operating in Nigeria fell by 4.5%. To prevent the reoccurrence of such situations, the roles of IP in SMEs need to be more appreciated. The government and other stakeholders must be ready to take steps in addressing those hindrances. To do this, the following recommendations should be considered;

- Increase in the awareness of the available national IP strategy for SMEs;
- Availability of a conducive working environment, and other support to make it easier for SMEs to enjoy IP rights;

¹⁶ Anthony Otaru, 'Over 39.65m MSMEs operate in Nigeria, says report' *The Guardian* (Lagos, 13 January 2022) <https://guardian.ng/business-services/over-39-65m-msmes-operate-in-nigeria-says-report/>

- The registration procedure should be simple, and devoid of any technicalities that may scare a layman away;
- The cost of registration and other related expenses should be made affordable as much as possible;
- Stricter policy against forgery, plagiarism, and piracy, particularly in the entertainment industry, and other related fields;
- Adequate implementation of the existing IP rights protection laws;
- Lastly, the government should set up a network of support for SME affairs in each state of the federation.

CONCLUSION

Altogether, it is worth noting that IP being a product of intellect is only recognized with the expression of ideas, and not the idea itself. In other words, an unexpressed idea in the head is worth nothing in the IP market. And IP assets that are not duly registered are susceptible to infringement. Therefore, to ensure that IP performs its roles on individual businesses (SMEs), specialized legal services become a *sine qua non*. Because it has become glaring that just as SMEs are said to be the lifeblood of the national economy, IP is the lifeblood of SMEs.



**RULE OF LAW AND THE
ENFORCEMENT OF FUNDAMENTAL
HUMAN RIGHTS IN NIGERIA: A
CRITIQUE OF THE NORM**

CHUKWUMA CHISOM

University of Ibadan, Oyo State.

Chukwumaanthony131@gmail.com

ABSTRACT

The rule of law and respect of fundamental human rights are vital ingredients of a strong democratic state. Nigeria, supposedly a democratic state is expected to respect these pillars for a progressive democracy. This paper borders on how the rule of law and fundamental human rights are respected and offered solutions on how to deal with violations of those vital pillars of democracy.

INTRODUCTION

On January 2019, Allen Oloruntobi, a software engineer was detained at a gunpoint on his way to a restaurant by the Nigerian Police. His only offence why he was been accused of being an internet fraudster was that he had a luxurious car and a flashy phone.¹ Similar to this was the shambolic impeachment of Gov. Darius on 2006 by irregular eight out of twenty-four lawmakers against the constitutional requirement of two-thirds majority. Report has it that the 8 lawmakers enjoyed the auspices of the president whom the governor had refused to support his third tenure bid, providing heavy armed security for the 8 lawmakers which led to the death of two civilians.² The above scenarios are tips of iceberg to millions of daily violations of rule of law and fundamental human rights which has not only become epidemic but now our national emblem.

RULE OF LAW AND ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS IN NIGERIA

It was Prof. A. V. Dicey, an Oxford English Law Professor who coined the term “The Rule of Law” in his 1885 book titled “An introduction to the study of law of the Constitution”. Although the concept has been in existence hitherto since the inception of

¹ Wired(2020) “How Nigerian Prince Stereotypes Led to a Police Brutality Crisis” Retrieved from <https://www.wired.co.uk/article/nigeria-end-sars-protests-police>

² Sahara Reporters(2006) “Developing Story: Plateau State Legislators Makes Impeachment Attempt on Gov. Joshua Dariye” Retrieved from <https://saharareporters.com/2006/10/04/developing-story-plateau-state-legislators-make-%E2%80%9CImpeachment-%E2%80%9CAttempt-govjoshua-dariye>

democracy in ancient Greek where Aristotle subscribed that leaders should exercise political power for the collective good of all in the Polity.³ Anthony Valcke defined Rule of Law as a concept that describes the supreme authority of a law over governmental action and individual behavior.⁴ The Organization for Economic Co-operation and Development however added flavor to Valcke's definition by crafting it more appropriately, elucidating rule of law as meaning that no one including the government is above the law, where law protects fundamental rights, and justice is accessible to all.⁵

Chapter 4 from Section 33 to 45 of the Nigerian Constitution is dedicated to the fundamental human rights which include but not limited to rights to life, dignity of human person, liberty, fair hearing, freedom of assembly and association.⁶ In the bid to ensure the protection and respect of these rights, the National Human Rights Commission was created for promotion, protection and enforcement of Human Rights.⁷ There are four universal principles of rule of law; the supremacy of the law, a clear written law, protection of fundamental rights and an independent judiciary. The first two are fully operational by virtue of our democracy and section

³ Anthony Valcke(2012) "The Rule of Law: Its Origins and Meanings (A Short Guild for Practitioners) Retrieved from

https://www.researchgate.net/publication/255726723_The_Rule_of_Law_Its_Origins_and_Meanings_A_Short_Guide_for_Practitioners

⁴ Ibid

⁵ OECD.org "Rule of Law" Retrieved from

<https://www.oecd.org/mena/governance/rule-of-law/>

⁶ 1999 Constitution of the Federal Republic of Nigeria as Amended.

⁷ NHRC "About National Human Rights Commission" Retrieved

<https://www.nigeriarights.gov.ng/about/overview.html>

1 of 1999 Constitution. In the light of this background, this essay will focus on the last two.

A CRITIQUE OF THE NORM

The right of life is the most vital of all human rights because without it all others are insignificant. Section 33(1) of the 1999 Constitution provides that every person has a right to life and no one shall be deprived intentionally of his life. The reverse is presently the case as it appears that this provision only ends in the paper it is written. In Nigeria, human life is wasted on daily basis by state and non-state actors. In 2021 alone, an estimated 2600 civilians were killed by bandits⁸ while Boko Haram has led to the death of above 60,000 Nigerians since 2011.⁹ Even the security forces that are ostensibly meant to protect this right are at the center of its violation. For the first 4 months of 2022, 115 persons were reported killed arbitrary by the state security.¹⁰

Just like the right to life, the right to liberty and dignity of human person is constantly abused. Day in day out, citizens are being kidnapped by bandits, subjected to cruel and inhuman conditions in demand for ransom. For instance, in 2021 alone, 821 students were

⁸ GCFT RTP(2022) “ More than 2600 Civilians Killed by Armed Bandits in 2021” Retrieved from <https://www.globalr2p.org/countries/nigeria/>

⁹ Ripples Nigeria(2022) “Boko Haram, Others Killed 60,000 in Northern Nigeria Since 2011, Rights Group CDD Claims” Retrieved from <https://www.google.com/amp/s/www.ripplesnigeria.com/boko-haram-others-killed-60000-in-northern-nigeria-since-2011-rights-group-cdd-claims/%3famp>

¹⁰ Amnesty International(2022) “Nigeria: At least 115 People Killed by Security Forces in Four Months in Country's SouthEast” Retrieved from <https://www.amnesty.org/en/latest/news/2021/08/nigeria-at-least-115-people-killed-by-security-forces-in-four-months-in-countrys-southeast/>

abducted for ransom while those unable to pay were killed.¹¹ Many Nigerians have been victim of this ugly situation as our roads, airports, seaports and railways are now the headquarters of bandits. Civilians receive all kinds of inhuman treatments from state actors including beating, searching and threatening them with guns and even forcing them to swim musky water. It was reported by Amnesty International that estimated 20,000 people were arbitrarily detained within 2009 to 2015 with 7000 dying in custody.¹² The abuse of right of human dignity in our correction centers is nothing to write home about. Our correction centers are overcrowded which is partially attributed to governors' unwillingness to sign death warrant resulting to above 3,008 in the list.¹³ On top of that, infrastructure and equipment are been lacked including basic facilities, water, adequate foods, rehabilitation center etc. In 2019, five inmates were accidentally electrocuted in their 35 capacity room been shared by 140 inmates.¹⁴ Also, inmates are tortured and put to the worst of inhuman treatment. As reported by BBC of the use of Taboy by Police on inmates which involves binding a suspects arms at the elbows to cut off circulation at the same time the inmates' feet are

¹¹ TheCable(2021) "Timeline: 821 Students Abducted in 2021 alone" Retrieved from <https://www.thecable.ng/timeline-821-students-abducted-in-2021-alone-more-than-half-of-those-kidnapped-in-past-7-years/amp>

¹² Amnesty International(2021) "Blood on Their Hands" Retrieved from <https://www.amnesty.org/en/latest/news/2015/06/nigeria-military-report/>

¹³ Vanguard(2021) "Death Row Inmates Now 3,008 as FG Urges Quick Action by States" Retrieved from <https://www.google.com/amp/s/www.vanguardngr.com/2021/07/death-row-inmates-now-3008-as-fg-urges-quick-action-by-states/amp/>

¹⁴ Punch(2019) "How Five Ikoyi Prison Inmates Were Electrocuted – Sources" Retrieved from <https://www.google.com/amp/s/punchng.com/how-five-ikoyi-prison-inmates-were-electrocuted-source/%3famp>

bound.¹⁵ Little wonder they come out of the correction centers as hardened criminals.

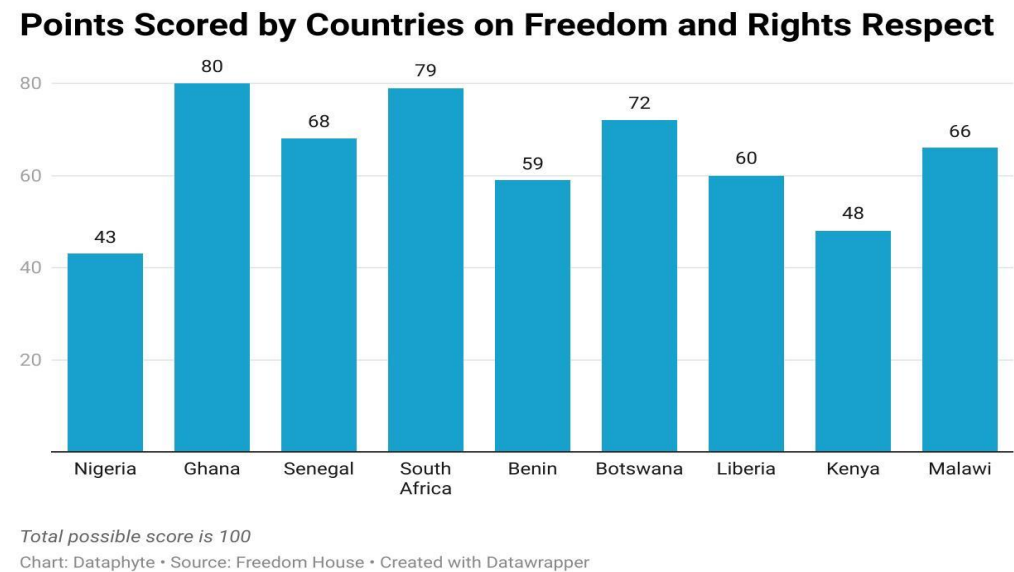


Figure 1¹⁶

The above diagram captures how major African countries scored in freedom and rights respect.

The constant violation of freedom of expression in Nigeria is epidemic. There are litanies of daily abuse of this right both by the government and individuals. Ranging from Twitter ban, recurring arrest of journalists like Jim Janligo, arrest of Jolayemi for releasing a song a minister finds insulting¹⁷, detention of 4 boys for putting on

¹⁵ Amnesty International(2019) “ Everything You Need To Know About Human Rights Violation in Nigeria” Retrieved from <https://www.amnesty.org/en/location/africa/west-and-central-africa/nigeria/report-nigeria/>
¹⁶ Dataphyte(2022) “Human Rights Violations and Abuse are Still High in Nigeria _ US Reports” Retrieved from <https://www.dataphyte.com/latest-reports/judiciary/human-rights-violations-and-abuse-are-still-high-in-nigeria-us-report/>
¹⁷ TheCable(2020) “Broadcaster Charged to Court for Insulting Lai Mohammed” Retrieved from <https://www.thecable.ng/journalist-arrested-over-whatsapp-audio-charged-with-insulting-lai/amp>

a t-shirts with inscription “BuhariMustGo” for 30 days¹⁸, killing of Deborah for allegedly blasphemy to the restriction of press freedom through infamous Nigerian Broadcasting Code which has led to closure or sanction of different stations like AIT, Channels, Arise news, Info radio etc. All these are express violations of the freedom of expression.

In Nigeria, the right to peaceful assembly and association are egregiously abused. The state dictates who you associate with and where you assembly. This became clear in 2020, when Military opened fire on unarmed protesting citizens which led to the death of about 11 persons.¹⁹ It has become a tradition for the states to dictate who, where, and when to associate and assembly. The tear gas on protesting Obidients in Ebonyi state²⁰ and on students protesters.²¹ The detention and killing of protesting members of Revolution

¹⁸ Punch(2021) “Youths Arrested In Dunamis Church For Wearing BuhariMustGo Shirts” Retrieved from <https://www.google.com/amp/s/punchng.com/youths-arrested-in-dunamis-church-for-wearing-buhari-must-go-shirts/%3famp>

¹⁹ This Day(2021) “In Damning Report, Lagos EndSARS Panel Says 11 killed at Lekki Tollgate” Retrieved from <https://www.google.com/amp/s/www.thisdaylive.com/index.php/2021/11/16/in-damning-report-lagos-endsars-panel-says-11-killed-at-lekki-tollgate/amp/>

²⁰ Vanguard(2022) “2023: Angst as Police Teargas Obi Rally in Enonyi, Pursue Supporters in Church” Retrieved from <https://www.google.com/amp/s/www.vanguardngr.com/2022/09/2023-angst-as-police-teargas-obi-rally-in-ebonyi-pursue-supporters-into-church/amp/>

²¹ Sahara Reporters(2022) “Police Tear Gas Protesting Ogun University Students” Retrieved from <https://saharareporters.com/photos/police-tear-gas-protesting-ogun-university-students>

Now,²² Shiites Muslim²³ and IPOB protesters²⁴ among others makes mockery of these rights.

Also, most of the sectors that are meant to promote human rights in Nigeria are underfunded. For instance, while UNESCO recommends that the educational budget of developing countries should be at least 26%.²⁵ This is like pouring water on stones as our budget hardly passes 7%.²⁶ The institutions is so run-down that the students graduate without any touch of refine but turn out worser than they were before been admitted. The same goes to the health sector but the worst is that in the past 11 years, 72% of health budget are spent on salaries and running offices with little left on health investment.²⁷ Even at that, 75% of our annual budgets are lost to corrupt practices.²⁸ This has led to unnecessary lost of lives in our dilapidated hospitals with inadequate personnel. Accounting for

²² Vanguard(2020) "Police Arrest Over 30 Revolution Now Protesters" Retrieved from <https://www.vanguardngr.com/2020/10/breaking-police-arrest-over-30-revolutionnow-protesters/amp/>

²³ TheCable(2021) "Police Arrest 42 Shiites After Violent Protest in FCT" Retrieved from <https://www.thecable.ng/police-arrest-42-shiites-after-violent-protest-in-fct/amp>

²⁴ PremiumTimes(2020) "Police Arrest 67 IPOB Members, Native Doctors for Unlawful Assembly" Retrieved from <https://www.premiumtimesng.com/news/more-news/408491-police-arrest-67-ipob-members-native-doctor-for-unlawful-assembly.html>

²⁵ Premium Times(2022) "Through Far from UNESCO Benchmarks, Buhari inches Towards Fulfilling Education Funding Pledge" Retrieved from <https://www.premiumtimesng.com/news/headlines/491888-2022-budget-thought-far-from-unesco-benchmark-buhari-inches-towards-fulfilling-education-funding-pledge.html>

²⁶ Ibid

²⁷ ICIR Nigeria(2022) "72% of Nigeria's Health Budget Spent on Salaries, Running Offices in 11 years" Retrieved from <https://www.icirnigeria.org/72-of-nigerias-health-budget-spent-on-salaries-running-offices-in-11-years/>

²⁸ DailyTrust(2022) "75% of Nigerian Budget Lost to Corruption" Retrieved from <https://dailytrust.com/75-of-nigerias-budget-lost-to-corruption-forensic-experts>

34% of global maternity rate²⁹, child mortality, 54 years life expectancy rate, one of the worst globally³⁰. The National Human Rights Commission that is meant to promote these rights are not only poorly funded but are also intimidated by the state security like police while doing their jobs³¹ and are present in only 20 States.³²

One of the most meritorious principle of rule of law which is the independent of judiciary is still in its dark age in Nigeria. The judiciary arm of government is still held tightly by the executive arm of government. A perfect example of this is when President Buhari wakes up one morning and suspended the CJN without the NJC recommendation.³³ This is a recurring decimal in different states as many governors sack and refuse to appoint Chief Justice on recommendation of the NJC as stated by the Constitution. Still, the judiciary is poorly funded. This become evident on the recent letter of Supreme Court judges to CJN on poor state of service due to funding. The pathetic state of our courts, inadequate judges and lacks of facilities also contribute to cases staying in trial courts for 10

²⁹ The Guardian(2022) "Addressing Nigerian Maternal Mortality Issue" Retrieved from <https://guardian.ng/opinion/addressing-maternal-mortality-in-nigeria/>

³⁰ Dataphyte.com(2022) "Nigeria's Life Expectancy Rates Have Increased in the Last 2 Decades Despite Many Odds" Retrieved from https://www.google.com/amp/s/www.dataphyte.com/latest-reports/health/nigerias-life-expectancy-rates-have-increased-in-the-last-2-decades-despite-many-odds/%3famp_markup=1

³¹ PrimuimTimes(2020) "Police Shoot Into Human Rights Commission's Premises, Intimidate Personnel _ Official" Retrieved from <https://www.premiumtimesng.com/news/top-news/384105-police-shoot-into-human-rights-commissions-premises-intimidate-personnel-official.html>

³² Ibid

³³ TheCable(2019) "NJC Writes Buhari Over Its Decision on Onnoghen, Acting CJN" Retrieved from <https://www.thecable.ng/just-in-njc-finally-takes-a-decision-on-onnoghen-acting-cjn/amp>

years and above. Also, the remuneration of judges are poor³⁴ while the budget of judiciary continue to decline yearly.³⁵ Even at that, some state governors still refused to pay the pension and gratuity of retired judges.³⁶ While government policies like Treasury Single Account (TSA) which compels the judiciary to pay its' income into TSA, denying the judiciary of its' much-needed revenue and by it dependent on executive largesse.³⁷ All these fuel the debate on how independent Nigerian judiciary is.

ADDRESSING THE IMPEDIMENTS

As the adage goes that the only problem without solution is death. To strengthen the rule of law and protection of human rights, the National Human Rights Commission should be independent of the executive arm and be placed under the National Judicial Council. This will not only aid its' activities in all states as it will also collaborate with Nigerian Bar Association and other sister Human Rights organizations to promote the rule of law and human rights but stop the intimidation by agents of state and help make provision for more funding.

³⁴ Blueprint Newspapers(2020) "The Poor Remuneration of Judges" Retrieved from <https://www.blueprint.ng/the-poor-remuneration-of-judges/>

³⁵ This Day(2022) "The Sorry State of Judiciary Budgets and Judges' Salaries" Retrieved from <https://www.google.com/amp/s/www.thisdaylive.com/index.php/2021/05/04/the-sorry-state-of-judiciary-budgets-and-judges-salaries/amp/>

³⁶ NigerianTribune(2021) "Court Orders Edo Govt to Pay Retired Judge #41m Gratuity, Pension Within 30 Days" Retrieved from <https://tribuneonlineng.com/court-orders-edo-govt-to-pay-retired-judge-n41m-gratuity-pension-within-30-days/>

³⁷ TheNation(2021) "Independence of the Judiciary: A recipe for True Democracy in Nigeria" Retrieved from <https://www.google.com/amp/s/thenationonlineng.net/independence-of-the-judiciary-a-recipe-for-true-democracy-in-nigeria-2/amp/>

Moreover, the National Assembly should abolish the controversial Nigeria Broadcast Code and put into place a more sophisticated law to meet with international standard of broadcasting, ensuring that there is not only freedom of speech but freedom after speech. They should also legislate on establishing human rights courts in all states as trial courts saddled with the responsibility of adjudicating on issue of human rights to help in courts decongestion.

To ensure greater independent of the judiciary. It should be funded by been excluded from the annual appropriation. Instead, they should be able to come up with their yearly budget submit directly to the National Assembly. The money approved should be given to them from the first day of every fiscal year. The National Judicial Council should be only body responsible for the appointment, remuneration and dismissal of judge without any approval whatsoever from the president or governors while members of NJC should be voted into by members of Nigerian Bar Association. It goes without saying that with this, they can be able to fund the improvement of the judiciary and its' facilities, better remuneration for members of judiciary and most importantly be independent of policies of the executive like TSA.

Since governors lack the will power to sign death warrant. Nigeria should borrow a leaf from United States of America and cancel death penalty which is the International best practice. Also, the government should properly fund the correction centers, education and health sectors, military and para-military agencies etc. to their state-of-art and in so doing help in the enlightenment, protection and respect of rule of law and fundamental human rights. The

government should also digitalize these agencies with a platforms similar to IPPIS, TSA to help cob corruption which is spreading like malignant cancer.

CONCLUSION

As seen in this paper, the violation of rule of law and human rights is a collective depravity. Therefore, the responsibility of promoting them should also be a collective responsibility. Government and its' agencies especially security operatives and also individuals should know that while the rule of law is the bedrock of any strong Democratic state, the respect of human rights drives democracy through peace, justice and equality. All hands must be on deck to promote rule of law and respect the fundamental human rights of every citizen. May Nigeria succeed!



**LAW, LOGIC AND LANGUAGE:
THE THREE MUSKETEERS OF JUSTICE**

ADEDAYO MICHAEL

UNIVERSITY OF LAGOS

adedayomichaelalexander@gmail.com

ABSTRACT

The Court is said to be the arbiter of justice and order. Knowing that justice is largely subjective, one is therefore tempted to test or interrogate how the Court achieves or grasps such a concept for the purpose of practical application. This adventure is undoubtedly interesting as it exposes one to how the Court arrive at certain seemingly interesting decisions. This paper takes the view that language, logic, and law are the three devices that the Court apply in its quest to ascertain justice when parties submit disputes before it.

1. INTRODUCTION

It is widely believed – and rightly so - that the Court occupy a strategic and essential position in every democratic state. It is also commonplace that a state – democratic or otherwise – that is without a system of law would eventually succumb to disorder and chaos, and ultimately, descend into the abyss, mirroring the primordial state of human organization which Thomas Hobbs rather simply described as “short, nasty, and brutish”.¹ Hence, in every democratic state where a system of law – and government - necessarily exist, the role of the third arm of government is indispensable. The judiciary guarantees the sanctity of laws and democratic principles and also undertake its role, alongside the other arms of government, in the performance of certain obligations such as the maintenance of harmony and order through the administration of justice. However, for justice to be fairly administered and receive a public stamp,² certain instruments are used by the Court. It is humbly submitted that the three essential instruments in the administration of justice are law, logic, and arguably, language. The object of this paper is to discuss these three instruments and show how they are indispensable in the administration of the essential but elusive concept – justice.³

*Adedayo, Michael, undergraduate of Law at the University of Lagos. Contact information: Adedayomichaelalexander@gmail.com; +2348131235344.

1. “Thomas Hobbes: Solitary, Poor, Nasty, Brutish, and Short”, Yale University Press London, 2013, available at: <https://yalebooksblog.co.uk/2013/04/05/thomas-hobbes-solitary-poor-nasty-brutish-and-short/>

² See *R v. Sussex Justices, ex parte McCarthy* ([1924] 1 KB 256, [1923] All ER Rep 233] where Lord Atkin and Lord Hewart submitted that justice should not only be served but be apparent and admitted to having been appropriately served.

³ The concept of justice is elusive because there are several conceptions of justice. It is also subjective as evidenced by the multiple conscience problem. See Plato, *the Five Great Dialogues*, Classics Club, 1942, Book I, p.221-253.

2. THE GRAND PHILOSOPHICAL QUESTION: WHAT IS LAW?

It is only appropriate that a conception of justice from a legal viewpoint begins with an inquiry into *what is law?* After all, justice is a fragmented concept that can only be viewed in bits via lenses, one of which is the law. Law has no generally accepted definition and the question, *what is law?* is both a troubling and boring philosophical question, even to a lawyer. Well, this is not exactly disappointing because of the commonplace knowledge that law is one of those concepts that are usually defined from limited and subjective perspectives. Nevertheless, the definitions provided by various schools of thought exist and are quite helpful in having a grasp of what law is from minute lenses. These schools of thought defined law from their own personal experiences. Additionally, factors like level of education and profession influenced these definitions.⁴

From the perspective of the positivists, law is a command made by the sovereign being which is binding upon his subjects because it is enforced by sanctions. This conception does not necessarily hold because not every person obeys laws because of sanctions.⁵ First, the fact that deviants exist despite the existence of laws backed by sanctions is a classic case against the presumption that subjects fear the power of the sovereign and sanctions. Second, this definition presupposes the existence of a modern impossibility - a definite

⁴ Obilade, A.O., *The Nigerian Legal System*, London: Sweet & Maxwell, 1979, xxxii, 294 p.23

⁵ Ibid.

sovereign. Modern principles of governance such as popular sovereignty, democracy, separation of power, and rule of law preclude the existence of a definite sovereign, making the theory unworkable.

The pure theorists, however, opine that law is a body of norms that exist in a hierarchy and the highest norm in the hierarchy is the *grundnorm*.⁶ Usually, the modern equivalence of the *grundnorm* is the Constitution, the *fons et origo*.⁷ It is however argued that this conception of law is problematic because it is difficult, if not impossible, to determine the *grundnorm* when there have been several displacements of the determiner of the legal order, making every subsequent determiner of the legal order the *grundnorm*. For example, military incursions into government in Africa, including Nigeria, are deemed synonymous with revolutions that change and replace the Constitution with Decrees - which are the highest body of law in military regimes.⁸ And it is of course, logically and intellectually inconsistent for the sake of the theory to say the *grundnorm* changed.

As for the sociological school of thought, the law is dependent on the society - not a sovereign; and the effectiveness of a law is measured by the degree of societal adherence.⁹ Eugene Ehrlich, the foremost proponent of the theory, says “the centre of gravity of legal

⁶ Sanni, A., *Introduction to Nigerian Legal Method*, Obafemi Awolowo University Press Limited, Ile Ife, Nigeria, 2nd and enlarged edition, 2006, p. 11.

⁷ Mowoe, K.M. *Constitutional Law in Nigeria*, Lagos: Malthouse, [Rev.ed] ed, 2008.

⁸ Op cit., Sanni, p.12; The Court in *Lakanmi v. A.G. Western State* (1970) SC.58/69 also deliberated on the question of whether military regimes mark revolutions that do not recognise the Constitution or otherwise.

⁹ Op cit., Obilade,

development lies not in legislation nor juristic science nor in judicial decisions but the society itself.”¹⁰ But it is noteworthy that the law is what shapes societal behaviour, not otherwise.¹¹

The functionalists and the realists place much emphasis on the court of law and argue that the law is what the court says and that a judge has to be objective in administering justice.¹² These are not exactly devoid of conceptual imbalances because, although laws made by legislators are subject to judicial interpretation, most rules are seldom the subject of litigation.¹³ Moreover, judges are humans and cannot be completely exempt from the natural inclination to be biased because of personal affiliations and preferences.

However, beyond the lasting criticisms levelled against these theories of law, there is at least one reason why the definitions and conceptions of these schools of thought are unsatisfactory in the context of answering the grand philosophical question. That is, none of them is a unified, objective, and working definition of law. On the contrary, they are subjective mental pictures that certain persons got from their personal experiences. Just like the proverbial elephant, the law is a whole figure that no one blind man could describe from his standpoint with all accuracy – and reasonably too, with all authority. So, has the last word been said? No!

Traditionally, theorists define a concept using characteristics peculiar to it, its essential features, and features that are general to

¹⁰ Fisher, B.D, *Introduction to the Legal System - Theory, Overview, Business Applications*, West Publishing Co., 1997, p.7.

¹¹ Op cit., Sanni, p. 20.

¹² Ibid, p.19.

¹³ Op cit., Obilade.

its class.¹⁴ This is type of definition is a definition by *genus and difference*¹⁵. Arguably, the wide adoption of this method of definition is because of its general applicability and workability as opposed to other types of definition. Nonetheless, attempts at defining law by genus and difference will only complicate matters as one of its four cardinal rules is, ironically, “restrictive”¹⁶. The rule states that only relevant characteristics of the object up for definition should be stated. This makes definition by genus and difference unsuitable in this case. This is because all the features of law are essential if one is looking to provide a definition that is perfect and deserves no further inquiry into what law is.

Secondly, there is no “conventional” connotation of what law is, so how does one select the relevant characteristics when an acceptable set of characteristics are yet to be agreed upon? Moreover, various definitions of law exist partly because theorists place varying or no value on some characteristics of law. So, to the extent where no generally accepted definition exists, it means the most relevant characteristics of the concept that should be included in a general definition have not been agreed upon. Although this point is debatable on the basis that working definitions of law exist; nonetheless, it is noteworthy that those definitions are at best *ad hoc* definitions and their workability does not translate to acceptability. Speaking of *ad hoc* definitions, which are deeply rooted in one’s

¹⁴ Copi, I.M., and Cohen, C., *Introduction to Logic*, Macmillan Publishing Company, 9th edition, 1994, p.189

¹⁵ Ibid, p. 189. It is also called definition by division, analytical definition, *definition per genus et differentiam*.

¹⁶ Ibid. One of its rules of definition states that a definition cannot be too broad or too narrow.

understanding of the “purposes” of law, it is also noteworthy that the debate about whether the law has to be purposive or otherwise¹⁷ is endless.

Considering how conceptually and practically broad law is and how diverse views on what features are essential in conceptualizing law already exist, it is humbly argued that a definition by even the Almighty genus and difference would do no good in ending the ancient quest for a final solution to the old philosophical question. And although various operational or working definitions of law exist, they are *ad hoc* and none of them pass for a perfect, objective definition that ends all definitions.

From the foregoing discussion, one thing can be said though. It can be said that truly, the concept, law, is indeed elusive. Perhaps Okunniga had this under consideration when he said that, “nobody including the lawyer has offered, nobody including the lawyer is offering, nobody including the lawyer will ever be able to offer a definition of law to end all definitions.”¹⁸ The perfect definition of law cannot be offered by anyone, not the philosophers, and not even those who perpetually worship in the temple of justice – and that is not much of a shame. Therefore, the great philosophical question will be transferred to the next generation of philosophers and legal

¹⁷ Fuller, L.L., *The Morality of Law* (rev. ed) New Haven, 1969, p. 15, cited A. Sanni, *Introduction to the Nigerian Legal Method*, Obafemi Awolowo University Press Limited, Ile-Ife, Nigeria, 2nd and enlarged edition, 2006; Fuller, L., *Lon L. Fuller, Positivism and Fidelity to Law- A Reply to Professor Hart*, Harvard Law Review, 1958, 71(630), 661-64.

¹⁸ Op cit., Sanni, p.20

scholars for contemplation. But for now, one should rather concentrate on how the law is applied in Court.

3. LAW BEYOND THE BOUNDARY OF CONCEPTUAL OBJECTIVITY: STEPPING INTO COURTS' REALITY

Although law is a concept that is impossible to clearly define, during juridical processes, law is applied subjectively¹⁹. The definition adopted in Court – despite being subjective - is preferred to those provided by theorists because their definitions have not been placed on the wheels of realism and pragmatics but mostly serve as descriptive guides. The Court applies law in a more instructive, prescriptive, and consequential way.

To the Court, law does not necessarily have to be conceived in all its eminence for it to regulate human communities as an instrument of social engineering. That would be tantamount to placing technicalities over substance and purpose. Every modern community has what they consider its body of rules, and of course, rules become law when the idea of obligation is involved.²⁰ It is however difficult to think of rules without obligation, even one as simple and base as the suggestion of non-violation of a norm or rule. That is, the rule that says 'thou shall not kill' is a law because it places a negative obligation on the recipient to *not* kill. The obligation here is inherent in the rule. The base obligation is "avoid killing" which is almost inseparable from the rule itself. Some rules are however

¹⁹ The concept of objectivity in this exposition is philosophical. However, with regards to the court of law, it is more concerned with the practicality of objectivity in judicial processes. See Adaramola, F., *Basic Jurisprudence*, Nayee Publishing Co. Ltd, 2003, p.318-19.

²⁰ Op cit., Obilade.

more complex than that and even outline the consequences of breach. It is therefore reasonable to think that, in whatever form these rules exist, whether formal as with laws or informal as with customs, beliefs, traditions, and practices, they are standards of behaviour in that community. Hence, the Court does not have to linger for a Divine Book that provides a perfect definition of law to descend from Heaven before understanding that law regulates human conduct, and as such, apply existing rules that satisfy this simple purpose. So, somewhat, within the universe of the Court, law is what the Court says it is.²¹ Hence, law should be construed in a manner that implies a preoccupation with the administration of justice during Court proceedings because after all, “justice is sometimes taken to be synonymous with, or equivalent to law.”²²

4. JUSTICE IN LAW: WHAT MATTERS?

What is Justice? Is a question that the wisest of ancient Greek philosophers grappled with but could barely explain. Even Lord Denning, the erudite and globally celebrated, had no idea what justice is and is said to have concluded that justice is not temporal but eternal, it is not something we can see. Nevertheless, the erudite justice said that the closest we can come to defining justice is to say it is what the right-minded members - those who have the right spirit within them- in the society say is fair.²³ According to Lord Denning, these are lawyers - and by extension, judges.

²¹ Op cit., Sanni, p.20

²² Giorgis and Campbell, *Justice- An Historical and Philosophical Essay*, University Press, Edinburgh, (1952) 1st ed., p.1, cited in Sanni, A., *The Nigerian Legal Methods*.

²³ Extract from the Book “The Road to Justice” which prints collection of addresses given by Lord Denning while visiting Canada and United States of

From the perspective of the Court and every person who approaches the Court for final legal answers that, apparently, nature, sometimes the legislature, and the society cannot provide, justice is what the Court says it is – after of course, doing due diligence using its three surgical instruments to dissect the matter. Therefore justice is construed as ‘proper administration of laws in jurisprudence, the constant and perpetual disposition of legal matters or disputes to render to every man his due.’²⁴ Worthy of mention is the fact that justice, just like law, can be viewed subjectively by different persons under different circumstances (multiple conscience problem). However, to preserve its sanctity in administration, two legal principles accompany the concept of ‘natural’ justice, namely, *audi alterem partem* and *nemo judex in causa sua*, which are loosely interpreted as follows: (a) both parties must be heard; and (b) a person cannot be a judge in his own case, respectively. It is submitted that the essence of these principles is to add some degree of objectivity to the administration of justice.

Practically speaking, however, both legal principles barely limit the subjectivity bedevilling the realization of true justice. Despite hearing both parties and being disassociated from the case, a judge may be swayed by other factors like colour, disposition, race, inter alia, thereby interpreting and applying the law in an inappropriate way. This is based on the understanding that the judge is a human

America as the guest of the Canadian Bar Associations and the American Bar Associations with the approval and consent of Lord Denning of it being published in the Volume, Post Centenary Silver Jubilee Celebration 1866-1991 (Volume-II) High Court of Judicature at Allahabad < <https://www.allahabadhighcourt.in/postcentenary/RoadOfJustice.html> > Accessed Jan 18 2023.

²⁴ Black’s Law Dictionary, 7th ed., West Group St. Paul Minnesota, 1999, p.599

and cannot be some God-stage uninfluenced umpire as expected. Therefore, another instrument heavily relied on by the Court for balance is the old, cold, mechanical device – logic.

5. THE INTERSECTION OF LOGIC AND LAW

According to Aristotle, one of the most useful instruments in the Court is logic.²⁵ Legal logic, or legal reasoning, is defined as the systematic method of making logical constructions using legal rules and analysis. It is adopted by judges, adjudicators and lawyers when presenting legal arguments, referencing authorities, showing causal and legal relationships, making decisions, applying legal rules and principles, and in pronouncing judgments. This instrument is used by legal practitioners, especially in Court. Other instruments complement legal reasoning, they include legal language, legal rhetoric, and legal rules and principles.²⁶ All these aid the legal practitioner or judge in presenting logically valid and convincing legal arguments. And of course, for logic to apply, facts must exist. ‘Facts’ take the status of premises in this context. Premises – or facts, so to speak - are the building blocks of a legal argument. A legal argument is a body of facts, propositions, or premises (and legal authorities) postulating, declaring or establishing a legal determination or conclusion. Since arguments are supposedly

²⁵ Although there might be oppositions to the supposition, or affirmation, so to speak, that logic and reasoning are indistinguishable, it is very much factual. The only primary difference between reasoning and logic is that reasoning centres on personal opinions that could be reasoned out whereas formal logic is strictly based on rules.

²⁶ Op cit., Sanni, p.118-121

reasoned out, a legal argument is analysed using reason and logic to determine its veracity and persuasive weight.

Traditionally,²⁷ method of reasoning is divided into two forms, namely, deductive and inductive reasoning. Actually, inductive reasoning is more relevant than deductive reasoning in Court.²⁸ This is because facts must first be determined in trial courts; and in establishing them, causal arguments that are based on probability, and scientific methods of an essentially inductive nature come first. Nonetheless, both methods are deemed useful to the legal profession.

Deductive reasoning that takes the form of a categorical syllogism is a method of reasoning in which a specific conclusion of an argument is deduced from two premises - namely the major and minor premises; and from which the conclusion must follow by necessity.²⁹

The major premise is a piece of general knowledge, a popular fact, a universal truth, or an axiom. However, the legal equivalence of these are fundamental objectives, general principles, legal rules or standards, exceptions to a principle or rule, a purpose of law, provisions of a statute, case law decisions or facts, or anything that is generally or domestically recognized by or as law within a geographical boundary – and beyond, in some cases.

The minor premise is, judging from logical conventions, a fact of the case in question. It can also be a reasonable deduction from the facts and the major premise, a hypothesis, a supporting idea or a debatable legal principle that is related to the major premise and necessitates

²⁷ Proceeding on the understanding that legal reasoning and legal logic are interchangeable in terms of form, structure and validity.

²⁸ This is probably because facts are constantly disputed, not laws.

²⁹ Op cit., Sanni, p.121; Copi op cit.

the logicity of the conclusion. The conclusion is the final legal point one makes to complete a legal argument.³⁰ A deductive argument is either valid or invalid. An argument is valid when its conclusion follows necessarily from its faultless premises and invalid when any of its premises are false, thus making the conclusion impossible to follow logically.³¹ The form popularly adopted by this method of reasoning is called categorical syllogism³². That is, there can only be two premises and one conclusion in a single argument and each premise must contain two terms that are used in the argument.³³ The following is a classic illustration of what a categorical syllogism is:

P1: There shall be grave consequences for anyone who violate the Criminal Code

P2: Mr. Taye violated the Criminal Code

C: Therefore, Mr. Taye will suffer grave consequences

There are usually three terms in an argument, namely, the major term, the minor term, and the middle term. The major term is the one that occurs as the predicate of the conclusion and in this case, 'grave consequences'. The minor term is the one that occurs as the

³⁰ See Sanni's analogy on deductive reasoning in p.122.

³¹The informal fallacies that could be committed when the premises do not necessitate the truth of the conclusion include non sequitur, converse accident, the fallacy of division and *ignorantio elenchi*. Additionally, in logic, truth and validity are two different concepts. Logic is mostly concerned with validity. Not all the conclusions of a valid syllogism are true and not all premises of a syllogism may be true but such syllogism may remain logically sound and valid.

³² Copi and Cohen, op cit. The most popular form of deductive reasoning is categorical syllogism. However, there are several other forms of deduction like sorite, enthymeme, etc.

³³ Op cit., Carl and Cohen.

subject of the conclusion and in this case, 'Mr Taye'. The middle term is not contained in the conclusion but must be contained in the two preceding premises and in this case, "the Criminal Code". A close observation would reveal that each premise contains two terms and the conclusion too is no exception.

However, reasoning cannot always be deductive because not all arguments are deductive; not all lay claim on demonstrating the truth³⁴ of their conclusion as following necessarily from their premises; and certainly, not all emanate from a general fact (law). These types of arguments only have conclusions that are 'probable', 'probably true' or 'reasonably possible'. An argument in this category provokes inductive reasoning which is a less strict method of reasoning that is based on the balance of probability (or probable inference), causal relation, and analogy.³⁵ Well, it is less formal in the sense that its form is not strict like that of a categorical syllogism. It does not have a particular number of premises that is mandatory to establish a conclusion.

Furthermore, an argument of this form unlike a deductive argument is not tested based on validity - or invalidity.³⁶ An inductive argument is only tested in terms of the degree of support its premises lend to its conclusion. This method of reasoning is from a particular idea to a general conclusion, the exact opposite of the deductive method. It is constructive rather than deductive³⁷ and is usually used

³⁴ Ibid.

³⁵ Ibid, p.601.

³⁶ Ibid.

³⁷ For example: (P1) Animals are mortals; (P2) Humans are mortals; (P3) Alexander is a human and a mortal; (C) All humans are animals.

in the legal profession to show how precedents, case laws and decisions are similar, dissimilar, or inconsistent and inapplicable altogether.

The most obvious flaw of this method of reasoning, particularly in the legal profession, is that there are different circumstances (facts) that could cardinaly differentiate a judgement in one case from another. Moreover, the decision or judgment of a previous case may not necessarily be binding in another case because the analogy is inappropriate or unsuitable, even when both cases are factually identical to an extent.³⁸ Hence, for judicial precedents to be binding in another case, certain material facts must exist in both, and these material facts must be identical by all means.

6. LOGIC: INVARIABLY COLD-BLOODED OR TEMPERABLE AS REQUIRED?

The essence of these two methods of reasoning is for a judge to arrive at a calculated, rational decision, not simply some personal, unfounded decision of his own. The judge's decision has to align with reason and the laws of logic. However, this obligation is not exactly always binding or strict, there are exceptions, for the sake of justice. In cases where reasoning and logic are arbitrary, unreasonable, inapplicable, or where both will not serve the major purpose of law, which is justice, they will be duly underused. Therefore, after applying logic as duly required in a given case, judges base their final decisions on practical reasoning, which revolves around the following considerations:

³⁸ The concept of distinguishing and practical justification.

- (a) whether the decision is in agreement with existing legal rules and principles;
- (b) whether it agrees with public policies;
- (c) whether it is reasonable to a reasonable person; and
- (d) whether justice is served.³⁹

It is observed that what amounts to public policy, in the perspective of domestic courts, are usually what is considered consistent with the notions of morality and justice, that is, norms that are widely held⁴⁰. But again, public policy may also be what the Court understands it to be. Anyhow, the multiple conscience problem as a hindrance to the attainment of justice cannot possibly be a problem in every case. In some cases, public policy is as simple as a widely accepted norm, therefore, it does not matter what a particular person or group of persons believe, so long a larger number of people accept the decision to be consistent with a norm. But this brings to the fore a question: is the threshold of acceptance important in the administration of justice? It is argued that law – and by extension justice- is more effective – and accepted – when it conforms to the ‘moral feeling’⁴¹ of a greater number of people in a given community. After all, the societal force of a people must be reckoned with in court decisions lest the court performs the exact opposite of its intention, the overthrow of public order and harmony because there is a chance that the people would revolt in response to a judgment they find disturbing and contrary to established norms – and especially, public

³⁹ Op cit., Sanni, p.128.

⁴⁰ Gilles, P., *Enforcement of International Arbitration Awards – the New York Convention*, International Trade Law and Business Law Review, 2004, 19, 39-40

⁴¹ Op cit., Obilade.

morality. It is therefore arguable that public policy is equal to public morality and public norms.

For this purpose, practical reasoning trumps cold logic which does not necessarily consider the elements of public policy. In principle, practical reasoning is a reliable method of justification in cases where deductive and inductive reasoning are too formal and less helpful. The essence of practical reasoning is to attain justice and equity without prejudice. As observed in *Chinwendu v Mbamali*⁴² justice should not be sacrificed on the altar of technicalities (which can be likened to the strict rules of logic).

7. LANGUAGE IN THE COURT: JUSTICE OR NOTHING?

Language can be likened to a magical wand or the weapon of a vicious, angry god; it is capable of birthing clarity, watering ambiguity, and grasping justice - and sometimes, nothing - depending on how it is used and in what context. When used brilliantly, language will yield intended outcomes; it can also be manipulative or deceptive. On the contrary, careless use will breed pointless misunderstandings, ambiguities, and lasting disputes.⁴³ The primary-most uses of language are informative, expressive, and directive. Meanwhile, forms of language are four, namely declarative, interrogative, imperative, and exclamatory. The uses of language can be distinguished from the forms of language in that uses of language are implemented via its forms.⁴⁴ That is, the use of language in a way that is intended to inform or direct an audience can also be

⁴² (1980) LCN/1108(SC)

⁴³ Copi, I.M., Cohen, C., and McMahon, K., *Introduction to Logic*, Pearson New International Edition, 4th edition, 2014, p. 68-69.

⁴⁴ Ibid.

interrogative, declarative, and exclamatory. The various possible combinations that result therefore equip language with different functions, suitable for different situations and contexts. Now, it is the job of the lawyer (and judge) to know what function of language is most effective in pursuing justice - or when it pursues nothing but the interest of their clients because after all, the duty of a lawyer is to make sure that the interest of his client is eloquently and well represented, not justice or truth, that is for the judge to find⁴⁵.

Language has several functions but importantly, it can express emotions and report facts simultaneously. Basically, language is used to convey beliefs, which can be emotional or factual, both of which, independently or collectively, have impacts on the attitudes of both listeners and speakers. Disputes normally arise from ambiguity, belief, or attitude but sometimes, some disputes arise out of linguistic misunderstandings.⁴⁶ In the event of a dispute, what must first be done is to identify the nature of the dispute. There are three types of disputes that can potentially arise from disagreements arising from attitude, belief, or ambiguity.⁴⁷ The first is the obviously genuine dispute where disagreement is usually in attitude and not facts. For example, if A believes that Lagos is in the South West and B denies this, there is a genuine disagreement but a good map will readily resolve the dispute.

The second is one in which the conflict is apparent but not genuine. Disagreements in this category are resolved by agreement about

⁴⁵ Denning, *op cit.*, p.1.

⁴⁶ Copi et al, *op cit.*, p.79.

⁴⁷ *Ibid.*

what some words or phrases mean or should mean. In a law court, it is difficult to see how lawyers will conveniently come to an agreement about what certain words or phrases mean when there are authorities to support both interpretations and when their case rests solely on one of either interpretation. Lord Denning is reported to have criticized this practice among lawyers on the ground that they do not necessarily advocate in the interest of justice anymore but made themselves “technicians” who find escapes in the meanings of words and phrases.⁴⁸ Hence, the burden has to pass to the judge, who will decide what the word or phrase means, especially when determining the meaning of such word or term is necessary.

The third category involves disagreements which are usually verbal but really genuine. That is, a misunderstanding about the use of terms may be involved but when that disagreement is resolved, there remains a disagreement that exceeds the meanings of the words. All these disagreements can arise in court. Sometimes, judges and lawyers have to define terms in a way that strip them of verbal disagreements and parties sometimes disagree over how certain words should be interpreted or construed by the court.

Notably, disagreements as to facts also arise in court, especially at the appellate stage, which is where lawyers try to discredit or extract facts from witnesses through the skillful use of language and rhetorical questions. It is notable that sometimes, lawyers use emotional language and inductive and cognitive reasoning while

⁴⁸ Denning, *op cit.*, p.1

interrogating witnesses to convince the jury to take a certain view or interpretation of witnesses' utterances and conduct.

The emotional inclinations of certain words may be overlooked if their informative function carries more weight.⁴⁹ That is, language can be emotive but informative and logically sound to the extent that the emotional provocation that follows may be ignored. So, it is accurate to conclude that emotive language is welcomed in some contexts, say, in a court. This view influenced Justice John Harlan to say:

Much linguistic expression serves a dual communicative function: it conveys not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well. In fact, words are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech, has little or no regard for that emotive function which, practically speaking, may often be the more important element of the message sought to be communicated. . . . and in the same vein, we cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process.⁵⁰

Nonetheless, it is argued that the extent of the use of emotive language in Court also depends on the nature of the case and the

⁴⁹ Ibid, p.70.

⁵⁰ R. G. Wright, *An Emotion-Based Approach to Freedom of Speech*, Loyola University Chicago Law Journal, 2003, p.429. Available at: <http://lawecommons.luc.edu/lucj/vol34/iss2/4> Accessed 18 January 2023.

whether a party is a plaintiff or defendant. For example, in a human rights violation or infringement case by a state, the attorney representing the state will most likely apply cold, practical reasoning and facts in justifying the intrusive actions than arguments backed by emotions. Meanwhile, the attorney representing the victims will most likely rely heavily on logic and emotive language to incite the emotions of the judges and make them see the extent of the violation or infringement.

Emotive language is even more dangerous when the issue in question has to do with morality, for example, the morality of abortion. Disputes on subjects such as this incite or trigger so emotions in both the speaker and the audience and can distort their rational thinking. This is perhaps why logicians strive to use language in a way that is devoid of emotional meanings, for instance, symbols. But lawyers are not only logicians but advocates that can determine their client's quality of life; hence, any tool that guarantees a favourable outcome (whether justice or otherwise) is justified. This is perhaps why lawyers see language as a very important tool that determines important outcomes and feasts on technicalities of its use or misuse.

Speaking of technicalities, the language of the law (legal language) is perhaps one of the most technical professional languages in existence. The language is a tradition that has been maintained for a long time.⁵¹ The use of archaic English words, Latin, and French maxims, repetition of common words or phrases, use of special

⁵¹ Op cit., Sanni, p.117.

imports for common words, etc., are evidence of the transferred and cherished tradition of common law.

Another interesting feature of legal language, especially as used in statutes, is that it is general and broad, applying to a wide array of situations.⁵² This means that law is worded to apply to a large spectrum of people and in different circumstances. While the rationale behind this is reasonable, sometimes, a statute cannot foresee peculiar circumstances; hence, the Court assume the position of restricting its interpretation for the purpose of the facts of the case or creating exceptions from the general rule (language). Where situations are reversed, the Court may find it necessary to expand the scope of a limited law to apply to a broader set of facts.

Additionally, legal language is also known for its incorporation of abstract terms or common terms used in rather remarkable ways. Lawyers are said to have invented new concepts from common day-to-day words of ordinary business people. These concepts include “contract”, “company”, “rule of law”, “legal personality” and others. While these words have ordinary meanings, they have special implications in the legal universe.

It is practically difficult to detach advocacy from rhetoric. According to Plato, rhetoric is “the art of winning men’s mind with words”.⁵³ Hence, it is rational to say that language is the building block of rhetoric. With regard to how the Court operate, rhetoric is a well-consulted tool. The purpose of rhetoric in Court is to present convincing arguments effectively. According to Aristotle, there are

⁵² Ibid, p.113

⁵³ Ibid, p.119.

two types of rhetoric, namely deliberative and forensic rhetoric. Forensic rhetoric is applied by lawyers and does not necessarily have to embody the reason for a certain viewpoint but only to the interest of who they happen to represent. However, for deliberative rhetoric, the judge is obligated to explain why he is assuming a certain position and he does so using elements of persuasion. Aristotle thinks the noblest of the two types of rhetoric is the deliberative style.⁵⁴

As already noted, language has diverse purposes in Court. It may be used persuasively, it may be used to direct or command actions and inaction, incite emotions, convince, persuade, describe, explain and it may be used to inform and instruct. These are the strict and mechanical applications of language. Emotive language has a powerful influence on the Court and justice. Emotive language is appeals to human emotions and invokes pity or otherwise. It is believed that emotive languages have the potential to trigger the consideration of extra-judicial factors and circumstances. Advocates and judges are humans after all; they may be swayed by legal technicalities and emotive languages or impressive demonstrations. Generally, the use of certain expressions or examples in an argument may be termed fallacies; however, in law, this writer observes that it would seem a special consideration is given so that what would have been called a logical fallacy in ordinary discourse is not criticized or rebutted on the basis of classical fallacies. Therefore, the fallacies that may have been committed when using emotive language are overlooked in law. The rationale behind this bias is probably one

⁵⁴ Ibid, p.119

that favours the ascertainment of justice, the primary objective of law.

Perhaps emotive language is not barred in Court because it may trigger equity which may actually produce reasonable and justifiable decisions in cases where the law is arbitrary or unclear. However, most times, especially when the dictates of existing laws are not vague and pass the tripartite test, logic precludes consideration of emotive languages and decisions that may emanate from such. This is in consonance with the theory of formal justice and certainty of the law.⁵⁵

So, can one say that language also has an impact on justice? To answer this question in the simplest of fashion, one just has to imagine why good lawyers win cases for clients who definitely deserve punishment in the eyes of justice - or the public, so to speak. This means that, although the Court has the duty of pursuing justice, advocates that come before it and the quality of their persuasiveness, the depth of their legal analysis, and their command of language have a huge influence on whether justice or nothing is caught after the pursuit. This is perhaps why Sanni suggested that a serious-minded lawyer must constantly look to improve his mastery of language and word usage.⁵⁶

8. CONCLUSION

To understand how much justice is worth and how all these instruments are objects of justice, one should consider Justice

⁵⁵ *Obafemi Awolowo v. Federal Minister of Internal Affairs* (1962) 4 NCLR 261 FCA.

⁵⁶ Sanni, *op cit.*, p.119.

Oputa's submission in *Laoye v Federal Civil Service Commission*⁵⁷, where he asserted that justice is the major objective of law and it can be ascertained by the ascertainment of truth which can be ascertained through the instruments of the Court in an open trial. It is submitted that the instruments referred to by the learned Justice include legal logic, legal language and legal rules; and apparently, their importance in court proceedings cannot be overemphasized. This paper has shown how these devices are really important to the Court of law in its quest to ascertain justice. It can be said that this quest is indeed a tumultuous one, with lots of difficulties and hindrances along the way, but with the help of these three musketeers, through centuries after centuries, the Court has been able to come close to achieving its objective in any proper human community.

⁵⁷ 1989 SC.202/87.

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