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EDITOR'S NOTE

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Best Regards,

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TOWARDS A LAW PRACTICE DRIVEN BY ARTIFICIAL INTELLIGENCE IN NIGERIA

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Abstract:

The world around us is changing, and the time has come to make a decision – adapt to the changing dynamics of a technology-centred world or remain stagnant¹. It may not always be obvious, but we are living in the age of intelligent machines². Artificial intelligence (“AI”) permeates our lives in numerous subtle and not-so-subtle ways, performing tasks that, until quite recently, could only be performed by a human with specialized knowledge, expensive training, or a government-issued license³. This research analyzes the importance of technology innovation and the role of artificial intelligence towards a sustainable law practise in our modern society and the possible way forward to incorporate the study and advancement of artificial intelligence and robotics in Nigeria’s legal system.

Keywords: Artificial intelligence, technology, innovation, robotics.

1.0 INTRODUCTION:

A revolution is looming but the complete AI revolution will take a little time and will ultimately wash over us in a series of four waves:

¹ Inaingo Dambo, ‘Artificial Intelligence And The Future For Law Firms’,(2019)

<<https://strachanpartners.com/wp-content/uploads/2019/06/Artificial-Intelligence-and-the-future-for-law-firm.pdf>> accessed 9 June 2020.

² Matthew U. Scherer, ‘Regulating Artificial Intelligence Systems: Risks, Challenges, Competencies, And Strategies’,(2016)

<<http://jolt.law.harvard.edu/articles/pdf/v29/29HarvJLTech353.pdf>> accessed 6 June 2020.

³ Ibid

internet AI, business AI, perception AI, and autonomous AI. Each of these waves harnesses AI's power in a different way, disrupting different sectors and weaving artificial intelligence deeper into the fabric of our daily lives.⁴

The Law Practice of yesterday has dynamically changed today and AI poses another disruptive future change. Of course, anticipating the future does not easily lend itself to exhaustive prediction⁵ but we could imagine the amazement that a time traveller from the 1950s would experience from a visit to the present.⁶ What role would AI play in shaping a sustainable Law Practice in Nigeria?

1.1 ARTIFICIAL INTELLIGENCE

The difficulty in defining artificial intelligence lies not in the concept of artificiality but rather in the conceptual ambiguity of intelligence.⁷ At its simplest, AI is the development and use of computer programs that perform tasks that normally require human intelligence⁸. In other words, artificial intelligence is intelligence displayed by machines, in contrast to the natural intelligence displayed by humans and other animals.⁹ AI is not all about robots¹⁰. AI covers a gamut of technologies from simple software to sentient robots, and everything in between, and unavoidably includes both algorithms

⁴ Kai-Fu Lee, 'AI-Super Powers: China, Silicon Valley and The New World Order', Boston: Houghton Mifflin Harcourt, [2018]

⁵ Iria Giuffrida, Fredric Lederer, and Nicolas Vermerys, 'A Legal Perspective on the Trials and Tribulations of AI: How Artificial Intelligence, the Internet of Things, Smart Contracts, and Other Technologies Will Affect the Law', (2018) <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=4765&context=caselrev> accessed 6 June 2020.

⁶ Ibid

⁷ Supra, note 5

⁸ Supra, note 2

⁹ Ademola Adeyoku, 'Artificial Intelligence and the Future of Law Practice in Africa', <<https://www.tekedia.com/artificial-intelligence-and-the-future-of-law-practice-in-africa>> accessed 6 June 2020.

¹⁰ Ibid

and data.¹¹

2.0. THE TRADITIONAL LAW PRACTICE

Traditionally and historically, the legal profession has protected itself from technological disruptions by maintaining a professional monopoly over legal work and limiting the practice of law to only qualified lawyers.¹² The legal industry, over time has been stubborn in protecting itself from change.¹³ Our legal systems tend to be reactive and not proactive, especially when we cannot predict what the future will be like.¹⁴ The law, a notoriously risk-averse profession, now faces a transformation in response to emerging technology.

The case of *Lola v Skadden*¹⁵, held that “tasks that could otherwise be performed entirely by a machine cannot be said to engage in the practice of law,”¹⁶ meaning that once some task can be entirely performed by a machine, that task can no longer be considered to be the practice of law.”¹⁷ The decision may soon spark a global trend.¹⁸

¹¹ Ibid

¹² Supra, note 1

¹³ Professor Konyinsola Ajayi SAN, ‘Conflation of Time: Analogue Practice & Digital Reality’, Lecture delivered at the Prof. A.B. Kasunmu Annual Lecture, Faculty of Law, University of Lagos (2018) UNILAG Law Review Vol 2 No. 2

¹⁴ Supra, note 5

¹⁵ Alyson Carrel, ‘Legal Intelligence Through Artificial Intelligence Requires Emotional Intelligence: A New Competency Model for the 21st Century Legal Professional’,

< <https://readingroom.law.gsu.edu/cgi/viewcontent.cgi?article=2977&context=gsulr> > accessed 9 June 2020.

¹⁶ *Lola v. Skadden, Arps, Slate, Meagher & Flom*, No. 14-384 (2d Cir. 2015)

¹⁷ Supra, note 9

¹⁸ Supra, note 9

3.0. THE REALITY OF AI IN TODAY'S LAW PRACTICE

AI is rapidly infiltrating the practice of law.¹⁹ Undoubtedly this is a time of rapid technological transformation, with Artificial Intelligence (AI) technologies being an increasingly core area of focus for top and mid-tier law firms in their long-term strategy.²⁰ The days going, and gone in some places, where activities – [such as: legal research; prediction of legal outcomes; due diligence; and review of client document could only be done by human beings.²¹ The alarming headlines and predictions of artificial intelligence (AI) replacing lawyers have no doubt created discomfort for many attorneys already anxious about the future of their profession.²² AI will fortunately not replace most lawyers' jobs²³ at least in foreseeable future.

Today, Artificial Intelligence (AI) is being used by professionals all over the world to improve on daily tasks – the law is not spared. Hence, artificially intelligent legal solutions, such as Kira Systems, eBrevia, Wevorce, IBM's Watson and ROSS Intelligence, are reshaping the legal market in other parts that are awake to the season and not taking time as fixed as judicial precedent.²⁴

4.0. ROLE OF AI TOWARDS A SUSTAINABLE LAW PRACTICE IN NIGERIA

Clients are demanding that lawyers provide faster, cheaper, and better service²⁵. Unlike the clients of the '70's who could be impressed by

¹⁹ Supra, note 2

²⁰ Ben Mears, 'The Potential for AI in the Law Firm of the Future', <<https://www.collectivecampus.io/blog/the-potential-for-ai-in-the-law-firm-of-the-future>> accessed 7 June 2020

²¹ Supra, note 13

²² Supra, note 21

²³ Supra, note 13

²⁴ Supra, note 13

²⁵ Supra, note 21

the pleasant-sounding Latin of our legal principles, the 21st century client has become accustomed to a service level that seeks for clarity of language, brevity of advice, speed, without sacrificing accuracy or content on the altar of efficiency.²⁶

Therefore, AI can create sustainable Practice of Law in Nigeria in many areas, which include:

a. Due Diligence: “Kira” is a form of AI for law—used for contract review, analysis, or knowledgeable management. Kira can mitigate the risk of errors, enable faster deal-making, increase speed, and ultimately, improve value while keeping both the client and lawyer satisfied.²⁷ In 2015 alone, Kira was trusted with over USD 100 Billion Dollars’ worth of transactions, and currently in use by top professional services firms such as Freshfields, Herbert Smith Freehills, Fenwick & West LLP, DLA Piper, Deloitte.²⁸

b. Prediction Technology: There are AI software like Ravel Law, Premonition etc that are being used to predict and to identify outcomes based on relevant case law, judge rulings and referenced language from more than 400 courts.²⁹

AI such as these can aid Nigeria firms.

c. Legal Research: Developing more AI software like Law Pavilion would be more advantageous and provide Lawyers & Judges efficient e-research tools.

²⁶ Supra, note 13

²⁷ Cody O’Brien, ‘How Artificial Intelligence Will Affect the Practice of Law?’, <<https://digitalcommons.sacredheart.edu/cgi/viewcontent.cgi?article=1283&context=acadfest>> accessed 7 June 2020

²⁸ Ibid

²⁹ Supra, note 21

d. Legal Analytics: Legal analytics use big data, algorithms, and AI to make predictions from or detect trends in large data sets.³⁰ For example, Lex Machina, now owned by LexisNexis, uses legal analytics to predict trends and outcomes in intellectual property litigation, and is now expanding to other types of complex litigation.³¹

e. Document Automation: This encompasses the design of (AI) systems and workflows that assist in the creation of electronic documents.³² Documents are now easily automated via AI software that generates and drafts documents in a couple of minutes.

f. Intellectual Property (Ip): Within IP management, AI can empower IP professionals. Day-to-day IP tasks can be time consuming, but AI technology enables professionals to focus on more strategic decisions in their portfolio.³³

g. Practice Management: Practice Management is a practice and case management software that provides attorneys with convenient methods for effectively managing client and case information, including contracts, calendar and meeting information, documents, and other specifics.³⁴

h. Electronic Billing: Electronic Billing platforms provide an alternative to paper- based invoicing with the goal of reducing disputes on line items, more accurate client adjustments,

³⁰ Gary E. Marchant, 'Artificial Intelligence And The Future Of Legal Practice',

<<https://www.documentcrunch.com/ai-news-artificial-intelligence-and-the-future-of-legal-practice.html>> accessed 9 June 2020

³¹ Ibid

³² Supra, note 28

³³ 'The Role of Artificial Intelligence in Intellectual Property',

<<https://www.ipwatchdog.com/2017/07/27/role-artificial-intelligence-intellectual-property/id=86085/>> accessed 9 June 2020.

³⁴ Supra, note 28

(potentially) more accurate reporting and tracking, and reduced paper costs.³⁵

5.0. CONCLUSION

AI has come to stay. For us to be competitively relevant to clients and be on the same pedestal with professionals across the globe, we need a paradigm shift to reflect the AI reality. The path to using artificial intelligence is not quick and requires planning, resource building, trial and errors, a continuous approach and culture shift – all before any benefit is realised.³⁶ Now is the time for all law firms to commit to becoming AI ready by embracing a growth mindset, set aside the fear of failure and begin to develop internal AI practices³⁷.

6.0. RECOMMENDATIONS

1. There is need for deployment of AI in our criminal justice system to address issues of finger prints, data base and face identification of suspects etc
2. The Law School curriculum should capture the current AI reality in the training of prospective Lawyers
3. Relevantly, Law Firms should start incorporating solution driven AI measures
4. There is a need for AI regulation in the profession so as to have an efficient technology driven practice.

³⁵ 'AI in Law and Legal Practice – A Comprehensive View of 35 Current Applications', <<https://emerj.com/ai-sector-overviews/ai-in-law-legal-practice-current-applications/>> accessed 9 June 2020.

³⁶ Supra, note 1

³⁷ Supra, note 13

COVID 19: ASSESSING CHINA'S CULPABILITY THROUGH INTERNATIONAL LAW

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Abstract:

Every country around the globe was thrown into panic in December, 2019 when the pandemic disease of corona-virus broke out in China. This disease gradually spread from China to other parts of the world accounting for the loss of several lives and critical sickness of persons. Irrespective of different measures put in place by the government of various countries, the disease meticulously found a way to transmit itself into these countries wrecking irreparable havoc to affected nations and the global economy. Majority of human rights activists have since condemned the government of the Republic of China for not containing the virus when it broke out and as such, should be held responsible under existing international laws.

This paper examines and analyzes the outbreak of the virus in China, the Chinese legal system as regards international law, possible liabilities that may arise from breach of international instruments, the practicability of bringing the Chinese republic before international courts and possible solutions which may serve as a better framework to avoid the occurrence of such international legal crisis in future.

THE CORONAVIRUS DISEASE 2019 (COVID19)

The term "COVID19" is an abbreviation for Corona-Virus Disease 2019. The disease which broke out in Wuhan, China is an infectious disease caused by a severe acute respiratory syndrome corona-virus 2 (SARS-CoV-2). Due to the outrageous cases of persons who have contacted this virus and in the worst cases, lost their lives around the globe, it has been declared a "pandemic" disease by the World Health Organization. This disease spreads primarily through droplets of

saliva or discharge from the nose when an infected person sneezes and thereby makes it very susceptible to easy contact by other non-infected persons¹.

CHINA'S LEGAL STATUS ON INTERNATIONAL LAWS

The People's Republic of China is a country is located in East Asia and the world's most populous country. The legal status of China on international law remains debatable as there exists two views on whether it should be regarded as a monist or dualist state². It is a fact that China is a party to multilateral international instruments and it was also established that China has currently signed and ratified 273 multilateral international treaties³. However, there is a need to determine its procedure on the applicability of international treaties in order to conceive whether such laws are binding on China and whether she can be held liable under these laws irrespective of its sovereign immunity. The monist view is based on the Chinese practice that a treaty is superior to municipal law in application, though the Chinese Constitution has no express provision on the status of international treaties⁴. This was further substantiated by the 1986 General Principles of Civil Law which provides that if any treaty concluded or acceded by China contains provisions different from those in the domestic civil laws of China, the provisions of international treaty shall apply, unless they are ones to which China has made reservations.⁵

The dualist view is based on the practical approach of China to international laws. The Chinese government had in past made

¹ www.wikipedia.org/wiki/coronavirus_disease_2019 accessed on 15th July, 2020.

² Valparaiso University Law Review, Vol. 44 No. 3 (2010), Art. 10

³ Hanqin Xue, China's Open Policy and International Law, 4 Chinese J. INT'L, 136 (2005)

⁴ See Wang Tieya, International Law In China: Historical And Contemporary Perspectives (1990)

⁵ Article 142 of the General Principles of Civil Law, in the laws of the people's republic of china 291 (1983-1986)

necessary domestic laws or guidelines for the implementation of international treaties. They argued *inter alia* that where the UN Law of Sea Convention was ratified by China in 1996, the country at domestic level promulgated the Law on the Territorial Sea in 1998 for its application.⁶ There is however a third view which is premised on modifying the dualist approach by stating that there is no common field of operation between international law and municipal law and as such no system is superior or inferior to the other. They concluded that though the two systems are different, they are closely linked and complement each other⁷.

It may therefore be postulated following a holistic consideration of the above views that promulgation of domestic laws on some international instruments by China only exists as a guide for its implementation when necessary. International laws are thereby highly regarded by the Chinese legal system and as such, it is bound by all international treaties acceded to and the obligations thereof.

CHINA'S CULPABILITY THROUGH INTERNATIONAL LAW

The basic essence of analyzing China's legal system is to determine whether the Chinese Republic can be held liable under its domestic courts for violation of international instruments ratified by the country. It is therefore pertinent to know that the type of legal system a country operates does not affect their culpability in international courts so long the treaty or international instrument that empowers the court with jurisdiction has been ratified. The difference in instituting an action in a domestic or international court comes into play where there is a need to determine the *locus standi* of the plaintiff in an action. In domestic courts, only individuals or citizens can challenge the state in the court while in international realm, *locus standi* is limited to state parties who have ratified the treaty

⁶ Zou Keuyan, China's Marine Legal System And the Law Of The Sea 342-345 (2005)

⁷ WANG, *supra* note 10, at 191-192

(and in some cases, NGOs with observer's status).⁸ In the context of examining these international treaties offended by the Republic of China, it must be stated that the country would incur the same liabilities in domestic and international courts if found guilty of breaching these treaties (except as to the extent of remedy that can be granted) and as such, international treaties and their obligations as related to the topic would be discussed jointly.

The Chinese Republic can be held to have breached a span of obligations under various international treaties for its failure to contain the outbreak of the corona-virus when it broke out in its most populous county, Wuhan. These international treaties and its provisions would be outlined as follows:

• THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

The Rome Statute is the treaty that established the International Criminal Court which governs the prosecution of four core international crimes which are Genocide, Crime against humanity, War crimes and Crime of aggression amongst its state members. Article 7(1)(k) of the Rome Statute provides that crime against humanity includes "*any other inhumane acts of a similar character intentionally causing great suffering or serious injury to body, mental or physical health*". It may be argued that the Chinese republic can be found liable under this provision for its failure to contain the virus as this is circumstantially lucid to have been used as a means of causing great suffering to other states.

• INTERNATIONAL HEALTH REGULATIONS⁹

The International Health Regulations is an international health treaty adopted by the World Health Organization (WHO) to combat global or pandemic diseases. It provides in Article 6 and 7 that state parties are "*to notify the WHO by the most efficient means of*

⁸ See Article 14 of Rome Statute

⁹ 2005

communication available by way of the National IHR Focal Point within 24 hours of assessment of public health information” and “where a country has evidence of an unexpected or unusual public health event within its territory, it shall provide to WHO all relevant public health information”. The essence of these provisions is to enable the WHO carry out its duties of informing other countries of such development so as to prevent a wide spread attack of such disease.¹⁰ It is very lucid that the Chinese has failed to uphold this provision as it failed to notify the WHO of the disease at its early stage leading to the spread of the virus to other countries that had no notice of the disease.

• DRAFT ARTICLES ON THE RESPONSIBILITIES OF STATES FOR INTERNATIONALLY WRONGFUL ACTS (ARISWA)

The ARISWA are principles on progressive development adopted by the International Law Commission (ILC)¹¹ to govern the extent of responsibility of a country for a breach of an international obligation. This treaty is the yardstick used in determining whether a state has breached an international obligation and has been cited by the International Criminal Court in several cases.¹² Article 2 of the ARISWA provides that *“an international wrongful act consist of an action or omission attributable to the state under international law and constitutes a breach of an international obligation of the state”*. It further provides in Article 12 that *“there is a breach by a state when an act is not in conformity with what is required of it by that obligation, regardless of its origin and character”*. It is therefore irrefutable in light of the aforementioned international obligations canvassed and failure to maintain these obligations according to international standards that the Chinese Republic is liable for the spread of the corona-virus pandemic disease.

¹⁰ Article 11 and 12 of IHR

¹¹ On August, 2001

¹² Gabčíkovo-Nagymaros Project (Hungary/Slovakia), ICJ Reports 1997, at 7

PRACTICABILITY OF BRINGING THE REPUBLIC OF CHINA BEFORE INTERNATIONAL COURTS

The liabilities of the Chinese Republic have been analyzed using different international treaties. It is however pertinent to note that the Republic of China remains a sovereign country with unfettered power to regulate itself in international matters especially as regards jurisdiction of international courts over the country. Therefore, irrespective of the underlying treaties cited, one needs to consider whether in reality, the Republic of China can be prosecuted or sanctioned by the International courts or tribunals for breaching provisions of international treaties. This becomes more imperative considering the fact that national court does not have jurisdiction to entertain international matters between states except as between a state and an individual or NGOs within the territory.¹³

The first treaty pointed out by this article is the Rome Statute which is adjudicated upon by the International Criminal Court. The Rome Statute provides in Article 12 that *“A state which becomes party to the statute accepts the jurisdiction of the court and the court can exercise jurisdiction if one or more of the states have accepted the jurisdiction of the court.”* This provision lucidly shows that the state to be held liable must submit itself to the jurisdiction of the court before it can be tried.¹⁴ In this instant case, the Chinese Republic have neither ratified the Rome Statute nor show any indication that it will submit itself to the jurisdiction of the International Criminal Court. A possible alternative to this is prosecution through the UN Security Council under Article 13(b) of the Rome Statute and Chapter VII of the Charter of the United Nations. However, a seemingly obstacle which may befall the institution of the case is that China, being one of the five permanent members of the UN Security Council has the power veto against the prosecution and as such, cause a natural death of the case *ab initio*.

¹³ Op cit. footnote 8

¹⁴ India v Pakistan ICGJ 515 (2017)

The second treaty identified is the International Health Regulations adopted by the World Health Organization. The World Health Organization happens to be a specialized agency of the United Nations responsible for international public health. Therefore, any dispute arising from the violation of such treaty will be presided upon by the International Court of Justice, a court established by the Charter of the United Nations as its principal judicial organ for settlement of disputes among state parties. The Statute of the International Court of Justice which governs the ICJ provides in Article 36(2) that “*the states parties to the present statute may at any time declare that they recognize as compulsory ipso facto and without any special agreement, in relation to any other state accepting the same obligation and jurisdiction of the court in all legal disputes...*”. The basic interpretation of this provision is that the competence of the ICJ to hear any matter is based on express consent by the disputing parties. This position was re-echoed in *Treatment in Hungary of Aircraft and Crew of the United States of America (United States of America v. Hungary)*¹⁵ where the court held that it could not allow an application in which it was acknowledged that the opposing party did not accept its jurisdiction. Therefore, this may also operate as an obstacle to prosecute the Chinese Republic which has been popularly known for rejection of the jurisdiction of ICJ in several matters.¹⁶

The ARISWA which is the last treaty discussed in this article is set of international measures used as a parameter to determine the breach of an international obligation under various treaties and can thus be adopted by any court without recourse to a special jurisdiction.¹⁷

CONCLUSION

The essence of examining China's legal system and position on international courts alongside the possible obligations they might be

¹⁵ [1954] ICJ Reports 103

¹⁶ Philippines v China PCA Case No. 2013-19 dispute over South China Sea

¹⁷ Op cit. footnote 12

held liable for under international treaties is to determine the extent of her liability and culpability. While one may easily highlight her liability under provisions of international treaties, but only a total consideration of the treaties, legal system and position on international courts may reveal whether it can be successfully found culpable for those violations.

China's geographical location on the world map has made it very convenient for it to evade ratification of leading international treaties and courts jurisdiction. The basic focus of affected states by the pandemic should not be the litigation of China in international courts for the cause of the pandemic disease but rather focus its resources and energy in combating the virus and reducing loss of life of their respective citizens.

However, there is also a need to curtail the occurrence of this event from happening and international bodies such as the United Nations should find a way to combat these events post-pandemic. The Chinese Republic must be sanctioned in order for her to realize that its negligence had been actively instrumental in the spread of the disease to other countries which resulted in extensive economic, social and physical damage to lives and properties. The Rome Statute and the Statute of International Court of Justice should be reviewed to reflect that serious breach of international obligations would not be tolerated. In any case, where the accused state holds a veto power, it should not be allowed to exercise such power for the purpose of evading justice. These international courts must also in cases where it finds a state guilty of the charges brought against it, impose extraneous sanctions such as seizure of foreign assets without necessarily causing havoc or hardship for its citizens.

It is hoped that this paper serves as a factor to recognize existing problems which would lead to the creation of a better framework to ensure a healthy and peaceable relations amongst countries in the world.

SEDATIVES OF THE PRIMARY EDUCATIONAL SYSTEM: A CASE STUDY OF CHILD LABOUR, CHILD ABUSE AND ALMAJIRI SYSTEM IN NIGERIA

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Abstract:

The right of a Child to education has been recognized as fundamental to the growth of the society. In line with this, various laws have been passed in order to ensure that every Nigerian child gets the required formal education he/she needs to be able to survive and contribute actively and positively to the society, as well as to possibly eradicate the problem of illiteracy in the country. But although these laws have been passed, certain problems have proven to be detrimental to the achievement of this cause, and thereby hindering the maximum achievement of the goal of ensuring every Nigerian's attainment of a good level of formal education. This paper aims to shed light on some issues serving as hindrance to the achievement of this cause while also creating awareness on some salient issues with regards to the primary educational system in Nigeria.

1.0 Introduction

It is no surprise that the first tangible formal education given to a child as the foundation upon which his future is built, is given at the “Primary school”. Education obtained at this level is indeed ‘primary to life’, as it **molds** the character, and morals of a child.¹ Unfortunately, certain factors are detrimental to the success of the primary educational system in Nigeria. This paper will be examining

¹ The National Policy on Education of Federal Republic of Nigeria, 2004b:14.

this issue in the light of: Child Labour, Child Abuse and the Almajiri system in Nigeria.

2.0 What is Primary Education?

Primary education is *“the education given in an institution for children aged 6-11 plus”*. It is the basis upon which the educational system is premised and in turn determines the success or failure of the whole system.² The goals of primary education include;

1. Inculcating permanent literacy and effective communication skills.
2. Laying a sound basis for reflective thinking.
3. Give citizenship education as a basis for effective participation and contribution to the society.
4. Develop good character and morals in the child.
5. Develop in the child, the ability to adapt to changing environment.³

2.1 Who is a child?

The Child Rights Act, 2003⁴, defines a child as *“a human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”*.

Unfortunately, only 25 of the 36 states in Nigeria have domesticated the Act⁵. It further states that, it shall be the duty of the Government to provide free compulsory universal basic education to every child, as well as the duty of the parent or guardian of such child to ensure

² ibid

³ Nnamdi. A. (2014) Relevance and Challenges of Primary Education to the overall development of the child and the Nigerian society, p.56.

⁴ A domestication of the United Nations Convention on the Rights of a Child.

⁵ Available at <https://www.premiumtimesng.com>, accessed on 22nd August, 2020

that he attends and completes his primary and junior secondary education. Section 15 of the Act provides thus:

(1) Every child has the right to free, compulsory and universal basic education and it shall be the duty of the Government in Nigeria to provide such education.

(2) Every parent or guardian shall ensure that his child or ward attends and completes his

- a) primary school education; and*
- b) junior secondary education.*

Section 6 further states:

(6) Where a parent, guardian or person who has care and custody of a child, fails in the duty imposed on him under subsection (2) of this section, commits an offence and is liable:

- a) on first conviction to be reprimanded and ordered to undertake community service;*
- b) on second conviction to a fine of two thousand naira or imprisonment for a term not exceeding one month or to both such fine and imprisonment; and*
- c) on any subsequent conviction to a fine not exceeding five thousand naira or imprisonment for a term not exceeding two months or to both such fine and imprisonment."*⁶

Although these are provided for in the Child Rights Act, UBEC Act⁷ et al, the constitution does not expressly provide for the rights of a child. Thus, where a lacuna is created by the constitution itself, no other law can efficiently fill that gap.⁸ This explains why despite

⁶ See also s2 (1), (2) & (4) of the UBEC Act, 2004.

⁷ *ibid*

⁸ Ikpe, U.S (2016) Critical Analysis on the Right of Children to Education under International Law: A case study on Nigeria, ABU, Zaria, p.4.

the existence of child right laws, their implementation are not yielding.

3.0 Child Labour and its Effects on the Nigerian Primary Educational System.

Child Labour refers to any activity that proves detrimental to the physical and mental health of a child and which hinders his proper development.

Based on ILO Convention No. 138 and 182, “Child Labour” is defined as;

“Ages 5-11 = all children at work in economic activity,

Ages 12-14 = all children at work in economic activity minus those in light work,

Ages 15-17 = all children in hazardous work and other worse forms of child labour.”⁹

Child labour is usually caused by poverty, limited access to compulsory free education, violation of existing laws, etc. This in turn reflects negatively on the primary educational system in Nigeria.

The Child Rights Act prohibits child labour which could be in form of domestic work, hawking, begging and other forms of exploitation¹⁰. It has proven to reflect negatively on the primary education of a child such that it;

- i. contributes to poor performance in children who combine work and education;
- ii. negatively affects school attendance;

⁹ (ILO,IPEC,2002, P.19)

¹⁰ s28-33 of the CRA, 2003.

iii. lowers net primary enrolment ratios.¹¹

In a study conducted by Neumann & Morgenstern, it was discovered that the time and energy a student utilizes for his employment will be directly subtracted from the time and energy which otherwise available, will be used for either school related activities or with family and friends.¹²

Furthermore, victims of child labour are more likely to fail or repeat a grade (or both) at school than their counterparts who do not work. Studies show that even an hour of work per day increases the probability of failing at school and this eventually proves detrimental to the educational system and cause lifelong psychological problems to the child, and the child in turn adds to the problems of the society.

4.0 Child Abuse and its Effects on the Primary Educational System.

Child Abuse is any act of physical or psychological maltreatment or neglect¹³ that may endanger the overall development of a child.¹⁴ The Child Rights Act¹⁵ provides for proper maintenance, as well as entitlement to all necessities related to the proper development of a child.

Child Abuse does not only occur at home alone, but also in school and other places as well. Most times, in the process of trying to correct or punish a child, the adult involved ends up committing child abuse. In the case of **Maryland Comprehensive Secondary**

¹¹ Enrollment need not be from Grade 1. See also “Negative effects of Child Labor on Education”, available at <https://globalpartnership.org>, accessed on 22nd August, 2020.

¹² Neumann & Morgenstern, 1994.

¹³ Neglect here could include negligence to the overall wellbeing of the child e.g. physical appearance, immunization ,etc.

¹⁴ Adult here refers to any person in whose care the child is kept whether related or not.

¹⁵ s2 &20, CRA, 2003

School, Olabode &Ors. V Master Mehdor Attah Normah Awoh &Ors¹⁶, two students were slapped, beaten, insulted and humiliated on the assembly ground with their clothes torn to shreds. In this case, the court held thus:

"...we frown at a circumstance where the right of the child is abused. Sir, you will agree with me that, the attitude of the Administrator is not corrective but rather an abuse on the right of the child. We are therefore forwarding this petition that the injustice meted out to this child of his because of his inability to fight for himself in the prevailing circumstance should be corrected by prosecuting the school Administrator for child abuse..."

Child Abuse may be in form of physical abuse, sexual abuse, neglect or emotional abuse,¹⁷ which means that it includes child labour. In sexually abused children for instance, cognitive ability and academic achievement are lower than their peers'. A study of sexually abused 7-12-year-old girls showed that; 39% faced academic difficulty, 24% repeated a grade, 15% enrolled in remedial classes, 48% obtained below average grades and 31% displayed cognitive ability below 25%.¹⁸

Child Abuse constitutes a barrier to the attainment of sound educational development in the country. A child who is constantly flogged by his mathematics teacher is more likely to fail mathematics, than a child who is treated with kindness. In the same vein, a child who faces abuse at home tends to suffer certain deficiencies outside the home such as an inability to assimilate quickly in comparison to his mates, eventually hindering the achievement of the goals of primary education, and negatively affecting the life of such child in the future as well. Little wonder why Herbert Ward made the statement "*child Abuse casts a shadow*

¹⁶ (2017) LPELR-44042(CA)

¹⁷ Forms of Child Abuse available at <https://www.1child.net> accessed on 22nd August, 2020

¹⁸ Diagnault & Herbert, 2009.

the length of a lifetime". Child Abuse is bigger than what meets the eye and unfortunately, not many cases of Child Abuse and child labour have been adjudicated upon.

5.0 Almajiri System and its effects on the Nigerian Primary Educational System.

“Almajiri”, gotten from the Arabic word “Al-Muhajirun”, refers to a person who migrates his home in search of Islamic knowledge. This is predominantly practiced in northern Nigeria.

During the Pre-colonial era, Al-majiri was created to educate children in Islamic knowledge and it was funded by the state treasury, the community parents, Charity controlled by Emirs, Alms and sometimes, the farm output of the students. However, with the emergence of the Colonial era, many changes were made to the system including the defunding of the system, and the emirs losing control of their territory. With no support from the community, Emirs and government, the system collapsed.

Today, the term “Almajiri” now refers to boys from poor backgrounds between the ages of 3 and 12 who beg on the street and do not attend a regular school.¹⁹ The Mallams who teach them do not receive salaries and only depend on the alms of the community and the work of the Almajiri for economic sustenance.

Unfortunately, the Almajiri system does not promote secular education. Losing its purpose, it has now become a fusion of child labor and abuse. Due to poverty, ignorance and unemployment factors, parents send their children to the Almajiri School instead of the secular schools, and since this is predominant in northern Nigeria, it has interfered with the maximum achievement of the goals of primary educational system of the north in comparison to its

¹⁹ Omeni.A.(2015) The Almajiri in Northern Nigeria: Militancy, perceptions, challenges and state policies, African Conflict and Peace Building Review, s (2):128-142.

southern counterpart. A UBEC Almajiri system²⁰ was introduced but unfortunately, many northern states are still yet to put this project into motion.

6.0 RECOMMENDATIONS

- 1.Public enlightenment programs should be set in motion in order to combat ignorance of what constitutes child labour and abuse.
- 2.Cases bordering on child labour and abuse should be taken more seriously and adjudicated upon. This would create precedent in law on when correction crosses the line and becomes abuse and strengthen the various Child Right laws as well.
- 3.There should be restrictions on the "spare the rod and spoil the child" rule. Preferably, schools should prescribe the forms of punishment that should be meted out on students.
- 4.Laws should be set in motion to create compulsory training workshop requirement for employment of teachers, with regards to prevention and recognition of all forms of child maltreatment.
- 5.The UBEC Almajiri system should be adopted and supported by governments of various northern states.

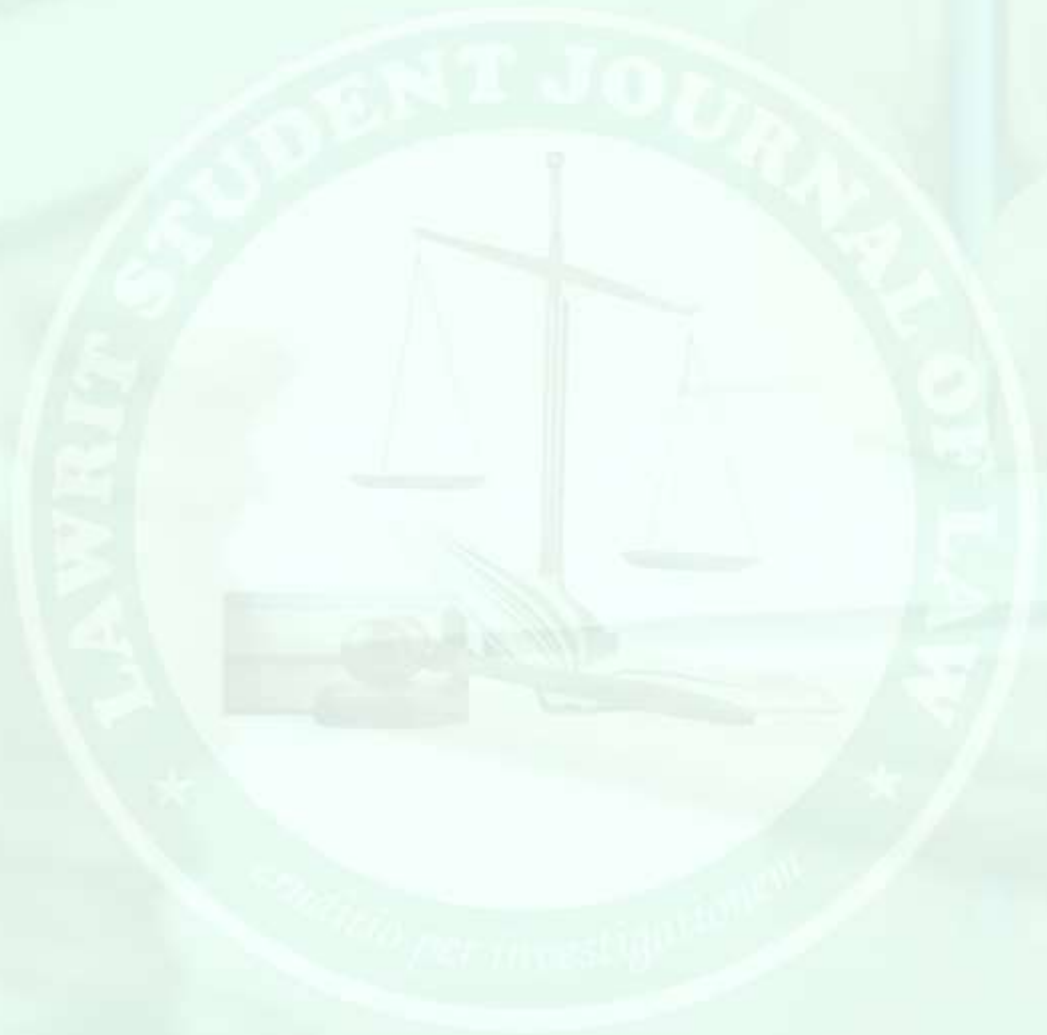
7.0 CONCLUSION

It is a great gain saying that the "youth are the leaders of tomorrow" and a fraction of these youth are children. A child's success in school is proportional to the success ratio of the educational system. When a child's primary education is negatively affected, it latently affects the nation's overall development. Just as the great Oracle of Law, Lord Denning once said "*You cannot put something on nothing and expect it to stay there, it will collapse*".²¹ A child's future, the future of the country and the future of the world at large, depends on the quality of what is obtained during the early stages of Childhood which includes Primary education. Therefore, it has become

²⁰ An integration of the Almajiri system into the secular educational system

²¹ *Macfoy v United African company limited* (1961) 3 All ER 1169

pertinent to ensure that all hindrance hampering a child's access to quality primary education be tackled appropriately.



THE CONSTITUTIONAL RIGHTS TO FAIR HEARING OF AN ACCUSED UNDER THE NIGERIAN LEGAL SYSTEM

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Abstract:

In the Nigerian Legal System, the constitutional rights of an accused person are enshrined in section 35 and 36 of the Constitution of the Federal Republic as amended (CFRN). When a suspect is described as having rights, he is acknowledged to be entitled to some rights claimable under the law. The Nigerian system grants suspects/accused persons fundamental rights, that are also in the sense of natural rights or inalienable rights granted to every individual. Among which are the rights of an accused to be represented by a legal practitioner, the right to be presumed innocent and regarded as such until otherwise proven guilty and many others. All these rights are entrenched in the constitution to ensure strict adherence and protect individuals from being unjustly dealt with. This study is aimed at analyzing those rights as stated in the Constitution of the Federal Republic of Nigeria (CFRN)

Keywords: Rights, inalienable rights, Nigerian Legal System, Suspects

INTRODUCTION

An accused person is one charged with an offence. The generic name for the defendant in a criminal case. Person becomes "accused" within meaning of guarantee of speedy trial only at the point at which either formal indictment or information has been returned against him, or when he becomes subject to actual restraints on his liberty imposed by arrest, whichever first occurs¹. Rights are freedom

¹ Black's Law Dictionary, 6th edition

and advantages that everyone should be allowed to have. It is what is morally, legally and officially allowed to do². Rights are what advocates fairness, equality, freedom and respect to all. When an accused person (one charged with an offence) is described as having rights, he is acknowledged to be entitled to something for which he has a just claim under the law. By virtue of man's creation, he has certain rights which are common to those of all other men. Most of the fundamental rights are in a sense natural right vested in every individual and to which he is entitled without any obligation or duty on the part of the government to provide facilities for their enjoyment.

RIGHTS TO FAIR HEARING

In regard to criminal matters, section 36(4) of the 1999 Constitution³ provides that *“any person charged with a criminal offence, except the charge is withdrawn, is entitled to a fair hearing within a reasonable time by a court of law”*.

Although, the Constitution does not define the term “fair hearing”, yet the courts have proffered some judicial definitions to it. In the case of *Ezechukwu V. Onwuka*⁴, the Court of Appeal pointed out that; *“Fair hearing is a hearing which is fair to all parties to the suit, whether the plaintiff, the defendant, the prosecutor, or the defense. It is a doctrine of substance and the question is not whether injustice has been done because of lack of fair hearing rather ... whether a party entitled to be heard has been given an opportunity of being heard... fair hearing entails doing during the course of a trial all that will make an impartial observer to believe that the trial has been balanced... to both sides...”*⁵

The principle of fair hearing as enshrined in the Constitution is often illustrated by the “twin pillars of justice” expressed in the Latin

² Longman Dictionary of Contemporary English New Edition (Longman Group Ltd, 1999) p1226

³ Laws of the Federation of Nigeria Cap 23 2004

⁴ (2005) All Federation Weekly Law Report pt.280 pp. 1553.

⁵ Ibid

maxim; Nemo judex in causa sua and audi alteram partem. A breach of this doctrine of fair hearing in a judicial inquiry renders the action unconstitutional, illegal and liable to be set aside. These principles are stated as follows:

i. A person charged with a criminal offence must be tried within a reasonable time: The constitution guarantees to every person charged with a criminal offence the right to be tried within “a reasonable time”⁶. Trial within a reasonable time is fundamental to a fair trial because undue delay impairs the ability of an accused person to defend himself through the facts that are vital to his defence and witness might have died or the interval or the recollection of the facts by other witnesses might have become blurred. There is also the danger of the trial judge losing his impression of the demeanor of the witness after the lapse of time during which he has to watch the demeanor of witnesses⁷. Undue delay is thus fraught with the danger of miscarriage of justice, and for that reason it is frowned at by courts. Furthermore, a public arrest exposes the person involved to anxiety and concern which is unfair to be prolonged unduly.

ii. Right to publicity of a criminal trial.

Under section 36(4), whenever a person is charged with a criminal offence, he shall unless the charge is withdrawn be entitled to a fair hearing in the public⁸. In other words, the room or place in which any trial is to be conducted shall be an open court to which the public may have access as far as it can conveniently contain them⁹.

⁶ Constitution of the Federal Republic of Nigeria 1999(amended) 2011 S 36(4)

⁷ Professor B.O Nwabueze, The Presidential Constitution of Nigeria (sweet & Maxwell) pg. 411

⁸ Similar provisions are contained in section 203 of the Criminal Procedure Act, and section 225(1) of the Criminal Procedure Code.

⁹ Section 36(4) C. F.R.N. 1999 (amended) 2011

The provision to section 36(4)¹⁰ further classifies certain instances when the public may not be permitted during a criminal trial. These situations are considered;

i) In the interest of defense, public safety, public order and public morality.

ii) For the welfare of persons who have not attained the age of eighteen years;

iii) To protect the private lives of the parties to the proceeding;

iv) Upon the satisfaction of court by the Minister of Government of the Federation or a Commissioner of a State that it would not be in the public interest for any matter to be publicly tried, the court may hear such evidence in camera.

v) During trial of juvenile;

vi) When an enactment expressly requires that a trial shall be held in camera. In all these circumstances, when proceedings are being heard in camera, except the court expressly stated otherwise, bona fide representative of mass media, court officials and legal practitioners appearing in the case are permitted in court¹¹.

iii. Right to presumption of innocence

The popular common law presumption of the innocence of an accused person until the contrary is proved otherwise known as the rule in *Woolmington v. D.P.*¹², is entrenched in section 36(5), that every person who is charged with a criminal offence, no matter how heinous, shall be presumed to be innocent until he is proved guilty¹³. This presumption does not however invalidate any law which may require the accused person to establish particular facts. The burden of establishing the guilt of an accused person rests throughout on the prosecution. It is only upon such proof beyond reasonable doubt that the burden is shifted on to the accused. It is submitted that proof

¹⁰ C. F.R.N. 1999 Cap C23 L.FN 2004

¹¹ Criminal Procedure Code, section 205

¹² (1935) Appeal Cases 465.

¹³ Section 36(5) C. F.R.N. 1999 (amended) 2011

beyond reasonable doubt does not however, mean proof beyond a shadow of doubt. What is required of the prosecution is to lead strong and cogent evidence against the accused.

iv. Right of the accused to be promptly informed of his offence

By virtue of section 36(6) (a), a person charged with a criminal offence shall be entitled to be “informed promptly” in the language he understands, and in detail, of the nature of the offence¹⁴. The right that the accused must be informed promptly is an obvious extension of the well-known common-law rule that once a person is arrested, he should be informed that he is arrested for a particular reason. The rationale behind informing the arrested person of the reason for his arrest is to enable him realize that his personal liberty is lawfully interfered with while the reason for informing him about the charge against him is to enable him prepare his defence. Insufficiency of details, like failure to furnish grounds for an arrest, is not a mere matter of procedure which can be cured by appropriate remedy; its effect may invalidate the trial and any conviction resulting from it. It is also a violation of the right to have fair trial to convict a person of an offence which he is not charged with.

v. Right to adequate time and facilities to prepare for his case¹⁵.

A person charged with a criminal offence is “entitled to be given adequate time and facilities for the preparation of his defence”. It is after the person would have been told of the charge against him that the issue of time and facilities for preparing his defence would arise. Consequently, this aspect of fair hearing has been argued in Nigerian courts on several occasions. The contentions have tended to center on the request on the part of the accused to get an adjournment in order to consult or obtain the services of a counsel to be able to invite witnesses to court for his defence. For any of these, the accused will

¹⁴ C. F.R.N. 1999 (amended) 2011 Section 36(6) (a)

¹⁵ C. F.R.N. 1999 (amended) 2011 Section 36(6) (b)

naturally need some time. In *Gopka v. I.G. P*¹⁶, where the accused was brought to court under a bench warrant to stand trial for offences of stealing and fraudulent accounting, he applied for an adjournment to enable him retain the service of a counsel to defend him. A short adjournment was granted to him until later in the afternoon. At the resumed hearing, counsel was not in court. He was subsequently convicted. On appeal, there was evidence before the court that any available counsel would have had to travel to court from the nearest town, a distance of about 23 miles to the court, and hence the short adjournment was inadequate. In allowing the appeal, the appellate court also pointed out that the accused ought to have been granted a longer adjournment to enable him engage the services of a legal practitioner.

vi. Right to Employ Counsel of His Choice.

It is a cardinal principle in the administration of justice that a party to a suit ought to have a legal practitioner of his choice to defend his interest in any case or matter. This right is constitutionally fortified by the provision of section 36(6) (c)¹⁷ which expressly declares that an accused person shall be entitled to defend himself in person or by a legal practitioner of his own choice. Similarly, under the Criminal Procedure Act¹⁸, both the complainant and the accused are entitled to be represented in court by the counsel of their own choices. Although, the Constitution is silent on the need for compulsory legal representation of a person charged with a capital offence, yet both the Criminal Procedure Act¹⁹ and Criminal Procedure Code²⁰ provide for it. Both enactments guarantee that any accused person charged with a capital offence who is unrepresented by counsel shall be assigned one by court, if practicable, for his defence. The constitutionality of the mandatory legal representation for capital

¹⁶ (1961) 1 All Nigerian Law Report, 423)

¹⁷ C. F.R.N. 1999 Cap C23 L.FN 2004

¹⁸Section 211(1)

¹⁹ Section 352

²⁰Section 186

offences have been judicially tested and pronounced upon in our court of law in *Josiah v. The State*²¹. In that case, an accused person was charged with the offence of armed robbery and murder. Although, he was not represented by a counsel, the trial court went ahead and convicted him. On a further appeal to the Supreme Court the apex court held that failure of the appellant to be represented by counsel was a denial of fair trial. In *Awolowo v. Minister of Internal Affairs*²², the constitutional phrase, 'legal practitioners of his choice' was interpreted to mean a legal practitioner that could enter Nigeria as of right.

vii. **Right to have an interpreter.**

Section 36(6) (e) provides that where the accused person does not understand the language of the court, in which the proceedings are to be conducted, he is entitled to the assistance of an interpreter free of charge²³. Such interpretation must be full, accurate and without any distortion. It is for the accused person or his counsel to notify the court that he does not understand the language in which the trial is being conducted, else, it would be presumed that there is no complaint in that respect. The procedure may be dispensed with where the accused person so wishes and the trial judge is of the opinion that the accused person does not require any interpretation of the proceedings. In *Sampson Uweakwehinya v. The State*²⁴, the Supreme Court held that if the accused person does not ask for an interpreter, the failure to supply one would be treated as a procedural irregularity and a conviction may only be set aside if it had led to a miscarriage of justice. However, if a counsel represents the accused,

²¹ (1951)1 Not Criminally Responsible 27

²² 1962) LLR 177.

²³ Section 36(6) (c) C. F.R.N. (amended) 2011 62

²⁴ (2005)6 MJSC 1 at 17,18

the objection must be taken at the trial in the first instance, and not on appeal²⁵.

CONCLUSION

The right to a fair trial deals with procedures and can sound dull. It is not. Rights without remedies are pointless and it is through court hearings that remedies can be ordered. Defendants in criminal charges are up against the full might of the state. It is vital that these trials and other procedures are fair and that even the weakest or most unpleasant persons are treated equally and are able to make their cases or defend themselves under equal terms with the powerful.

An accused under the Nigerian Constitution, Section 36(4) is constitutionally endowed with the right to Fair Hearing within a reasonable time frame of his arrest. The fair trial serves as global justice Watchdog for a just society. Every person accused of a crime should have their guilt or innocence determined by a fair and effective legal process. But it's not just about protecting suspects and defendants. It also makes societies safer and stronger. Without fair trials, victims can have no confidence that justice will be done. Without fair trials, trust in government and the rule of law collapses²⁶.

²⁵ O. Oluwamuyiwa, "Right of An Accused Person Under the Nigerian Criminal Justice System" <https://www.academia.com> (2020) accessed August 13, 2020

²⁶ "The Right To a Fair Trial" <https://www.fairtrials.org/right-fair-trial> (August 30,2020) <<https://www.fairtrials.org?right-fair-trial>> accessed September 6, 2020

EXTENSIVE EXPOSITION ON THE CONCEPT OF LAW.

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Abstract:

Following the complaints of fresh law students about their lack of understanding of the concept/objective of law, it is paramount that an explicit and lucid explanation be given for proper understanding. A good foundation should also be laid so as to enable freshers have undeniable knowledge of their voyage of study.

This research provides a background study of law and its various concepts, such as Justice, Order, Freedom, State, Legitimacy and Sovereignty. The essence of the work is to simplify the study of law by providing an ultimate understanding of the concepts and objectives of law.

1.INTRODUCTION.

The term 'objective' or 'concept' of law means the scope of law or what the law seeks to achieve. Also, they are common and essential terms associated with the law in order to have a better understanding of law. In every given society, there exist a set of rules of conduct that regulates the societal norms in order to bring about peace, stability and tranquillity for the proper administration of the state. For clarity of purpose, the following questions would be determined: what is law? What are the concepts of the law? What are the objectives or things the law seeks to achieve?

2. MEANING OF LAW.

The word 'Law' is applied across all discipline and field of study such as law of gravity, law of demand and supply, law of nature etc. However, law in this context would be defined as a rule of conduct,

set of rules and regulations usually made by the legislative arm of government, as may be proposed by other professional body vested with powers for proper administration, discharge of justice and the effectual functionality of the whole legal system of a country. Furthermore, law according to **PROF. (SIR) JOHN W. SALMOND** (1862–1924) is *“the set of rules accepted and applied in the administration of a state”*.¹ In the same vein, **HARMAN MARX** (1911-1975) law as *“the reservoir of rules from which judges draw their decision”*.² To **KARL N. LLEWELLYN** (1893-1962) an American jurist and author, *“what officials do about dispute is the law”*.³ In the words of **SIR WILLIAMS BLACKSTONE** (1723-1780), *“law is the rule of action which is prescribe by some superior and which the inferior is bound to obey”*.⁴

The term ‘LAW’ has never been subjected to specific generally accepted definition in the flux of man. To this end, Okunola states that *“Nobody including the lawyers has offered, nobody including the law is offering, nobody including lawyer will ever be able to offer a definition of law to end all definitions”*.⁵ However, this is not to say that there are no definitions of law, but that all definitions provided thus far are subject to criticisms and are based on individual professional opinion.

In respect with the above definitions, it is worth knowing that the term ‘LAW’ is a complex word and also seeks to achieve many things in the society. Therefore, the concept of law can be grouped into six (6) jurisdictions: Order, Justice, Sovereignty, Freedom, State and Legitimacy.

¹ The Nigerian Legal Method by Ese Malami Pg. 6&7

² Ibid

³ Ibid

⁴ Ibid

⁵ A. O. Okunniga, op. cit.

3. ORDER.

Order means a state well arranged, peaceful, calm and harmonious. It also means the power to enforce a rule. The primary function of law is to do justice which in turn brings about orderliness in the society. The classical function of any government is to maintain law and order, protect lives and properties within its territory and ward off external aggression.⁶ So, the word law and order are meant to achieve justice. In the words of **Thomas Hobbes** (1588-1679), “*without law, life will be solitary, poor, nasty, brutish and short*”⁷; which means a state of being will not be in order. It is the duty of the government through the law to maintain orderliness in the society without infringing on the rights of any person(s).

4. JUSTICE

According to Black’s Law Dictionary: “*justice is the proper administration of law in jurisprudence, the constant and perpetual disposition of legal matter or dispute to render everyman his dues*”. It can also be defined as the impartial decision of disputes. Also, it can be further said to be the right application of law provided those laws are not draconian, obnoxious or unjust. Thus, judges are encouraged to do justice outrightly. In the words of **Lord Gordon Hewart** in **R v. Sussed justice, ex parte McCarthy** he said: “*it is not merely of some importance, but it is of fundamental importance that justice should only not be done but should be manifestly and undoubtedly be seen to be done*”.⁸ Judges are therefore encouraged to do justice which is the primary function of existence of law so as to produce orderliness.

Justice is divided into two forms, which are formal justice and substantial justice. Formal justice is the strict application of law without external consideration. According to **Lord Eldon** in

⁶ See Abiola Sanni (Introduction to Nigerian Legal Method; Law in social context) p.31

⁷ The Leviathan (Ch. 12), 1651

⁸ (1924) 1 KB 256. LPDC v. Fawehinmi (1985)

Sheldon v. Goodrich,⁹ “it is better that law should be certain, then that every judge should speculate upon improvement in it”. This shows and supports that law should be applied validly as stated by the positive theory of law. This class is justified *inter alia* that it creates no room for impartiality and prejudice in adjudication since a judge is never allowed to show preference to either parties. However, the formal application of law has been criticised on the ground that some laws are unjust and unfair and inhumane and the application of which could bring about injustice as against the intent of the law maker, hence the need for substantial justice.

Substantial justice is the lenient application of law where formal or rigid application would manifest absurdity or injustice such that the right intent of the law is made manifest. The use of extra consideration by judges is known as ‘judicial activism’. On this note, the court of equity was carved out of common law court. This court was created to do substantive justice where the application of common law would result to injustice.

5. SOVEREIGNTY

Sovereignty means the right power of a state or society to exercise and enforce law. Sovereignty can also mean the non-interference in the decision of a member state in internal affairs among comity of nations. Sovereignty is the full right and power of a governing body over itself, without any interference from outside sources or bodies. This principle was introduced by a French philosopher and writer, Jean Bodin (1529-1596). Thus, every law has an element of sovereignty. In the law of Nigeria, sovereignty reside with the people of Nigeria as seen in Section 14(2)(a) of the 1999 Constitution of the Federal Republic of Nigeria (herein after referred to as CRFN 1999), ‘*sovereignty belongs to the people of Nigeria from whom government through this constitution derives all its powers and authority*’. In a democratic society, sovereignty often belongs to the people opined by Abraham

⁹ (1803) 32 ER 441 at P.447

Lincoln as 'government of the people, by the people and for the people'. However, sovereignty/supremacy may vary in the place which it resides. Thus sovereignty/supremacy could reside in the people for example Nigeria as seen in section 14(2)(a) of the constitution; it could also reside in the parliament, such as parliamentary supremacy in United Kingdom, or reside in the constitution (as seen in Section (1)(1) 1999 CFRN) *This constitution is supreme and its provision shall have binding force on the authorities and persons throughout the federal republic of Nigeria; If any other law is inconsistent with the provisions of this constitutions, this constitutions shall prevail and the other law shall, to the extent of its inconsistency, be void*'. Finally, it could reside in a dictator either the military or traditional ruler etc.

However, with this level of sovereignty and supremacy, there are certain limitation to it, such as: external nations (domestication of treaty of international bodies)¹⁰; imposition of rules on the populace; military rules and so forth. The people can still exercise their supremacy in voting process, recall process of their legislative representative¹¹, referendum of rules, lobbying and so forth.

6. FREEDOM.

Every man's utmost desire is freedom. The quest for freedom has made man engage in numerous wars¹² and thereby leading to political independence of many countries.¹³ Freedom is thus a state of freeness, right and ability to do things without interference. It is often said that: 'where there is a duty, there is also a corresponding right and vice versa'. However, there is no absolute freedom in the world. So, the right of a citizen can be enforced through the law. IN

¹⁰ See Section 12(1) of 1999 Constitution of the Federal Republic of Nigeria.

¹¹ <https://punchng.com/breaking-inec-begins-dino-melays-recall-process/>

¹² See the American war of Independence 1775, French Revolution of 1789 and Kano riot of 1953.

¹³ Nigeria independence of 1st October, 1960 among others.

Nigeria, the rights of citizens are specified and entrenched in Chapter 4 of the 1999 CFRN.

For example, Section 33 provides for right to life; section 34 provides for right to personal liberty etc. Formerly, a child born outside wedlock is considered illegitimate; however, section 42 provides for non- discrimination of persons from inheritance by reason of his birth. In the case of *Alake v. prat*,¹⁴ the court ruled on the bases of this section. Also, the right and freedom of person is signed under the 'United Declaration of Human Right of 1948' and 'African charter of Human Right of 1981'. In the case of *Abacha v. Fawehinmi*¹⁵, Nigeria Constitution and African Charter of Human Rights were the bases of the Plaintiff's claim.

However, the right and freedom of an individual can be restrained under many circumstances. The Utilization school of law¹⁶ holds that the right of an individual can be restrained if it is for the greater good of the society. For example, the right to movement can be restrained on the grounds of state of emergency or curfew; right to life is denied upon committing an offense of capital punishment; right to vote and be voted for can also be restrained as being an electoral official, or due to age limitation and so forth.

Freedom is divided into different parts, such as: political freedom, freedom of contract, freedom of social life etc. But no matter what the freedom is, it should never be used to disturb others.

7. STATE

A State can be defined as a political geographical territory with a population and working government that has sovereignty (power to rule). Before a society can be called a state, it must contain certain

¹⁴ Ibid

¹⁵ (2000) 6NWLR pt. 660, p. 228 SC

¹⁶ Propounded by Jeremy Bentham (1748-1832)

elements. These elements are: a definite geographical location; population; government; and sovereignty.

Section 2(1) and section 2(2) of 1999 CFRN provides that '*Nigeria shall be one indivisible and indissoluble sovereign state to be known by the name Federal Republic of Nigeria.*' and '*Nigeria shall be a federation consisting of states and the Federal Capital Territory*'.

However, the state is an abstract thing to note and the vehicle or wheels it employs to operate is the government. Government can therefore be said to be an agency or machinery through which the will of the state are formulated, enforced and attained. It can also be defined as a body vested with power and authority from the state to maintain peace, security and stability in a fundamental and conventional way in the society.

Thus, the government and the state are inseparable in term because they work together. The Government adopted by a State varies from territory to another. For instance, in Nigeria, we practice a federal system. In Britain, Parliamentary system is adopted, while Ghana operates a Unitary System of government etc. The system adopted by a state makes the state a subject of criticism and controversial question.

8. LEGITIMACY.

Legitimacy is something is Free, Right and Legal. What is legitimate is legal and vice versa. Thus, what is illegitimate cannot claim for what is legitimate and vice versa. In the case of *Ashmore, Benson, Pease & Co Ltd v. Dawson Ltd*¹⁷, in 1967 the plaintiffs, Ashmore, Benson, Pease & Co, manufactured tube tanks and the defendant, AV Dawson, a haulage company. The plaintiff contracted with the defendant to help them convey some piece of equipment to the port. The defendant loaded his vehicle in excess of weight against the ROAD TRAFFIC ACT OF 1960, S.64(2). The defendant

¹⁷ (1973) 1 WLR 828

on the road to deliver the equipment had an accident as a result of which the car tumbled and got the equipment damaged. The plaintiff sued for breach of contract and damages. The court held that an action cannot be illegitimate and claimed for legitimacy. Thus, the plaintiff knew the action was illegitimate as it violates the existing law and this therefore invalidate their claims.

Formerly, a child born outside wedlock or marriage act considered the child illegitimate and thus, not entitled to inheritance of the paternity. But as a result of section 42 of 1999 CFRN which is against discrimination of human, the custom was nullified. The case of *Alake V. Prat*¹⁸ is a practical example of Legitimacy.

In conclusion of the foregoing, it is important to note that the concept and objective of law is essential to the proper understanding and knowledge of Law. However, the concept law does not limit the scope of law as Law is wide and complex.

¹⁸ (1955) 5 WACA 20. Also, Re Adadevoh (1951) 13 WACA 304, *Mojekwu v. Mojekwu* (1997) 7 NWLR Pt. 512, p. 283 CA

A STUDY OF ELECTRONIC SIGNATURE AND ITS LEGAL VALIDITY IN NIGERIA.

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Abstract:

In a legal environment, signature is commonly the means of authenticating a document. Before now, what was the commonest form of signature was a handwritten signature of the signer indicating his 'acceptance' or 'consent' to a legally binding commitment such as contractual terms or payment. With the advent of computers, this form of signature has changed, what is now prevalent is an electronic signature authenticating an electronic document. Electronic signatures extend the function of handwritten signatures to electronic documents, providing a way for two parties to conduct business confidently in an electronic environment.

In this article, I have explored the meaning, forms, functions and legal validity of electronic signature and discussed the legal framework on electronic signature particularly in the context of Nigeria.

1. Introduction

A signature is 'any name or symbol used by a party with the intention of constituting it his signature'.¹ The main purpose of statutes requiring a particular document to be signed by a particular person is to confirm the genuineness of the document.² The feature and function of a signature was endorsed in the case of *Goodman v J. Eban Ltd*,³ where the court said that the essential requirement of signing is the affixing in some way, whether by writing with a pen or pencil or

¹ Alfred E. Weber v Dante De Cecco, (1948) 1 N.J. Super. 353, 358

² Lobb v Stanley [1844] 5 QB 574; 114 E.R. 1366

³ Goodman v J. Eban Ltd [1954] QBD 550

by otherwise impressing upon the document, one's name or 'signature' so as to personally authenticate the document.

Prior to the advent of computers, a handwritten signature was the only universally acceptable mode for individuals to make apparent on paper-based documents that they are who they say they are and that, often, they agree to be bound by whatever they are signing.⁴ Signing a document is, first and foremost, an act of will. Therefore, it is very important for the individual signing a document to have the assurance that he fully saw and understood what he signed⁵ because after signing, the signer is usually held bound by whatever he signed.⁶

The Legal signature requirement as a condition for the validity of certain acts in common law jurisdictions is traceable to the Statute of Frauds⁷ which was originally passed in Great Britain in 1677 for the prevention of many fraudulent practices and perjury.

With the onset of the electronic age and the rapid development of newer technologies, online security became more significant as security compromises are one of the major barriers to building users' trust in electronic commercial transactions. Electronic signature made its appearance and has been considered an equivalent to traditional handwritten signatures or stamps,⁸ and as a means of ensuring authenticity of electronic documents and security.

The article examines the meaning, forms and functions of electronic signature and discusses the legal framework on electronic signature particularly in context of Nigeria.

⁴ Lord Denning in *Goodman v J. Eban* [1954] QBD 550 at 56 said: 'In modern English usage, when a document is required to be signed by someone that means that he must write his name with his own hand upon it'.

⁵ Valentin Pau and Luminita Copaci, 'Digital Signature: Digital Protection Method' (2016) 2016 Int'l Conf Educ & Creativity for Knowledge-Based Society 11

⁶ *L'Estrange v F. Graucob Ltd* [1934] 2 KB 394

⁷ Statute of Frauds, 29 Car. II, c. 3 (1677) (Eng.) Section 4.

⁸ F. Wang, *Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China* (Oxford: Routledge, 2010), 77.

2. Definition and Concept of Electronic signature

The term 'electronic signature' is a generic, technology neutral term that refers to the many ways in which a person may indicate consent to and an association with an electronic document. Unfortunately, there is no statutory definition of what amounts to an electronic signature in Nigeria and the courts have not had the opportunity to define it.

The UNCITRAL Model Law on Electronic Signatures defines an 'electronic signature' more specifically as 'data in electronic form in, affixed to or logically associated with a data message and to indicate the signatory's approval of the information contained in the data message'.⁹ In the same vein, The ECOWAS Supplementary Act A/SA.2/01/10 on Electronic Transactions within ECOWAS defined electronic signature as, 'any data emanating from the use of a reliable data procedure or identification procedure which guarantees its link with the act that is attached to'.¹⁰

Lim¹¹ defines electronic signatures simply as an electronic confirmation of authenticity. As simple as this definition is, the definition encompasses all forms of electronic signature, from the very informal (and insecure), such as initials at the end of an email, to the very formal (and highly secure), such as digital signature.

Electronic signatures extend the function of handwritten signatures to electronic documents, providing a way for two parties to conduct business confidently in an electronic environment. Electronic signatures aim at creating the same level of confidence associated with handwritten signatures.

⁹ UNCITRAL Model Law on Electronic Signatures (2001) Article 2.

¹⁰ ECOWAS Electronic Transactions Act 2010 Article 1.

¹¹ Yee Fen Lim, 'Digital Signatures, Certification Authorities: Certainty in the Allocation of Liability' (2003) 7 Singapore Journal of International & Comparative Law 183.

3. Forms of Electronic Signature

According to Wang 'Electronic signatures can take many forms and can be created by many different technologies. Common forms of electronic signatures include but are not limited to password or personal identification number (PIN), e-mail signatures, smart cards, biometrics, scanned signatures and digital signatures.¹²

The commonest of these forms of electronic signature will now be examined hereunder;

a. Picture Scanned Signatures

This is a scanned image of a handwritten signature in digitalized form. The image is developed from a traditional signature that is scanned and transferred to an electronic document, the digital image file could then be attached to the document file as an electronic signature.¹³ While it is convenient and less costly to use picture-scanned signatures, it is however very easy to forge such a signature as much less skill and effort is required to scan a paper.¹⁴

b. Email signatures

This type of Electronic signature is formed by printing the name, and title of the sender on the electronic mail or by attaching a scanned signature of the sender to the email. In recent years, more and more email signature software has been launched to help users develop a more secure email signature; for example, some signature creation software may help in the creation of 'handwriting' signs/symbols to accent the individuality of the user's signature in email messages.¹⁵ In the *Singaporean case of SM Integrated Transware*

¹² F. Wang, *Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China* (2nd ed, Oxford: Routledge, 2014), 130

¹³ F. Wang, *Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China* (2nd ed, Oxford: Routledge, 2014)

¹⁴ *Ibid*

¹⁵ *Ibid*

Pte Ltd v Schenker Singapore (Pte) Ltd,¹⁶ it was held that names typed in an email correspondence constituted valid signatures.

In *Doherty v Registry of Motor Vehicles*,¹⁷ the Court held that a police report in email format, that identified the officer making the report and stated that it was made under penalty of perjury, was effectively signed by the reporting officer, even though the report did not contain a handwritten signature. In coming to this conclusion, the Court followed earlier decisions to the effect that statutory signed writing requirements do not necessarily require a handwritten signature. In some cases, mere acknowledgement of an email by the sender or recipient amount to signing.¹⁸

c. Digital signatures (advanced electronic signatures)

A Digital signature is the use of public key encryption systems, to ensure the authenticity of electronic messages and guarantee the integrity of the contents of these messages. A digital signature is ‘an asymmetric key operation where the private key is used to digitally sign data and the public key is used to verify the signature’.¹⁹ Digital signatures ‘provide authenticity protection, integrity protection, and non-repudiation’.²⁰

Digital signatures are created and verified by using cryptography,²¹ Digital signatures use what is known as public key cryptography,

¹⁶ [2005] SGHC 58.

¹⁷ Mass. No. 97CV0050

¹⁸ *Ashakacem Plc v Asharatul Mubashshurun Investment Ltd* [2019] LPELR-46541(SC)

¹⁹ Electronic Authentication Guideline, National Institute of Standards and Technology (NIST) US Department of Commerce, Draft NIST Special Publication 800–63–2, February 2013. Available at: <http://csrc.nist.gov/publications/drafts/800-63-2/sp800_63_2_draft.pdf> accessed 9 August 2020.

²⁰ Ibid.

²¹ ‘Cryptography is the act of secret writing composed of a series of ciphers and codes used to hide the content of a message’. F. Wang, Law of Electronic

which is often based on the use of algorithmic functions to generate two different but mathematically related 'keys'²² for the encryption and decryption process, which are known as a private key and a public key.²³ Digital signature is the only form of electronic signature which satisfies all three of the UNCITRAL security evaluation factors, i.e., that an electronic signature should: (1) authorize; (2) approve; and (3) protect against fraud.²⁴

Digital signatures are easily transportable, cannot be imitated by someone else, and can be automatically timestamped.²⁵

d. Personal Identification Number (PIN)

Personal identification number (PIN) is 'a set of numbers or characters generated and shared between the system and the user'.²⁶ PIN is the most widely used method of 'authentication' for purposes of access control and identity verification in a broad range of transactions, including most internet banking transactions, cash withdrawals at automated teller machines and consumer credit card transactions.²⁷

Commercial Transactions: Contemporary Issues in the EU, US and China (2nd ed, Oxford: Routledge, 2014), 130.

²² United Nations Commission on International Trade Law, Promoting Confidence in Electronic Commerce: Legal Issues on International Use of Electronic Authentication and Signature Methods (Vienna: United Nations Publication, 2009).

²³ F. Wang, Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China (2nd ed, Oxford: Routledge, 2014), 130.

²⁴ K.H. Pun, Lucas Hui, K.P. Chow, W.W. Tsang, C.F. Chong & H.W. Chan, 'Review of the Electronic Transactions Ordinance: Can the Personal Identification Number Replace the Digital Signature?' (2002) 32 Hong Kong Law Journal, 252.

²⁵ Mohammad Hasan Murad, 'A study of Digital Signature and its Legal Implications in Context of Bangladesh' (2010) 6 IIUC STUDIES 111.

²⁶ F. Wang, Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China (2nd ed, Oxford: Routledge 2014), 129

²⁷ See Enas M Qutieshat, 'The Use of Electronic Signature in Validation of Electronic Contracts from the Jordanian Perspective' (2019) 89 JL Poly & Globalization, 62

e. Biometrics

A biometric is 'a measurement used to identify an individual through his or her intrinsic physical or behavioural traits'.²⁸ Common traits that may be used for recognition in biometrics include DNA, fingerprints, iris, retina, hand or facial geometry, facial thermogram, ear shape, voice, body odour, blood vessel patterns, handwriting, gait, and typing patterns.²⁹

f. Biodynamic version of a manuscript signature.

This is an electronic version of a handwritten signature that is signed directly on an electronic document with the aid of electronic pen and pad. After signing on the pad, the signature is automatically reproduced on the computer screen and a series of measurements record the behaviour of the person as they perform the action.³⁰ Virtually all Nigerians are familiar with this form of electronic signature, this is the form of electronic signature used in Bank Verification Number (BVN) registration in Nigeria.

With the advent of smart phone, there became ease of writing and signing on phone note app, and this, aided the increased use of an electronic version of a handwritten signature in authenticating electronic documents. In *in Re Estate of Javier Castro*,³¹ the testator and his witnesses signed his Will on a tablet using a stylus. The court found that the testator's signature satisfied the legal requirements of the Wills Act stating that 'the tablet application also captured the signature of Javier. The signature is a graphical image of Javier's

²⁸ United Nations Commission on International Trade Law, Promoting Confidence in Electronic Commerce: Legal Issues on International Use of Electronic Authentication and Signature Methods (Vienna: United Nations Publication, 2009)

²⁹ Ibid; see also Enas M Qutieshat, 'The Use of Electronic Signature in Validation of Electronic Contracts from the Jordanian Perspective' (2019) 89 J.L. Pol'y & Globalization, 62

³⁰ S. Mason, Electronic Signatures in Law (London: Institute of Advanced Legal Studies, 2016)

³¹ 2013-ES-00140 (Ct. Comm. Pl. Lorain Cnty., Probate Div, Ohio, June 19, 2013)

handwritten signature that was stored by electronic means on the tablet'.³²

4. Functions of Electronic Signature

Generally, signature serve four specific functions as identify by the American Bar Association.³³ They are Evidence,³⁴ Ceremony,³⁵ Approval,³⁶ Efficiency and logistics.³⁷

In addition to these functions, qualified electronic signature (digital signature) serves the following purposes and functions:

- a. **Authentication:** Electronic signature provides authentication of the identity of the signer by attributing the message to the signer, to know who participated in a transaction.³⁸ The rationale of this function is based on the fact that digital signature cannot easily be forged, unless the signer loses control of the private key either accidentally or intentionally
- b. **Integrity:** Electronic Signature protects the integrity of the electronic document it is attached. Documents that are authenticated

³² Ibid

³³ American Bar Association, Digital Signature Guidelines Tutorial. Section of Science and Technology Information Security Committee. <http://www.americanbar.org/groups/science_technology.html> accessed 9 August, 2020.

³⁴ A signature authenticates a writing by identifying the signer with the signed document. When the signer makes a mark in a distinctive manner, the writing becomes attributable to the signer.

³⁵ The act of signing a document calls to the signer's attention the legal significance of the signer's act, and thereby helps prevent inconsiderate engagements.

³⁶ In certain contexts, defined by law or custom, a signature expresses the signer's approval or authorization of the writing, or the signer's intention that it have legal effect.

³⁷ A signature on a written document often imparts a sense of clarity and finality to the transaction and may lessen the subsequent need to inquire beyond the face of a document. Negotiable instruments, for example, rely upon formal requirements, including a signature, for their ability to change hands with ease, rapidity, and minimal interruption.

³⁸ F. Wang, Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China (2nd ed, Oxford: Routledge, 2014); Mohammad Hasan Murad, 'A study of Digital Signature and its Legal Implications in Context of Bangladesh' (2010) 6 IIUC STUDIES 111;

by a secure electronic signature are entitled to a presumption of integrity, that the signature is that of the person with whom it is associated and that the user affixed the signature with the intent of signing or approving the document.³⁹

c. **Non-repudiation:** the inability of the signer to deny the signature. Since a digital signature is highly secured and a message can only be read by using key pair, the signatory cannot, at least in theory, deny that he has not signed the document.⁴⁰

5. The Legal Validity of Electronic Signature in Nigeria

Generally, electronic signature has the same legal weight as the traditional written signature if it is signed in a manner and in conditions that fulfill the standard parameters of a signature in a legal document. These conditions are:

- that it is uniquely linked to the signatory;
- that is, it is capable of identifying the signatory;
- it is created using means that the signatory can maintain under his sole control;
- and it is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.⁴¹

According to section 93(2) of the Evidence Act 2011 and Section 17(1) of the Cybercrimes (Prohibition, Prevention, Etc.) Act 2015, electronic signature is a valid means of authenticating electronic documents in Nigeria. By virtue of these two legislations, an electronic signature cannot be denied legal effect solely on the ground that it is in an electronic form.⁴²

³⁹ F. Wang, *Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China* (2nd ed, Oxford: Routledge, 2014)

⁴⁰ Mohammad Hasan Murad, 'A study of Digital Signature and its Legal Implications in Context of Bangladesh' (2010) 6 *IIUC STUDIES* 111.

⁴¹ See Enas M Qutieshat, 'The Use of Electronic Signature in Validation of Electronic Contracts from the Jordanian Perspective' (2019) 89 *JL Pol'y & Globalization*, 62; UN6CITRAL Model Law on Electronic Signatures 2001 Article 6.

⁴² See also Section 3 Law Reform (Contracts) Law of Lagos State 2015.

6. Legal Framework for Electronic Signature in Nigeria

The various legal framework on electronic signature applicable to Nigeria will be discussed in this section.

a. United Nations Commission for International Trade Law Model Law on Electronic Signatures 2001 (UNCITRAL)

On 5 July 2001, UNCITRAL approved the Model Law on Electronic Signatures(hereinafter referred to as the Model Law).⁴³ The Model Law applies to electronic signatures that are used in the commercial sphere.⁴⁴ The Model Law is intended to provide help, guidance and act as an instrument for nation states to use in forming legislation.⁴⁵ While states are encouraged to incorporate the Model Law on Electronic Signatures fully into their domestic legislation, changes can be made to the content.⁴⁶ The Model Law is not intended to interfere with the normal operation of the rules of private international law.⁴⁷

The objectives of the Model Law include the encouragement of facilitating the use of electronic signatures and providing equal treatment for all documents whether they are in electronic format or stored on a physical carrier.⁴⁸ The Model Law preserves party autonomy. It is not mandatory in character and provides for variation by agreement subject to any limitations that may be imposed by the applicable law.⁴⁹ The Model Law is founded on the principle of technology neutrality as indicated by Article 3, which provides that

⁴³ Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures 2001 paragraph 25.

⁴⁴ UNCITRAL Model Law on Electronic Signatures 2001Article 1.

⁴⁵ Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures 2001 paragraph 4.

⁴⁶ Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures 2001 paragraph 27.

⁴⁷ Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures 2001 paragraph 26

⁴⁸ Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures 2001 paragraph 5

⁴⁹ UNCITRAL Model Law on Electronic Signatures 2001 Article 5

‘...nothing in this law ... shall be applied so as to exclude, restrict or deprive of legal effect any method of creating an electronic signature that satisfies the requirements referred to in Article 6(1) or otherwise meets the requirements of applicable law’.⁵⁰ In line with the principle of party autonomy, the Model Law allows the enacting state to designate a public or private authority to specify the types of electronic signatures that would meet the reliability criteria set out in Article 6, subject to the proviso that the recommended technology meets recognised international standards.⁵¹ While interpreting the Model Law, ‘regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith’.⁵²

The Model Law defines Electronic Signature as ‘data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory’s approval of the information contained in the data message’.⁵³

Article 2 of the Model Law envisages three parties taking part in the use and creation of an electronic signature: ‘Signatory’,⁵⁴ ‘Certification service provider’,⁵⁵ ‘Relying party’.⁵⁶ In addition, provisions are made for the conduct of the various parties.

The signatory, as the holder of signature creation data that creates signatures that have legal effect, is expected to keep it under his control and take reasonable care to avoid its unauthorised use.⁵⁷

⁵⁰ UNCITRAL Model Law on Electronic Signatures 2001 Article 3

⁵¹ UNCITRAL Model Law on Electronic Signatures 2001 Article 7

⁵² UNCITRAL Model Law on Electronic Signatures 2001 Article 4

⁵³ UNCITRAL Model Law on Electronic Signatures 2001 Article 2

⁵⁴ a person that holds signature creation data and acts either on its own behalf or on behalf of the person it represents.

⁵⁵ a person that issues certificates and may provide other services related to electronic signatures.

⁵⁶ a person that may act on the basis of a certificate or an electronic signature.

⁵⁷ UNCITRAL Model Law on Electronic Signatures 2001 Article 8

The certification service provider has to meet a list of obligations under the provisions of Article 9(1) where the electronic signature used has a legal effect.⁵⁸ Article 10 deals with the issue of trustworthiness raised in Article 9(1).

The relying party is placed under an obligation to verify the reliability of an electronic signature.⁵⁹ Where it is supported by a certificate, the relying party is to take 'reasonable steps to verify the validity, suspension or revocation of the certificate, and to observe any limitation with respect to the certificate'.⁶⁰

Where these parties fail to meet the obligations set out in the Model Law. Articles 8(2), 9(2) and 11 of the Model Law provide that they will bear the legal consequences of their failure to exercise their respective obligations.

In line with the principle of non-discrimination, the geographic location where the electronic signature was created or the certificate issued will not determine whether the certificate or electronic signature is legally effective⁶¹

According to Articles 12(2) and (3), a certificate or an electronic signature issued outside the domestic jurisdiction will be legally effective if it offers a 'substantial equivalent level of reliability'.

In determining whether a certificate or an electronic signature offers a substantially equivalent level of reliability for the purposes of paragraph 2 or 3, recognized international standards and any other relevant factors shall be taken into consideration.⁶²

Article 12(5) provides for freedom of parties to agree on the use of certain types of certificates and electronic signatures to be sufficient for cross-border recognition. However, this freedom is curtailed by relevant mandatory provisions of the applicable law.

⁵⁸ UNCITRAL Model Law on Electronic Signatures 2001 Article 9

⁵⁹ UNCITRAL Model Law on Electronic Signatures 2001 Article 11(a)

⁶⁰ UNCITRAL Model Law on Electronic Signatures 2001 Article 11(b).

⁶¹ UNCITRAL Model Law on Electronic Signatures 2001 Article 12(1)(a).

⁶² UNCITRAL Model Law on Electronic Signatures 2001 Article 12(4)

The Model law is a good step taken by the United Nations Commission on International Trade towards the harmonisation of laws relating to electronic signature in cross-border electronic commerce.

b. Evidence Act 2011

Prior to the enactment of the Evidence Act 2011, it was virtually impossible to admit computer generated documents as evidence in Nigeria.⁶³ The enactment of the Evidence Act 2011 paved way for the admissibility of computer-generated documents by Nigerian Courts. This Act in turn laid the foundation for the legal recognition afforded electronic document and electronic signature in Nigeria. The Nigeria Evidence Act 2011 make provision for the recognition of electronic signature in section 93(2) and (3). This section provides that:

(2) Where a rule of evidence requires a signature or provides for certain consequences if a document is not signed, an electronic signature satisfies that rule of law or avoids those consequences.

(3) An electronic signature may be proved in any manner, including by showing that a procedure existed by which it is necessary for a person, in order to proceed further with a transaction, to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of the person.

By this provision, it is clear that an electronic signature is valid under Nigerian Law.

While this is a good step taken by the Nigeria legislature, the Act however fails to define what constitutes an electronic signature, thereby leaving the court to decide on the bases of each case what

⁶³ *UBA v Sani Abacha Foundation for Peace and Unity (SAPFU)* (2004) 3 NWLR (Part. 861) 516 the court held that the provisions of Section 97 (1) (b) and (2) (c) of the old Evidence Act do not cover the admissibility of computer printout even if they are duly certified and relevant; In the case of *Yesufu v ACB* (1976) 1 All NLR (Prt.1) 328 the Supreme Court in an obiter highlighted the need to amend the then Evidence Act in order to allow the admissibility of computerized statements of account.

amounts to an electronic signature. Also, the Act did not provide for the mode of proving electronic signature.

c. Cybercrimes (Prohibition, Prevention, etc) Act 2015

The Act provides an effective, unified and comprehensive legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria.⁶⁴ The Act apply throughout the Federal Republic of Nigeria.⁶⁵

The Cybercrimes (Prohibition, Prevention, etc) Act 2015 provides in Section 17(1), with reference to electronic signature as follows:

(a) Electronic signature in respect of purchases of goods, and any other transactions shall be binding.

Section 17(1) (b) presumed the genuineness of an electronic signature in favour of the signer and place a strict burden of proof on the person who contends the genuineness of an electronic signature. However, this does not solve the issue of proof of electronic signature because the provision is only concerned with who should prove and not how it should be done.

In addition, Section 17(2) specifies the nature of transactions that would not be valid if an electronic signature is used and they include wills, death certificate, birth certificate, matters of family law such as; marriage, divorce, cancellation or termination of utility services, etc.

The Act also failed to define what amounts to electronic signature in Nigeria.

d. ECOWAS Supplementary Act A/SA.2/01/10 on Electronic Transactions within ECOWAS.

⁶⁴ Cybercrimes (Prohibition, Prevention, Etc) Act 2015, Section 1

⁶⁵ Cybercrimes (Prohibition, Prevention, Etc) Act 2015, Section 2

At the 37th Session of the Authority of ECOWAS Heads of State and Government held in Abuja On 16 February 2010, the Heads of State and Government of the Economic Community of West African States (ECOWAS) adopted Supplementary Act A/SA.2/01/10 on Electronic Transactions (ECOWAS Electronic Transactions Act) as a regional legal regime to govern electronic transactions within the ECOWAS region, it applies notably to all transactions whatever their nature and which take the form of electronic message.⁶⁶

However, the Act does not apply to transactions such as legally authorised gambling, including lotteries and legal representation and assistance services, as well as activities carried out by notaries public.⁶⁷

The ECOWAS Electronic Transactions Act recognises that, ‘the main impediments to the development of e-transactions are linked to inadequate regulation on the legal recognition of data messages, the recognition of electronic signature ... and the absence of specific legal rules to protect consumers, intellectual property, personal data and information systems and lack of legislation peculiar to electronic transactions’.⁶⁸

Consequently, the Act aims to establish a regionally harmonized legal framework for the governance of electronic transactions within the ECOWAS.

The ECOWAS Supplementary Act A/SA.2/01/10 on Electronic Transactions within ECOWAS recognised electronic signatures as a means of authenticating electronic transaction. In the Act, an ‘electronic signature’ is defined as, ‘any data emanating from the use of a reliable data procedure or identification procedure which guarantees its link with the act that is attached to’.⁶⁹

⁶⁶ ECOWAS Electronic Transactions Act 2010 Article 2.

⁶⁷ ECOWAS Electronic Transactions Act 2010 Article 3.

⁶⁸ ECOWAS Electronic Transactions Act 2010, Preamble

⁶⁹ ECOWAS Electronic Transactions Act 2010 Article 1.

Under the Act, the use of electronic signatures is generally accepted for electronic transactions⁷⁰ and the process through which an electronic signature has been created is presumed to be reliable unless there is evidence that proves the contrary.⁷¹ The Act equates an electronic signature with a handwritten signature. However, for such equal treatment to apply to an electronic signature, such a signature must have been created by a secure mechanism that is under the 'exclusive control' of the party making the signature, and the signature must have been based on a digital certificate.⁷²

7. Conclusion

The evolution of information technology has dramatically increased the production of electronic documents throughout the world. While these electronic documents are produced with ease, there are however, backsides to them. Consequently, there became the need to address the backsides and this led to the introduction of electronic signature in ensuring the originality of the electronic documents.

The enactment of the Evidence Act 2011 and the Cybercrimes (Prohibition, Prevention, Etc) Act, 2015 recognising electronic document and signature is an important building block in the legal foundation necessary for the development of information technology in Nigeria. However, much is still needed to be done and the article recommends for the enactment of a legislation specifically on electronic signature.

8. Recommendation

The article recommends as follows:

1. There should be a clear definition of electronic signature as is the case of the traditional signature to ensure they fulfil the same function.

⁷⁰ ECOWAS Electronic Transactions Act 2010 Article 34(1).

⁷¹ ECOWAS Electronic Transactions Act 2010 Article 34(2).

⁷² ECOWAS Electronic Transactions Act 2010 Article 35.

2.Currently, in Nigeria, there are two laws recognising Electronic signature. One of the laws excluded certain documents from the scope of electronic signature and this leads to a sense of ambiguity. There is therefore a need for an Act to provide for clarity.

3.The Act to be enacted should also take cognisance of proof of electronic signature and the method of creating electronic signature.



ALTERNATIVE DISPUTE RESOLUTION (ADR); BEYOND LITIGATION.

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Abstract:

This study explains the various alternatives to resolving disputes outside the court room. As court queues, rising costs of litigation and time delays continue to plague litigants, it has become expedient to look beyond litigation and adopt some other measures of resolving disputes among warring parties. There are three major forms of alternative dispute resolution processes which are Arbitration, Mediation and Negotiation. All these forms of alternative dispute resolution are voluntary and open for different categories of disputers who prefer to resolve their differences and come to a settlement and mutual agreement between the parties involved. This study also helps to define the peculiarities between the various Alternative Dispute Resolution methods with a clear analysis as to why it is preferable than litigation.

Keywords: *Alternatives, Arbitration, Litigation, Mediation, Negotiation, Resolution.*

1. INTRODUCTION:

In general definitions, dispute is referred to as a disagreement, argument or conflict between parties. Dispute resolution on the other hand is an indispensable process for making the society peaceful. Dispute resolution process tries to resolve conflicts which enables parties to maintain co-operation. Alternative dispute resolution (ADR) refers to any means of settling disputes outside of the court room. As problems associated with the normal litigation are becoming numerous - delay in court proceedings, time and effort wastage, high cost of litigation, stringent technicalities and many other issues, it is of high

importance to adopt many other alternatives to resolving disputes.

Dispute resolution is an indispensable process for making social life peaceful. Dispute resolution process tries to resolve and check conflicts, and also enables persons and group to maintain co-operation. It can thus be alleged that it is the *sine qua non* of social life and security of social order, without which it may be difficult for the individuals to carry on the life together.¹

ADR is beneficial for resolving any critical dispute. However, the results vary from situation to situation, depending on the matter at hand. ADR possesses some key benefits which include:

(a) Cost saving: unlike litigation, ADR carries a lower cost. This is due to the fact that judicial processes which involves the payment of court fees, appearance fees, documentation fees and the likes are not included in ADR.

(b) Saves Time: In resolving conflicts via ADR, parties involved decide when it is more convenient for them to meet in order to resolve their disputes. However, adjudicative processes for resolving conflicts are quite lengthy since the hearing is dependent on court decisions. Litigation takes years to resolve due to incoherent dates and time. Matters deliberated using the ADR method may take few months or even just weeks to be resolved.

(c) Control: The parties have control over some of the processes in ADR. Decisions such as choosing the preferred method of ADR, selecting the panel for the dispute resolution, the length of the process, and, in mediation cases, even the outcome is controlled and maintained by the parties. In a lawsuit process, the control is totally possessed by the court and supreme authority.

¹ R. E. Park and E. W. Burgess, Introduction to the Science of Sociology, (The University of Chicago Press 1921)

(d) Confidentiality: Privacy is fully secured when it comes to Alternative Dispute Resolution. ADR is conducted in private, therefore avoiding publicity from the media. The public are also unable to attend.

(e) Experienced Neutral Panelists: The Panelists are professional mediators and arbitrators with training and expertise in dispute resolution. Disputing parties are able to select their panellist from a list of qualified individuals who are specialized in specific aspects and areas as it concerns the matter for dispute.

(f) Cooperative Approach: All ADR services take place in a more informal, less confrontational atmosphere. This enables the parties involved to continue in a good and undistorted relationship at the end of the process.

2.0 ALTERNATIVE DISPUTE RESOLUTION METHODS

2.1 Definition and Scope of Arbitration

Arbitration is one of the oldest methods for the resolution of disputes between the parties. It has existed in one form or the other, in every country at all times. Arbitration as a process of dispute resolution offers many advantages to both the parties.²

Arbitration is one of the various methods of dispute resolution but undoubtedly the most popular. It is defined in the Halsbury's Laws of England as "the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction"³

Similarly, Bernstein in his book on Arbitration practice said – "where two or more persons agree that a dispute or potential

2 V. Agarwal (2001). "Alternative Dispute Resolution Methods" Paper written following a UNITAR Sub-Regional Workshop on Arbitration and Dispute Resolution published in Geneva, March 2001.

3 Halsbury's Laws of England, 3rd Edition, Volume 2 at pg.2 para 2.

dispute between them shall be decided in a legally binding way by one or more impartial persons in a judicial manner upon evidence put before him or them, if it's a panel. the agreement is called an **arbitration agreement or a submission to arbitration**.

Arbitration also involves a neutral third party (the arbitrator) who is responsible for running the process and making the decisions necessary to resolve the dispute. Unlike litigation where a judge (a public official) is appointed by the court to sit on a case, the arbitrator is typically a private person chosen by the parties. Such person is usually a specialized expertise on the matter for dispute. A dispute that might otherwise go to court becomes subject to binding arbitration only by the agreement of the parties. In this sense, arbitration is a creature of contract, and the terms of the parties' particular arbitration agreement are generally controlling.

An agreement to arbitrate can also be made after a dispute arises, as the result of a negotiation between parties already in conflict. Binding arbitration in lieu of judicial adjudication is voluntary in the sense that it is only by agreement that one is required to arbitrate; but once there is an agreement it is involuntary in the sense that courts will enforce it against a reluctant party by refusing to adjudicate disputes which are within the scope of the arbitration agreement.

2.2 Benefits of Arbitration

In an arbitral proceeding, the procedural rules may be set by the parties in their arbitration agreement. Pre-trial discovery is typically limited or eliminated and each party is given an opportunity to present proofs and arguments at a hearing where the procedures are typically much less formal than those found in court. Depending upon the parties' agreement, the arbitrator may or may not be asked to render a principled decision supported by a reasoned opinion. Often the arbitrator is free simply to announce the award without any explanation. In "final-offer" arbitration, by agreement of the parties the arbitrator is required to resolve the dispute by choosing one or

the other of the “final-offers” submitted by the disputants – the arbitrator lacks all power to impose any other result (Farber 1980)⁴. (This is sometimes called “baseball arbitration” in the United States because it is used to resolve salary disputes in major league baseball.)

3.0 Definition and Scope of Mediation

Mediation, as one of the most important and also most common form of Alternative Dispute Resolution, is a procedure in which the parties discuss their disputes with the assistance of a trained impartial third person(s) who assists them in reaching a settlement.⁵ Mediate is from the Latin word "mediere", meaning to be in the middle.

Generally, it is like a negotiation, presided over by a third party. Regarding this definition, we can conclude that mediation occurs every day in human's life. For example, a mother trying to settle a dispute or quarrel for her children or a manager settling a dispute between two members of staff are said to be mediating.

According to the Black's Law dictionary, mediation is the act of a third person, interfering between two contending parties with a view to reconcile them or persuade them to adjust or settle their disputes.⁶

According to the Madison Law, mediation is a form of ADR where a neutral third-party assist disputing parties in resolving conflict through the use of specialized communication and negotiation techniques.⁷

⁴ Farber, H. S. “An Analysis of Final-Offer Arbitration.” [1980] *Journal of Conflict Resolution*; 24 page 683-705.

⁵ What is Mediation and how does it work?

<<https://corporate.findlaw.com/litigation-disputes/what-is-mediation-and-how-does-it-work>> accessed on 6 November 2020.

⁶ Black, H. Campbell: Black's Law dictionary, West Publishing Co. St. Paul, Minnesota, USA 1990.

⁷ Megan Smoak and Nichole Hill: Madison Law, Create Space Independent Publishing Platform, ISBN-10: 1478151897. 2012.

It is also important to note that a mediator cannot impose his decision/s on the parties involved. He only stands as a facilitator in the mediation process.

The most common disputes that lead to mediation are the ones that involve contracts, disputes in commercial transactions, family law matters, employment disagreements, workers compensation, divorce, domestic relations or any other matters which do not involve complex procedural issues like criminal cases.⁸

Mediation can be an informal meeting lasting for some hours or rather, can be a planned settlement conference that lasts for some months. It is volitional to the two parties which makes it different from arbitration where an arbitrator, just like a judge, can make decision that is binding on the both parties.

3.1 Benefits and Advantages of Mediation

There are many advantages to using mediation as an Alternative Dispute Resolution (ADR).

1. Mediation is not Cost Effective: One of the biggest advantages of mediation is that the costs are significantly lower. The English Courts have a very strong endorsement to mediation at early stages, mostly in cases where litigation costs more than the amount in dispute. In **Egan v Motor Services (Bath) Ltd**,⁹ the amount in dispute was only €6,000 but the parties spent almost €100,000 on the litigation. Ward LJ regarded the parties as "completely cuckoo" to have engaged in such expensive litigation with so little at stake. So, litigation and court cost can be very expensive and the cost of mediating is greatly reduced in

⁸ Find Law Attorney Writers, What is Mediation and how does it work. (2016) accessed on 6 November 2020.

<<http://Corporation.findlaw.com/litigation-disputes/alternative-dispute-resolution-which-method-is-best-for-you>>

⁹ *Egan v Motor Services* (Bath) Ltd, England and Wales Court of Appeal (Civil Division)1002. 18 Oct, 2007

comparison with pursuing the matter through the courts or arbitration.

2. It is Private and Confidential: Confidentiality in mediation has such importance that the legal system cannot force a mediator to testify in court as to the content or progress of mediation.¹⁰ What you say during mediation cannot legally be revealed outside the mediation process, however with few exemptions. Whatever said in a mediation meeting is kept between the two parties and the mediation. The proceedings are concluded in private and the parties are in control of their own position.

3: Mediation ends amicably: Lawsuits ruin relationships, thus an advantage of mediation is its ability to resolve disputes without ruining the relationship. Mediation allows the two parties to resolve their disputes in a friendly manner. It gives the two parties a way to solve disputes in ways agreeable to both sides.¹¹ And obligations under agreement are more likely to be fulfilled than obligations imposed by a court.

4: Time Saving: While an average case going through proper legal procedure can last for years, a case handled through mediation lasts for less than three months. Moreover, meeting sessions can be easily fixed at any time that suits the either parties and can take place in variety of locations. It is also very helpful in family cases where prolonged law disputes can cause psychological and emotional imbalance for the children involved. Studies have shown that trials that take months to prepare have detrimental effect and cause tension for the children.¹²

5: Compliance: Studies show that people who reach an agreement mutually will not look for ways to violate the

¹⁰Megan Smoak and Nichole Hill: Five benefits of mediation, Madison Law, Create Space Independent Publishing Platform, ISBN-10: 1478151897. 2012.

¹¹ David Jones: The advantages and disadvantages of mediation (2019) accessed on 6 November 2020 <<https://www.glaisyers.com/adantages-and-disadvantages-of-mediation>>

¹² Law reform commission-alternative dispute resolution: Mediation and conciliation. Dublin, Ireland (2010)

agreement. As such, agreements reached through mediation are more likely to be carried out than those imposed by a judge because both parties mutually agreed to them.

3.2 Disadvantages of Mediation

There are disadvantages of mediation that lead people to use other options such as litigation, arbitration, conciliation and so on, to solve their problems.

1: Either Party may Withdraw: One of the disadvantages of mediation is that either of the parties can withdraw at any time while mediating. Moreover, either party can choose to go with the agreement or not. In litigation, for example, the only party that can withdraw is the plaintiff, if they drop lawsuit. But in mediation, even the party that is at fault can withdraw if they are not happy with what might be the probable outcome of the meeting.¹³

2: The Mediator is a Third Party: The mediator is an outside party. The mediator has no previous knowledge of what the case is and has never met the parties before. This can be like a problem in mediating an issue. In contrast, a lawyer that is called to defend a client in a criminal case knows much about what a criminal case is before getting into the court. Furthermore, the mediator cannot decide for the parties he or she is trying to mediate for. He just brings up pieces of advice on what the two parties can agree on.

3: There are no Guarantees: In mediation, negotiations fall through. There is no assurance that the issue will be settled if a side is adamant and refuses to listen to what is being mediated, the matter will end up in court and even regardless of the cost

¹³ Mediation Disadvantages (accessed on 6 November, 2020)

<<https://www.lawfirms.com/resources/lawsuits-and-disputes/mediation/mediation-disadvantages>>

spent on mediating, the cost of going to court will be added if negotiations fall through.¹⁴

4.0 Negotiation

Negotiation is one of the most commonly used means of Dispute Resolution.

Negotiation can be defined as a strategic discussion that resolves an issue in a way that both parties find acceptable. In a Negotiation, each party involved tries to persuade the other with his/her point of view. By negotiating, all involved parties try to avoid arguing but agree to reach some form of compromise.

We participate in negotiations every day. We negotiate disputes and responsibilities. Negotiation is a bargaining process between parties when both try to arrive at an understanding agreement that settles matter of common concern or resolves conflict. Though conducting a negotiation has some objective principles that can guide its success, it is an art. Steve Gates, CEO of The Gap Partnership, an international workshop provider and organizer, wrote "...there is no right or wrong way to negotiate an agreement, there is an appropriate way."¹⁵

In negotiation technique, the serious bargaining negotiator accomplishes his goal by endeavoring to persuade his opponent that their case is not strong and that they should seek a solution as fast as could reasonably be expected. Instead of approaching a negotiation like an exercise in joint problem solving so that all parties benefit, the competitive negotiator views negotiations as a zero-sum game; one party must win and another will have to lose.

¹⁴ David Jones, The advantages and disadvantages of mediation (2019) accessed on 6 November 2020. <<https://www.glaisyers.com/advantages-and-disadvantages-of-mediation>>

¹⁵ Steve Gates, The Negotiation Book: Your Definitive Guide to Successful Negotiating, published by John Wiley & Sons (2011) p.19 accessed on 9 November, 2020.

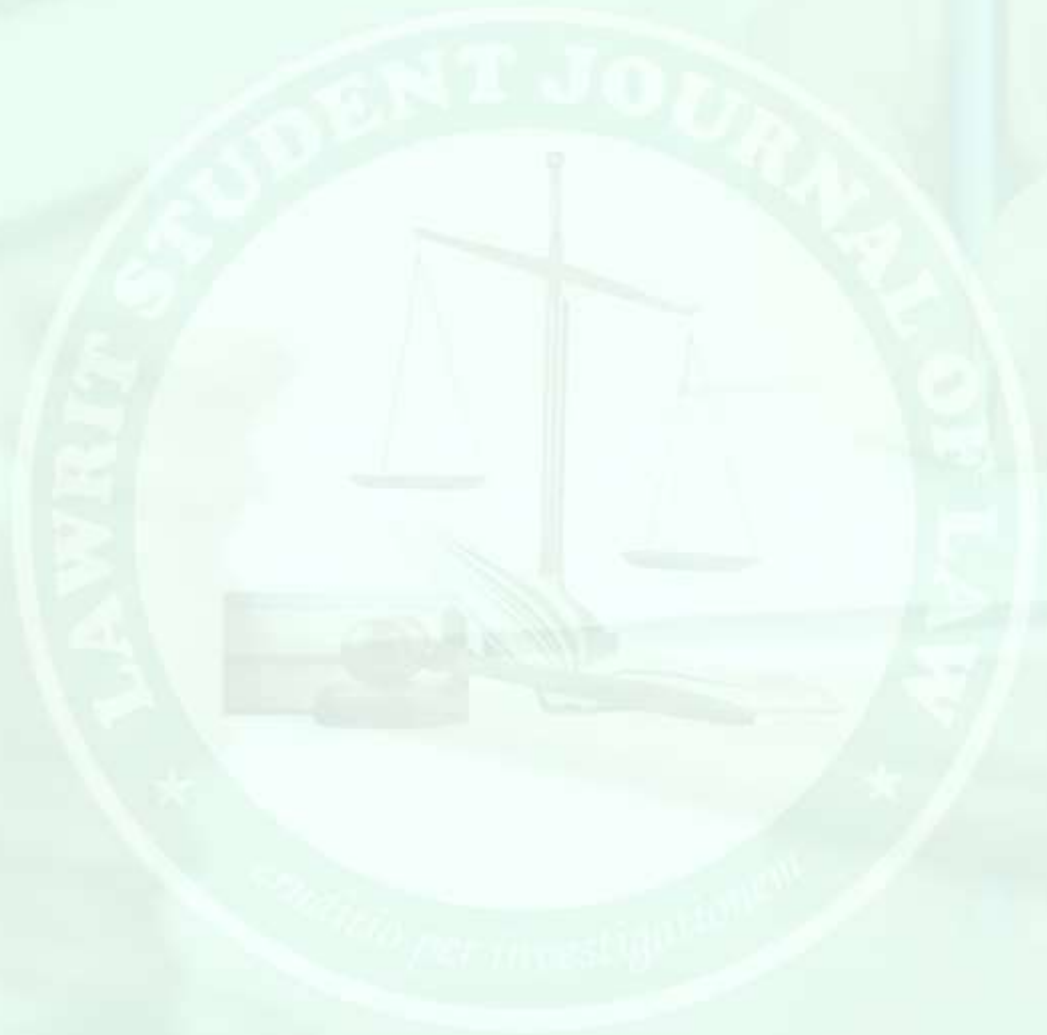
5.0 Conciliation

Conciliation is the process by which one or more independent person(s) selected by the parties to an agreement generally by mutual consent, either at the time of making the agreement or subsequently when a dispute has risen between them, to bring about a settlement of their dispute through consensus between the parties by employing various persuasive and other similar techniques. The conciliator is supposed to be impartial and conduct the conciliation proceedings in an impartial manner. He/she is guided by the principles of objectivity, fairness and justice, and by the usage of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties. The conciliator is not bound by the rules of procedure and evidence. It is a process of confidence and faith. Sometimes, and in some systems, it is also called mediation. There may be technical or legal differences between the two expressions, namely, conciliation and mediation, but for the present purpose the expression “conciliation” is used to refer to both the processes, namely, the conciliation and mediation.

6. CONCLUSION

For a negotiation process to start and end well, consistency matters in ensuring the negotiation are as effective as possible. Furthermore, if the steps of preparing for a negotiation is thoroughly followed, there is an assurance of a successful negotiation. We’ve defined negotiation and examined the alternatives strategies for conflict resolution. Alternative Dispute Resolution is indeed an emerging sector in the litigation process. With the various types and ways of resolving dispute such as mediation, negotiation, arbitration, as discussed earlier, it is absolutely possible to engage in a judicial process without stepping into the court of law, the litigation process has become so easy as these steps help to hasten the judicial process, as it is known that justice delayed is justice denied. The different steps to Alternative Dispute Resolution help to fasten the judicial

process, reduces the cost of litigation significantly, foster unity even after the process.



ASSESSING CHINA'S CULPABILITY THROUGH INTERNATIONAL LAW

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Abstract:

A common phrase in global health literature is that "diseases know no borders. This is the same issue with the spread of covid-19. Which originated in China and caused a global meltdown on the world's economy. Since then," Assessing China's culpability through international law has been a controversial topic. This topic has been hampered by a lack of empirical evidence, and also the lack of knowledge of international law by legal researchers. Here we discussed at length, what international laws are, how they are applied, the obligation of States under international public law, how to assess the culpability of the Republic of China, Through Justification on their culpability, China's legal obligation, Jurisdictional issues, remedies available to the aggrieved party. This article provides information about all the aforementioned, clearly and concisely. This article has critically assessed the culpability of China and otherwise, with clarification on both sides.

INTRODUCTION

COVID-19 -- a word that barely meant almost nothing at the beginning of this year now heralds an epoch of milestone suits, unlocking a floodgate of claims brought by activists, nations, and other disgruntled forces seeking to hold China culpable for the deaths, untoward economic hardship and global turmoil caused by the virus.

In the space of 20 years, China has taken the world through a gruesome path, twice. According to Yanzhong Huang, a global health expert specializing in China at Seton Hall University, during the

2002/2003 SARS pandemic which killed over 700 people worldwide,¹ patients were driven around to prevent them from being seen by the visiting delegation of W.H.O. experts.²

Barely two decades after being condemned for a sluggish reaction to SARS, China is once again facing worldwide scrutiny for its handling of the novel coronavirus. China repeated the obstruction of information that worsened the SARS crisis 18 years earlier. It tried to suppress the SARS epidemic, which led WHO member states to adopt the new International Health Regulations in 2005.³

In both cases, China and the world would have been spared thousands of unnecessary deaths had China acted forthrightly by following its legally binding international obligations.

Besides the unfortunate loss of lives, the COVID-19 pandemic has caused the global economy to suffer enormous setbacks: capital markets across the world have plummeted, the International Monetary Fund now projects a 3% drop in the global economy instead of the initially projected 3.3% rise, and 25 million people are expected to join the ranks of unemployed individuals.⁴

Transportation, tourism, manufacturing, and energy sectors have also been badly struck by the lockdowns imposed on various countries to mitigate the crises. Nigeria is not exempted from the socio-economic problems which have emanated from both the pandemic and measures to curb it. Many businesses have closed

¹ Severe acute respiratory syndrome (SARS) < <https://www.cdc.gov/sars/about/faq.html> > Accessed on 23rd July 2020.

² [New York Times 2020]: Trump slams W.H.O over coronavirus. He is not alone < <https://www.google.com/amp/s/www.nytimes.com/2020/04/08/world/asia/trump-who-coronavirus-china.amp.html> > Accessed on 23rd July 2020.

³ World Health Assembly Adopts new International health regulations < https://www.who.int/mediacentre/news/releases/2005/pr_wha03/en/ > Accessed on 23rd July 2020.

⁴ The Great Lockdown: Worst Economic Downturn Since Great Depression < <https://blogs.imf.org/2020/04/14/the-great-lockdown-worst-economic-downturn-since-the-great-depression/> > Accessed on 23rd July 2020.

down due to reduced demand and inadequate cash flow; laborers and contract staff without alternatives have been left without means of livelihood. School children, many of whom are chronically undernourished, have missed up to a term's equivalent of school time in Nigeria while families staying at home have resorted to self-vigilante tactics to prevent robbery attacks by hoodlums.

Recently, a group of Nigerian lawyers led by Prof. Epiphany Azinge (SAN) sued the Chinese government before the Supreme Court of Nigeria for a 200 billion Naira claim. This suit might be unsuccessful because they were filed before municipal courts and are rooted in domestic law.⁵ About 14 similar suits have been filed by individuals, small businesses, and states.⁶ However, these claims have next to zero chances of success because foreign sovereign states are immune to prosecution before domestic courts.

Given the high cost - in terms of personnel and material - of China's negligence, it becomes necessary to examine the culpability of China through international law, since the virus originated from Wuhan, the Republic of China. First, we must ask this pertinent question: what international law safeguards exist to prevent disease outbreaks from spreading from one region of the world to another?

CRITICAL ASSESSMENT OF CHINA'S CULPABILITY UNDER INTERNATIONAL HEALTH REGULATIONS.

The International Health Regulations (IHR), which was revised in 2005, was developed to prevent the international spread of diseases and provide a suitable response to international public health emergencies.⁷ China is one of the 194 signatories of the 2005

⁵ In Defense of China's Sovereign Immunity <
<https://www.legalnaija.com/2020/04/in-defence-of-chinas-sovereign-immunity.html>> Accessed on 23rd July 2020.

⁶ What's in the Many Coronavirus-Related Lawsuits Against China? <https://www.lawfareblog.com/whats-many-coronavirus-related-lawsuits-against-china> Accessed on 23rd July 2020.

⁷ Strengthening Health Security by Implementing the International Health Regulations (2005) <

International Health Regulations, which is legally binding.⁸ However, pandemics such as the 2009 H1N1 flu pandemic, the 2014 Ebola pandemic, and the ongoing Covid-19 pandemic have defied these measures. China has been accused by intelligence officials of providing false data on the COVID-19 pandemic. The chairman of the France-based World Medical Association said, "China's figures aren't credible".⁹ This is in contravention to Article 6 of the International Health Regulations (2005) which states that: *Each State Party shall notify WHO, by the most efficient means of communication available, by way of the National IHR Focal Point, and within 24 hours of assessment of public health information, of all events which may constitute a public health emergency of international concern within its territory following the decision instrument, as well as any health measure implemented in response to those events.*¹⁰

Article 7 of the International Health Regulations (2005) further states that: *If a State Party has evidence of an unexpected or unusual public health event within its territory, irrespective of origin or source, which may constitute a public health emergency of international concern, it shall provide to the WHO all relevant public health information under Article 6.*¹¹

In December 2019, Li Wenliang, an ophthalmologist at Wuhan Central Hospital, voiced out in an online chatroom on December 30. That night, Wuhan public health authorities solicited information

<https://www.who.int/ihr/publications/9789241580496/en/> > Accessed on 23rd July 2020.

⁸ International Health Regulations < https://www.who.int/health-topics/international-health-regulations#tab=tab_1 > Accessed on 23rd July 2020.

⁹ Coronavirus: China hid the scale of the Outbreak — US Intelligence report < <https://www.google.com/amp/s/amp.dw.com/en/coronavirus-china-hid-scale-of-outbreak-us-intelligence-report/a-52988929> > Accessed on 23rd July 2020.

¹⁰ International health regulations 2005 < <https://www.globalhealthrights.org/instrument/international-health-regulations-2005/> > Accessed on 23rd July 2020.

¹¹ Ibid

on the emergence of a “pneumonia of unclear cause,” but omitted Li’s discussion about the possibility of SARS or a novel coronavirus. Medical practitioners who tried to disclose the emergence of the virus was suppressed or jailed.¹²

On the 30th of December 2019, China officially informed the World Health Organization but claimed that there was no human to human transmission of the virus and that it was completely zoonotic or passed only from animals to humans. This information provided to the W.H.O was false because as at that time more than one-third of those with the Covid-19 sickness have not visited the Wuhan market.¹³ Furthermore, the Chinese government rejected requests for an independent investigation of the epidemic by international scientists until late January, without explanation;¹⁴ this is a violation of Article 10 which states that *when WHO receives information on an event that may constitute a public health emergency of international concern, it shall offer to collaborate with the state party concerned in assessing the potential for international disease spread.*

Besides the misinformation, China did not send vital information to the World Health Organization as at when due.¹⁵ Various, researchers and scholars in the medical field unanimously agreed that, if the Chinese government had given accurate information and taken proactive measures, Covid-19 would have been an epidemic and not a pandemic. From the foregoing, we are led to only one logical conclusion and that the Chinese government has breached Article 6, Article 7, and Article 10 of the International health regulations. This makes them Culpable under International Law.

¹² Liability of china for the covid-19 outbreak, states responsibility and jurisdictional challenges < the <https://modern diplomacy.eu/2020/04/13/liability-of-china-for-covid19-outbreak-state-responsibility-and-jurisdictional-challenges/>> Accessed on 23rd July 2020.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

We could also conclude, that China cannot be held culpable because the arguments that China can be held are based on the allegations that China failed to inform the W.H.O about the viral outbreak (Art.6) and to provide “timely, accurate and sufficiently detailed and available public health information” about it (Art.7). Accusing that China has violated the IHR would have to navigate how the WHO has evaluated China's performance.¹⁶ The senior officials of the W.H.O have repeatedly praised China's leadership for its "openness to share information" with the international community in January. Praising them implies that they have been cooperative in terms of communication and measures to stop the upsurge of the pandemic. Though the W.H.O is not entitled to decide how states and parties interpret the IHR, the IHR itself gives the WHO such prominence and authority that its actions in this context can by no means be ignored.¹⁷

With this line of events, we could also safely conclude that the Chinese government cannot be held culpable because of the timely informing the W.H.O and also putting the measures in place to curb the spread of the disease.

According to Article 75 of the International health regulations, it provides that any dispute concerning its rules and breach of rules could itself be referred to the International Court of Justice (I.C.J) for dispute adjudication. Sadly, the international dispute adjudication is a consent-based system.¹⁸ The I.C.J can only exercise its jurisdiction when a State has given its consent, which is not the

¹⁶ Suing China for covid-19 is not taking international law seriously < https://www.google.com/amp/s/news.cgtn.com/news/2020-04-11/Suing-China-for-COVID-19-is-not-taking-international-law-seriously--PAXE13o8GA/share_amp.html > Accessed on 23rd July 2020.

¹⁷ Ibid.

¹⁸ Wikipedia: Jurisdiction of International Court of Justice < https://en.m.wikipedia.org/wiki/Jurisdiction_of_the_International_Court_of_Justice#:~:text=The%20key%20principle%20is%20that,has%20no%20true%20compulsory%20jurisdiction.&text=Article%2036%20outlines%20four%20bases,contentious%20cases%20before%20the%20ICJ.> > Accessed on 23rd July,2020.

case because China is one of the few countries, along with the US, which has not accepted the jurisdiction of the International Court (I.C.J), so it would always be open to the CCP — Communist Party of China to reject that court's intervention.¹⁹

CHINA'S LEGAL OBLIGATION UNDER INTERNATIONAL LAW COMMISSION

Having established that the Chinese government has wronged other member states of the W.H.O and may be held culpable under the international law, we have to look at the International Law Commission, which can also be known as the Draft Articles to further assess the culpability of China. According to Article 1 of this law **“Every internationally wrongful act of a State entails the international responsibility of that State”**; therefore, a state bears responsibility for an internationally wrongful act it commits. This authorization rendition of the law of the state was formulated with the infusion of countries to reflect a fundamental principle of international customary law, which binds all nations.

According to Article 2 of the International Law Commission, *"An act or omission qualifies to be an internationally wrongful act only when that act or the omission can be attributable to the State under international law and constitutes an international obligation of the State.* It further explains a wrongful act to be an act attributable to a state which constitutes a breach of an international obligation”.

The local Wuhan authorities as well as the Chinese Central Government - which are parts of the Chinese state - may be held responsible and their alleged wrongful conduct can be attributed to China. The Chinese government refused to give accurate information, which under the international health regulation 2005, they are expected to report timely, accurate, and sufficiently detailed

¹⁹ Coronavirus: CCP Beware, the Lawyers Are Coming <
<https://bitterwinter.org/coronavirus-ccp-beware-the-lawyers-are-coming/> >
Accessed on 23rd July 2020.

public health information about the events happening in its territory to the WHO. They failed to do and that makes them culpable under the International wrongful act which violates Article 14(3) of the International Law Commission. Which states

“The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.”

Even after, knowing the situation of things they continued to violate these laws. In the case of *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania 1948)*. The court held that no state may knowingly allow its territory to be used for acts contrary to the rights of the other states. The Chinese government allowed the activities that took place in its country to harm other states intentionally.

Having established that the Chinese government are can be held culpable for mishandling the Covid-19 pandemic. It is pertinent to note that the international law commission is a customary international law. This law has played little to no role in the spread of infectious disease over the long history of international health cooperation. Similarly, no proof has been found to ascertain that the causation prerequisite has been satisfied. Tedros Adhanom Ghebreyesus, W.H.O director-general, stated that China “has bought the world time” regarding the Covid-19 pandemic. By locking down the whole city for 76 days to contain the spread of the pandemic. This effort made by the Chinese government has effectively postponed the international spread of the virus.

Article 34 of the Draft Articles states that a state that “intentionally breached an international obligation is liable to full reparation for the injury caused by the internationally wrongful act,” Reparation shall be made available in the form of restitution, compensation, satisfaction, and even in the form of assurance of non-repetition of the wrongful act. One thing we failed to note however is that no

International law or the convention contains rules requiring payment of compensation for damage to other countries associated with violations of convention rules. The reason is simple, as it was rightly stated above. The outbreak of a pandemic has no boundary, no one knows where and when the next pandemic is going to come from. Therefore, requiring a country where the pandemic started to start paying compensation involves challenging scientific, public health, and political questions.

CONCLUSION

China is a member of the World Health Organization and is legally bound like other countries to prevent outbreaks like this. However, its perceived failure to meet up with its obligations has raised questions on whether it should be held responsible or not. Different factors point for and against an affirmation of China's culpability. However, it is left to major international stakeholders to decide whether or not to pursue litigations against China in unprecedented lawsuits that will undoubtedly make history.

JUDICIAL TECHNICALITY: A CLOG IN THE WHEEL OF THE ADMINISTRATION OF JUSTICE?

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Abstract

It is important with regards to note that one of the ills facing and confronting the judicial sector is the issue of judicial technicality, nobly known as "litigating the margin". And its effect on the very aim and goal of the judiciary, which is justice, is on the negative side. This been an issue of consideration in the legal profession. It is no longer doubt that this particular cankerworm has eaten deep into the judicial sector and great is its implication on justice. Lawyers and(or) counsels are now using this technique as a pretext to win cases by all means always regarding the gain not considering what it may cost(justice).

This article poses a question, through its topic, to the current state of judicial technicality in the judiciary, it's influence so far in the judicial sector and its effects. And in entirety, it tends to reveal the negative impact of judicial technicality not only in the judicial sector but also in the circular world and profer solutions.

Keywords: Technicality, adjectival law, substantive law, legal system, court, justice, litigants

1.0 INTRODUCTION

Legal technicality is a colloquial phrase referring to a technical aspect of law.¹ The technicality in judicial process is not really a term of law. According to the Longman dictionary,² it is a small detail in law or set of rules, especially one that forces you to make a decision that seems unfair.

Even though there may be no perfect definition of judicial technicality, in the determination of cases by the courts, judgments based on technicality are often differentiated from judgments based on merit.³ Technicality, like issues arising from the issue of court hierarchy, registering the name of a law firm instead of the name of the named legal practitioner, absence of a judge etc. are different from the cases themselves and no matter the merit, substance and issues of a case, these technicalities are capable of disqualifying justice.

2.0 DIALECTICS OF TECHNICALITIES IN JUDICIAL PROCESS

The result or decision of any litigation by a court of law determines how much trust the society has in the judiciary and the strict adherence to court rules and procedures is a significant feature that pervades the Nigerian advocacy system. Court procedures or rules are mainly laid down to enable and quicken the wheel of justice and to enable orderliness and decorum in the court of law, and they're to be obeyed. However, it shouldn't be a pretext to slaughter justice on the altar of technicality but unfortunately, the aim and reason of

¹ 'Legal technicality' <https://en.m.wikipedia.org/wiki/Legal_technicality> accessed 6 August 2020

² See Longman Dictionary

³ Azubuike S. *'Technicality in Law – CJN's Misfire and the need to Reload'* <<https://stephenlegal.ng/technicality-in-law-cjns-misfire-and-the-need-to-reload/>> accessed 6 August 2020

these rules have changed and these rules are now used to thwart legal proceedings just to win the case by all means.

As a matter of fact, some time ago, this feature was once a yardstick used in measuring the efficiency of advocates in the court of law. We knew that long time ago, to be successful in the legal field, one must be an expert in the process of manipulating the court rules in favour of him or her regardless of the side where the sword of justice rests. Those were the days when cases were won even before commencing the suit because the advocates were so sharp in bringing to the notices of the court any non-compliance to the rule of the court. The advocacy formula then was very simple- it was of high similitude to that colloquial rule in the game of soccer allegedly being preached and indoctrinated by unfledged coaches that: "if a defender misses the ball, he must not miss the opponent's leg"⁴. The rule in advocacy then used to be- "if you're sure of not getting substantial justice based on the merit of the case, frustrate the suit by procedural and technical gimmicks ' i.e. "litigate the margins"⁵. These decisions threw into sharp relief the harsh effect of arbitrary mandatory deadlines, and it leaves the common legal practitioner with a serious question: does the judicial system stand for justice?⁶

Indeed, these procedural rules and strict adherence to the court rules are inheritance gotten from the common law of England and obviously, the negativities of these hereditary attributes of the English common law also. The days of the common law were the days when a cause of action would be defeated for failure to file the appropriate writ of form of Action; the days when the courts were being too systematic and unnecessarily concerned with forms, procedures, technicalities, rules and niceties than the need to do justice; the days when the most trivial error on the part of the counsel

⁴ Adeola Owoade, *Litigating the Margin; A Campaign for its Final Burial* (2017)

⁵ *Ibid.*

⁶ Vincent Pavlish, *Bowles v Russell: They Got Me on a Technicality*, 70 Mont. L. Rev. 147(2009).

or litigant would automatically result in the matter being struck out or judgment entered in against him; the days when the failure of a party to seek the most appropriate remedy from the little available remedies would shut the door of justice on him; the period when forms were equally as, if not more important, than substance.⁷ Those were the days of the common law before the induction of equity in jurisdictional processes. During this period, the most common legal maxim used in practice was "forma non observata infertur adnullatio actus" which is to say when forms are not observed, a nullity of the act is inferred.

However, the hey days of technicality are over (not totally) as a way has been paved for the arrival of substantial justice, according to the words of the once upon a time a CJN, Walter Onnoghen in the celebrated case of *Dapianlong v Dariyel*⁸ that "the reign of technical justice is over, on the throne now sits substantial justice, long may you reign, substantial justice". The fact that counsels are also human beings and not excluded from the pitfalls of making mistakes as in the words of Niki Tobi, JSC of blessed in memory, in the case of *Abubakar v Yar'adua*,⁹ that " blunders must take place in the litigation process, and because blunders are inevitable, it is not fair, in appropriate cases, to make a party in the blunder to incur the wrath of the law at the expense of hearing the merits of the case". It is high time the courts of law started upholding and holding on to the tenets of justice as the basis, aim, objective and goal of any litigation process.

The rules of court relating to service are merely a rule of procedure and not a rule of substantive law conferring jurisdiction on a court. In *FRN vs. DAIRO* (2015)6 NWLR (pt 1454)141¹⁰ the court held that: Rules of court are meant to be obeyed. However, obedience to

⁷ Adeola Owoade, *Litigating the Margin; A Campaign for its Final Burial* (2017)

⁸ *Dapianlong v dariye*[2008] 8 Nigeria weekly law reports (Part 10430) 332.

⁹ [2008] 4NWLR (pt1078)

¹⁰ [2015]6 NWLR (pt 1454)141

rules must not be slavish to the point that justice in a case is destroyed or thrown overboard. Therefore, if in the course of doing justice, some harm is done to some procedural rules which hurt the rule, the court should be happy that it took such line”.

As a matter of fact, laws are made for man and not man made for laws, so in an instance where the letter if the laws will incur injustice, the spirit of the law should be allowed in substitution for the letters of the law regardless of the implicit and explicit letters of the law.

3.0 The Effects and Implications of Technicality in the Judicial Process

The procedural court rules are designed to administer justice effectively, but unfortunately, it's on the contrary. It is now what is used in clogging the wheels of the administration of justice.

In fact, the English philosopher and poet Walter Savage Landon, said in some years ago that when law becomes a science and a system, it ceases to be justice.

"Justice delayed is justice denied"; this sentence is almost turning to a *cliché* in the language of the judiciary as it is no longer a conviction to administer justice.

The decisions of the courts of law influences how much trust the society has in the judiciary. "The judiciary- the last hope of the common man; this statement that has always been a strong conviction, a sentence of hope no longer sees the light of the day. All thanks to the strict and rigid adjectival rules of the court. The common man no longer has any hope since the inception of the procedural rules which must be obeyed in the court of law et pereat mundus.

The electoral process, which is *sui generis*, has been through a lot, being a sacrificial lamb to technicality as so many electoral cases have been struck out because of a mere or minimal negligence or mistake on the side of either of the counsel which ought to be overlooked.

Considering the case of AGUNBIADE vs. OKE (2015) ALLFWLR (pt. 811)1330 C.A at 1333¹¹ where the petition of the appellants was struck out on grounds of wrong heading, "Presidential and Assembly Election Tribunal" instead of "National and State House of Assembly Election Tribunal. Also, in the case of Nnalimuo & Ors v. Elodumuo & Ors(2018) LPELR-43898(SC)¹², this is a case where a land was struck out in 2018 by the Supreme Court(47 years after) simply because a writ of summons which initiated the suit was not signed and the accompanying particulars of claim of the plaintiffs was signed in the name of a law firm. These are just tidbits among the innumerable instances of cases struck out on the basis of technicality

Another intrinsic implication of "litigating the margins" is that it punishes the litigants for the sins of the counsels. This of course, is not a good feature to hold on to in the administration of justice. The Supreme Court per Coker, JSC in *Doherty v Doherty*¹³ stated the position quite pungently thus: "it occurs to us that the failure to comply with the conditions of appeal is entirely due in this case to the fault of appellants' solicitors and to shut them out from the hearing of appeal on the merits is to hold them personally responsible for the negligence of their solicitors". In the same vein, His Lordship, Karibi Whyte, JSC in *Bello & Ors v A. G. Oyo State*¹⁴ was on the same motion that the court will not punish the clients for the carelessness of the counsel. He stated: "... I think I am speaking the mind of all engaged in the administration of justice not only in this court but in all courts in this country that the day the courts allow the inarticulate ignorance of counsel to determine the result of an action before it, that day will herald the unobtrusive genesis of the unwitting enthronement of injustice aided by the Court itself in default".

¹¹ [2015] All Federation Weekly Law Reports (pt. 811)1330

¹² [2018] Law Pavilion Electronic Law Reports-43898(SC)

¹³ [1964] 1 All Nigeria Law Reports 299

¹⁴ [1986] 5 NWLR(pt. 45) 825.

Another intrinsic implication of technicality in the judicial process is that it tends to reduce the litigation process to an ordinary 'sporting game' where the best and most cunning player wins the game. For this reason, the supreme court has drummed it into the ears of the judicial workers and administrators of justice that they should be wary and at alert against it. The court per Aniagolu JSC in *Afolabi v Adekunle*¹⁵ stated that " while recognizing that the rules of court be followed by parties to a suit, it is perhaps necessary to emphasize that justice is not a fencing game in which parties engage themselves in an exercise of outsmarting each other in a whirligig of technicalities, to the detriment of the determination of the substantial issues between them"

Furthermore, when there is importation of legalism into the application or the interpretation of any rule or statute, the law courts are unintentionally converted into workshops of technical justice while the judges being judicial technicians. This possibly, may be the reason why, in *EZE VS. FRN* (2017) 15 NWLR (PT. 1589)433¹⁶ the Supreme Court sounded it loud and clear, "justices of the Supreme Court are not judicial technicians and the Supreme Court is not a workshop of technical justice."

4.0 Balancing the Legal Tussle: The Way Forward

While this article provided for the meaning, harmful and dangerous effect of technicality in the judicial process, it ceases not to advise on the way forward also to give explicably, dangerous pitfalls to avoid and calling for the final burial concerning technicality in the judicial process.

It is a glint of hope to the emerging trends in legal practice as some new laws and statutes are now in place to give guidance to the legal procedures. Technicality is now under depredation with the high

¹⁵ [1983] LPELR-SC.126/1982

¹⁶ [2017]15 NWLR (pt.1589)433

increase rate in the "progressive judges". The new court rules also, are heavy blows on technicality.

An opinion suggested in this article as a reform is to balance the legal tussle between technicality and substantial justice in the judicial process. This relies partly on the legislature. The legislative should identify areas of possible contentions in law and seek to amend them with a view to achieving Justice¹⁷. The controversies that have paraded the legal scene on the issue of technicalities have always lingered on the interpretation of statutes. The lack of precision and clarity in legal frame works may somewhat move the judges towards applying judicial activism in offensive ways. It therefore behoves the Nigerian legislature to begin thorough examinations of judicial decisions and proscribe amendments to the law where necessary.¹⁸

One of the opinions regarded as a way to balance the tussle between technicality and substantial justice lies on the counsels, solicitors and lawyers altogether. These people should be made to know and understand the basic court procedures and rules before standing in front of any judge to defend or prosecute a case. It will not be regarded as injustice if a counsel is punished rightly Each day, we call and cry for the final burial of technicality in the court but does that mean court rules should be abolished ultimately and the court of law defiled with contempt? Common lawyers should be made to understand that fatal and costly mistakes from their side may bring injustice (so to say) on themselves and their clients. Actions must be initiated by due process of the law. The main aim and objective of these court rules are to ensure rationality and inspection in the legal processes. But if courts are not enforcing these rules, the legal process will be abused. So, lawyers shouldn't use the ignorance of court rules as pretext against technicality. In fact, if court rules are observed and

¹⁷ Joshua O. Ogwu, An Inspection of the Legal Tussle Between technicalities and substantial justice: a need for balance (2019) ULR online forum

¹⁸ Ibid.

adhered to, it won't deny neither delay justice, so lawyers should try as much as possible to adhere to the court rules to avoid further interference in justice. *Vigilantibus et non dormientibus jura subveniunt.*

5.0 CONCLUSION

No one is of the view that court rules should be treated with contempt or to be neglected. Neither is this article trying to point accusing finger at technicality. What it undergirds is that, court procedures should not affect justice rather must go hand in hand. The swing must be balanced, swinging to the side of justice and technicality subsequently in accurate order, with none disrupting the other.

Ultimately, while lawyers, standing as counsels should be wary and observant of court rules (regarding any mistake or blunder), to be a good and efficient spokesmen and spokeswomen for their clients, court rules, judicial technicalities, procedural laws should not be strictly adhered to if it is going to be at the expense of justice because *lege lata is not lege ferenda*.¹⁹

The court of law is the only place that can help in the rectification of this issue. The legislature can do nothing but a little, it depends solely on the judiciary who interprets these laws.

¹⁹ Park Ki-Gab, *Lex Ferenda in International Law* (UN ILC Journal 2018)

THE ADMISSIBILITY OF ELECTRONIC EVIDENCE IN NIGERIAN COURTS.

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Abstract:

Information and communication technology has advanced greatly in the past years. The developing world which was known for its analogue views and mode of operation has now metamorphosed into a giant global village where almost every activity involves the use of computers. The courts of Law are not left out of this great change and innovation. In matters of disputes as relating to electronic technology such as financial transactions, communication, modern automobiles and so on, parties involved would have no choice but to present electronic evidence as relating to the case at hand. One of the most notable developments of the new Evidence Act of 2011, is the acknowledgement of electronic document as evidence admissible before the court of Law. This paper is focused at examining the key prominent provisions of the Evidence Act, 2011 as relating to the admissibility of electronic evidence. It is also aimed at bringing out key points on when the evidence is said to be admissible before the court of law and when such evidence cannot be used as an evidence admissible before the courts of Law.

Keywords: admissibility, Nigerian courts, evidence, electronic, document

INTRODUCTION

The advent of information communication technology has introduced humanity into an advanced era of hi-tech communication on the digital platform. This is now the age of swift transfer of information, borderless transactions, electronic transactions (e-transactions). The automation has radically altered the landscape of human activities. These digital developments have

also redefined the pattern of legal proceedings in courts of law across the globe. Therefore, it is imperative that the law must keep pace with modern developments¹. Hence, the need for advancement in the use of electronic devices and documents in the courts of law is imperative as this tends to bring the Nigerian courts into an equal standing with other courts globally.

Before now, the admissibility of this kind of evidence has created controversies in reaction to some specific provisions thereto in the repealed Act and not so withstanding the facts that within the purview of this limited provision as given by the repealed Act, the Supreme court in the case of *ESSO WA V OYEGBOLA* (1969) *NMLR PG 194*, held that, the computer print outs were admissible.²

CLARIFICATION OF CONCEPTS

2.1 Evidence: evidence is information by which facts tend to be proved. It tends to prove or disapprove something; ground or belief; proof or data presented to a court or jury in proof of the facts in issue and which may include testimony of witnesses, records, documents, or objects.³ The Black's Law Dictionary defines the word evidence as:

Any specie of proof or probative matter, legally presented at trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention.⁴

Any matter of fact that a party to a law suit offers to prove or disprove an issue in the case is known as evidence. According to *CROSS AND TAPPER* in their text on evidence, the evidence of an act is that

¹ Akhihihero, P.A. "Admissibility of Electronic Evidence in Criminal Trials, How Practicable"? July, 2013

² *Esso wa v Oyegbola* (1969) *NMLR* pg 194

³ [dictionary.com/evidence-meaning-and-concept](https://www.dictionary.com/evidence-meaning-and-concept).

⁴ Black's law dictionary

which tends to prove it – something which may satisfy an enquirer of the fact's existence. Apparently, evidence, in a court of law is taken through various means by an examination-in-chief, where after, a cross examination is taken to determine the authenticity of the evidence given.

An evidence may be;

4.Oral evidence

5.Direct evidence

6.Real evidence

7.Circumstantial evidence

8.Hear-say evidence

9.Documentary evidence.

The admissibility of an evidence before the courts of law is solely determined through the directives of the Evidence Act, 2011. It came into force on the 3rd day of June, 2011. It repealed the Evidence Act Cap E14 by its section 257. According to its long title, the Evidence Act, 2011, is an “Act to repeal the Evidence Act Cap E14, Laws of the Federation of Nigeria and enact a new Evidence Act which shall apply to all judicial proceedings in or before courts in Nigeria and for related matters.”⁵

2.2 Electronic evidence

Evidence generated through the use of electronic or mechanical devices. It is any probative information stored or transmitted in digital form that a party to a court case may use at trial. Such kind of evidence may include documents generated from phone logs, emails, POS and ATM machines, social media platforms such as Facebook, Twitter, WhatsApp, YouTube, Instagram, blogs and so on. They may

⁵ Journal of law, policy and globalization 2019 at pg 2

also include videos in digital content such as DVDs, VCDs, flash drive and so on.

2.3 Admissibility

The concept of admissibility of an evidence before a court of competent jurisdiction is whether or not that piece of evidence can be received or accepted by the court of law when presented before her.

ADMISSIBILITY OF ELECTRONICALLY GENERATED EVIDENCE.

By virtue of section 84 of the Evidence Act, 2011, electronically generated evidence can be presented and are admissible before the court of law. Section 84(1) provides; *in any proceeding a statement is contained in a document, produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible.*⁶ Here, the Act makes it implicitly clear that electronic documents can be brought before the court of law. However, there are provisions for which they can be accepted as admissible.

Section 84(2) provides thus;

The requirements referred to in (1) of this section includes;

iv. *The document containing the statement was produced by the computer during a period over which the computer was regularly used to store and process information.*

v. *That over the period there was regular supplies to the computer in the ordinary course of those activities, information of the kind contained in the statement.*

vi. *That throughout the material fact of that period, the computer was operating properly*

⁶ section 84(1) Evidence Act,2011.

vii. *Lastly, that the information contained in the statement reproduced or that it is derived from information supplies to the computer in the ordinary course of these activities.*⁷

More so, section 84 (4) provides that a party seeking to tender a computer-generated document, shall file a certificate;

- (a) *Identifying the document or statement*
- (b) *Describing the manner of its production*
- (c) *Stating the particulars of the device used in the production of the document*

*The certificate shall be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of a relevant authority.*⁸

The aforementioned provisions have to be met in order to make an electronically generated evidence to be admissible. It is also important to note that an evidence can be relevant and yet inadmissible when it does not possess the qualities required of an evidence to be relevant and admissible.

Conclusion

It should also be noted that the technological advancement in the globe at large brings with it certain disadvantages and negative effects which warrants the courts of law to be extremely cautious in the admissibility of such documents in the bid to serve justice. Some of these vices which technological advancement causes includes; hacking of emails and other profiles on social media, alteration of documents such as images, electronic signatures, phone numbers and so on. Hence, notwithstanding the improvements and developments of the law, caution must be taken in order to ensure that justice is served in admitting evidence generated by computer.

⁷ section 84(2) Evidence Act, 2011,

⁸ Section 84(4) Evidence Act 2011.

DOUBLE JEOPARDY RULE; A PROTECTIONIST CLAUSE AGAINST INJUSTICE

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Abstract:

The principle of double jeopardy is a monumental clause in jurisprudence, its aim is of colossal importance. The principle operates as a proscription against retrials for the same criminal offence following a trial on the merits by a court of competent criminal jurisdiction concluding in an acquittal or conviction. The principle developed at common law in respect for the draconian punishment traditionally imposed on defendants and the deficiencies in medieval criminal procedure to the advantage of prosecution.⁹ The common law immunity from re-prosecution gradually developed in response to the injustice in permitting retrials for the same offence following an acquittal or conviction.¹⁰ The principle was also designed to prevent the imposition of multiple punishment for the same criminal transgression in separate proceedings.¹¹ Another importance embodied in the double jeopardy clause is the preservation of the finality of judgment. At this point, a careful reader will understand the position of double jeopardy in unambiguous manner.

Hence this article aims at appraising the protectionist clause of double jeopardy against injustice and not to dig into the history of the principle. It also aims at advocating the continuous enforcement of the principle through a constructive conclusion.

INTRODUCTION

This fundamental principle of criminal justice and procedure (double jeopardy) has been elevated to constitutional status in most common law jurisdiction including the United States, Canada, New

⁹ Jill Hunter, "THE DEVELOPMENT OF THE RULE AGAINST DOUBLE JEOPARDY" (1984)

¹⁰ <https://www.researchgate.net/publication/279846856-The-Constitutional-Status-of-the-Double-Jeopardy-Principle> accessed 31st October, 2020.

¹¹ *ibid*

Zealand, India, South Africa and Nigeria.¹² The doctrine appears to have originated in Roman law in the principle of *non bis in idem* (an issue once decided must not be raised). This is recognized by 72 signatories and 166 parties to the **International Covenant on Civil and Political Rights under Article 14 (7)**.

Similarly, the Fifth Amendment to the US Constitution provides: “no person shall be subjected for the same offence to be twice put in jeopardy of life or limb”¹³ The underlying idea, one that is deeply ingrained in at least the Anglo-American system or jurisprudence, is that the state with all its resources and powers should not be allowed to make repeated attempt to convict an individual for an alleged offence, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty

DOUBLE JEOPARDY RULE AS A PROTECTIONIST CLAUSE AGAINST INJUSTICE.

As the title of this Article suggest, the writer canvasses the view that double jeopardy clause is put in place to protect citizens against the following:

➤ **Protection against Re-Prosecution Following Mistrial:** the common law generally required that the previous trial must have ended in a judgement of conviction or acquittal, but the constitutional rule is that jeopardy attaches much earlier, in jury trials when the jury is sworn, and in trials before a judge without a jury, when the first evidence is presented. Therefore, if after jeopardy attaches, the trial is terminated in some reason, it may be that a second trial, even if the termination was erroneous is barred. This implies that, where there is an error at first trial, a second trial cannot surface due to the principle of double jeopardy.

¹² <https://www.researchgate.net/publication/279846856-The-Constitutional-Status-of-the-Double-Jeopardy-Principle> accessed 31st October, 2020.

¹³ Fifth Amendment to the United States Constitution (1791)

➤ **Protection against Re-Prosecution Following Acquittal:** that a defendant may not be retried following an acquittal is the most fundamental rule in the history of double jeopardy jurisprudence.¹⁴

The law attaches particular significance to an acquittal. To permit a second trial after an acquittal, however mistaken the acquittal may have been, would present an unacceptably high risk that the Government with its vastly superior resources, might wear down the defendant so that even though innocent he may be found guilty.¹⁵

➤ **Acquittal by Jury:** little or no controversy accompanies the rule that once a jury has acquitted a defendant, government may not through appeal of the verdict or institution of a new prosecution, place the defendant on trial again. Thus the court early held that, when the results of a trial are set aside because the first indictment was invalid or for some reason the trial's result were voidable, a judgment of acquittal must nevertheless remain undisturbed.¹⁶

➤ **Acquittal by the Trial Judge:** when a trial judge acquits a defendant, that action concludes the matter to the same extent that acquittal by jury verdict does. There is no possibility of retrial for the same offense.

➤ **Protection against Re-Prosecution Following Conviction:** a basic purpose of the double jeopardy clause is to protect a defendant "*against a second prosecution for the same offense after conviction*" it is settled that "*no man can be twice lawfully punished for the same offense*".¹⁷

➤ **Protection against Sentence Increases:** the double jeopardy clause protects against imposition of multiple punishment for the same offense.¹⁸ The application of the principle leads, however, to a number of complexities. In a simple case, it was held

¹⁴ United States V Martin Linen Supply Co., 430 U.S. 564, 571 (1977)

¹⁵ <https://www.law.cornell.edu/constitution-conan/amendment-5/doublejeopardy> accessed 31st October, 2020.

¹⁶ UNITED STATES V BALL, 163 U.S. 662 (1896)

¹⁷ *Ex Parte Lange*, 85 U.S. (18 Wall) 163 (1873)

¹⁸ *Ex Parte Lange*, 85 U.S. (18 Wall.) 163, 173 (1874); *North Carolina V. Pearce*, 395 U.S. 711, 717 (1969).

where a court inadvertently imposed both a fine and imprisonment for a crime for which the law authorized one or the other but not both, it could not, after the fine had been paid and the defendant had entered his short-term confinement, recall the defendant and change its judgement by sentencing him to imprisonment only.

➤ **Protection against Legislative Discretion as to Multiple Sentences:** it frequently happens that one activity of a criminal nature will violate one or more laws or that one or more violations may be charged. Although the question is not totally free of doubt, it appears that the double jeopardy clause does not limit the legislative power to split a single transaction into separate crimes so as to give the prosecution a choice of charges that may be tried in one proceeding, thereby making multiple punishments possible for essentially one transaction. This explains that one cannot serve multiple punishments for a crime in a situation where there are different legislative provision for a crime.

➤ **Protection against Successive Prosecutions for the Same Offense:** successive prosecution raise fundamental double jeopardy concerns extending beyond those raised by enhanced and multiple punishments. At the same time, multiple prosecutions allow the state to hone its trial strategies through successive attempts at conviction.¹⁹ In *BROWN V. OHIO*,²⁰ the Court, apparently for the first time, applied the same evidence test to bar successive prosecutions in state court for different statutory offenses involving the same conduct. In this case, a second trial was quashed in respect of the application of the double jeopardy principle.

Specifically, double jeopardy provides:

- ✓ A protection for the same offense after an acquittal
- ✓ A protection for the same offense after a conviction and
- ✓ A protection against more than one punishment for the same offense

¹⁹ *GRADY V. CORBIN*, 495 U.S. 508, 518-19 (1990)

²⁰ 432 U.S. 161 (1977)

CONCLUSION

The double jeopardy clause is an activist clause, it is a clause that encourages judicial activism in different ways while interpreting the law. It smoothen and correct the inconsistencies in our statutes as well as judicial precedents. In a more important function, double jeopardy principle checkmates the power of the executive and limits the powers of state prosecution to some extent. The clause protects citizens against state machineries, government functionaries who may want to abuse their powers in the exercise of their functions. It is true that “*power corrupt and absolute power corrupts absolutely*” a despotic leader may want to render vulnerable those who checkmates him deploying state machineries to that effect, however, the strict application of the principle will definitely serve as a strong limitation. Double jeopardy principle as explain herein restrains the state from retrying one who is previously acquitted of a crime, it restrains the retrial of a convict who is done with his punishment. The enshrinement of the principle in our constitution serve as a watershed in our jurisprudence. A person cannot be tried for the same offense based on the same conduct. The law maintains that if a person robs a bank or murder a person that individual cannot twice be tried for same offense. Similar position is maintained in section 36 (9) of the 1999 CFRN as amended 2011 which provide thus: ‘*no person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence having the same ingredients as that offence save upon the order of a superior court*’.²¹

²¹ Constitution of the Federal Republic of Nigeria 1999 as Amended 2011.

