CONTEMPORARY ISSUES IN CRIMINAL LAW AND ADMINISTRATION

Being a Paper Presented by Yusuf O. Ali Esq; SAN at the Eminent Intensive workshop for Magistrates, State Counsel and Police Prosecutors Organized by kwara State Ministry of Justice

INTRODUCTION

May I with the greatest respect, thank the organizers of this workshop for the privilege and honour given to me to address this August body of Magistrates, State Counsel and Police Prosecutors on the all important topic titled "**CONTEMPORARY ISSUES IN CRIMINAL LAW AND ADMINISTRATION."** You will undoubtedly agree that this topic is important and highly relevant at this time especially as an effective and speedy administration of justice is integral to the growth and stability of a democratic nation. It is also important to enhance public confidence and to renew the public perception of justice delivery by the judiciary as not just the third arm of Government, but as a major Force to be reckoned with by all.

Our main concern as shown by this topic of discussion is to discuss contemporary issues in criminal law and administration. In order to achieve its objective, the organizers of this workshop have identified some sub topics which shall be taken seriatim as follows:

1. Plea bargaining and prosecution of cases under the Anti-Corruption Law.
2. Admissibility and Custody of Exhibit in Criminal Matters
3. Prosecution of cases under the child Rights Act-Problems and prospects.
4. Rent matters before Magistrate Courts.
5. Police prosecution in Magistrate Courts: the role of Magistrates in ensuring justice in a lopsided legal system.
6. Appeals involving Magistrate Courts.

Plea Bargaining and Prosecution of Cases under the Anti-Corruption

Plea bargaining have been given different definitions by many scholars. However, the definition which in my humble opinion, fully described the concept of plea bargaining is that given by Onwudiwe Martins O. in his paper, "Plea Bargain: A Catalyst for the Nigeria Criminal Justice System as follow:

"Plea in the legal parlance, means the accused person's formal response of "guilty" "not guilty" or nolo contendere, i.e. no contest" to a criminal charge. While to bargain is to "negotiate" or to "agree". The legal combination of this two concepts produces the phrase PLEA-BARGAIN - also known as negotiating settlement, copping plea, copping out, plea argument or negotiated plea.

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http://hubpages.com/hub/Plea-Bargain-in-the-Nigeria-Criminal-Justice-System

Page 1173, seventh edition of the Black's Law Dictionary gives the definition of plea bargain as a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of the multiple charges in exchange for some concession by the prosecutor usually, a more lenient sentence or a dismissal of the charges.

From the above definition, it is safe to state that a negotiated plea will usually involve the accused pleading guilty to a lesser offence or to only one or some of the counts or a multi count indictment in return for a lighter sentence than that possible for the graver charge."

Plea bargaining is an old and established procedure in criminal law administration, though, novel to the Nigeria judicial environment. Plea bargain has its origin in the United State of America. The practice came about as a potent weapon in criminal law jurisprudence; it could be described as a child of necessity employed in deserving cases by the state in certain high profile cases to facilitate a negotiated soft landing platform for accused persons who are willing to save the time and huge expenses for the state, through a guilty plea and payment of fine/forfeiture of proceeds of the crime, to avoid undue publicity and the attendant image crisis.

Plea bargain as an essential component of justice administration, involves discussion that aim toward an agreement under which the accused defendant will plead guilty in exchange for some prosecutorial or judicial concession.

These concessions are of four types. Namely:
1. The initial charges may be reduced, thus ensuring a reduction in the sentence.
2. In instances of multiple charges, the number of counts may be reduced.
3. A recommendation for leniency may be made by the prosecutor, thus reducing the potential sentences from incarceration to probation or forfeiture.
4. In cases in which the charges involve a negative label, such as child abuse the complaint may be altered to a less repugnant one, such as assault.

For the accused, plea bargaining has three advantages:
1. It reduces the possibility of detention during extensive pretrial and trial processes. The accused can have his case completed more quickly and know what the punishment will be instead of facing the uncertainty of a judges sentencing decision.

2. It decreases the cost of legal representation.
3. It increases the chances of a reduced sentence. For the accused charged with murder it can remove the possibility of life sentence or even death.

For the state plea bargaining also have some advantages which includes, but is not limited to the following:
1. It reduces the overall financing cost of criminal prosecution.
2. It improves the efficiency of the court by having fewer cases go to trial.
3. It enables the prosecution to devote more time and resources to other cases and earn their fee quickly
4. It precludes any possibility of having a serious offender escape justice because of some real or imagined weakness in the case.

Negations during plea bargaining are subject to the approval of the court. In most instances the bargaining is arrived at between experienced and knowledgeable counsel on both sides and is readily approved by the court. If however, the court is willing to approve the plea bargain, the defendant must choose between withdrawing the guilty plea (and thus going on trial), accepting the plea bargain with such modifications as the judge may approve. Once the court has accepted a guilty plea pursuant to a plea bargain, the court cannot unilaterally alter it without permitting the defendant the opportunity to withdraw the plea.

Plea bargain is not settlement. Strictly speaking, it is not even a civil agreement. It is now done all over the world. Right now, the United Nations (UN) has adopted it and is using it to prosecute all world crime cases. In spite of the acceptance of the norm all over the world, a recent case is one of the celebrated child molestation trial involving Michael Jackson, the acclaimed king of pop music, by the court in the United State and even Maria Jones, the Olympic medalist which despite the hype and hullaballoo, ended in no contest, literally speaking under a plea bargain arrangement.

However, many Nigerians remain skeptical about the modus operandi and the legality of plea bargaining in our criminal justice policy. The critics are of two main schools of thought. The first school stresses due process and argues that plea bargaining does not exist in any of our laws and therefore its mere mention is illegal. The second school thought impliedly admitting its legality stressed the sentencing policy and points out that society's interest in appropriate punishment for crimes is reduced by plea bargaining.

Plea bargaining have also been criticized by some because it is perceived to be hidden from judicial scrutiny. Other critics believe that overuse of plea bargaining breeds disrespect and even contempt for the law. They say criminals look at the judicial process as a game or a sham, much like other deals made in life. However, despite its controversial nature, plea bargaining has continued to receive the blessing and judicial anointing of our courts and other courts alike. For example in the year 1971, while sitting excatedra Chief Justice Warren E. Burger reflected on the case of **SANTOBELLO v. NEW YORK** in the following manner:
"The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called "plea bargain" is an essential component of the administration of justice. Properly administered, it is to be encouraged."

It is a trite jurisprudential truism that justice at all material time must not only be done but must manifestly and undoubtedly be seen to be done; this informed the maxim fait justicia et ruat in coleuim. If therefore justice is attainable by plea bargaining, I am convinced beyond all standard of doubt that it should be encouraged to discourage technical justice and judicial bottlenecks.

As earlier said, the legality of plea bargaining had been a major cause of worry to legal and intellectual minds alike. Many have criticized this norm on the ground that it does not have a place in our present criminal law jurisprudence and it is not an option available to the prosecution in criminal trials. This I would like to state with utmost certainty, is a total misconception of our criminal justice policy. Any country that operates a system that allows for amendment of charges and laws have provided an avenue for plea bargaining. In other words, since our law allows an accused person to change his plea, this tends to conform with the principle, notion and spirit of plea bargaining.

Moreover, a cursory look at the working of plea bargain in our criminal justice system signifies that the process had been significantly exploited to fight serious crime like money laundering, drug trafficking, financial misappropriation and criminal activities of that mode. One of the bodies set up to look into these offences is the anti graft body known as the Economic and Financial Crime Commission, hereinafter referred to as EFCC. The EFCC since its establishment via the Economic and Financial Crime Commission Act 2004 (as Amended) has adopted plea bargain as a ready tool for criminal prosecution. Section 14 of the EFCC Act provides as follows:

[3]404 US 257, 260, 92 S.ct. 495, 498, 30 L.Ed. 2d 427, 432 (1971)

"Subject to the provision of section 174 of the constitution of the Federal Republic of Nigeria 1999, which relates to the power of the attorney general of the federation to institute, continue or discontinue criminal proceedings against any persons in any court of law, (nolle prosequi), the commission may compound any offence punishable under this Act by not exceeding the amounts of the maximum fine to which that person would have been liable if he has been convicted of that offence."

The above cited section no doubt empowers the EFCC to enter plea bargain with the accused by compounding the offence before it goes to court, they can agree with the suspect who would be told to return all the loot and his punishment will be negotiated. It is at the discretion of the Attorney General of the Federation (AGF), the prosecutor and the court to reduce the sentence of the accused person and not to eliminate it.

Needless to state that the EFCC Act is a subsidiary legislation of the National Assembly made subject to the provision of the 1999 Constitution by the law making power conferred in it. It is therefore heartwarming to note that the EFCC has succeeded in utilizing this section of our laws by prosecuting some of the so called "bigmen" and in some cases secure their conviction through the court by solely relying on plea bargain. Prominent among which are Chief Tafa Balogun who was convicted and his property confiscated after he pleaded to bargain. Also on this list is the former Governor of Bayelsa State, Chief D.S.P Alamieyeseigha.

Admittedly, the arguments for and against plea bargaining appears sound in reasoning. If the maxim, "Justice delayed is justice denied" is to be meaningful, this concept will serve as a major intervention strategy in tackling the delay in the administration of justice. To an extent that it is yet to be incorporated in the criminal procedure legislations of the states in the country, each time the prosecution adopts the concept; it should be applied in such a way that it will not defeat the attainment of substantial justice. Besides, it should have a clear cut procedure and must not be subjected to abuse or misapplication against the interest of the state and the society at large. As rightly pointed out by the retired eminent jurist of Supreme Court, **Chukwudifu Oputa**, J.S.C. (as he then was) "justice is not a two-way traffic but a three-way traffic." In other words, justice is for the state, the accused person and for the society. Beyond this, there is the need for criminal justice administration database and the establishment of Fast Track Courts that will utilise special rules of procedure in justice delivery system in the country. Perhaps, due to the imperative of criminal justice reforms, the Federal Government should set up a Criminal Law Reform Committee to embark on holistic review of the criminal justice administration in the country.

However, considering the wreck that corruption has done to our country, plea bargaining may not be an appropriate option in corruption cases in Nigeria. It is apposite to start with the ethical basis for plea bargaining itself. The essence of criminal justice is to see to the peaceful co-existence in the state. Where there is no law, anarchy will definitely take over. In Nigeria today, plea bargaining is becoming an escape route to corrupt government officials. It is disheartening to see today in our country that these corrupt government officials after stealing billions of naira will end up entering a guilty plea and they would be asked to return what they declared to have stolen and bag a lighter sentence.

For the society to move forward, some standard must be laid. Some acts are threat to the continual existence of the state. This is why there is the need to criminalize some activities and appropriate sanctions are usually offered to such actions. Where the law says that anybody who is liable for an offence shall be sentenced to say, seven years imprisonment, except in rare cases, such a culprit must be made to face the consequences of his actions. This is the whole essence of the criminal justice system.

Variations exist in different offences because of the nature of such offences. While some offences are classified as misdemeanor, others are called felony with stricter punishment. The wisdom behind this variation is not far fetched. There is a need to attach severe punishment to some offences because of their gravity. This is the only way others could be deterred. The severity attached is not for fun. It definitely has a purpose.

Perhaps, the EFCC and other anti-graft agencies do not realize the nature of the offence of corruption. It is noted that plea bargaining is not applicable to cases of murder, manslaughter and rape. Corruption is grievous than murder, manslaughter and rape if they were to be constituted into a single crime. In fact, corruption is no less a crime against humanity. It is disgusting when we see today that an ex-governor who was guilty of stealing billions of naira belonging to a state ending up to spend six months in jail! We advocate that plea bargaining should be sparingly employed in corruption cases and with a lot of circumspection.
The image of the country has been battered every where in the world. Her at home, it is strike actions here and there. The conflict in the Niger Delta which is transforming to a civil war has corruption as its remote cause. All the money

[4]The case of Alamesiagha cited above is an instance

that was meant to develop the region is being embezzled. At the end of the day, they plead guilty and released just 'a tip of an iceberg' of what they have stolen. I think the disgrace they get at trial as some people have argued is nothing. These people are supposed to face the wrath of the law no matter the length of the trial. They should get the severest of punishment. It is only then that people would learn from their torment and every public office holder will definitely abhor corruption like a plague. We are of the opinion that anybody who has the interest of the nation at heart should support the proposition that plea bargaining be sparingly employed in offences of corruption.

Apart from the above mentioned areas of Criminal Justice System where plea bargaining may not be totally appropriate, plea bargaining will necessarily endure as a great safety value, perhaps the only factor that stands between the administration of justice and utter chaos. Without this tool, every accused person charged with an offence, however serious or benign, would have to go to trial. As it is, millions of cases are processed in the court each year. With existing resources, a person arrested today might have to wait a year or century for his or her case to be determined considering the delay mechanisms that characterized the Nigeria judicial administration. Aside from expediency, the "virtue" of plea bargaining is that as earlier pointed out, it is beneficial to both the accused and the state. Therefore, it should be encouraged and utilized within the scope of the Nigeria Criminal Justice System. One can only hope that our courts, the prosecution and the accused will be well guided in their negotiation, acceptance and usage of plea bargaining.

Admissibility and Custody of Exhibit in Criminal Matters

Initially, the main source of the law of evidence in force in the Magistrate Courts and the High Court, (then known as the Supreme Court) during the Colonial days in the territory that became Nigeria, was the English Common Law of Evidence and the rules of evidence contained in British legislation such as

Section 10 Provincial Courts Ordinance 1914.
Section 12 Provincial Courts Ordinance 1933
Section 30 Magistrates Courts Ordinance 1943
Section 14 Supreme Courts Ordinance 1943 as well as Section 4 Ordinance No.4 of 1876 which provided for the application of English Common Law, Equity and Statutes of General Application passed on or before 1900.[5]

[5]Nwadialo, F. Modern Nigeria Law of Evidence. (1981) Benin City, Nigeria, Ethlope & Publishing Co. (p.7)

Subsequently the Evidence Ordinance No. 27 of 1943, which was based on the Digest of the Law of Evidence by Sir James F. Stephen and which became operational in 1945, Notice 618, became the main source of the law of Evidence.
Since October 1, 1960, the Evidence Ordinance came to be known as the Evidence Act. That Evidence Act was later incorporated into the Laws of the Federation CAP 112 LFN 1990 and CAP E14 LFN 2004 respectively. The Evidence Act as contained in CAP E14 LFN 2004 is now the major source of the Nigerian Law of Evidence.[6]

Section 4 (2) and (3) Constitution of the Federal Republic of Nigeria 1999 as well as Part 1 of the 2nd Schedule to the Constitution of the Federal Republic of Nigeria 1999 have made Evidence matters the exclusive preserve of the Federal Government. **Section 5(a)** Evidence Act LFN 2004 however makes provision for the applicability of other laws (hence our previous consistent use of the term "main source" in respect of the Evidence Act.), it provides thus:
"Nothing in this Act shall prejudice the admissibility of any evidence which would apart from the provisions of this Act be admissible."

The effects of **section 5(a)** Evidence Act is that although the Evidence Act LFN 2004 is the main source of the law of evidence in Nigeria, the English Common Law of Evidence or, any relevant local statute may be resorted to for the purpose of supplementing the provisions of the Act where necessary. This means that:
(1) It is possible to admit in evidence, any evidence which is admissible under any other Nigerian statutory enactment
(2) Any other evidence which would have been admissible under the Common Law had the Act not been passed, will still be admissible, i.e., under the rules as they existed by June 1, 1945

The value of Section 5(a) Evidence Act LFN 2004 is seen where the Act does not provide for the admissibility of a matter but such a matter is admissible under a Common Law rule. The principle in Section 5(a) Evidence Act LFN 2004 was discussed in **Onyeanwusi v. Okpukpara**[7] in which the West African Court of Appeal observed:
"It is the Evidence Act, or if it is silent, the Common Law of England that applies in this court."

Aguda, T. (1999) Aguda: The Law of Evidence, 4th Edition. Ibadan: Spectrum Books Ltd (p.4)
(1953) 14 WACA 21;311

In R v. Itule[8], the court in considering whether a confession which goes in favour of an accused person is admissible as evidence in favour of the accused, Brett, Ag C.J.F. (as he then was), said that:
"The matter is not dealt with expressly in Sections 27 to 32 of the Evidence Ordinance and the common law rule therefore applies by virtue of Section 5(a)"

In summary then, where the Act is silent, then the court can make use of the Common Law to admit the evidence in question, provided that it is relevant. However, the principle that evidence admissible under the Common Law is also admissible under the Act cannot be applied in reverse. It is not the Intention of **Section 5(a)** Evidence Act that evidence inadmissible under the Common Law is also inadmissible under the Act, or under any other statute applicable in Nigeria. In practice then, any rules of Common Law governing the exclusion of evidence are inapplicable in Nigeria, unless such rules have been incorporated into the Act. And where this is so, Nigerian courts can look up to English decisions as guides to interpret such Nigerian statutory provisions. But where the Evidence Act has declared that a certain piece of evidence is inadmissible, then such evidence cannot be admitted by any rules of common law.

Another effect of **Section 5(a)** Evidence Act is that other sources of evidence include:
(1) Customs
(ii) The courts through judicial precedents
(iii) The legislature through the promulgation of Acts, Laws and Edicts

Other Nigerian statutory enactments on the admissibility of Evidence include **Sections 36 (4)(b)** of the Constitution of the Federal Republic of Nigeria 1999 and the Advance Fee Fraud Act and other Related Offences Act, 2006.

Admissible evidence is the term used to describe evidence that is relevant to a determination of issues in any judicial proceeding so that such evidence can be properly considered by a judge in making a decision. Evidence is admissible if it is of such a character that the court is bound to accept it during the trial so that it may be evaluated by the judge or jury. Admissible evidence is the foundation of the deliberation process by which a court or jury decides upon a judgment or verdict. The Federal Rules of Evidence regulate the admissibility of evidence in federal courts. State rules of evidence determine evidence that is admissible in state court proceedings.[9]

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[8](1961) ALL NLR 462
[9]West's Encyclopaedia of American Law (2009) Admissible, Answers.com Available from: http://www.answers.com/topic/admissible (Accessed 31/01/2010]

Admissible evidence may be described as evidence which the trial judge finds is useful in helping the trial of a fact (a jury if there is a jury, otherwise the judge) and which cannot be objected to on the basis that it is irrelevant, immaterial or violates the rules against hearsay and other objections. Sometimes the evidence which a person tries to introduce has little relevant value (usually called probative value) in determining some fact, or prejudice from the jury's shock at gory details may outweigh that probative value. In criminal cases, the courts tend to be more restrictive on letting the jury hear such details for fear they will result in "undue prejudice". Thus, the jury may only hear a sanitized version of the facts in prosecutions involving violence.[10] While admissibility refers to "the quality or state of being allowed to be entered into evidence in a hearing, trial, or other proceeding. "[11]

The powers of Nigerian courts with respect to admissibility of evidence is provided for in **Section 6 (1), (2), (5) and (6)** of Constitution of the Federal Republic of Nigeria 1999 which is reproduced below:

"(1) The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.

(2) The judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State.

(5) This section relates to:-

(a) the Supreme Court of Nigeria;

(b) the Court of Appeal;

(c) the Federal High Court;

(d) the high Court of the Federal Capital Territory, Abuja;

(e) the Sharia Court of Appeal of the Federal Capital Territory, Abuja;

(g) a Sharia Court of Appeal of a State;

(h) the Customary Court of Appeal of the Federal Capital Territory, Abuja;

(f) a Customary Court of Appeal of a State;

(j) such other courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and

(k) such other court as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws

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[10]Hill, G. and Hill, K (2005) Admissible Evidence. The Free Dictionary [Online] Available from: http://legal-ictionary.thefreedictionary.com/Admisible+evidence. [Accessed 31/01/2010]

[11]Black Law Dictionary 1999, 7th Edition, West Publishing Co., Minnesota p48

(6) The judicial powers vested in accordance with the foregoing provisions of this section -
(a) shall extend, notwithstanding anything to the contrary government or authority and to any persons in Nigeria, and to all actions and thereto, for the proceedings relating determination of any question as to the civil rights and obligations of that persons;
(b) shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution;
(c) shall not, as from date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966 determining any issue or question as to the competence of any authority or person to make any such law."

Additionally, Section **186 (1)** of the Evidence Act which deals with the powers of a judge with respect to admissibility of evidence provides that:
"When either party proposes to give evidence of any fact, the court may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the court shall admit the evidence if it thinks that the fact, if proved, would be relevant and not otherwise."

And **Section 140** Evidence Act makes provision for the burden of proof in relation to the admissibility of evidence. It provides:
"(1) The burden of proving any fact necessary to be proved in order -
(a) to enable a person to adduce evidence of some other fact; or
(b) to prevent the opposite party from adducing evidence of some other fact, lies on the person who wishes to adduced, or to prevent the adduction of, such evidence, respectively.

(2) The existence or non existence of facts relating to the admissibility of evidence under this section is to be determined by the court."

In criminal proceedings, exhibits admitted in evidence are kept in the custody of the court, presumably for safekeeping. However, the common trend in Magistrate Courts in Nigeria appears to be that such exhibits are most often lost before the final determination of the case and in some cases, the exhibits are untraceable when needed foe appeal.

Prosecution of cases under the child Rights Act-Problems and prospects

The Child Rights Act represents a decisive step for the protection of children in Nigeria as it domesticates the obligations of the Convention on the Rights of the Child and consolidates all laws relating to children into one single legislation. The Act specifies the rights and responsibilities of children and the duties and obligations of government, parents and other authorities, organizations and bodies. **Section 204** of the Child Rights Act provides as follows:

"No child shall be subjected to the criminal justice process or to criminal sanctions, but a child alleged to have committed an act which would constitute a criminal offence if he were an adult shall be subjected only to the child justice system and processes set out in this Act."

By virtue of **Section 205** of the Child Rights Act, the right of the child to privacy shall be respected at all stages of child justice administration in order to avoid harm being caused to the child by undue publicity. The section provides:

"(1) The right of the child to privacy specified in section 8 of this Act shall be respected at all stages of child justice administration in order to avoid harm being caused to the child by undue publicity or by the process of labeling,"

(2) Accordingly no information that may lead to the identification of a child offender shall be published,

(3) Records of a child offender shall-

(a) be kept strictly confidential and closed to third parties;

(b) made accessible only to persons directly concerned with the disposition of the case at hand or other duly authorised persons; and

(c) not be used in adult proceedings subsequent cases involving the same child offender,"

Similarly, the legal status and fundamental rights of the child is protected under **Section 210** of the Child Rights Act which provides as follow:

"The legal status and fundamental rights of the child set out in Part II of this Act, and in particular-

(a) the presumption of innocence;

(b) the right to be notified of the charges; -

(c) the right to remain silent;.

(d) the right to the presence of a parent or guardian;

(e) the right to legal representation and free legal aid, shall be respected in the administration of the child justice system set out in this Act."

In addition, **Section 211** of the Child Rights Act which provides thus:

"(1) On the apprehension of a child-

(a) the parents or guardian of the child shall-

(i) be immediately notified, or

(ii) where immediate notification is not possible, be notified within the shortest time possible after the apprehension, of the apprehension;

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(b) the Court or police, as the case may be, shall, without delay, consider the, issue of release;

(c) contracts between the police and the child shall

be managed in such a way as to-. (i) respect the legal status of the child,

(ii) promote the best interest and well-being of the child,

(iii) avoid harm to the child, having due regard to the situation of the child and the circumstances of the case.

(2) In this section-

"harm" includes the use of harsh language, physical violence, exposure to the environment and any consequential physical, psychological or emotional injury or hurt."

Professional education, in-service training, refresher courses and other appropriate mode of instructions shall be utilised to establish and maintain the necessary professional competence of all persons, including Judges, Magistrates, Police officers, supervisors and child development officers, dealing with child offenders. See **Sections 206 and 207** the Child Rights Act which provides as follows:

Section 206

"(1) Professional education, in-service training, refresher courses and other appropriate mode of instructions shall be utilised to establish and maintain the necessary professional competence of all persons, including Judges, Magistrates, officers of the Specialised Children Police Unit, supervisors and child development officers, dealing with child offenders.
(2) Every Judge, Magistrate and other judicial officer, appointed to the Court shall be trained in sociology and behavioural sciences to ensure effective administration of the child justice system.
(3) Persons employed in the child justice system shall reflect the diversity of children who come into contact with the child justice system and efforts shall be made by those concerned with the appointment of those persons to ensure the fair representation of women and minorities in the appointment..
(4) Subject to subsection (2) of this section, political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and promotion of persons employed in the child justice system shall be avoided in order to achieve impartiality in the administration of the child justice system."

Section 207
"(1) There shall be established, in the Nigeria Police Force, a specialised unit of the Force, to be known as the Speciliased Children Police Unit (in this Act referred to as the "Unit") which shall consist of police officers who-
(a) frequently or exclusively deal with children; or
(b) are primarily engaged in the prevention of child offences,
(2) The Unit shall be charged with the following functions, that is-
(a) the prevention and control of child offences;
(b) the apprehension of child offenders;
(c) the investigation of child offences; and
(d) such other functions as may be referred to the Unit by this Act or by regulations made under this Act or by any other enactment.

(3) Members of the Unit shall be continually trained and instructed specially for the functions conferred on the Unit under subsection (2) of this section."

In view of the varying special needs of children and the variety of measures available, a person who makes determination on child offenders shall exercise such discretion, as he deems most appropriate in each case, at all stages of the proceedings and at the different levels of child justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions Every person who exercises discretion shall be specially qualified or trained to exercise the discretion judiciously and in accordance with his functions and powers.[12] For instance, the police, prosecutor or any other person dealing with a case involving a child offender shall:

(a) Have the power to dispose of the case without resorting to formal trial by using other means of settlement, including supervision, guidance, restitution and compensation of victims; and

(b) encourage the parties involved in the case to settle the case.

Police investigation and adjudication before the court shall be used only as measures of last resort.[13] Detention pending trial shall equally be used only as a measure of last resort and for the shortest possible period of time and wherever possible, be replaced by alternative measures, including close care by and placement with a family or in an educational setting or home. Even when Detention pending trial is used as a last resort, a child in detention shall be given care, protection any necessary assistance including social, educational, vocational, psychological. medical and physical assistance, that he may require having regard to his age, sex and personality while in detention.[14]

A child who is accused of having committed an act such as is contemplated in **Section 209** of the Child Rights Act shall be tried in the Court, the terms" conviction" and "sentence" shall not be used in relation to a child dealt with in the Court and any reference in any enactment or other law to a person convicted, a conviction or a sentence shall, in the case of child be construed as including a reference to a person found guilty of an offence, or to a finding of guilt or to an order made upon such a finding, as the case may be. 15 In the trial of a child, the observance of his rights to fair hearing, and compliance with due process such as respect for the legal status of the child; promoting the best interest and well being of the child; as well ea avoiding harm to the child, having due regard to the situation of the child and the circumstances of the case, all in relation to the trial of the child offender (as during the initial contact with the child), shall be observed. 16 Further stressing this point, **Section 215** of the child Rights Act provides as follows:

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[12]See Section 208 of the Child Rights Act

[13] See Section 209 of the Child Rights Act

[24]See Section 211 of the Child Rights Act

[25] See Section 213 of the Child Rights Act

"***(1) Where a child offender is brought before the Court, the court shall ensure that-.***
(a) the proceedings is conducive to the best interests of the child and is conducted in an atmosphere of understanding which allows the child to participate therein and express himself freely;
(b) the reaction taken is always in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and needs of the child and the needs of the society;
(c) the personal liberty of the child is restricted only 'after careful consideration of the case, including the use of alternative methods of dealing with the child, and the restriction is limited to the possible minimum;
(d) the child is not deprived of his personal liberty unless he is found guilty of-
(i) a serious offence involving violence against another person, or
(ii) persistence in committing other serious offences, and there is no other appropriate response that will protect the public safety;
(e) the well-being of the child is the guiding factor in the consideration of his case.
(2) The Court has the power to discontinue any proceedings at any time if circumstances arise which make discontinuation of the proceedings the best way to dispose of the case.
(3) The Court shall handle each case brought before it expeditiously without unnecessary delay."

While **Section 216** of the child Rights Act goes further to provides that:
"(1) The parents or guardian of a child offender who is charged before the Court for an act which constitutes a criminal offence, shall attend all stages of the proceedings and shall be entitled to participate in the proceedings.
(2) The Court may, where necessary, make an order to enforce the attendance of a parent or guardian before it:

[16]See Section 214 of the Child Rights Act

(3) Not withstanding subsection (1) of this section, where in the opinion of the Court, it is not in the interest of a child that his parent or guardian should attend, the Court shall, by order, exclude the parent or guardian from so attending.

Where a child is brought before the Court, the Court shall, as soon as possible, explain to him and his parents or guardian in a language the child and the child's parent or guardian understands, the substance of the alleged offence. If a child admits the offence or the Court is satisfied that the offence is proved, the Court shall then ask the child if he desires to say anything in explanation of the reason or reasons for his conduct, and before deciding on how to deal with him, the Court shall obtain such information as to his general conduct, home surroundings, school record, including the social inquiry reports and medical history, as may enable it deal with the case in the best interests of the child; and may put to child any question arising out of such information.

If the child does not admit the facts of an alleged offence, the Court shall proceed to hear the evidence of the witnesses in support of the facts and at the close of the evidence of each witness, the Court shall ask the child or if the Court sees,fit the parent or guardian of the child, whether he or she wishes to put any questions to the witnesses. If the child, instead of asking questions, wishes to make a statement, the child shall be allowed to do so and it shall be the duty of the Court to put to the witnesses such of the questions as appear to be necessary and the Court may put to the child such questions as may be necessary to explain anything in the statement of the child. If it appears to the Court that a prima facie case is made out against the; child, the evidence of the witnesses for the defence shall be heard, and the child shall be allowed to give evidence or to make any statement.

If the child admits the offence or the Court is satisfied that the offence is proved, and the Court decides that a remand is necessary for purposes of inquiry or observation, the Court may cause an entry to be made in the Court records that the charge is proved and that the child has been remanded for enquiry or observation. The Court before which a child who has been remanded is brought may, without further proof of the Commission of the offence, make any order in respect of the child which could have been made by the Court which remanded the child.[17]

The appropriate officers shall, before a case, other than that involving a minor offence, is finally disposed of by the Court, properly investigate the background of the child, the circumstances in which the child is living and the

[17] See Section 218 of the Child Rights Act

conditions under which the offence has been committed. The investigating officer shall inform the Court of all relevant facts, relating to the child, including his social and family background, school career and educational experience, arising out of the investigation.[18]

Where a child is charged before the Court with an offence and the Court decides that the case would be best disposed of by the imposition of a fine, damages, compensation or costs, whether with or without any other measure, the Court shall order that the fine, damages, compensation or costs awarded be paid by the parent or guardian of the child instead of the child, unless the Court is satisfied that the parent or guardian of the child cannot be found or the parent or guardian has not condoned to the commission of the offence by neglecting to exercise due care, guidance of and control over the child. The Court may also order his parent or guardian to give security for his good behaviour. A sum imposed and ordered to be paid by a parent or guardian under this section, or any forfeiture or any security as given under this section, may be recovered from the parent or guardian by distress in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged.[19]

It must be pointed out that capital punishment cannot be imposed on a child who is found to have committed an offence. **Section 221** of the Child Rights Act provides thus:

"(1) No child shall be ordered to be-
(a) imprisoned; or
(b) subjected to corporal punishment or
(c) subjected to the death penalty or, have the death penalty recorded against him.
(2) No expectant mother or nursing mother shall be subjected to the death penalty or have the death penalty recorded against her.
(3) A court shall, on sentencing an expectant or a nursing mother, consider the imposition of a non-institutional sentence as an alternative measure to imprisonment.
(4) Where institutional sentence is mandatory or desirable, an expectant or a nursing mother shall be committed to and be held or detained at a Special Mothers Centre.
(5) No mother and child shall be held or detained at a Special Mothers Centre for a period longer than the time the child would have attained the age of six years.

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[18] See Section 219 of the Child Rights Act
[19] See Section 220 of the Child Rights Act

(6) Where-
(a) a mother is released from a Special Mothers Centre due to the age of her child being six years before she has completed her sentence; or.
(b) a child dies while with the mother at a Special Mothers Centre, the mother Shall be brought before the court which passed the original sentence to review the case and deal with her as appropriate, having regard to all the circumstances of the case.
(7) Where a mother is further given a sentence of imprisonment as a result. of a review under Subsection (6) of this section, the child shall be treated as a child in need for purposes of section 178 of this Act and may be committed to the care of either-
(a) his father; or
(b) a fit and proper person, by a committal order."

While **Section 222** of the Act provides as follows:
"(1) Notwithstanding anything in this Act to the contrary, where a child is found to have attempted to commit treason, murder, robbery or manslaughter, or wounded another person with intent to do grievous harm, the Court may order the child to be detained for such period as may be specified in the order.
(2) Where an order is made under subsection (1) of this section, the child shall, during that period, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place and on such conditions as the Court may direct, and the child whilst so detained shah be deemed to be in legal custody.

Where a child charged with an offence is tried by a court and the Court is satisfied that the child actually committed the offence, the Court shall take into consideration the manner in which the case should be dealt with. Namely, by:
(a) dismissing the charge: or
(b) discharging the child offender on his entering into a recognisance; or
(c) placing the child under care order, guidance order and supervision order, including-
(i) discharging the child offender and placing him under the supervision of a supervision officer, or

(ii) committing the child offender by means of a corrective order to the care of a guardian and supervision of a relative or any other fit person, or
(iii) sending the child offender by means of a corrective order to an approved accommodation or approved institution, or
(d) ordering the child offender to-
(i) participate in group counseling and similar activities,
(ii) pay a fine, damages, compensation or costs, or
(iii) undertake community service under supervision or
(e) ordering the parent or guardian of the child offender to-
(i) pay a fine, damages, compensation or costs, or
(ii) give security of his good behaviour, or
(iii) enter into a recognisance to take proper care of him and exercise proper control over him; or
(f) committing the child offender to custody in a place of detention provided under this Act; or
(g) making a hospital order or an order prescribing some other form of intermediate treatment; or
(h) making an order concerning foster care, guardianship, living in a community or other educational setting; or.
(i) dealing with the case in any other manner in which it may be legally dealt with under this Act.

The placement of a child in an approved accommodation or Government institution shall be a disposition of last resort; and not be ordered unless there is no other way of dealing with the child, and the Court shall state, in writing, the reason or reasons for making the order. Where an order is made by the Court, the order shall, for the purpose of reverting or restoring stolen property and enabling the Court to make orders as to the restitution or delivery of property to the owner and as to the payment of money upon or in connection with the restitution or delivery, have the like effect as a restitution order upon a conviction of an adult offender. Furthermore, a court shall not make an institutional order in respect of a child unless it is satisfied that there is a vacancy in the approved institution to which it intends to commit the child and an approved institution may refuse to accept or admit a child where there is no vacancy in the institution for the child notwithstanding an order of a Court committing the child to that institution.

From the foregoing, it is clear that strict compliance with the Child Rights Act in the prosecution of children offender is required for adequate protection of the fundamental rights of the child. However, the Child Rights Act appears to have little impact on our criminal justice system in Nigeria mainly because in the Constitution, issues of child rights are under States' responsibility and jurisdiction, the States are expected to formally adopt and adapt the Child

Rights Act for domestication as State laws. The Act only becomes fully operational when it is adopted by a State. To date, the Child Rights Act has been promulgated into Law in 16 States: Abia, Anambra, Bayelsa, Eboniyi, Edo, Ekiti, Imo, Jigawa, **Kwara**, Lagos, Nassarawa, Ogun, Ondo, Plateau, Rivers and Taraba. UNICEF continues its efforts, in conjunction with the Federal and State Ministry of Women Affairs, to advocate for the passage of the Child Rights Act by all States.

Rent Matters before Magistrate Courts

Magistrate Courts have the jurisdiction to hear landlord-tenant cases including actions for recovery of possession. Actions for recovery of possession are for those seeking to recover possession of property as well as those seeking recover possession of property and arrears past due rent.

Actions for recovery of possession are a creature of statute and are subject to strict construction which must be complied with. For instance, service of valid quit notices and notice of owner's intention to recover possession on the tenant are preconditions for recovery of possession under the law.[20] See **Eleja v. Bangudu**[21] where Mohammed, J.C.A. (as he then was), held s follows:
"....This is because in the circumstances, the services of valid quit notices under the law being a precondition for recovery of possession, the claim of the appellant at the trial court was not brought by the due process of the law and upon fulfillment of any condition precedent to the exercise of jurisdiction having regard to the case of Madukolu & Ors v. Nkemdilim & ors (1962) 1 All NLR 587. Indeed the Supreme Court held in the case of Sule v. Nigeria Cutton Board (1985) 2 NWLR (Pt. 5) at 36-37 that in cases of recovery of possession such as the instant case, the service of the notice of owners intention to recover possession on the tenant is a condition precedent to the exercise of jurisdiction."

A landlord and tenant relationship, actual or implied, must exist before an action for recovery of possession may be filed. When a landlord-tenant relationship exists, and the landlord wishes to file an action for recovery of possession, he/she must make a demand for possession of his/her property prior to filing the action. Keep in mind you must be able to prove you made a demand for possession should the defendant raise that issue at trial. There are 3 common grounds upon which an action for recovery of possession may be based:
1. Failure to pay rent which is now past due,

[20]See Sections 15, 16 and 17 of the Rent Control and Recovery of Residential Premises Lawof kwara State
[21](1994) 3 NWLR (Pt. 334) 534 at 542, paras E-F

2. Holding over the premises beyond the terms of the lease or rental agreement,
3. Holding property over at the expiration or other determination of the tenancy.

When filing an action for recovery of possession for failure to pay rent, the actual rent must be past due and unpaid at the time of filing. Should the landlord accept any money from the tenant after the filing of the action for recovery of possession, such acceptance may stop his or her right to continue with said action.

Landlord who intends to institute an action for recovery of possession may apply for the issue of a summons for recovery of possession or enter a plaint against the tenant or any person who came into possession through or under him. [22] If the defendant does not at the time named in the summons or any adjournment thereof, show good cause to the contrary, the court may upon proof of:

(a) the defendant still neglecting or refusing to deliver up possession of the premises;
(b) yearly rent of the premises;
(c) the holding;
(d) the expiration or other determination of the tenancy with the time and manner thereof;
(e) the title of the landlord if such title have accrued since the letting of the premises; and
(f) the service of the summons, if the defendant does not appear thereto, order that possession of the premises mentioned in the plaint be given by the defendant to the landlord either forthwith or on or before such date as the court shall think fit to specify. [23]

Where the landlord is entitled to possession of any premises, the court may issue a warrant of possession, notwithstanding that any counter-claim filed by the defendant is yet to be determined. [24] A landlord can legally enter into the premises and remove a tenant and/or the tenant's property from the rented premises once a warrant of possession has been obtained from the presiding court and the warrant of possession has been served on the premises, provided that such entry shall no be made on Sunday or public holiday or at any time except between six o'clock in the morning and six o'clock in the afternoon. [25]

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[22] See Section 19 of the Rent Control and Recovery of Residential Premises Law of Kwara State
[23] See Section 24 of the Rent Control and Recovery of Residential Premises Law of Kwara State
[24] See Section 25 of the Rent Control and Recovery of Residential Premises Law of Kwara State
[25] See Section 30 of the Rent Control and Recovery of Residential Premises Law of Kwara State

Police Prosecution in Magistrate Courts: The Role Of Magistrates in Ensuring Justice in a Lopsided Legal System

The quality of criminal justice administration in society is determined by the political and economic structure of society. It is also a fact that the character and effectiveness of the police reflect society's political and economic structure. Nonetheless, the police exert distinct influence on the criminal Justice process and output in any country. This is largely because they serve as the gatekeepers to the entire criminal justice system. In that role they sieve potential materials for processing within the system and thereby influence the quantity and character of the clients of the criminal justice system.

In a democracy, therefore, police institution and operation need to be guided by effective Constitutional, statutory and administrative rules so that they do not become oppressive or on the other hand rendered incapable of maintaining law and order in society. Thus, a careful balancing of personal freedoms with public security should guide police operations. Police forces in Nigeria, historically, did not enjoy public confidence as a result of their colonial repressive origin and the protracted dictatorial system of government that has largely prevailed since independence. The ineffectiveness of the country's police in the areas of crime prevention and control also negatively affect public confidence. But public hostility towards the police has been entrenched more by corruption and brutality.

The Nigeria Police Force is charged with numerous functions. Section 4 of the Police Act prescribes the general duties of the police, thus:

"The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or without Nigeria as may be required by them by, or under the authority of, this or any other Act."

Nigerian police have statutory powers to investigate crimes, apprehend offenders, Interrogate suspects, prosecute suspects, grant bail to suspects pending completion of investigation or prior to court arraignment, to serve summons, to regulate or disperse processions and assemblies. They are also empowered to search and seize properties suspected to be stolen or associated with crime, and to take and record for purposes of identification, the measurements, photographs and fingerprint impressions of all persons in custody.

The Nigerian Constitution (1999) confers the power of prosecution on the Attorney General of the Federation and of the States as may be applicable. However, the Attorney General may delegate the power. As a result, most of the cases prosecuted in lower courts such as the Area Courts and the Magistrate Courts are undertaken by police prosecutors. Most of the criminal cases are heard and decided by these lower courts." It would have been practically difficult for the Office of Attorney General to assume the prosecution of all cases in the country. Thus it is contented handling only very serious cases and vetting cases for police prosecution. There are two problems with this arrangement. A major problem of criminal justice administration in the country is the delays and adjournments in the trial of suspects, which often also lead to long pretrial detention. These delays and adjournments arise in part as a result of inefficiency of the agencies responsible for criminal investigation, case vetting and prosecution. There is need to improve the performance of prosecuting agencies and personnel in the country through adequate resources, staffing, training and remuneration, in order to protect the rights of the citizens and to facilitate effective administration of criminal justice.

Prosecution powers in Nigeria are counter-balanced by Constitutional guarantee of human rights in the successive Constitutions. In **Chapter 4 of the 1999 Constitution**, and under the Criminal Procedure Statutes, the following fundamental rights are guaranteed:

1. Right to life, human dignity and personal liberty.
2. Right to be presumed innocent until proven guilty.
3. Right to remain silent
4. Right to notice of charges within a reasonable period.
5. Right to trial in language(s) understood by the suspect.
6. Right to be arraigned before a court within a reasonable period.
7. Right to be represented by a counsel of one's own choice provided one is able to pay for the services (and to state legal aid for indigent persons in cases of capital offences).
8. Right to bail.
9. Right to cross-examine prosecution witnesses and present own witnesses.
10. Right to speedy trial.
11. Right against self-incrimination - compulsion to testify against or for oneself,
12. Right to a fair, open and impartial judicial process.
13. Right against unduly long detention without trial.

These are rights that are guaranteed citizens in democratic societies. However, as the legal realist school has argued, there is a world of difference between 'law in books' and 'law in action'. Thus, in spite of the elaborate provisions on citizens' rights within the context of law enforcement and

criminal justice administration generally, the reality is that these rights are frequently violated by the police due to several reasons including- a dictatorial political environment conducive to police repression; inadequate training and motivation of police personnel; poor level of operational, administrative and financial resources; absence of effective mechanism for police accountability to the citizens, and widespread poverty resulting in lack of access to justice in the form of litigation against -erring police officers by victimized citizens. These problems have not only resulted in many cases of the oppression and violation of the rights of citizens but also engendered police inefficiency in Nigeria.

Thus, Nigeria police have often been criticized for their ineffectiveness, corruption, brutality and general lack of respect for members of the public. As a result, members of the public do not offer the necessary assistance to the police to effectively enforce the law, especially in the areas of crime prevention, investigation and intelligence gathering. The result of which has been high crime rates, delay in investigation and long pre-trial detention of suspects. Nigeria police need to be reformed in order to meet the challenges of democracy. Such reform should include:

- Proper screening of persons seeking recruitment into the force in order to avoid criminally minded persons seeking employment in the Force as avenue for pursuing their criminal goals;
- Adequate training and retraining in police duties and in both domestic and international human rights provisions relevant to the works of law enforcement and public police;
- Provision of adequate financial and non-financial resources for effective remuneration, operations and administration of the police;
- Development of closer relationships between the public and the police in crime prevention and control, based on mutual respect and trust.
- A virile system of prosecution that will minimize delays and adjournments in the trial of suspects should be developed. Every divisional police office should have a police lawyer to facilitate prompt prosecution of cases, in consultation with the office of the Attorney General in the State.

These provisions will promote an environment in which more effective law enforcement consistent with democratic governance can be realized.

The Court is the ultimate judge of the culpability or otherwise of persons prosecuted for crimes. The Nigerian Constitution stipulated that the judicial powers of the Federation shall be exercised by the Judiciary. Although the establishment of the Magistrate Courts is not expressly provided for in the 1999 Constitution, nonetheless Section 6 1(5) of the Constitution empowers a state government through the State House of Assembly to set up the Magistrates' Courts.

Thus, it can safely be said that the establishment, jurisdiction, practice and procedure and grades of Magistrate's Courts are provided for in the laws and the magistrates' courts rules of each state.

In Nigeria the bulk of our criminal cases are tried by the Magistrate Courts, about 70 per cent of the cases that reach the High Courts, Courts of Appeal and Supreme Courts originate from the Magistrates' courts. It is common knowledge that except for offences, that attract capital punishment, most of the offences created under the laws are tried by the magistrate courts. Offences like stealing, house breaking, burglary as well as offences that have to do with road traffic matters come before the Magistrate Courts. Even though the Magistracy bears the load of providing access to justice to the bulk of the citizenry, the Magistracy in Nigeria has received little or no attention over the years. Priority has always been given to the working conditions, the rules of practice and the human and Infrastructural facilities required for justice delivery at the level of the High Court.

Cases here may be initiated by any police officer or public servant, or by any oral or written complaint to the magistrate. Several problems are encountered by and in the Magistrate Courts in respect of criminal justice administration. These are problems of corruption; inadequate material, financial and human resources at all levels of the judiciary resulting in heavy case loads, delays and adjournments; outdated manual recording of proceedings, poor remuneration, inadequate training and retraining of judges to meet changing patterns of crimes. The consequences of these problems include perversion of justice due to corruption, delays and long pre-trial detention, especially as Nigerian judges tend to favour remanding offenders in custody instead of granting them bail. This has largely accounted for the high population of awaiting trial persons in the prisons allover the country.

The role of Magistrate Courts in the criminal justice system of Nigeria cannot be over emphasized. It is a matter of common knowledge that except for offences, that attract capital punishment, rape and a few other high offences, most of the offences created in our penal laws are attended to by the Magistrate Courts. Offences like stealing or theft, house breaking or burglary, most offences that have to do with road traffic, most offences that deal with the administration of justice, are just a few of the matters that come before the Magistrate Courts. the above fact underscores the reason why we must all be concerned with the justice delivery system in our Magistrate Courts. There are some minimum irreducible qualities that anyone called upon to decide dispute between persons must possess. The society also have expectation that anyone who sits in judgment over others must posses these qualities. These qualities include:

1. **Impartiality of Adjudicator**

This is another important precondition for due administration of justice and the real enthronement of rule of law that a judge must be an impartial adjudicator. As earlier stated, a judge should in keeping with the requirements of the provisions of section 36 of the 1999 constitution avoid being partial. A judge should not put himself in an embarrassing position of being partial to one of the parties before him to the detriment of the other. In the case of Balogun vs Adejob the court defined privies to include all those who are related to the parties by blood, interest and title of the subject matter.

It must be stressed that the test of impartiality is an objective one and never subjective nor in accordance with the Judge's or enlightened members of the public perspective. This is because it is not merely of some importance but is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to have been done.

Along the same line, the Supreme Court has held that delayed justice is preferable to hurried trial that ultimately culminates in injustice. In the case of **Oshoboja vs Amuda**[27]the Supreme Court per **Olatawura**, J.S.C. held as follows:

"The long time spent before justice is done is better than the harm done in a shorter period and perpetuated forever. We should not sacrifice justice for speedy trial."

In the case of **Chief (Alhaji) Moshood Kasimawo Olawale Abiola vs Federal Republic of Nigeria**[28] the Supreme Court held that a judge should not hear a case if he is suspected of partiality because of consanguinity, affinity, friendship or enmity with a party, or because of his subordinate status towards a party or because he was or had been a party's advocate. Natural justice demands, not only that those whose interest may be directly affected by an act or decision should be given prior notice and adequate opportunity to be heard but also that the tribunal should be disinterested and impartial. The Court went further to hold that from the provision of **Section 33 (1)** of the 1979 Constitution, the independence and impartiality of a court are part of the attributes of fair hearing.

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[26] (1995) 1 SCNJ 242 at 265

[27] (1992) 6 NWLR (pt 250) 690 at 709

[28] (1995) 7 NWLR (pt 405) 1 at 22-23

The requirement of impartiality is intended to prohibit a person from deciding a matter in which he has either pecuniary or any type of interest. Such other interest may arise from his personal relationship with one of the parties to the case or may be inferred from his conduct or utterances during the hearing of the matter.

Equally important is the fact that the Supreme Court did not tenaciously hold unto corporate veil and distinction between Chief M. K. O. Abiola and Concord Press Limited to vest itself with jurisdiction. All other Courts therefore have a great deal of lesson to learn from this all important ruling of the apex Court. One cannot but agree with J. D. Ogundere, J.C.A. (as he then was) in his earlier cited book, where the late justice of the Court of appeal opined thus:

"In his relationship with relatives and friends, he may be appraised of matters which are subjects of pending litigation or which subsequently become one. If such a matter comes before him, he should advise himself if he is a Chief Judge, or if he is a judge, decline to take the case in a note to his Chief Judge, on the grounds of previous knowledge of it or simply personal grounds."

This admonition in our opinion, applies to Magistrate Court Judges with equal force.

2. **Justice According to Law**

A Judge has a peremptory duty to ensure that justice is dispensed to parties in accordance with the law. Accordingly his yardstick for determining cases brought before him should be the law and neither the whims or caprice of the judge nor some consideration outside of the law.

It flows from the foregoing that the primary duty of the Court is to ascertain the law. After the ascertainment of the law applicable to a given matter, the judge should then proceed to apply the law to the fact demonstrated before him by evidence. It also follows that a judge must maintain his position of an umpire and should realize that he is not conducting an investigation. He should appreciate that there is a marked difference between conduct of investigation which belongs to some other realm of human endeavours and adjudication which is regulated by law.

The renowned Master of Rolls, **Lord Denning** put the matter succinctly thus in his book the **Due process of Law**[29] where he wrote thus:

[29]Pages 60, 61 and 62

"Nevertheless, we are quite clear that the interventions taken together, were far more than they should have been. In the systems of trial which we have evolved in this country, the judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large as happens we believe in some foreign countries. Even in England, however a judge is not a mere umpire to answer the questions How's that?

His object, above all is to find the truth and to do justice according to law; and in the daily pursuit of it the advocate plays an honourable and necessary role".

A judge should equally be wary in carrying out his adjudicatory function, such that he does not usurp legislative function which is by the constitution and the accepted doctrine of separation of powers vested in the legislature. A judge should bear in mind, that he is being called upon to adjudicate between parties in accordance with the law as it stands. The court, it must be borne in mind is not expected to incurse into the legislative realm under the guise of interpreting a law. In the case of **Kalu vs The State**[30], the court warned against the practice by which a court would legislate on settled and unambigous provisions of the law. In the same case **Iguh** JSC at page 597 of the report observed thus:

"Although the argument against capital punishment, may be proper basis for legislative abolition of the death penalty, the authority for any action abolishing the death penalty is clearly not a matter for the law courts. Nor have I found myself able to hold that this court is entitled to repeal or revoke laws ostensibly based upon notions of public policy or sanction simply because such laws, for one reason or the other are said to be unacceptable to a group of persons or a section of society. Such repeal or revocation is within the exclusive jurisdiction of the legislature except of course such laws are attacked by due process of law on grounds such as unconstitutionality, illegality or the like."

Belgore JSC (as he then was) in his concurring judgment observed at page 606 of the report thus:

[30] (1998) 13 NWLR (Pt 583) 531 at 594

".....At any rate in this country, due to our constitution, it is not the function of courts of law to abolish the sentence of death, the responsibility is on the legislative body."

A judge should therefore try to ascertain what the position of law on an issue before him is and should proceed to apply the law to the facts and circumstances of the case. A judge must continuously be mindful of the fact that in adjudicating, he is not conducting an investigation. He should also bear in mind, that for a successful operation of the rule of law and its attendant benefits to the society, judicial officers should not be concerned with whether or not, law is good nor conform with their subjective perspective of justice. A judge would do well to recognize that there is a world of difference between law and sentiments and to endeavour at all times to divorce one from the other so that the task of the court would be made lighter and more beneficial to litigants and indeed the generality of the society.

3. **Prompt Justice**

The importance of prompt dispensation of justice cannot be over emphasized. It is a fundamental constitutional requirement provided for in section **36 (1)** of the 1999 Constitution that every litigant shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law. A judge must therefore ensure that everything is done to give effect to this all important provision of the constitution. It is axiomatic that justice delayed is justice denied. This saying is of utmost relevance in Nigeria, having regard to the general social, political and economic trends which could have far reaching effect on the outcome of litigation. A judge should therefore accord priority attention to prompt dispensation of justice.

It does not speak well of a judge not to sit on working and juridical days. The judge should equally ensure that, he sits promptly to conduct the business of the court. The accepted view in Nigeria is that law courts begin their business at 9 am. A judge should strive to acquire the reputation of sitting at 9:00am. This does not only bring honour to the court but put both counsel and litigants on their toes. A judge should not in deserving cases hesitate to impose sanction in form of striking out cases for want of diligent prosecution and cost against erring litigants in other cases. A judge should equally devote the time of the court to the serious business of adjudication. A court room is seen as the sanctuary of justice. The judge should strive to sustain this belief. A court room should not be turned into a cinema, where comedies are viewed. This is not in the least to suggest that a judge should make the atmosphere in the court room to be charged. Far from it, what is been advised is that serious judicial responsibilities should be transacted in the court room daily.

A judge should also prevent unnecessary application for adjournments. It is accepted that one of the many notorious factors accounting for delayed justice is frivolous applications for adjournment. Except in deserving and meritorious cases, a judge should not condone unwarranted application for adjournment. Fortunately, a decision on an application for adjournment is one that is absolutely at the judge's discretion which discretion is sparingly interfered with by superior courts. The only caveat here is that a judge should exercise his discretion judicially and judiciously. That is, the judge should exercise the discretion in the overall interest of justice. Once a judge acquires reputation for disallowing unwarranted applications for adjournment both counsel and litigants will sit up and this in turn will lead to speedy administration of justice. Confidence in the judicial system will be greatly restored if this is done. Where a matter is adjourned in the absence of either of or both parties, the court should, unsolicited order the issuance and service of hearing notices on litigants and on their counsel where they are represented by Counsel. This is also not to suggest that a case must go on willy-nilly once same is fixed for hearing, notwithstanding the reason advanced for applying for an adjournment by an absent litigant or his counsel. See for this Ayua vs Gbaka[31]

A judge also has a duty to ensure that the business of court at all times is properly prioritized. For example, it may not be out of place to start a day's business with ex-parte applications and other non-contentious matters before delving into highly contentious matters. It is also our submission that a judge should give priority attention to part heard matters rather than opening new matter which the judge may not be able to conclude either before transfer or other imminent factor.

A judge should bear in mind that under the constitution, there is a time frame for delivery of judgment. He must therefore strife to comply with this constitutional stipulation as contained in section 294 (1) of the 1999 Constitution. The Judge should also by virtue of the enabling provisions of applicable law encourage amicable resolution of disputes by parties. A judge should therefore lend a supporting hand to moves at amicable settlement of matters. This we postulate could go a long way in assisting prompt dispensation of justice. Once efforts at an amicable settlement

[31] (1997) 7 NWLR (pt 514) 659 at 672

have failed, he must at once set down to hear the case on its merit and in doing this he must discountenance all facts connected with the failed settlement bid.
One must not be understood to say that speed must have priority over substantial justice. Far from it and in deserving cases, courts must make haste slowly with a view to arriving at justice. See the case of **Obeta vs Okpe**[32]

4. **Incorruptible Adjudicator**

For a successful operation of the rule of law, and the dispensation of justice, a judge is expected to be incorruptible. A corrupt judicial officer is one who dishonestly uses his position as a judge to gain some unmerited advantage. The advantage could be monetary, promotion, sexual or in any other form. A corrupt judge is a morally bankrupt judge. He is a dishonest judge and an indecent creature of the Almighty God.

It should be borne in mind that upon appointment, an oath is administered on a judge by which he covenants with the State and indeed the Almighty God that his actions and decisions on the bench will not be informed by affection or ill will or any other kind of consideration. This is what is called the judicial oath. Corruption, unfortunately, signals the commencement of a gradual breach of the oath taken by a judicial officer. This is because corruption leads a judge to perpetrating injustice. His vision becomes blurred and impaired and he is momentarily inclined to tilt the scale of justice in favour of the person or authority who has induced or participated in any way in the process of getting the judge corrupted. A judge is expected to observe to the letter the code of conduct for judges.

It should be noted that judges of superior Courts of record are regulated by a code of conduct. They are equally expected to subscribe to judicial oath set out in the constitution. Accordingly the judicial officers are expected to subscribe to the judicial oath set out under schedule 7 of 1999 Constitution of the Federal Republic of Nigeria. By virtue of section **318(1) (b)** of the 1999 Constitution, all members of staff of Magistrate Court are deemed to be public officers in the public service of the State. It follows therefore that Magistrates are expected to observe the code of conduct for public officers which is set out under part I of the Fifth schedule to the Constitution of Federal Republic of Nigeria 1999. For purpose of clarity, a Magistrate is not expected to put himself in a position where his personal interest conflicts with his duties and responsibilities.

[32](1996) 9 NWLR (pt 473) 401

He is especially expected not to ask for or accept property or benefits of any kind for himself or any other person on account of anything done or omitted to be done by him in the discharge of his duties. See paragraph 6 sub (1) of part I of the fifth schedule 1999 Constitution. By virtue of paragraphs 8 and 9 of the same schedule, no person shall offer a public officer any property, gift or benefit of any kind as an inducement or bribe for the granting of any favour or the discharge in his favour of the public officer's duties. The public officer is equally under a duty not to do or direct to be done, in abuse of his office, any arbitrary act, prejudicial to the right of any other person, knowing that such act is unlawful or contrary to any government policy. The breach of the Code of Conduct is referable to the Code of Conduct Bureau for proper action.

It is apparent from the foregoing that a Magistrate is not expected to be corrupt otherwise, he would be operating contrary to the tenets of the calling of his office. One cannot but quote with approval the erudite word of Justice **M. M. A. Akanbi**, former president, of the Court of Appeal, in his book: **"Judiciary and Challenges of Justice"** where his Lordship said:
"Let me say that where a judge with little or no adequate knowledge of the law, may be consider a nuisance, and his lack of understanding and appreciation of the law may constitute an obstacle in the path of justice, yet, he is still, more tolerable than a corrupt judge. For a corrupt judge is not only a dangerous obstacle, he is an anathema and a disgrace to the profession or the institution to which he does not deserve to belong."

Therefore, it is the expectation of the common man that judicial officers would be free from corruption, so that his confidence in the operation of rule of law and indeed in civil government would be kept intact. A corrupt judicial officer going by the texts of the holy books is doomed into eternal suffering and discomfiture in the hereafter.

A judge should never accept gifts from litigants, their friends or relations before, or after he has tried their case because a judge's habit can never be hidden. The character of a corrupt Judge according to J. D. Ogundere in his book earlier referred to at page 154 thereof, is like sulfur smoke that pollute the foundation of justice and lays waste flowers and vegetation in its wake. According to **Sir Francis Bacon**[33]

[33]Quoted:- Land-marks in the law by Lord Denning. Pages 33-34. Also quoted in The Nigeria Judge and his Courts Op Cit page 155.

"Above all things, integrity is their portion and proper virtue. Cursed (saith the law) is he that removeth the land- mark. The mislayer of a mere stone is to blame. But it is the unjust Judge that is the capital remover of the land-marks, when he defineth amiss of land and property. One foul sentence doth more hurt than many foul example. For these do not corrupt the stream; the other corrupt the fountain."

5. **Deep Knowledge Of The Adjudicator**

It is expected of an adjudicator to be knowledgeable, since that is the Instrument through which he is expected to dispense justice. Accordingly, a Judge is expected to be versed in the kind of law he is expected to administer. For the Magistrate, he is expected to be learned in the law applicable within his sphere of jurisdiction.

Because of the complexity and completeness, a Magistrate cannot be expected to know all especially at the time of his appointment as a Magistrate. He will however do well by continuing to learn on the job. He must be prepared to do this as a matter of challenge and necessity.

The Magistrate must master the panel laws, the provisions of the Evidence Act, the applicable procedure to his court and the rules of common law. Little knowledge will be a disservice to a judge no matter the grade. Learned counsel of various post call experience will appear before him and he must be prepared intellectually to meet the expectation of all. To borrow the words of ***Hon; Justice Akanbi*** earlier referred to:

"A Judge with little or no adequate knowledge of the law, may be considered a nuisance, and his lack of understanding and appreciation of the law may constitute an obstacle in the path of justice."

According to Honourable Justice A. O. Obaseki in his paper ***"The art and science of Judging: style and Creativity"***

The judgment seat in any court of law cannot be allowed to be occupied by any anyone not versed in the art and science of judging. The resolution of any dispute between two persons even in the simplest of societies is not allowed to be undertaken by any person or tribunal ignorant of or untutored in the norms or rules and custom regulating the relationship and dealing among members of the society. Judging is a science in that it is governed by laws, rules and regulation with which it must comply in order to be acceptable in the society. It is an art in that its arrangement is dictated by logical reasoning in a legal climate and environment....."

It is not in the least to be suggested that any human being is perfect so as to adjudicate perfectly. Far from it, all mortals including Judges are fallible, which is a reflection of the imperfections, inherent in human nature.

6. **Independence of the adjudicator**

The adjudicator is expected to be independent. By this it is meant that the judge decides cases before him in line with this own understanding governed by his conscience. It should be borne in mind that the constitution of Federal Republic of Nigeria, 1999 in clear terms vest judicial power of the Federation and the States in Courts established under the Constitution. See for this section 6 of the 1999 Constitution. It would therefore portend a dangerous trend for a judge to fail to utilize fully this constitutional provision.

A judge should therefore ensure that he is neither blackmailed, coerced, intimidated or in any other way influenced to decide in a particular way. Both the individual citizen, non-citizens and indeed government and authorities should have no influence over the Court's decision. A judge will do well to bear in mind in the discharge of his functions that, what must be of paramount importance to him at all times is the law governing a particular transaction or case before him, the cold facts as presented before him and his conscience. He should be less concerned with alleged events that transpired outside of the precinct of the Court room.

A dangerous trend seems to have penetrated the judiciary in recent times. The sad trend if not quickly checkmated has the tendency of eroding confidence in the judicial system. This unfortunate trend is the practice where discretion is unduly fettered or judgment influenced because of perceived "state's interest in a case". This has manifested itself more in bail applications before lower Courts including Magistrate courts. On such occasions, bail is often refused so that the executive arm of the state or indeed a few highly placed citizens would feel satisfied that bail has been refused in politically motivated offences, which are ordinarily bailable under our laws.

It must be emphasized that to secure the independence of the adjudicator is a collective task that requires the involvement of the other tiers of government that is the executive and the legislature. These arms of government must ensure compliance with constitutional and other statutory provisions dealing with the autonomy of the judiciary. It is hoped that financial independence of the judiciary will aid the independence of adjudicators at all levels of Courts. This it is submitted will enable Magistrates to meet up to the expectation of their independence in keeping with the spirits of separation of powers and rule of law

If we remember that more than 60% of the decisions of from Magistrate courts do not get appealed from, to higher courts, then the importance of these qualities will be better appreciated.

Appeals Involving Magistrate Courts

The principles of justice and fairness imply that decisions affecting the rights be subject to review on appeal to a higher body than the original decision or liabilities of persons should not be absolute in the first instance but should maker. There are different kinds of decisions. Decisions may emanate from administrative, regulatory, judicial, arbitral or other dispute resolution, disciplinary or regulatory procedures. Thus decisions could be court arbitration tribunals, decisions of regulatory bodies or even decisions of traditional rulers. Different principles and procedures govern appeals against each kind of decision. However, this paper focuses mainly on appealing judicial decisions.

The judicial powers of the Federal Republic of Nigeria are vested in the courts. The hierarchy of courts in Nigeria is set out by the Constitution and includes courts of first instance and appellate courts. The hierarchy of Nigerian courts is such that judicial decisions are subject to scrutiny at different levels with the aim of ensuring that justice is upheld. The appeal process under Nigerian law is regulated by statute and appeals flow from the courts below to those above in the hierarchy of courts. Statutes and Rules of Court regulate issues of time, place and procedure for appeal.

An appeal is the resort to a superior court to review the decision of a lower court or bodies with the intention of correcting a perceived injustice or error committed. Thus, an appeal by its nature is a continuation of the prosecution of the original cause or matter which is the subject of the appeal. See **Ogundiani v. Araba**[34]. The position as upheld by the courts is that a party should not be seen to put forward in the appellate court a case different from what he canvassed at the trial court. See **Ohiaeri v. Akabuezes**[35]**.** In Nigeria, the right of a litigant to appeal, the jurisdiction of the appellate court to entertain such appeals and the procedure to be followed are strictly regulated by the Constitution and other Statutes.

[34][1978] 11 N.S.C.C. 334 at 347

[35](1992) 2 NWLR (PT. 221)1 at 20

The various State High courts can in the exercise of the appellate jurisdiction hear and determine all appeals from the decisions of the Magistrate courts in the Southern State whether original or appellate and those of the District Courts in the North in the exercise of the original jurisdiction. The procedure is by filing a notice of appeal in the Magistrate or district court that gave the decision. The notice of appeal and all copies must be signed by the appellant or by his Legal practitioner. The Appendix to each of the Rules of Court contain a form of notice of appeal and an appellant is required to adopt the form with such variation as circumstances may require.

The notice of appeal must be filed at the registry of the lower court (the Magistrate Court) and should contain the following:

- The suit number of the proceedings from which the appeal arose;
- The name of the parties;
- The date and substance of the decision;
- The ground of appeal which shall be stated clearly and succinctly. (Each ground of appeal shall be set out separately and where a ground of appeal alleges an error in law, the nature of such error shall be stated. The ground of appeal may simply state that the decision of the lower court is against the weight of evidence. This is otherwise known as theomnibus ground);
- The appellant's address for service within jurisdiction; and
- The name of the legal practitioner (if any), representing the appellant.

Appeals may be as of right or with leave of Court. Appeal as of right means that the person who is appealing has an automatic right to contest the decision. While appeal with leave means that the approval of the Court (original or appellate court as the case may be) by an application for that purpose is required. Some legal practitioners have found themselves swimming in murky waters with regard to the above provisions in two respects. First is the distinction between a final decision and an interlocutory decision for the purpose of appeal. Second is the determination of whether the grounds of appeal are on points of law alone or on points of mixed law and fact or on points of facts alone.

In determining the nature of an appeal as whether one of law or of fact the grounds of appeal and the particulars are to be considered and not just the label placed on the ground of appeal by the appellant. See **Bwai v. U.B.A**.

[36] See Section... of the Magistrate Court Law of Kwara State.

Public confidence in a legal system and the ability of the Magistrates te discharge their duties promptly and efficiently is crucial to the effective dispensation of justice. A legal system that does not enjoy public confidence in its ability to dispense justice will ultimately collapse; hence, the foundation of democracy and rule of law. It is therefore, important Magistrates who are in the mainstream of criminal administration of justice find legitimate solutions to these critical procedural problems with a view to putting in place a Magistracy that is equipped with public confidence in order to give effect to the rule of law and enhance the quality of service to the public. Where there is right, there is remedy, but in the words of William Gladstone, "Justice delayed is Justice denied'.

This is a proper place to try and discuss the contemporary issues in criminal law and administration that will assist not only in the attainment of justice but speedy justice according to law. Once more, I express my gratitude to the organizers for the honour of inviting me to share my thoughts with this distinguished audience, on this very important topic. Hope you are not too bored.

Thank you and God Bless.