



The jurisprudence of remand proceedings in Nigeria: A pre and post administration of criminal justice act 2015

Cletus Ojumu¹, Emeje Aruwa¹, Balami Deborah²

¹ Lecturer, College of Law, Salem University, Lokoja, Kogi, Nigeria

² Salem University, Lokoja, Kogi, Nigeria

Abstract

The concept of remand proceedings in Nigeria is now statutorily empowered by Section 293 of the Administration of Criminal Justice Act 2015, which Act was enacted to fill in the obvious lacuna created by the Criminal Procedure Code and Criminal Procedure Act. In remand proceedings, a suspect is arrested for an offence and brought to the Magistrate Court which does not have jurisdiction to try the offence for a remand order. The Act thus empowers the Police and other Security Agencies to obtain court orders from Magistrate Court to detain criminal suspects for a limited time to avoid running foul of the Constitutional time limit for arraignment. This work exposes the jurisprudence of remand proceedings in Nigeria, pre and post Administration of Criminal Justice Act 2015 and Laws of some States that have similar provisions. This exposition is achieved through doctrinal methodology of research which employs books, statutes, judicial authorities, journal articles and online materials. The paper finds that the Administration of Criminal Justice Act 2015 and Laws of some States that statutorily provide for remand proceeding merely re-enacted holding charge into our law and accords it statutory backing. It finds further that the Act gives Magistrate Court that lacks jurisdiction to try capital offences the powers to remand suspect alleged to have committed such offence. That remand proceedings is inconsistent with the constitutional right to personal liberty and fair hearing of the suspect. It concludes that remand proceedings under the Administration of Criminal Justice Act and Laws defeats the underlining purpose of the Act which is ensuring speed dispensation of justice. It recommends that the law enforcement agencies, must, at all times, in every case, conclude or carry out their investigation first, before arrest; that where offence to which a suspect is alleged to have committed is a capital offence, he should be taken to the court that has jurisdiction to try the case. The amendment of section 293 of the Administration of Criminal Justice Act 2015 and Laws of some States of the Federation of Nigeria to strip Magistrate courts off jurisdiction of remanding suspects of capital offences and putting same on the High Court's is here also mooted.

Keywords: jurisprudence, remand, proceedings, administration, criminal, justice

Introduction

In Nigeria, under the criminal adjudicatory procedure, the law is firmly well settled that the power of police to detain a suspect is limited by law to specific number of days within which, the detaining authority must bring the suspect before a competent court for the purpose of an order for remand if need be. Most often, in this country, the police arrest and detain a person suspected of committing a serious offence and thereafter they find themselves in a curious kind of legal limbo whereby they do not know what to do further with the person. A *prima facie* evidence in support of the allegation against the suspect may not be readily available but there is hope that as the detention of the suspect continues, reliable evidence might be possible ^[1]. This is known as a holding charge, a contraption and amorphous resort unknown to the Nigerian jurisprudence ^[2]. No Nigerian law provides for it. This type of situation mostly happens in capital offences where the police cannot grant bail. In order to avoid being accused of detaining the suspect unreasonably, they rush the suspect to the court of law. The court is usually a magistrate known by the police to lack jurisdiction in such matters. The intention of the police is to detain the suspect for as long as investigation into the case lasts including the outcome of the DPP's advice and until there is a final decision whether or not to take the case to a competent court ^[3]. Court are discouraged from taking up cases on a holding charge

because it is an illegal system whose bad effect is to deny personal liberty guaranteed by the Constitution. However, by the introduction of the Administration of Criminal Justice Act ^[4], what then known as holding charge was given statutory fortification and rebranded as remand proceedings ^[5]. This paper therefore examines the jurisprudence of remand proceedings in Nigeria and how it affects the fundamental rights of the accused person to his personal liberty as well as fair hearing.

Remand Proceedings

Black's Law Dictionary defines remand as, 'to recommit an accused person to custody after a preliminary examination.'

^[6] In the case of *Lufadeju & Anor v Johnson* ^[7] the Supreme Court, per Tobi JSC, gave the meaning of remand, thus:

It means to send to prison or send back to prison from a court of law to be tried later after further inquiries have been made, often in the phrase "remanded in custody." It also means to recommit on trial accused to custody after a preliminary examination..

Remand also known as pre-trial detention, preventive detention or provisional detention, is the process of detaining a person until his trial ^[8]. It illustrates a situation where a suspect who is charged with an offence is ordered by the court of law, to be kept in prison custody, pending his bail, ultimate trial or release on the advice of the Attorney General ^[9].

The concept of remand proceeding is statutorily enabled by Section 293 of the Administration of Criminal Justice Act 2015, which Act was enacted to fill in the obvious lacuna created by the Criminal Procedure Code ^[10] and Criminal Procedure Act, ^[11] the twin sister statutory laws regulating criminal proceedings in the High Court of Northern and Southern parts of Nigeria and proceedings at the Federal High Court. For the sake of clarity, the provision of section 293(1) of the Act is hereunder reproduced *verbatim ac literatim* thus:

'A suspect arrested for an offence which a Magistrate court has no jurisdiction to try shall within a reasonable time of arrest be brought before a Magistrate Court for remand.'

In remand proceedings, a suspect is arrested for an offence and brought to the Magistrate Court which does not have jurisdiction to try the offence, the suspect is brought before a magistrate court within a reasonable time for remand ^[12]. The Act thus empowers the Police and other Security Agencies to obtain court orders to detain criminal suspects for a limited time to avoid running foul of the Constitutional time limit for arraignment ^[13].

The Administration of Criminal Justice Act 2015, in section 293(1), merely created statutory recognition and backing for holding charge which before the enactment of the Act was not part of our jurisprudence. The above section of the Act equally gives the Security Agencies in Nigeria the juridical *carte blanche* to arrest suspects with no scintilla of evidence whatsoever and later rush to magistrate courts to procure remand order upon application and as a result the suspect is detained in prison custody pending investigation to get evidence to prosecute the suspect with. The Security Agencies, especially the Police hide under this provision to secure latitude of time to carry out their investigation. This exposition, broaches a question agitating legal minds, which is, whether it is legally right or justifiable in law for the Police or any other law enforcement agencies to arrest and detain a suspect through the instrumentality of remand proceedings at magistrate courts before investigation? It amounts to procedural jumping the gun to arrest on mere allegation with no tinge of evidence and go to magistrate court to get remand order and thereafter begins investigation. In the case of *Duruaku v Nwoke* ^[14], the Court of Appeal, commendably, held arrest pending investigation unconstitutional. The Court incisively and decisively stated thus:

The mere allegation of crime or wrongdoing against a suspect, irrespective of its seriousness, cannot operate to curtail the fundamental rights of the suspect nor can it operate to justify the incarceration and torture of the suspect. The person who infringes or breaches the constitutional right of the applicant has the onus to justify such breaches. An arrest pending investigation is unconstitutional. In the instant case, where the 4th and 5th respondents failed to investigate the offences the appellants allegedly committed before detaining them, the trial court erred by not granting damages sought for infringement of their constitutional rights.

The Court, by way of reiteration and accentuation in paragraphs F-H, further stated thus:

The person who infringes or breaches the constitutional rights of the applicant, has the onus to justify such breaches. In Ogor v Roland & C.O.P (1983) 1 CNR 345 it was held that an arrest pending investigation is unconstitutional as the learned counsel for the appellants has ably argued, the

above position of the law presupposes that while the Police has a duty to infract a citizen's right based on allegation of crime, it must first investigate such allegation and establish a prima facie evidence that is tantamount to either the commission of same or reasonable suspicion of the commission of crime as this is the universally accepted practices among policemen.

Exultantly, the point being made here, is that, it is legally and constitutionally wrong for the Security Agencies to make arrest and detention without investigation to garner evidence or material with which suspects will be prosecuted with. Fully aware of the protection offered by section 293 of the Act and being circumspect not to detain suspect upon arrest beyond the constitutional limit take the suspect to magistrate court to secure remand order and after which commence investigation pending legal advice in flagrant violation to the constitutional rights of the suspect.

Remand Proceedings and Jurisdiction

Jurisdiction is very important and indispensable in the overall administration of justice. It is the hub of all judicial processes so much so that the validity or otherwise of any proceeding turns on its existence or non-existence ^[15]. It is the linchpin and touchstone of every adjudicatory proceeding. It is the authority which a court has to decide matters that are litigated before it, or to take cognizance of matters presented in a formal way for its decision ^[16]. Jurisdiction is blood that gives life to the survival of an action in a court of law and without jurisdiction; the action will be like an animal that has been drained of its blood. It will cease to have life and any attempt to resuscitate it without infusing blood into it would be an abortive exercise ^[17].

The Administration of Criminal Justice Act 2015 ^[18], section 293 (1) raises issue of jurisdiction. For the sake of wearisome reproduction and without sounding *ad nauseam*, the section provides thus:

'A suspect arrested for an offence which a Magistrate court has no jurisdiction to try shall within a reasonable time of arrest be brought before a Magistrate Court for remand.'

The jurisdiction of the magistrate court in relation to remand proceedings extends even to cases it ordinarily, has no jurisdiction to try at all. The magistrate court, by this provision, is empowered to grant remand order on a suspect who has been arrested and brought before it for an offences ^[19] it has no jurisdiction to entertain. This, in our views, rankles the whole essence of jurisdiction and adjudicatory procedure. The law is firmly well settled that where a court lacks jurisdiction to try a case, such case should not be brought before it. It is either that a court has jurisdiction to try a case or that it does not have jurisdiction at all ^[20]. Therefore, where a court lacks jurisdiction to entertain a case, then that court has no business whatsoever with that matter.

Under the Nigerian judicature, the jurisdiction of magistrate court is limited in scope and subject matters. There are offences that magistrate courts do not have the jurisdiction to hear and try. It is an inferior court, and as such, it cannot entertain any capital offence ^[21].

Therefore, the Administration of Criminal Justice Act 2015 ^[22] authorising the Magistrate to make remand order on a subject matter it has no jurisdiction to try raises very jurisdictional questions bordering on the administration of criminal justice. Given that a court's judicial power can only

be exercised where it has the jurisdiction, the question that then arises is whether magistrate court that has no competence or jurisdiction to try a case has the power to make remand order.

To address this point, a forensic travelogue to the Constitution of the Federal Republic of Nigeria (as amended) is here apposite. Section 35 (5) of the Constitution calls for attention. It provides that a person arrested or detained shall be brought to court within a period of one day, where there is a court of competent jurisdiction within 40 kilometer radius and in any other case, a period of two days or such longer period as may be considered by the court to be reasonable. By the spirit and letters of this provision, where a person is arrested for an offence, whether capital or simple, such suspect should be taken to the appropriate competent court with requisite jurisdiction. It is inconsequential that Magistrate Court is the closest court to the police or the law enforcement agency prosecuting. The aberration then arises when the Magistrate Court knowing full well that it lacks jurisdiction, hears the application for remand and ends up making remand orders rather than striking out the entire application and reproving the prosecution who cannot follow what the law spells out^[23].

A careful consideration of Section 35 (5) (a) of the constitution of Federal Republic of Nigeria provides that the accused must be brought before a court of competent jurisdiction. With emphasis on the word 'competent jurisdiction', is the Magistrate a court a court of 'competent jurisdiction' as envisage in section 35 (5) (a) of the Constitution?^[24] The answer is in the negative.

The import and purport of section 293 (1) of the Administration of Criminal Justice Act is therefore inconsistent with the provision of the Constitution. This is so because the Constitution provides for a court of competent jurisdiction, however, the provision of section 293 (1) of ACJA empowers the Magistrate to remand, knowing full well it has no jurisdiction. Where a magistrate court has no competence or jurisdiction to try a case, then it should not proceed to give a remand order.

Admirably, the Administration of Criminal Justice Law, Edo State 2016 made a fundamentally diametrically opposed provision in relation to remand proceedings. The Law provides that the suspect arrested for an offence which the Magistrate has no jurisdiction to try be brought before the High Court for remand^[25]. This provision, indeed, is quite commendable and underscores the point that this paper addresses. The High Court is by the Nigerian Judicature a court of superior record with unlimited jurisdiction to try all cases^[26]. Where remand order is made by the High Court upon an application by the prosecution in respect of any offence, whether capital or simple, the court can competently make such order. This is opposed to where magistrate makes remand order in capital offences or other grievous offences that it lacks jurisdiction to try. The magistrate court is restrained in law to make a binding order in a matter it lacks jurisdiction. Magistrate Court, not being court competent to try an offence outside its jurisdiction should not be empowered to make remand order.

A handful of judicial authorities on the dispositions of the Supreme Court on the jurisdiction of the magistrate court to make remand order in cases where it lacks jurisdiction to try certain offences will be looked at here. First is the case of *Lufadeju v Johnson*^[27]. In this case, the two issues that the Supreme Court was confronted with were whether the Court

of Appeal was right to hold that where the Magistrate Court found that it does have jurisdiction or competence to try the substantive charge when it is ready, it has no jurisdiction to make a remand order under Section 236 (3) of the Criminal Procedure Law of Lagos State, 1994^[28] and whether the said section 236 (3) was unconstitutional.

Given the primacy of this case, stating the facts and circumstances of this case is apposite. In *Lufadeju's case*, one Evangelist Bayo Johnson the Respondent and eleven other persons were arrested and detained at the Police Criminal Investigation Department, CID, Alagbon, Lagos on 12th of January, 1997 for conspiracy to commit treason and the commission of treasonable felony. They were brought before a Magistrate Court and remanded. The Respondent sought bail, but the Magistrate denied bail on the ground that the court had no jurisdiction to grant the application for bail. As a result of this refusal of bail and the remand in custody, the Respondent sought a judicial review in the High Court. The High Court ruled that the Magistrate Court had the power to remand persons who may have been arrested for indictable offence. Disenchanted with the decision, the Respondent repaired to the Court of Appeal and the Court of Appeal *inter alia* held that such remand proceedings and order were a gross violation of the appellant's constitutional rights to personal liberty. On a further appeal to the Supreme Court, the court disagreed with the Court of Appeal and set aside same.

The decision of the Supreme Court in the above *Lufadeju's case* was an intense shock to human rights lawyers in Nigeria^[29]. It is surprising that the Supreme Court seemed to have approved of a practice whereby suspects could be kept in detention or custody without any formal charge as to when they could remain in custody before they are lawfully arraigned^[30]. It was the expectations of many Legal Practitioners that the apex Court put an end to pre-charge detentions in view of the constitutionality or otherwise of the practice. However, the Court dashed hopes by rather holding that remand proceeding is not a violation of the Constitution.

The Supreme Court decision in *Lufadeju's case*, with utmost deference, gave judicial fortification to holding charge it had earlier, in a plethora of cases condemned, as it failed to condemn the Magistrate Court that remanded the Respondents for an offence it had no jurisdiction to try, and further refused to grant bail. This judgment, being the judgment of the highest court in the country, remained the law until set aside by a subsequent decision of the selfsame Supreme in *Agundi v Commissioner of Police*^[31] the Supreme Court, setting aside its earlier decision in *Lufadeju's case*, held that it is unconstitutional for a Magistrate Court to take cognizance of an offence, remand a suspect into prison custody and make binding orders when the court lacks the requisite jurisdiction to entertain such matter. This decision is applaud able, far-reaching and laid to rest the lingering problem of pre-detention or remand proceedings prevalence at the magistrate court until 2015 when the Administration of Criminal Justice Act found its way into the Nigerian jurisprudence. Perhaps the draftsmen of the Administration of Criminal Justice Act 2015^[32], in incorporating section 293 (1) into the Act 2015, with profound respect, failed to take cognizance of the apex Court's decision in *Agundi's case* in giving the magistrate court the power of remand in offences it does not have jurisdiction to hear.

Remand Proceedings and Right to Personal Liberty

Under the Constitution of the Federal Republic of Nigeria 1999 (as amended), section 35(1) provides that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases^[33] and in accordance with a procedure permitted by law^[34].

Further, the Constitution^[35] provides that any person who is arrested or detained in accordance with subsection (1) (c)^[36] of section 35 shall be brought before a court of law within a reasonable time, and if he is not tried within a period- (a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; (b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date^[37]. Subsection 5 states 'in subsection (4) of this section, the expression "a reasonable time" means- (a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers, a period of one day; and (a) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable^[38]."

The Administration of Criminal Justice Act 2015, section 296 provides for Time, protocol for remand orders. It clearly provides that when a remand order is granted, it shall be for a period of 14 days in the first instance and can be renewable on application in writing showing 'good cause' why such an order should be renewed. In the cases of this renewal, the remand period shall not exceed 14 days as in the earlier instance. In both cases, the case must be returnable to the court within the period of remand^[39]. A Learned author, Uzo, stated that any arrest and detention of a suspect that is contrary with the provisions of section 35 of the Constitution of the Federal Republic of Nigeria (as amended) amounts to violation of the right to personal liberty of the suspect^[40]. He reasoned that sections 293-299 of the Administration of Criminal Justice Act 2015 that provided for remand proceedings is unconstitutional as it violates section 35 (4) (5) of the Constitution of the Federal Republic of Nigeria (as amended).

Commenting on the inconsistency of the Administration of Criminal Justice Act 2015 with the Constitution of the Federal Republic of Nigeria (as amended) in relation to remand proceedings and right to personal liberty, Momodu^[41], stated that Section 35 (5) (a) of the Constitution which provides for the availability of a "court of competent jurisdiction within a radius of 40 km' for a period of one day is what the provision means by reasonable time. However, 35(5) (b) provides for a longer period for a court without competent jurisdiction for a period of two days. What this entails in the context of Section 293 (1) of the Administration of Criminal Justice Act is that the Magistrate who has no jurisdiction to try an offence is a court without competent jurisdiction and therefore lacks the power to make any decision concerning the matter.

The Police and other law enforcement agencies when they arrest suspect are to bring them before a competent court within 24 hours or 48 hours as the case may be. However, in remand proceedings, the suspect is remanded to enable the law enforcement agencies to properly conduct investigations. Olomojobi^[42], has recommended that Police

are not to arrest or detain any suspect or accused person until there is evidence which creates a *prima facie* against the suspect. The Police can make up charges if they dislike someone, knowing the person could spend years behind bars trying to get out. "He charges you for whatever comes to his mind. A Policeman can determine the future of a suspect for the next 10 years^[43]."

Section 291 296 gives the Magistrate power to make a remand order in a matter it has no jurisdiction to hear. The Magistrate grants remand order for 14 days in the first instance, renewable on two subsequent occasions for 14 days each and a final 14 days and no more. Thus, remand can be for a period of 42 days and even more. With this, the suspect is denied his right to personal liberty for 42 days or even more. This provision of the Administration of Criminal Justice Act contradicts the spirit of the Constitution in section 35 (5) which provides that a suspect be brought before a court for trial within a reasonable time of 24 hours in the case of an arrest or detention in any place where there is a court of competent jurisdiction within 40 km or 48 hours or such longer period considered by the court as reasonable in any other case. In this regards, section 293-296 of the Administration of Criminal Justice Act is inconsistent with the provisions of section 35 (1), (4) and (5) of the Constitution of Federal Republic of Nigeria (as amended).

Remand Proceedings and Right to Fair Hearing

The right to fair hearing is a fundamental human right guaranteed by Section 36 of the Constitution of the Federal Republic of Nigeria (as amended), which every citizen is entitled to. This is the right that has been frequent and constantly litigated in our courts. In Nigeria adjudicatory procedure, in the determination of the right of a person in a civil or criminal case, his own side must be heard.

The Administration of Criminal Justice Act 2015^[44], section 293 (2) provides that remand proceeding shall be made *ex parte*. The word *Ex parte* is derived from a latin phrase which means 'one side to a dispute^[45].' *Ex-parte* in adjudicatory procedure in Nigeria courts is done by one party to the matter. When this is done, only one party which is the prosecution is heard and the other party is not heard. In *Kotoye v. Central Bank of Nigeria*^[46], the Supreme Court per Nnaemeka Agu JSC in explaining *ex-parte*, stated that by their nature injunction granted on *ex-parte* application can only be interim in nature, they can be made without notice to the other side..'

In relation to remand proceedings which is done *ex-parte*, the suspect who has been brought before the Magistrate by the Police or law enforcement agency is not heard, thereby shutting him out in a proceeding that seeks to curtail his personal liberty. This negates the dictates of fair hearing^[47]. This is why the learned author Adedapomola^[48], stated that in an *ex-parte* hearing, only the applicant is heard, the defendant is just seen and cannot be heard.

The dictates of fair hearing is not limited to ensuring obedience with the rules of natural justice, the twin pillars which are *audi alteram partem* – meaning the other party must be heard and *nemo judex in causa sua*-meaning 'never be a judge in your own case.' It also includes the plenitude of hearing in accordance with the provisions of section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)^[49].

A suspect brought before a court for the commission of an offence should be given his right to fair hearing and deprived of it at every stage of the administration of justice. In the case of *Adio v State*^[50] the Supreme Court per Karibi-White, JSC, magisterially held:

The beauty of our adversarial procedure is that a person accused of the commission of a crime is immediately given a hearing by being confronted with the allegation and given an opportunity to admit or deny the accusation. See Section 33 (6) of Constitution 1979^[51]. *The hearing of the accusation of an offence commences with the proceedings leading to the reading of the charge to the accused and his pleading to it.*

The right to fair hearing is one which every person is entitled to. Once a person is arrested, he is presumed innocent until proven otherwise^[52]. Since the suspect is presumed innocent until proven otherwise, he should be given an opportunity to defend himself either personally or by a counsel even in the course of remand proceedings.

The main issue here is remand proceeding, pursuant to section 293 (2)^[53] is made *ex-parte*. By *ex-parte*, it shuts out the suspect in the course of application for remand proceedings in court. The proceeding is a one-party affairs denying the suspect the opportunity or the right of fair hearing. There is no inconvenience or miscarriage of justice created if the application is made on notice or if the suspect is put on notice. Where this is the case, it gives the suspect the latitude to state his/her part of the allegation. At any material time a suspect is brought to any court for a remand proceeding, he should be given an opportunity to defend himself/herself instead of the proceeding being *ex-parte*.

Examining fair hearing in the context of remand proceedings, a learned author, Farouk^[54], stated that even with the presence of the suspect in court, remand being an *ex-parte* application denies the suspect the right to respond to the allegations brought against him or her. He further stated that if the prosecution can be heard, then the suspect should also be allowed to respond by giving reasons^[55]. If the prosecution can be heard by the Magistrate, then the suspect should also be given an opportunity to defend himself. Shutting the suspect out by not giving him the opportunity to respond breaches every tenet of the principle of fair hearing. This should not be the case as fair hearing is an essential right that is fundamental to every person all around the world.

The point being made here is that Section 293 (3) of the Administration of Criminal Justice Act 2015 which provides that remand proceedings shall be made *ex-parte* is inconsistent with Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Section 36 of the Constitution is to the effect that, 'in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time.' The Supreme Court, per Niki Tobi JSC, (as he then was) in the case of *Tanko v State*^[56] held thus:

Where the Constitution has set out certain conditionalities for doing a thing, no legislation of the National Assembly or State House Assembly can alter those conditionalities in any way. This Constitution is very much supreme to all other laws of the land and its provisions throughout have binding force on all authorities and persons throughout Federal Republic of Nigeria.

Accentuating, still, on the supremacy and primacy of the Constitution of the Federal Republic of Nigeria (as amended) over every other laws made by National Assembly and State House of Assembly, the Court in the case of *Achu v CSC Cross River*^[57], held thus:

The provisions of an ordinary statute would not render trivial the relevant provisions of the Constitution. Therefore, if any law of the State including subsidiary legislation is inconsistent with the provisions of the Constitution, the provision of the Constitution shall prevail and the State Law to the extent of the inconsistency is void.

The net effect of the above expositions, festooned with judicial authorities, is that the provision of the Administration of Criminal Justice Act 2015 that provides that remand proceedings should be by *ex-parte*, that is, without hearing from the suspect is inconsistent with the provisions of Section 36(1) (4) (5) and (6) of the Constitution of Federal Republic of Nigeria (as amended) which provides for fair hearing of citizens of Nigeria.

Bail Application and Remand Proceedings.

Bail is a constitutional right deriving from Section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which provides for right to personal liberty and presumption of innocence^[58]. Bail arises at three stages in Nigeria; bail by the police, bail the court pending the final determination of the matter and bail pending the determination of appeal.

Bail is the freeing or setting at liberty one arrested or imprisoned, upon and others becoming sureties by recognisance for his appearance at a day and place certainly assigned; he also entering into self recognisance. The accused/convict is delivered into the hands of sureties, and is accounted by law to be in their, though they may free themselves from further responsibility if they surrender him to the court before the date assigned^[59].

The Constitution of the Federal Republic of Nigeria (as amended) provides presumption of innocence. That every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty. In the case of *Ahmed v C OP*^[60], the Court held thus:

By virtue of Section 36(5) of the 1999 Constitution, the constitutionally guaranteed presumption of innocence is extant and available for an accused person who has been arrested or detained upon reasonable suspicion of having committed a crime until he is properly arraigned, tried and rightly convicted by a court with competence and jurisdiction. The Nigerian Criminal Jurisprudence is accusatorial and not inquisitorial. Invariably, an accused person is not expected to prove his or her innocence. Also he/she is not supposed to be detained for an undeterminable or endless period. Hence, bail is meant to secure the release of a person arrested, detained or charged with the commission of a criminal offence, in such a manner that will ensure his further attendance or appearance in court for his trial. Basically, bail pending trial is a constitutional right...

The Criminal Procedure Code and the Criminal Procedure Act before the enactment of Administration of Criminal Justice Act 2015 provided procedure for bail^[61]. The Administration of Criminal Justice Act repealed both the Criminal Procedure Act and Criminal Procedure Code.

The Administration of Criminal Justice Act 2015 provides for bail in Sections 158-188. Section 158 of the Administration of Criminal Justice Act which provides for

bail is made in line with Section 35 and 36 of the Constitution of the Federal Republic of Nigeria 1999 which provides for right to personal liberty and right to fair hearing^[62]. Section 30 (1) & (2) of the Administration of Criminal Justice Act provides that suspects must be charged to court within 24 hours after arrest or granted administrative bail. However, in capital offences like murder, armed robbery and treason, section 161 (1)^[63] of the Administration of Criminal Justice Act requires that bail in respect of such offences can only be granted by the High Court^[64].

With special reference to remand proceedings, the Administration of Criminal Justice Act 2015^[65] provides for where Court may grant bail in remand proceedings. For the avoidance of doubt, the Act provides in section 295 thus:

The Court may, in considering an application for remand brought under section 293 of this Act, grant bail to the suspect brought before it, taking into consideration the provisions of sections 158 to 188 of this Act relating to bail.

The Act further provides that where a good cause is not shown for the continued remand of the suspect pursuant to subsection (4) of Section 296 or where the suspect is still on remand custody after the expiration of the extended period under subsection (5), the court shall, with or without an application to that effect, discharge the suspect and the suspect shall be immediately released from custody^[66].

Sections 295 and 296 of the Administration of Criminal Justice Act relating to remand proceedings, give the Magistrate Court the powers to release a suspect on bail keeping in view the provisions of section 158 to 188 of the Act and where a suspect is released pursuant to section 296 (6) of the Act no further application for remand shall be entertained by any Court after the proceeding in subsection (6) of Section 296^[67]. This means that even in a capital offences or grievous offences where Magistrate Court is stripped of jurisdiction to try, it releases a suspect suspected or alleged to have committed such crimes. This is completely inconsistent with Section 161 of selfsame Act which gives only the Judge of High Court the powers to admit to bail suspects alleged to have committed capital offence.

Conclusion and Recommendations

The purpose of the Administration of Criminal Justice Act 2015 is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant and the victim; and the courts, law enforcement agencies and other authorities or persons involved in criminal justice administration shall ensure compliance with the provisions of the Act for the of its purposes^[68].

It is our submissions that remand proceedings as provided in Sections 293-299 of the Administration of Criminal Justice Act is an antithesis to the purpose of the Act. The system where the Police or any other law enforcement agencies arrest and detained suspect without any formal investigation and worried about the constitutional implications rush to the Magistrate Court, which perhaps does not have jurisdiction to hear or try the case for remand order for the time limit of 14 days which shall be returnable for another 14 days and continues pending the conclusion of investigation and legal advice making a suspect to stay in detention until the Magistrate has cause to release the suspect. This, of course,

breaches and contradicts the fundamental right to liberty of the suspect and defeats the ultimate goal of the Administration of Criminal Justice Act of 2015 which encourages speedy dispensation of justice. This also gives statutory recognition and protection to holding charge, which our courts have condemned. To avoid these obvious pitfalls, this work therefore recommends *inter alia*; that the law enforcement agencies, must, at all times, in every case conclude or carry out their investigation first, before arrest; that where offence to which a suspect is alleged to have been committed is a capital offence, he should be taken to the court that has jurisdiction to try the case or better still, amendment of section 293 of the Administration of Criminal Justice Act 2015 and Laws of some States of the Federation of Nigeria to strip Magistrate courts off jurisdiction of remanding suspects of capital offences and putting same on the High Courts. Admirably, Edo State Administration of Criminal Justice Law, which provides that remand proceedings in respect of capital offences should be done by the High Court is commendable and buttress the point being made here. Also, application for remand proceedings should be by notice and not *ex parte*, to prevent shutting the suspect out from his/her Constitutional guaranteed right to fair hearing.

References

1. George Amadi OS. Police Powers in Nigeria, (Afro-Orbia Publishing Co. Ltd, Nsukka, 2000, 198.
2. The courts, in a plethora of decided authorities, have variously condemned holding charge as being illegal, unlawful and unknown under our laws and an accused person detained thereunder is entitled to be released on bail within a reasonable time before trial more so in non-capital offence. See the cases of Wabali v COP (1985) 6 NCLR; Enwere v COP (1993) 6 NWLR (pt. 299) 333; Onagoruwa v State (1993) 7 NWLR (pt.303) 49; Pius OzoAnakwe v Commissioner of Police (1996) 3 NWLR (pt. 436) 323; Shagari v COP (2007) 5 NWLR (pt, 1027)
3. Okpara Okpara, Human Rights Law and Practice in Nigeria (Chenglo Limited, 2005:1:164.
4. Administration of Criminal Justice Act 2015 and Administration of Criminal Justice Laws for States that have domesticated the Act.
5. Administration of Criminal Justice Act 2015, section 293. Remand means to recommit an accused person to custody after a preliminary examination.
6. Bryan A Garner (ed), Blacks Law Dictionary (9thedn, West Publishing Co, 2009:(9):1407.
7. (1007) 8 NWLR (pt. 1037) SC
8. Farouk Obisanya, 'Infringing the Fundamental Rights of a Suspect: Addressing Remand Proceedings in Nigeria. <https://www.thecable.ng/infringing-the-fundamental-rights-of-a-suspect-addressing-remand-proceedings-in-nigeria/amp> (accessed 12th August 2022), 2020.
9. CC Ani, Towards Eradicating the Problem of Delay in Criminal Justice Administration in Nigeria, In F A Yusuf (Ed) Issues in Justice Administration in Nigeria, Essays I Honour of Hon. Justice S M A Belgore (VDG International Ltd, 2008:137:136-153.
10. Criminal Procedure Code, Cap 80 Laws of the Federation of Nigeria (LFN), 2004.

11. Criminal Procedure Act, Cap C 38 Laws of the Federation of Nigeria (LFN), 2004.
12. Administration of Criminal Justice Act 2015, section 293 (1).
13. Sam Erugo, 'Law & Human Rights: Holding Charge Practice Must Stop' 2021 <https://www.vanguardngr.com/2021/11/holding-charge-practice-must-stop-lawyers/amp/> (accessed 13 August 2022)
14. (2015) 15 NWLR (pt. 1483); (2016) All FWLR (pt 815) 351 p. 395, paras. E-F. See also the case of *Ogor v Roland & C. O. P.* (1983) 1 NCR 342
15. Obande F Ogbuinya, *Understanding the Concept of Jurisdiction In the Nigerian Legal System* (Snaap Press Ltd 2008) 36
16. Halsbury's Laws of England, 10(4), 715.
17. *Uti v Onoyivwe*. 1 SCNJ. 25 at 49, Bello
18. Same as Administration of Criminal Justice Law of Lagos State, section 264 (1); Administration of Criminal Justice Law of Kogi State, section 291 (1); Administration of Criminal Justice Law of Anambra State, section 132 (1) and many other states of the Federation of Nigeria that have adopted the Administration of Criminal Justice Act 2015.
19. Capital or grievous offences such as murder or culpable homicide punishable with, treason and treasonable felony, to mention but these.
20. *Madukolu & ors v Nkemdilim* (1962) LPELR 24023
21. Marshal Umuokoro, 'Access to Justice in the Lower Courts: Re-examining the Civil and Criminal Jurisdiction of Magistrate Court in Nigeria ' A paper delivered at Conference of all Nigerian Judges of the Lower Courts at National Judicial Institute, Abuja, 2016, 5.
22. And Administration of Criminal Justice Laws of some states in Nigeria with such similar provision
23. MO Stanley, 'Magistrate Remand Orders in the absence of Jurisdiction, Way out'. Available online at https://barristering.com/magisterial-remand-orders-in-the-absence-of-jurisdiction-way-out#google_vignette, accessed on the 21st August 2022, 2021.
24. Basil Momodu, 'Remand Proceedings: section 293 of ACJA 2015 is Unconstitutional' <https://thenigerianlawyer.com/remand-proceedings-section-293-of-acj-2015-is-unconstitutional-by-basil-momodu-esq/> (accessed 23rd August 2022)
25. Administration of Criminal Justice Law 2016, section 293 (1)
26. AO Obilade, *The Nigerian Legal System* (1stedn, Sweet & Maxwell 1979) 160
27. (2007) 8 NWLR, 1037.
28. The said section 236 (3) of the Criminal Procedure Law of Lagos State provides that: 'If any person arrested for an indictable offence is brought before any Magistrate for remand, such Magistrate shall remand such person in custody or where applicable grant bail to him pending the arraignment of such person before the appropriate court or tribunal.'
29. Ibrahim Abdullahi, 'The Supreme Court of Nigeria Decision in *Lufadeju v Johnson* (2007) 8 NWLR (pt 1037) 535 *Journal of Law, Policy and Globalisation*, 2014:28:175.
30. AO Yekini, 'Remand Proceedings and the Right to Personal Liberty in Nigeria: Revisting Supreme Court Decision in *Lufadeju's Case*' in Olusegun Yerokun (ed) *LASU Law Journal*, 2012:8(2) & (3):100.
31. All FWLR, 2013: 1243:660.
32. Administration of Criminal Justice Laws for some States having similar provision with that of the Act of 2015.
33. As provided in Section 35 (1) (a) to (f) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
34. See also African Charter on Human and People's Right, Article 6
35. Constitution of the Federal Republic of Nigeria 1999
36. Section 35 (1) (c) provides that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law: for the purpose of bringing him before a court in execution of the order of court or upon reasonable suspicion of his having committed a criminal offence, or to such extent may be reasonably necessary to prevent his committing a criminal offence.
37. Constitution of the Federal Republic of Nigeria 1999, section 35 (4) (b)
38. Constitution of the Federal Republic of Nigeria, section 35 (5) (a) (b)
39. Halima Abiola, 'Appraisal of Remand Procedure under the Administration of Criminal Justice Act 2015', 2021. <http://loyalnigerianlawyer.com/appraisal-of-remand-procedure-under-the-administration-of-criminal-justice-act-2015/> (accessed 22 August 2022)
40. Ikechukwu Uzo, *Guide to Fundamental Rights Litigation Law Digest Publishing Co* 2016), (2), 16.
41. Basil Momodu (ibid) (n 26) 168
42. Yinka Olomojobi, 'Right to Personal Liberty in Nigeria' <https://deliverypdf.ssrn.com/delivery.php?ID=700081>. (accessed 24th May 2022)
43. AO pe, 'Stuck in Limbo: endless wait for justice for those in Nigeria's prisons', 2021. <https://www.theguardian.com/global-development/2021/Oct/28/stuck-in-limbo-endless-wait-for-justice-for-those-in-nigerias-prisons> (accessed 24th August 2022)
44. Administration of Criminal Justice Laws of some States having similar provisions with the Act.
45. Cali Ojimba, 'The Granting of *Ex-parte* Orders of Injunction Seems to Run Counter to the Principle of Fair Hearing. How True is it? ' *Knowledge Review*, 2011:(23):2.
46. 1 NWLR, 1985:98:419.
47. Bridget Edokwe, 'The Constitutionality of Remand Proceedings Under the Nigeria Criminal Justice System' <https://baristerng.com/the-constitutionality-of-remand-proceedings-under-the-nigeria-criminal-justice-system/> (accessed 24th August 2022)
48. GL Adedapomola, 'The Constitutionality of Remand Proceedings Under the Nigerian Criminal Justice System, 2020. <https://barristerng.com/the-constitutionality-of-remand-proceedings-under-the-nigeria-criminal-justice-system> (accessed 25th August 2022)
49. AI Ogbuabia, *Quick Reference to Criminal Trials and Procedure in Nigeria* (Logicgate Media Limited 2016), 211.

50. 3 NWLR,1986:714(31):729.
51. Which is in pari materia with Section 36 (6) of the Constitution of the Federal Republic of Nigeria (as amended).
52. Constitution of the Federal Republic of Nigeria (as amended), section 36 (5).
53. Administration of Criminal Justice Act 2015
54. Farouk Obisanya, 'Infringing the Fundamental Rights of a Suspect: Addressing Remand Proceedings in Nigeria, 2020. <https://www.thecable.ng/infringing-the-fundamental-rights-of-a-suspect-addressing-remand-proceedings-in-nigeria/amp> (accessed 24th August 2022)
55. Ibid
56. 4 NWLR, 2009:(1131):430.
57. 3 NWLR, 2009:475(1129):506.
58. O Doherty, Criminal Procedure in Nigeria, Law and Practice (London: Blackstone Press Ltd 1990) 125
59. Caleb Ojo v FRN (2006) 6 NWLR (Pt 984) 103
60. 8 NWLR, 2012, 1304.
61. Section 118 of the Criminal Procedure Act and Section 341 (1) of the
62. Momodu (n 26) 92
63. The section of the Act gives the Judge of the High Court the latitude to admit to bail a suspect arrested, detained or charged with an offence punishable with death under exceptional circumstances. These exceptional circumstances are contained in subsection (2) of section 161. They are: ill health of the applicant confirmed and certified by a medical practitioner employed in a Government hospital, with proof that the detaining authority has no medical facilities to take care of his illness; extraordinary delay in the investigation, arraignment and prosecution for a period exceeding one year; or any other circumstances that the Judge may, in the particular facts of the case, consider exceptional.
64. Olukunle Edun, 'Bail and Detention of Suspects at the Magistrate Courts', 2021. <https://tribuneonline.ng.com/bail-and-detention-of-suspects-at-the-magistrate-courts/> (accessed 25th August 2022
65. Section 295
66. Section 296 (6)
67. Section 296 (7)
68. Administration of Criminal Justice Act, section 1 (1) and (2)