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A critical appraisal of the admissibility of the insanity defence under the nigeria legal jurisprudence

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Abstract
The insanity defence is one of the most thoroughly studied and hotly debated issues in criminal law. This discourse x-rays the admissibility of the insanity defence under the Nigerian legal system. It provides both statutory provisions and judicial decisions on the subject matter. It asserts that statutory provisions and the deriving case laws are derived from the M'Naughten Rules, 1843. The paper says that the Nigerian criminal law is primarily statutory in form –the Criminal Code operating in the South and the Penal Code in the Northern part of the country – with sections 27 and 28 of the criminal code and section 51 of the penal code making appropriate provisions for the concept. The paper adds that Nigerian courts have often disregarded expert opinions and preferred non-expert opinions while adjudicating on the insanity defence cases because expert opinions have been conflicting. It concludes that presently in Nigeria, the insanity defence is admissible or available to a defendant if it is proven that the accused was insane at the time he or she committed the crime. The paper however recommends that Nigerian courts should rely more on the opinions of expert witnesses rather than those of non-experts – especially where non-expert corroborative evidence for insanity is lacking.

Keywords: Appraisal, admissibility, insanity defence, Nigeria

Introduction

Excuses provide a defence based on the fact that although a defendant committed a criminal act, that he or she is not considered responsible. With excuses, defendants are not morally blameworthy and therefore excused from criminal liability.

The insanity defence is one of the most controversial issues in medical jurisprudence as criminals commit crimes for a variety of reasons. The law presumes that they do so rationally and of their own free will and thus merit some form of punishment. However, some offenders are so mentally disturbed that they are found to be incapable of acting rationally. Civilized societies have deemed it a "violation of fundamental principles of fairness and morality" to punish such persons as to do so would thwart two major tenets of punishment – "retribution and deterrence [1]". Accused with mental disorder or impairments who are found competent to stand trial may seek acquittal on the claim of insanity, alleging that they were not criminally responsible for their actions at the time that offence was committed.

The Nigerian Insanity defence is a product of the M'Naughten Rules, 1843. In that case, Daniel M'Naughten, a paranoid wood turner from Glasgow, intending to murder Sir Robert Peel, the Prime Minister but mistakenly killed the Secretary, Mr. Edward Drummond. His acquittal of murder on the ground of insanity provoked public outcry and controversy which led to a debate on the House of Lords. The judges of England's highest court were convened and directed to determine a strict rule defining when an insanity acquittal would be justified. The rules are

a. Every person is presumed sane until the contrary is proved. The onus of proving insanity lies on the defence. The question must be proved in a balance of probabilities.
b. To establish a defence on the ground of insanity, it is the act that party accused was laboring under such a defect of reason, from disease of the mind, as not to know it, that he did not know the nature and quality of the act he was doing, or, if he did not know it, that he did not know he was doing what was wrong ("wrong means contrary to law").
c. Where a criminal act is committed by a man under some insane delusion as to the surrounding facts, which conceals from him the true nature of the act, he is doing, he is under the same degree of responsibility as if the fact were as he imagined them to be [2].

Where, at the trial of the accused, the jury finds that he was insane at the time of the crime, a special verdict of "Not guilty by reason of insanity" is returned. The accused is then detained at a mental hospital indefinitely until he or she recovers [3].

1. Insanity Defence under Nigeria Law

The Nigeria criminal law is primarily statutory in form [4]. While the Criminal Code applies and operational in the Southern States, the Penal Code to the Northern States of the Federation. Both codes made appropriate provisions for the defence of insanity. It is important to note that the provision of both codes are invariably linked to the M'Naughten Rules 1843 [5], but with minor modifications.

Section 28 of the Criminal Code provides

A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand that he ought not to do the act or make the omission. A person whose mind, at the time of his doing or omitting to do an act, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of the foregoing provisions of this section, is criminally responsible for the act or omission to the same extent as if the real state of things had

been such as he was induced by the delusions to believe to exist [6].

The Penal Code, on its part, states in *section 51* thus

Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law [7].

In the Nigerian Criminal Procedure, the insanity defence can be raised at different stages [8]. The accused may be insane at the relevant time of committing the act or of making the omission, or at the time of trial of the matter itself [9].

In Nigeria, there are certain ingredients which the accused person must provide to establish the defence of insanity. They include

1. That the accused person was at the relevant time suffering from either mental disease or from natural mental infirmity.
2. That the mental or the natural mental infirmity as the case may be, was such that at the relevant time, the accused person was as a result deprived of capacity to;

a. Understand what he was doing;
b. Control his actions;
c. Know that he ought not to do the act or make the omission [10].

The implication of these provisions is that an accused person who fails to establish these ingredients will not be availed the benefits of the defence of insanity. In *Madujemu v State* [11], the appellant was arraigned for the murder of his wife. He pleaded not guilty to the charge. At the conclusion of the trial, the court found him guilty as charged and sentenced him to death because from available evidence, there was no proof that the appellant was insane or that he was suffering from mental infirmity that deprived him of the capacity of understanding what he was doing or control his actions, or to know that he ought not to do the act or to make the omission. He appealed to the Court of Appeal which dismissed the appeal. He further appealed to the Supreme Court which also dismissed the appeal and upheld his conviction. In dismissing the appeal, the Supreme Court of Nigeria, as per Igu JSC, stated that to establish the defence of insanity, recourse could be had to the following relevant facts, namely

1. Evidence as to the conduct of the accused person
2. Evidence from prison officials who had custody of the accused person before and during his trial.
3. Evidence of medical officers who examined the accused.
4. Evidence as to the conduct of the accused immediately preceding the killing of the deceased.
5. Evidence of relatives about the general behaviour of the accused person and the reputation he enjoyed for sanity or insanity in the neighbourhood.
6. Evidence showing that insanity runs in the family history of the accused; and such other facts which will help the trial court come to the conclusion that the burden of proof placed by law the defence has been dismissed.

The court further held that the raising of the insanity defence provided in *section 28* of the Criminal Code is *prima facie* an acceptance of responsibility for the act complained of. Under the Nigeria legal system, the defence must adduce evidence to establish insanity to disprove the presumption of sanity, provided in *section 27* [12] of the Criminal Code, which provides that: "*every person is presumed to be sound in mind, and to have been sound mind at any time which comes in question, until the contrary is proved".* It is important to note that the provisions of *sections 27 and 28* of the Criminal Code are substantially similar in meaning to the M'Naughten Rule, 1843 [13].

2. Means of Proving Insanity

The rule is that "no man may be brought to trial of any crime unless and until he is mentally capable of standing trial [14]". It is trite law that an accused person who relies on the defence of insanity (in answers to criminal charges) has the burden of introducing evidence that, at the time of the commission of the offence, he was afflicted by insanity by reason of which any of the specified capacity was impaired [15].

One of the accepted methods of proving insanity is through the testimony of the relatives of the accused person. In this respect, the defence is entitled to call evidence from friends and the relatives of the accused with a view to establishing the defence, that is, whether it is genetic or otherwise. In a number of cases, the courts have demonstrated their willingness to rely wholly and exclusively on the evidence of insanity of the accused as narrated by relations. In *R v Inyang* [16], the court upheld the defence of insanity based on the testimony of his relations that prior to the accused's killing of the accused, he (i.e. the accused) suffered from severe headaches, used to wonder about at night, speak in meaningless manner, laughing insanely and either throwing away his food or urinating on his food. Similarly, the court gave recognition to the evidence of relations in *R v. Ashigifuwo* [17] where the relations testified that the accused had been mad on earlier occasion and had been given medicine purposely to improve his condition. See the diction of Oputa JSC in *Josiah v The State* [18], where he stated that "justice is not a one way traffic".

3. Expert Opinion

The most often invoked and most controversial method of proving the insanity defence is the use of medical evidence of psychiatrists and other competent experts. Perhaps, the first case in the admissibility of expert testimony in psychiatric cases arose in 1843 from the celebrated English case of M'Naughten, 1843 [19]. M'Naughten shot and killed Edward Drummond, Secretary to British Prime Minister, Robert Peel. He intended to shot Peel, but shot Drummond by mistake. M'Naughten suffered from the delusion that Peel and the Pope were conspiring against him. Expert testimony found that M'Naughten was insane and thus not guilty [20].

In Nigeria, generally, when a court is to form an opinion on a relevant fact in issue, opinions of other persons are irrelevant and inadmissible [21]. The testimony of experts constitute exceptions to this rule [22]. This exception find justification in the fact that "there are certain scientific matters on which the court will be unable to determine unless assisted by the experts to reach a correct decision [23].

Accordingly, *section 68* [24] of the Evidence Act provides that When the court has to form an opinion upon a point of foreign court, customary law or custom, of science or art or as to identity of handwriting or finger impressions, the opinion upon that point of persons specifically skilled in such foreign law, customary law or custom, or science or art

or in questions as to identity of handwriting or finger impressions are admissible.

The areas of knowledge in expert testimony which may be received or are admissible encompass matters scientific and medicine (medical) [25] in which psychiatry is a branch. However, decided cases have shown that the conditions precedent to the admissibility of psychiatric evidence are seldom complied with. The courts have rightly rejected the testimonies of the psychiatrist expert on grounds of hearsay. The decision of the Supreme Court in *Aiworo v The State* [26], attests to this. In that case, the accused was standing trial for the murder of his six-months old and two other persons. He raised the defence of insanity. He claimed not to have understood what happened at the time he committed the offence. He attributed his actions to a wrap of Indian Hemp which he claimed a friend had given to him. He however failed to call the friend who gave him the Indian Hemp or any other witnesses. A psychiatrist who saw him eleven months after the commission of the offence testified on his behalf that he suffered from a disease of the mind called schizophrenia. The expert testimony was neither based on any "medical or clinical examination" of the accused, but on the facts obtained from the accused's relations about his background. The court rightly rejected the medical evidence on the ground of hearsay. A caseful look at some ther decided cases reveal that is debates between judges and psychiatrists on who should have the last say, the courts have always disregarded psychiatrists' evidence.

In *Alfa v State* [27], the appellant as the accused was arraigned before the Kogi State High Court sitting at Okpo, for committing culpable homicide, an offence punishable under *section 221(a) of the Penal Code.* The appellant, Pastor Sunday Alfa on the fateful day of 24th February, 2014, left his bedroom and entered the bedroom of his wife, Rose Alfa, the deceased at about 3.00am and thereafter inflicted several cuts on her with the use of a cutlass. She suffered several injuries and died on her way to the hospital. The trial court in its considered judgment convicted and sentenced the Appellant to death by hanging.

Dissatisfied with the judgment of the final court, the appellant appealed to the Court of Appeal. On whether it is the court that determines if an accused person was insane when he committed the offence, the Appeal Court held as per Yahaya JCA

However, it is to be noted that it is solely for the judge to determine whether the accused person was indeed insane or suffering from insane delusion i.e. mentally deluded, at the time of committing the offence. So, any medical report available to court is only a guide. It does not tie and bind the hands of the court…

Similarly, on *Edoho v The State* [28], the Supreme Court, on whether the evidence of insanity of an accused person's ancestors or blood relation is admissible, held that:

It need be also borne in mind that evidence of insanity of his ancestors or blood relations is admissible. Medical evidence, though probative, is not essential.

Furthermore, experience has shown that testimonies of psychiatrists are neither authoritative nor devoid of conflicts. One is often compelled to regard the evidence of psychiatrists as mere "users work" [29]. It is not unusual to find conflicting expert psychiatrist evidence in respect to the insanity or otherwise of the accused. For example, the trial which led to the acquittal of John Hinckley, the would be assassin of President Ronald Regan in 1982, produced conflicting psychiatric evidence and this and many more conflicts in evidence of psychiatrists have successfully won distrust for psychiatrists [30].

4. Non-Expert Opinion

There are situations where the courts entertain the evidence or opinions of non-experts. This refers to the opinion in "restricted circumstances" by laymen or persons who do not possess any expertise. These circumstances mainly concern matters of everyday life where a person may be expected to give opinions and which opinions may be safely acted upon by others [31]. Such circumstances cannot be definitively laid out, but cases in which non-expert opinions have been admitted include

1. Apparent age of a person
2. Apparent age of objects
3. Speed
4. Weather
5. Drunkenness
6. Identification of handwriting
7. Eye witness identification
8. Identification of physical objects
9. The general body condition or emotional state of a person
10. The general condition of objects
11. The approximate value of objects
12. Approximate distance
13. Time
14. Ability to speak and understand a language [32].

However, the issue of the need for expert opinion or evidence in respect of psychiatric offenders has occupied the attention of judges, courts and various authors and writers. In contrast, that of non-expert opinions or evidence has received scant attentions. This is probably because, in most litigations, the courts have continued to seek expert opinion even when non-experts such as relations, friends or parents of the accused have testified.

Under the Nigeria legal system, the defence must adduce evidence to establish insanity to disprove the presumption of sanity provided in *section 27 of the Criminal Code.* It is important to note that the provisions of *section 28 of the Criminal Code* are substantially similar in meaning to the M'Naughten Rules. For example, the latter clauses of the section represent an extension of basic "right or wrong" test of the M'Naughten Rules mentioned earlier on as mitigation of responsibility, the "uncontrollable action" or "irresistible" [33]. However, a satisfactory definition of what constitutes an irresistible impulse has proved difficult to attain. This position has been unhelpful in determining issues of insanity and criminal responsibility in many cases. In *R v. Omoni* [34], the Court of Appeal remarked that this condition allows a defence that the accused was acting under irresistible or uncontrollable impulse.

A vital component in the Nigerian insanity plea is the presence of "mental disease" or "natural mental infirmity" as the basis for the lack of capacity in "certain cognitive and behavioural domains resulting in the offence" [35]. Nigerian judicial opinions rely on "non-expert account of defendants' apparent "behavioural abnormalities and reported familiar vulnerability to mental illness [36], among other facts. Additionally, the Supreme Court of Nigeria has maintained a view that "insanity is to be determined in the legal sense and is an issue that should be decided by the courts rather

than physicians in the practical formulation of insanity in Nigerian courts" [37]. The courts have often discountenanced with the evidence of insanity tendered by an accused person himself as suspect and is not usually taken seriously [38].

A recent study of all cases involving the insanity defence reported in Nigerian law reports revealed that "100% of them were homicide cases although the study only reported appeal cases [39].

Under the Nigerian legal system, the burden of proof in regards to insanity cases is provided for by *section 136* [40] of the Evidence Act, 2011. The section provides that the burden of proof "regarding any fact (e.g. insanity) is on the party which seeks to convince the courts as to the existence of that fact". However, while *section 135* [41], places a burden of proof beyond reasonable doubt on the prosecution in criminal matters, "this shifts once the defendant raises any exception to criminal liability as afforded by *section 139(1)* [42] where the insanity defence is thus raised as an exception to the criminal conduct, *section 137* [43] "places the burden of proof on the balance of probability on the defendant" [44].

Conclusion and Recommendation

The Nigerian insanity defence is composed of two parts – first, it serves as "an exoneration by recognising that mental illness or a natural mental infirmity can impair one's ability to understand, control, or recognize the wrongness of behavior" [45]. Secondly, is "non-exculpatory in that it holds the defendant accountable for the extent to which particular delusions cause him or her to act legally or illegally" [46].

Nigerian courts on the insanity defence have often relied more on non-expert opinion rather than expert opinions holding that the defence is a legal construct rather than a medical one and have often regarded expert opinions as hearsay, advisory and not binding.

As it stands presently under the Nigerian justice system, the insanity defence is admissible to an accused person who is able to prove that he or she was insane at the time the crime was committed.

However, we are inclined to observe that discounting the opinions of expert witnesses while adjudicating on insanity cases by Nigerian courts may lead to miscarriage of justice. We are therefore recommending that, to aid the transparent dispensation of justice, Nigerian courts should rely more on the opinions of psychiatrist expert witnesses rather than those of non-experts, especially in cases where non-expert corroborative evidence for insanity is lacking.

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36. Ibid
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38. Ibid, p3. See *Guobadia v State (2004) 6 NWLR 360* where the Supreme Court held that evidence of insanity

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