

ACJA-EMERGING ISSUES & CHALLENGES

By

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1

GRATITUDE

- For the honour and recognition by one's professional colleagues;
- For the association with the distinguished honouree: **Hon. Justice Ishaq Usman Bello, CJ, FCT.**
- I worked under him at the Panel on Implementation of Justice Reform (PIJR)-
- His Leadership made the passing of the ACJA in 2015 possible.

KUDOS TO THE FCT JUDICIARY

- For Hon. Justice Bello's proactive and perceptive leadership style which has placed the FCT judiciary at the forefront of judicial reform nationwide. Achievements include but not limited to:
 - (a) Issuance of Practice Directions;
 - (b) Sentencing Guidelines;
 - (c) Deskbook of best practices;

KUDOS (CONTD.)

- (d) Appointment of ACJA implementation Committee headed by Hon. Justice Baba Yusuf; (e) Support for the ACJMC-
- (f) Balanced approach-the CJ is neither for the prosecution nor for the defence-**only for justice and the rule of law;**
- (g) Several other initiatives which will be highlighted in a forthcoming book;

KUDOS TO THE UNITY BAR

- The NBA has made the right choice to honour his Lordship and to work in synergy with the judiciary to ensure that the system of administration of justice in the FCT is more robust and responsive to the needs and aspirations of the public;
- This invitation reinforces the award recently conferred on me by the national body of the NBA at Asaba-

LECTURE OVERVIEW

- Introduction-
- Outline of Key innovations-
- Evolving ecology of the ACJA-
- Notable developments-
- Emerging issues and challenges
- Way forward-

INTRODUCTION-

- Without an effective criminal justice system capable of curbing the anti-social tendencies of individuals, the human society could easily degenerate into a failed system with features of the animal kingdom where only the fittest can survive-
- Lawyers including judges are not needed in the animal kingdom because there is no job for them.
- A sound justice system is the hallmark of a civilized society-

INTRODUCTION- (CONTD.)

- The rule of law provides a conducive environment for humans to flourish;
- The legal profession is currently facing a crisis epitomized by dwindling fortunes of lawyers, especially the younger lawyers;
- A greater population of lawyers tend to flourish under a dynamic and functional socio-legal system and rule of law.

MAJOR INNOVATIONS OF THE ACJA

- **Clarity of objectives-section 1(1)-**
- **Nationwide applicability- section 2(1)- with or without domestication-**
- **Uniformity of procedural laws- old dichotomy between CPA and CPC gradually fading out-**
- **Domestication admits of local peculiarities-**

MAJOR INNOVATIONS (CONTD.)

- **Centrality of the role of the judex in the administration of criminal justice-**
- **Restorative Justice system-**
- **Mandatory Criminal Justice statistics and data-**
- **Technology-aided justice system-**
- **Gender parity-**

MAJOR INNOVATIONS (CONTD.)

- **Human Rights compliance-**
- **Control of pre-trial detention and automatic review of remand cases-**
- **Prohibition of Stay of Proceedings-**
- **Disclosure protocols-**
- **Mandatory Timelines-**

MAJOR INNOVATIONS (CONTD.)

- **Mandatory Reporting Requirements-**
- **Case management-**
- **Synergy between 'demand side' and 'supply side' of justice- ACJMC**
- **Plea bargaining guidelines-**
- **Sentencing Guidelines-**

REFERENCE-

For a discussion of the major innovations listed above, you may wish to read:

- **Keynote Address on the Administration of Criminal Justice Act (ACJA) 2015 delivered by Prof Yemi Akinseye-George, SAN, at the Nigerian Bar Association (NBA) Conference on Administration of Criminal Justice in Nigeria held on 9th November, 2017;**

FURTHER REFERENCE-

- **Prof. Yemi Akinseye-George, SAN, Introductory Notes on the Administration of Criminal justice Act 2015 published by GIZ (German Foundation, 2017).**
 - **See also www.censolegs.org**
- Various publications by:**
- **the Presidential Advisory Committee on Corruption (PACAC);**
 - **Centre for Socio-Legal Studies (CSLS);**
 - **Nigerian Institute of Advanced Legal Studies (NIALS)**

EVOLVING ECOLOGY OF THE ACJA-

- **Saraki v. FRN**, (2016) 3 NWLR (part 1500) 531 at 578

In this leading case, the Supreme Court, per Onnoghen, JSC (as he then was) rightly upheld the applicability of the Administration of Criminal Justice Act to the Code of Conduct Tribunal.

With the repeal of the Criminal Procedure Act and the Criminal Procedure Code, section 493 of the Administration of Criminal Justice Act 2015 has taken their place.'

EVOLVING ECOLOGY OF THE ACJA- (CONTD.)

■ **Olisa Metuh v. FRN** (2017) 11NWLR (part 1575) 157

The Supreme Court, per Ogunbiyi, JSC upheld the constitutionality of section 306 of the ACJA and section 40 of the EFCC (Establishment) Act 2004 which prohibit Stay of Criminal Proceedings.

EVOLVING ECOLOGY OF THE ACJA- (CONTD.)

- **Ejembi Eko, JSC,**

In his powerful concurrence, noted,

*‘The trial is under the Administration of Criminal Justice Act, 2015, which requires the criminal proceedings to proceed on **day-to-day basis**, section 306 of the ACJA, prohibits the trial court staying proceedings in respect of a criminal matter before the court. (at p.183).*

EVOLVING ECOLOGY OF THE ACJA- (CONTD.)

- On his part, **Kekere-Ekun, JSC** alluded to such concepts as;
- **New dispensation** throughout the hierarchy of our courts.....is to **fast track** the hearing and determination....

EVOLVING ECOLOGY OF THE ACJA-(CONTD.)

Okoye v. C.O.P (2015) LPELR 24675

- In a trial in the Magistrate Court or Tribunal, **the prosecution shall, provide the defendant all materials** that the prosecution intends to rely on at the trial, before or at the commencement of the trial.
- The facilities that must be afforded the accused person are the 'resources' or 'anything which would aid' the accused person in preparing his defence to the crimes Under section 350(2) ACJA
- Although section 350(2) does not expressly extend this requirement of front-loading to trials in the High Court, the Supreme Court in the case of **Okoye & ors v. Commissioner of Police & ors.** appears to have done so.

EVOLVING ECOLOGY OF THE ACJA (CONTD.)

■ **Nweke v. State** [2017] 15 NWLR (Pt. 1587) 120.

The provisions of section 146 ACJL Anambra State, 2010 are in pari material with Section 379 of the ACJA 2015 with regard to frontloading proofs of evidence while filing an information in the High Court. However, the only difference between these statutes is that while section 146(h) of the ACJL of Anambra allows the prosecution to include any other statement or document which the prosecution may consider relevant to the case to be added to the proofs of evidence, the ACJA leaves that discretion to the court in section 379(1)(x) and **allowing the prosecution file and serve notice of additional evidence any time before judgment.**

DISCLOSURE BY THE DEFENCE-ORDER 5 FCT PD, 2017

- The ACJA 2015 seem to be silent on Disclosure by the defence;
- **This gap is filled by order 5 r.1& 4 of the FCT Practice Directions 2017.**
- The defendant must be given adequate time and facility to prepare for his defence.
- Defence counsel **may** voluntarily at the pre-trial hearing disclose to the prosecution and the court relevant material or information that will assist the court in identifying the issues to be decided upon, or narrow down the issues in dispute in order to achieve speedy dispensation of justice for all parties.
- The first limb of order 5 rule 1 is based on section 36 of the 1999 Constitution.
- See *Musa Ibrahim v The State*, SC. 652/2013 (5 May 2017)

DISCLOSURE BY THE DEFENCE (CONTD.)

FEDERAL HIGH COURT PRACTICE DIRECTIONS, 2013:

The duties of the defence as provided under section 5 are to:

- a) specify in writing, the defence being raised;**
- b) specify in writing those aspects of the prosecution case which are agreed;**
- c) specify in writing those aspects of the prosecution case which is in dispute;**
- d) specify in writing which witnesses are required for cross examination;**

ARGUMENTS RELATING TO DISCLOSURES BY THE DEFENCE

- That it has removed the presumption of innocence and the burden of proof on the prosecution to prove its case and the right to remain silent.
- **This is clearly not so.**
- The duty to make available materials before trial has to do with pre-trial proof of evidence. **The proof of evidence is not evidence yet.**
- At that stage, the Court is not to believe what is contained in the proof of evidence but that in the spirit of fairness, each party ought to know the case of his adversary in advance.
- If the prosecution is not allowed to spring surprises on the Defendant, there is no valid basis for the Defendant to be allowed to do so. It is trite that uneven justice is injustice.

COMPARATIVE ENGLISH PRACTICE-

Under sections 5 and 6 of the Criminal Procedure and Investigation Act, 1996, of the United Kingdom, the defendant is required to give the prosecution a Defence Statement and the content of the defence statement are prescribed by section 6A of the CPIA, 1996 (as amended):

- a) the defendant must file a defence statement or case statement;**
- b) the defence written statement must set out the nature of the defence, including any particular defence on which the defendant intends to rely;**

COMPARATIVE ENGLISH PRACTICE-(CONTD.)

- c) indicates the matters or fact on which the defendant takes or join issues with the prosecution and why he takes such issue;**
- d) set out particulars of the matters or fact on which the defendant intends to rely for the purpose of his defence;**
- e) indicate the point of law, (including any point as to the admissibility of evidence) that the defendant wishes to take at his trial and any legal authority on which the defendant intends to rely for this purpose;**
- e) in the case of an alibi defence, provides the name, address and date of birth of any alibi witness or as many of these details as are known to the defendant.**

COMPARATIVE ENGLISH PRACTICE-(CONTD.)

Under section 6 (c) of the CPIA, 1996, the defendant must give a Defence Witness notice and he is required to serve the Court and the prosecutor with the defence or case statement.

- In **R. v. Mayhew**, it was held that the object of requiring the defendant to disclose his case statement is to facilitate preparation for trial by the prosecution and to avoid springing surprises on the prosecution by the defendant and undue delay in the criminal justice system. **Proof of evidence is not evidence which the court can rely upon if they are not tendered by the prosecution during trial.** See **Pius .v. State (2012) LPELR 9304 CA**, **Dada .v. FRN (2014) LPELR CA/L/497/2014** page 15.

SHOULD DEFENCE DISCLOSURE BE DISCRETIONARY?

- **It is recommended that the Administration of Criminal Justice Act in future should contain similar provisions as in the CPIA, 1996.**
- **The FCT Practice Direction issued by the CJ on frontloading of materials and disclosure by the defendants is laudable: order 5, Rule 4 provides: *“after the service on the defendant of the materials that the prosecution intends to rely on, the defendant shall indicate on the case management form what aspect of the prosecution’s case he agrees or disagrees and may elect to disclose the defence he intends to raise at the trial”***
- **However, the word “may elect” used in that order seems to have given discretion to the defendant not to disclose the defence he intends to raise at the trial. In my humble view, it should not be at the discretion of the defendant to decide whether or not to disclose his defence to the prosecution.**

PRE-TRIAL CASE-MANAGEMENT

- Pursuant to o. 3 r. 5 the court shall consider all issues raised at the Arraignment and Case Management Hearing and resolve matters raised in the interests of justice within Five (5) working days of the Arraignment and Case Management Hearing.
- Although this Practice Direction took effect since 25th April, 2017, the courts and practitioners hardly observe the practice directions. There should be training for judges and practitioners on the importance of applying the practice directions.
- If order 3 is properly applied full-blown trials will become unnecessary in several cases as most of the preliminary issues that usually occasion delays would have been dealt with at the pre-trial stage.
- A prosecutor who plans to rely solely on confessional statement which, at the pre-trial case management stage becomes clearly inadmissible, would reconsider his plan and withdraw same at that stage. This will save considerable judicial time.

NOTABLE DEVELOPMENTS-

- Voluntary return of stolen assets- although there is need for greater specificity in this respect, there is no doubt that humongous amounts of stolen assets are being returned to the Treasury;
- Nyame has been concluded at the trial court;
- Progress of cases- prosecution has closed its case in Metuh;

TIMELINE IN METUH-

- **25th Jan.1, 2016-Arraignment**
- **9th Feb. 2016- prosecution closes its case after calling 8witnesses;**
- **18th Feb. 2016- No-case submission;**
- **9th March, 2016 -dismissal of No-case submission;**
- **24th May, 2016 Appeal court dismisses No-case submission;**
- **8th Feb. 2017 Supreme Court delivers ruling;**
- **9th June, 2017 Supreme Court delivers ruling.**

NOTABLE DEVELOPMENTS- (CONTD.)

- **several other cases are beginning to move forward;**
- **Costs are being awarded against parties in deserving cases-Another ACJA innovation!**
- **Front loading by the prosecution is now a growing practice.**

EMERGING ISSUES & CHALLENGES

- Persistent delays-
- Gaps in the ACJA and attempted remedies by Practice Directions-
- Non-compliance with practice directions-
- Prolongation of cross-examination of witnesses-
'filibustering?'
- Intimidation of hard-working judges through the writing of petitions-

EMERGING ISSUES & CHALLENGES (CONTD.)

- Non-compliance by counsel with frontloading or disclosure protocols as required by the Practice Directions-
- Abuse of remand proceedings by prosecutors-
- Mind set of some prosecutors-
“conviction at all cost”

EMERGING ISSUES & CHALLENGES (CONTD.)

- Disruptive attitude of some defence counsel, 'delay by all means' e.g. excessive cross-examination. In **Gleeson** (2003) EWCA Crim 3357, [2004]Cr App Rep.406 at paragraph 36, the English Court of Appeal urged practitioners to identify the real issues in a case at an early stage as criminal trials are 'not a game under which a guilty defendant should be provided with a sporting chance'

EMERGING ISSUES & CHALLENGES (CONTD.)

- Lack of provisions for witness expenses-
- Problem of trial de-novo-
- Modification of the practice of trial-within-trial by ACJL of several states;
- Concurrent application of ACJA and ACJL in some states;

WAY FORWARD

- **Reform of Practice Directions-**criminal procedure rules are generally updated twice a year; the Rules Committee sits once a month-Kingsley Napley, Serious Fraud, Investigation and Trial (LexisNexis, 4th Ed. P.323)
- **Need for proportionate sanctions for non-compliance with Practice Directions-** e.g. R. 3.5(6) CrP (Amendment) No.3 Rules 2007, SI 2007/3662.(England): The court may impose costs or other sanction.

WAY FORWARD (CONTD.)

- Use of electronic recording facilities-
- Capacity building for investigators and Prosecutors;

WAY FORWARD (CONTD.)

- Improved oversight of the work of judges by the NJC-
- Discipline of lawyers who abuse the system such as those relitigating settled issues of law.
- Fast track appellate system-
- Improved working conditions of judges-NBA and Body of Senior Advocates must be more proactive in advocating reasonable pay and perquisites for judges and the lower bench.
- Improved lower bench to take up more of the cases now handled by the High Courts

CONCLUSION

- **The survival of the Nigerian democracy depends, not on what the politicians do or fail to do;**
- **but on the extent to which the Legal Profession including judges, prosecutors and legal practitioners take seriously the all-important task of justice dispensation.**
- **The Administration of Criminal Justice Act 2015 is undoubtedly a major step forward in the direction of improving the delivery of criminal justice in the country.**

CONCLUSION

- **However, much remains to be done in providing the human, material and institutional resources necessary to ensure an effective implementation of the law.**
- **Despite its numerous challenges, the Judiciary has shown leadership and readiness to tackle the perennial problem of delay of justice.**
- **The Nigerian people, and the Bar in particular must respond with the right attitude and support for the judiciary to enable to actualization of the lofty objectives of the Administration of Criminal Justice Act.**

THANK YOU FOR YOUR ATTENTION!

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- Member, Administration of Criminal Justice Monitoring Committee (ACJMC);
- Member, FCT ACJA Implementation Committee.