

PROSECUTORIAL POWER OF THE POLICE UNDER THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015

Onyi-Ogelle, Obioma Helen

Faculty of Law, NnamdiAzikiwe University Awka, Anambra State, Nigeria

Abstract

In the Nigerian Legal system, the administration of criminal justice is one of its fulcrum by virtue of which it plays a vital role in the determination of its ability to withstand the vagaries of justice in its diverse phases. In a criminal proceeding, the parties and their representatives determine in one way or the other where justice tilts. This is one of the reasons why representation of an accused person is so vital to the extent that where an accused standing trial in a capital offence does not have a legal representation, the system directs that he/she be assigned one. In our legal system, the police prosecute matters all the way up to the Supreme Court. The prosecution of offences by the police attracted astute criticism from legal luminaries and public outcries over the years, on the premise that the police are not expert in law and in the act of prosecution. As a result, good cases are being lost on technical grounds by defendants who are always represented by legal practitioners who are experts in law. Consequently, the Administration of Criminal Justice Act, 2015 made provision suggestive of the fact that the police should no longer prosecute offences in the courts. Therefore, this work tried to find out whether the police still retain the power to prosecute offences under the Act? What is the extent of their power to prosecute in the present circumstance? These questions were answered and recommendations made which is geared towards development of the law in this area.

Keywords: Police, Prosecution, Criminal, Administration, Courts, Offences, Constitution, Act, Section, Accused

Introduction

Nigeria by virtue of her colonial affiliation with Britain received and applied the English law together with her rules and procedures. This received English law was introduced into Nigeria law and adopted as part of our legal system by Nigerian legislation. As a source of Nigerian law, it consists of the common law, doctrines of equity, statutes and subsidiary legislations. As a result, the Police Ordinance of 1943 (later Police Act of 2004) prior to Nigeria Independence was in operation. The Act amongst other Police enormous responsibilities of policing the entire Nigeria empowered them to arrest suspected offenders with or without warrant of arrest, investigate and prosecute offences. The police who are not expert in law but by virtue of the Act statutorily engaged in the act of investigation, preferring of charges and prosecution of defendants in court of law against the well trained legal practitioners up till today. It is pertinent to note here that at that time, there was acute dearth of legal practitioners in Nigeria who could take up the task of prosecution of offences in criminal proceedings – Thus, it was believed that this scenario could be the premise for the police prosecuting power provided in the Police Act above.

Police had been handling about ninety percents (90%) of criminal trials in Nigeria especially at the Magistrate Court. This act of prosecution of offences by the police has been a source of serious concern to most meaningful citizens of Nigeria more especially the legal practitioners. The worrisomeness of the act is escalated with the alarming rate at which police loose matters at the Magistrate Courts as a result justice is miscarried at the altar of technicality and expertise of the legal practitioners. The judicial process in Nigeria being accusatorial in nature is a real battle of the brain and the witty, either for or

against. This is so on the premise that failure of the prosecution to establish and prove all the essential ingredients (beyond reasonable doubt) of an alleged crime may automatically lead to either discharge or acquittal or both for the defendant. The police not being experienced in legal science could easily be schemed out of the judicial schisms as proceedings in court are tactical in nature and highly professional.

Courts where Police could Prosecute

The police receive complaints from the public either by way of written petition or oral complaint. Armed with the complaint police will swing into action of investigation, arrests, searches etc as the case may be. After a thorough and indebt investigation as provided by the Act, police, with convincing facts and evidence that an alleged offence has been committed by the suspect who was subject of the complaint that necessitated the criminal inquiry, the police will prefer a charge against the suspect. By section 78 (6) of the Administration of Criminal Justice Act, 2004 the police may exercise such powers and arraign the accused/suspect overnight in a magistrate court within jurisdiction of the police station. On the other hand, section 25 of the Police Act provides to the effect that a police officer can institute and indeed conduct criminal proceedings in Nigeria whereas section 174 (1) (b) of the 1999 constitution makes provision for “any person” to carry out the same function of prosecution in any court in Nigeria, Consequent upon the fore-going, a case arose with respect thereof where these issues were canvassed and decided upon. The case of *F.R.N.V. Osahon & sons* the appellant charged the respondents with various offences under Miscellaneous Offences Decree (Act) of 1984. The prosecutor was NuhuRibadu, a police officer the Nigeria Police Force and all those assisting him to prosecute were similarly police officers. The charge was brought before a Federal High Court Lagos Division. The presiding judge considered the issues before the court thus:

- i. Under section 174 (1) (a) of the 1999 constitution, only the Attorney General of the Federation is empowered to institute and undertake criminal proceedings against the 2nd to the 9th accused persons in respect of offences created under the Miscellaneous Offences Decree (formerly Special Miscellaneous Offences Decree) No, 20 of 1984
- ii. The powers conferred on the Attorney General of the Federation under section 174 (1) (a) of the 1999 Constitution can only be exercised by him in person or through officers of his department and
- iii. The prosecutor in these proceedings and/or other persons assisting him are police officers and are not officers of the Attorney General of the Federations office/department.
- iv. The charges and/or the amended charges herein are an abuse of legal process.

The appellants then the respondents deposed in their counter affidavits that the police did not need the fiat of the Attorney General of the federation to prosecute the offences under Miscellaneous Offences Act by virtue of section 23 of the Police Act. Also that though the Attorney General and members of his department could prosecute, the police equally could prosecute under the Act.

The judge gave judgment for the respondents ie the appellants to wit that the Police Officers being legally qualified (in this case officers called to the Nigerian Bar) can prosecute without the fiat of the Attorney General.

The Respondents appealed to the Court of Appeal with a sole issue for determination which was as follows:- “under section 56 (1) of the Federal High Court Act, only a law officer, a state counselor legal practitioner duly authorized by the Attorney General of the federation can represent the government... in the Federal High Court. Can a Police Officer (irrespective of being called to the Nigerian Bar) represent the government of the Federation in the Federal High Court?

The court of Appeal held that the Federal High Court Act, deliberately excluded Police Officers from prosecution and thus allowed the appeal. The respondents at the court of Appeal appealed to the Supreme Court.

The Supreme Court allowed the appeal and set aside the judgment of the court of Appeal. It held as follows:-

1. Any power given by the constitution cannot therefore be taken away by any Act of National Assembly or law of a state or a subsidiary legislation. The provision of the constitution in section 174 (1) (b) which the Supreme Court hinged on in as follows: - Paragraph (b) “... any such criminal proceedings that may have been instituted by any other authority or person.
2. That the defects in section 56 (1) Federal High Court Act affect appearance but it’s omission of “any other person or authority” has not brought it into conflict with the constitution, it’s inadequacy is merely procedural.

3. The power to prosecute or undertake criminal prosecution is vested on the Police Officer under section 23 of the Police Act subject to the exercise of powers conferred on the Attorney-General by the provisions of section 160 of the constitution.

The Supreme Court therefore held that a Police Officer can prosecute by virtue of section 23 Police Act, section 56 (1) Federal High Court Act and section 174 (1) of the Constitution of the Federal Republic of Nigeria, 1999,

The decision of the Supreme Court reinforced the authority of the Police Officers prosecuting criminal cases in Magistrates and other courts of criminal jurisdiction. They derive their powers under S. 23 Police Act. But with the decision, the issue of Police Officers prosecuting offences in superior courts of record was laid to rest. The Supreme Court allowed the Police Officers to prosecute a matter up to the Supreme Court

The worrisome aspect of the judgment is where his Lordship held quote “But when it comes to superior courts of record, it is desirable, though not compulsory that the prosecuting police officer ought to be legally qualified” This is not deleting from provisions of S. 174 (1) of the constitution, rather it maintains age long practice of superior courts having counsel rather than by persons in most cases prosecuting matters.’ (emphasis mine). It is indeed disturbing because his Lordship appeared to hold that legal qualification of a police officer is not a condition precedent for prosecution of matters at the inferior courts of record and neither too at the superior courts which includes the High courts of States and higher/appellate courts but rather desirable.

Despite the agitation of the legal practitioners, legal officers etc, this case remained an authority in the area. So many cases applied and followed the principle. Some of which are *Adewale Adedana v The State*, *I.G.P.V. Andrew, Azuh v UBN Plc* etc.

Administration of Criminal Justice

In 2015 a committee was set up to review the administration of criminal justice system in Nigeria. After a herculean task, the committee came up with the Administration of Criminal Justice Act 2015. Note from this outset that it was to review the system under the federal jurisdiction. Nigeria is a federal state hence the constituent states are not covered under the new Act except a state that wishes to adopt it. Consequently, the Criminal Procedure Act and the Criminal Code which hitherto regulated the administration of criminal justice system in the federal courts across the country ceased to be applicable in all the federal courts in Nigeria.

The Administration of Criminal Justice Act 2015 hereinafter called the Act or ACJA 2015 has some laudable innovations, variations and a sharp paradigm shift from the previous criminal procedural law in Nigeria. Chief amongst the innovations and well related to this writing is the fact that the Act sought to completely abrogate the power of prosecution of the Police. It was the situation as reiterated by the honourable justice above that from the colonial periods till May 13, 2015, the Police had been prosecuting offences in Nigeria. However, under the new dispensation, such powers have been whisked away from the police; their powers are now limited to only arrests and investigation of suspected criminals based on allegation laid before them. This is deduced from the combined reading of sections 33, 34, 106, and 110 of the Act. Section 110 of the Act deliberately removed the Police from preferring and signing charges in a Magistrate court wherein it stipulated that it is only those persons mentioned in S. 106 of the Act should do that and conspicuously omitted the Police. Formerly under the Criminal Procedure Act, section 78 (b) it was the duty of the police to prefer, sign and file charges in the Magistrate courts. Sections 33 and 34 of the Act make it mandatory for the Police to forward all their files on the last working day of every month to a designated Chief Magistrate who will study the files and in turn forward same to the Administration of Criminal Justice Monitoring Committee (ACJMC). For institution of criminal trial in the High Court the Act provides in section 109 (b) to be by information of the Attorney General of the Federation. Subject to section 104 which provides to the effect that it is only the Attorney-General of the Federation that may prefer information in any court in respect of an offence created by an Act of the National Assembly.

It is being generally argued that a community reading of sections 110 and 106 of the Act systematically repealed the Supreme Court judgment in the celebrated case of *F.R.N. v Osahon* *supra* – with respect to police power to prosecute offences in Nigeria federal courts. Those two sections of the Act have also schematically amended section 23 of the Police Act in line with rules of interpretation that posits that latter sections of an Act or recent legislations prevail over former ones.

Furthermore, the entire responsibilities of the Police by the provisions of section 34 of the Act has been made subject to the monthly supervision of a Chief Magistrate within jurisdiction where the police formation is situated. The Chief Magistrate or any other Magistrate as the Chief Judge may designate will constantly review the activities of the Police on monthly basis to checkmate the excesses of the Police in relation to refusal of bail due to obnoxious bail terms, unwarranted arrest and arbitrary police detention. The designate Chief Magistrate under the Act possesses all the statutory power to release or admit to bail any suspect forthwith as he visits the police formation on monthly basis without recourse to the police. Sequel thereto, the police activities are under strict judicial supervision of the Chief Magistrate of which failure to adhere to attract severe and grave disciplinary consequences.

The incorporation of collaborative synergies of the Police, Magistrate, Administration of Criminal Justice Monitoring Committee and Attorney General with respect to efficient, speedy and quality criminal justice delivery system in Nigeria can never be over emphasized. The Act by section 33 created this healthy and progressive connectivity for achieving the above stated purpose. The success and failure of the Act lies squarely on the committee, as it alone has the sole prerogative to recommend any criminal allegation to the Attorney-General for prosecution.

Recommendations

1. The Act, making police activities subject to direct judicial supervision is a welcome development and a step in the right direction. This singular provision of the Act will go a long way to curtail drastically the excesses and monopoly the Police had by refusing admission to bail of suspects save certain stringent fiscal conditions will be reduced to the barest minimum. This is achievable by the Act empowering the designate Magistrate to admit any suspect to bail, release any suspect conditionally or unconditionally without recourse to the Police.
2. The power of prosecution of offences by the Police which the Act intended to remove is also a step in the right direction. This will enable the police to concentrate on its traditional functions of maintenance of law and order, prevention and detection of offences and as well the protection of life and property of the citizenry.
3. The section 23 of the Police Act which empowers the Police to prosecute should be amended accordingly in order to reflect the current reality brought by the Administration of Criminal Justice Act, 2015.
4. The nexus of connectivity between the police, the designate Chief magistrate, Administration of Criminal Justice Monitoring Committee, the Attorney-General and the court for criminal trial should be revisited. This is coming on the heels of unforeseen delay which may be occasioned by the long chain and also the duration of time for the Chief or Magistrate to refer a case to the Attorney General. The Act provided for "at the end of month". This can be modified to read once there is or are triable offences recorded in the information/complaint/register as the case may be.
5. The Act to a great extent encouraged the Police and the executive arm of government to remain focused on their traditional functions of maintenance of law and order, prevention and detection of offences and as well the protection of life and property of the citizenry. To achieve this, they should be equipped with modern sophisticated gadgets to fight and combat crimes.
6. The Constitution of the Federal Republic of Nigeria, 1999 is the supreme law in the country from which every other draws its validity. Consequently, subsection (5) of section 215 which purports to oust the jurisdiction of the court with respect to any directive given to the Police by the executive arm of government. This provision is presently standing in limbo. Some are of the opinion that it be declared null and void. But the question is, if any provisions of the Act runs contrary to the Constitution, section of the constitution should automatically apply. The provision of the Constitution can never be declared null and void rather its supremacy voids any contrary provision. Thus it is hereby submitted that the full test of the application of these innovations in the Act and their correct interpretation will only be done by the court. Until then we respectfully proffer legal opinions.

7. One other important aspect of our administration of criminal justice is the issue of lodgment and receipt of complaints at the Police Station. This is the first step in the criminal justice system. Because about 90% percent of criminal trials begin and also take place at the Magistrate Court. The complaints are lodged at the police station. Thus the Police receive these complaints from the public and forward same to the court. The Act is silent on the handling of these complaints by the Police, to wit, it is still within the discretion of the Police to determine which will be forwarded to the Magistrate or not. The inspection/supervision of the Magistrate is only with respect to arrest and detention. Except if the record will be read to include the record of complaints received. The receipt of complaints can be a shared function between the Police and the designate magistrate. This will considerably whittle down the absolute discretion of the Police in determining which complaint will be forwarded or not hence ensuring justice at the outset.

Conclusion

This work carefully examined the power of the Police in Nigeria to prosecute criminal offences in Nigeria before the enactment of the Administration of Criminal Justice Act 2015 and thereafter. It was discovered that the Act put an end to the application of the Criminal Procedure Act and the Criminal Procedure Code which hitherto regulated the administration of criminal justice in all the criminal courts in Nigeria. It is also the finding that the intention of the lawmaker of the 2015 Act was to completely remove from the Nigeria Police Force the power to prosecute criminal offences. In the stead of the Police, the Act gave the hitherto police powers of preferring and signing of charges to the designate Magistrate and prosecution of same.

With the intention of the law maker to remove power of prosecution from the police, confusion generated by the case of *F.R.N.V. Osahon* was laid to rest to wit the court of Appeal held that the omission of the police in the Federal High Court Act with respect to those who can prosecute offences there was deliberate. The Supreme Court declared such omission as a defect which is not in conflict with the Constitution but rather only procedural and does not go to the root of the Act.

It is very pertinent to note here that the statement of the Supreme Court still holds sway in the face of the provisions of the Constitution. For example, the S/C held in that case that “any power given by the constitution cannot therefore be taken away by an Act of the National Assembly, S. 174 (1) (b) provides thus

The Act is an enactment of the National Assembly of the Federal Republic of Nigeria. Consequently, would a strict interpretation of the provision of section 174 (1) (b) of the Constitution still retain the power of the Police when combined with section 106 (b)? To answer this question, the provisions of the sections are hereby reproduced. Section 174 (1) (b) provides thus ‘to take over and continue any such criminal proceedings that may have been instituted by any other authority’. Section 106 (b) provides as follows ...prosecution of all offences in any court shall be undertaken by: (b) a legal practitioner authorized by the Attorney-General of the Federation; or a legal practitioner authorized to prosecute by this Act or any other Act of the National Assembly. The answer is in the negative. This answer is predicated on the interpretation of the provisions which relates to institution of criminal proceedings which power has been copiously taken away by the 2015 Act. Not only institution but also prosecution of criminal offences.

Finally, the Administration of Criminal Justice Act, 2015 was meant for the administration of criminal justice in the courts of the Federal Capital Territory, other Federal Courts in Nigeria and for related matters.

The purpose of the Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speed dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspects, the defendant and the victim. Thus the courts and the legal practitioners are enjoined to adopt the interpretation of this Act that will ensure the achievement of the purpose of the Act despite the grey areas.

References

- 1GP v Andrew (2014) LPELR – 22310 (CA)
Adebayo, A.M. Administration of Criminal Justice in Nigeria (Ikeja-Lagos; Princeton Publishing Company, 2012).
AdewaleAdebara v The State (2009) LPELR – 8194 (CA)
Azuh v UBN PLC (2014) LPELR – 22913 (SC)
Constitution of the Federal Republic of Nigeria 1999 as amended.
Ese MalemiThe Nigerian Legal System text and cases (Ikeja-Lagos; Princeton Publishing Company, 3rd ed. 2012).
F.R.N. v Osahon (2006) 5 NWLR (Pt. 973) 361
Federal High Court Act Cap F13 Vol 6Laws of the Federation of Nigeria(LFN) 2004
Hornby, A.S. Oxford Advanced Learners' Dictionary of Current English (7thed, Oxford University Press Ltd, 2004)
Interpretation Act Cap 89 1958
Miscellaneous Offences Decree (formerly Special Miscellaneous Offences Decree) No. 20 of 1984
Nkwocha v Governor of Anambra State (1984) 1 SCNLR 634
Nwakoby Greg C. et al Foundations of the Nigerian Legal System (2004, Bekaam Printers PVT Ltd, Chennai 600014 India).
Police Act Cap P19 Vol 13, Laws of the Federation of Nigeria (LFN) 2004
Section 78 (b) Cap C. 41, Vol 4, Laws of the Federation of Nigeria (LFN) 2004