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A Critical Appraisal of the Accused Right to Fair Hearing Under the Nigeria's Administration of Criminal Justice Act, 2015

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ABSTRACT

By the provision of Section 221 of the Administration of Criminal Justice Act, 2015 no objection to a charge shall be entertained during the course of a criminal proceeding or trial on the ground of an error or imperfection of the charge. In case the validity of a charge is challenged on any other ground during the course of criminal proceedings, Section 396(2) of the same Act requires the court to delay ruling on such objection until during the course of final judgment. The implication here is that once a charge is brought before court against an accused, he must go through the whole hug of trial before any objection he may have to the charge is decided. In this paper, the writer, using the doctrinal method of research, reviews the mentioned provisions of the Administration of Criminal Justice Act in the light of the inherent powers of the court for the control of proceedings before it, the right of an accused to the presumption of innocence and to fair hearing under the Constitution of the Federal Republic of Nigeria, 1999 (as amended). In the final analysis, the paper comes to the conclusion that the provisions of the said Sections of the Act are derogatory to the purpose of the Constitution in providing for the accused right to fair hearing and therefore, unconstitutional.

1. Introduction

By the Constitution of the Federal Republic of Nigeria, 1999 (as amended), every person accused of an offence is entitled to the right to fair hearing within a reasonable time[1]. This natural right derived from the principle of *audi alteram patem rule* entrenched in the Constitution of the Federal Republic of Nigeria, 1999 (as amended),signifies that in every judicial, administrative or quasi judicial proceeding, an accused is entitled to the right to not only be heard but, to the right to be presumed innocent and to receive a fair and equitable treatment in the hand of the court or other tribunals what so ever.[2] In fact, it is for this reason that the Constitution requires that an accused should be allowed opportunity of hearing at every stage of the proceedings and on every matter that may be resolved to his prejudice in the proceedings.[3]

The above Constitutional stipulation notwithstanding, Section 221 of the Administration of Criminal Justice Act, 2015 now provides for the law which prohibits the hearing of an objection to a charge during proceeding on the ground of imperfection or error in the charge. The Section provides that "objection shall not be taken or entertained during proceedings or trial on the ground of an imperfect or erroneous charge." Where however, the defendant challenges the validity of a charge during proceedings, Section 396(2) of the Acts prevents the court from ruling on such objection until the time of the delivery of judgment in the case. The implication here is that once a charge is filed against a defendant, he must go through the hurdles of trial before any objection he may have to the charge is decided. This implication is more so when the law presumes the fact that a charge is made, as equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.[4]

However, problem arises where the defendant has a genuine reason why he wants the charge against him be quashed or the proceeding against him be halted at the earliest opportunity. The ground of the defendant's objection to the charge may be that the trial court lacks jurisdiction to try him for the offence. The objection may be that on proper appraisal of the charge filed against him, the charge does not disclose a prima facie case. Such challenge during trial may be a challenge to the admissibility of a piece of evidence - such as confession - on the ground that it was not voluntary. The defendant could as well make a no case submission that the prosecution failed to establish a prima facie case against him at the close of evidence *etcetera*. In such situations, the question is whether it would be fair to the accused if the court reserve ruling on the objection until during the course of final judgment, or refuse to stay proceedings until judgment? Answer to this question seems in the affirmative to the Administration of Criminal Justice Act.[5] But the writer of this paper views the answer differently. Hence, the decision of the writer to apprise the right of an accused to fair hearing under the

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[1] Section 36 (1)(4)(5), Constitution of the Federal Republic of Nigeria, 1999 (as amended)

[2] Ibid. Section 36(2)

[3] Kingbu vs The Nigerian Army (2020) 10 N.W.L.R. (Part 1731) p. 157 at 162 Ratio 3

[4] Section 195, Administration of Criminal Justice Act, 2015

[5] Ibid. Section 306; Alex vs Federal Republic of Nigeria (2018) 7 N.W.L.R. (Part 1618) p. 228.

Constitution of the Federal Republic of Nigeria, 1999 (as amended) in relation to the position of the Administration of Criminal Justice Act explained above. The writer decides to do so for the purpose of buttressing reasons why the mentioned innovation of the Administration of Criminal Justice Act is inimical to the accused right to fair hearing and to the inherent powers of the court in the control of proceedings before it under the Constitution. The paper then makes recommendations for reform.

2. The Right to Fair hearing/Fair trial Under the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

As explained in the introduction above, the right to fair hearing is the right of an accused to not only be heard in the course of his trial for an offence but to also receive a fair, equal and equitable treatment in the hand of the court before arriving at a decision affecting him.[6] This right is a natural right derived from the principle of *audi alteram patem rule* enshrined in the Constitution of the Federal Republic of Nigeria, 1999 (as amended)[7]. It consists, of among others, the right of an accused to the presumption of innocence, the right to equality of hearing before the court, the right to adequate time and facility for the presentation of his defense; the right to examine and cross examine witnesses for the prosecution and the right to the conclusion of trial within a reasonable time.[8] In the context of the Constitution, the requirement for the grant of fair hearing to an accused is mandatory; and the same is satisfied when a trial is conducted in accordance with due process of the law with the accused given reasonable opportunity of hearing on any matter or issue that may be resolved to his prejudice.[9] This fair hearing principle, is so fundamental that any breach of the same in the course of a judicial proceeding will render any judgment so made there under a nullity no matter how brilliantly made.[10] This is so because, the standard of fair hearing under the Constitution, does not lie in the correctness of a judgment but the procedure followed in arriving at the same.[11]

Thus, in the case of *Wagbatsoma vs The Federal Republic of Nigeria*[12] the appellant and four others were arraigned before the Lagos State High Court by the Economic and Financial Crimes Commission (EFCC) and charged for the offences of obtaining properties by false pretences contrary to Section 1 of the Advance Fee Fraud and other Fraud Related Offences Act, 2006, Conspiracy to forge documents, forgery, and uttering of false documents contrary to Section 516, 467(3)(c} and 468 respectively of the Criminal Code Cap. C17, Volume 2, Laws of Lagos State Nigeria, 2003. The appellant and the co-accused persons pleaded not guilty to the charge. In proof of its case, the prosecution called twelve witnesses and tendered 71 documents which were admitted in evidence.At the close of the prosecution's case, the appellant and the other accused persons made a no case submission.

Arguing the no case submission, the appellant and the other accused persons contended that the prosecution fails to establish a prima facie case against them. They also raised the issue of jurisdiction, contending that by virtue of the provisions of Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 1, 2, & 19 of the Admiralty Jurisdiction Act, 1991 (which confer exclusive jurisdiction to the Federal High Court on the Admiralty matters); and Section 8 of the Federal High Court Act, the High Court of Lagos State Lacked the requisite jurisdiction to entertain the case as it relates to admiralty matters.

While ruling on the application, the trial court *suomotu* raised the issue of the incompatibility of the Section 19 of the Admiralty Jurisdiction Act, 1991 with the provisions of Section 251(2)(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). It resolved the same issue without hearing the parties by holding that the said Section of the Admiralty Jurisdiction Act is inconsistent with the provisions of the Section 251(2)(3) of the Constitution. The trial court therefore, struck out the Section and assumed jurisdiction over the matter.

Aggrieved by the ruling of the trial court, the appellant appealed to the Court of Appeal. In its judgment, the court of appeal found that the trial court violated the principle of fair hearing by striking down the provision of Section 19 of the Admiralty Jurisdiction Act, 1991 as been in conflict with Section 251(2)(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) without hearing the parties on the subject. It then set aside that part of the ruling by holding that it breached the appellant's right to fair hearing. The Court of Appeal however, declined to set aside the entire ruling of the trial court on the appellant's no case submissionStill aggrieved, the appellant appealed to the Supreme Court contending that the Court of Appeal erred in law when it saved the ruling of the trial court after finding that the ruling of the court was done out of the blues without hearing the parties. He argued that the finding ought to have resulted in the setting aside of the entire ruling of the trial court.The Supreme Court after hearing both parties, set aside the decision of the Court of Appeal, set aside the ruling of the trial court and ordered that the case be sent to the trial court to be tried *de novo* by another judge.In the course of judgment, Court held:

Where a court for any compelling reason, finds it necessary and particularly in the interest of justice to raise a point or issue*suomotu,* the parties must be given an opportunity to be heard on such a point or issue. This rule applies even with greater force in favor of the party that would be prejudiced as a result of the point raised without the prompting of any of the litigants in the case. An infraction of the rule of hearing out parties on an issue raised *suomotu* by the court, amounts to a flagrant breach of the aggrieved party's right to fair hearing as entrenched in the Constitution. It equiponderates to a miscarriage of justice… Thus any proceeding conducted in breach of a party's fundamental right to fair hearing guaranteed by Section 36(1) of the Constitution is null and void. It is liable to be set aside no matter how brilliantly made.[13]

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[6] S. 36(1) (5) & (6)(b), Constitution of the Federal Republic of Nigeria, 1999 (as amended).

[7] See generally sections 35 and 36 of the Constitution.

[8] Ibid

[9]Danladi v. Dangiri (2015) 2 N.W.L.R. (Part 1442) p. 51

[10]Ayoade v. State (2020) 9 N.W.L.R. (Part 1730) p. 577 at 582 Ratio 2

[11] Thomas v. Judicial Service Commission (2019) 7 N.W.L.R. (Part 1671) p. 284 at p. 287 Ratio 5

[12] (2018) 8 N.W.L.R. (Part 1621) p. 199

[13] Ratios 4, 5 and 6 of the case.

In the light of the above decision of the Supreme Court, the crucial determinant of whether an accused received a fair trial in any case and at any stage is whether he has been accorded equal and reasonable opportunity with the prosecution to present his case before judgment affecting his right is passed.[14] In that regard, the appellate court when seized of the proceedings of the lower court, will take an objective view of the whole proceeding before arriving at a decision. If an ordinary reasonable man present at the lower court could say justice has been done in the circumstance of a particular case, the appellate court will hold the view that the standard of fair hearing in the case has been achieved. Otherwise, any judgment passed in the case will be set aside for breaching the right of the accused to fair hearing/trial.[15]

In every criminal case, the standard of the right of an accused to fair hearing is synonymous to the standard of his right to fair trial. Thus, for the proceedings of a court to be fair, it must be seen to possess the following attributes:

1) The court shall hear both sides not only in the case but also on all material issues in the case before reaching a decision which may be prejudicial to any party in the case.
2) The court gives equal treatment, opportunity and consideration to all concerned.
3) The proceedings be heard in public and all concerned shall be informed of and have access to such place of hearing; and
4) Having regards to all circumstances in every material decision in the case, justice must not only be done but must manifestly and undoubtedly be seen to have been done.[16]

3. The Right to the Presumption of innocence in the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

As component of the right to fair hearing, the right to the presumption of innocence refers to the right of an accused to not be punished or made to suffer any form of degradation for an offence unless he is proven guilty for the same beyond reasonable doubt by legally admissible evidence in a fair trial before the court.[17] Of all the fair hearing provisions under the Constitution of the Federal Republic of Nigeria, 1999 (as amended), no provision signifies the object of the Constitution in ensuring fairness to the accused than the provision for the right to presumption of innocence. It is because the accused is presumed innocent under the Constitution that it requires that an accused should be informed promptly, in the language he understand and in detail of the allegation against him so that he could plead either guilty or not guilty to the same.[18]

Where the accused pleads not guilty to a charge, the rule of evidence places the duty of proving the accused guilty beyond reasonable doubt on the prosecution by virtue of the accused right to presumption of innocence under the Constitution.[19] The accused is not required to say anything in defense unless the prosecution is able to establish a prima facie case against him by legally admissible evidence.

On the other hand, no court is allowed to pass guilty verdict on the accused simply because he does not make any statement in his defense unless the evidence before it by the prosecution justifies such verdict.[20] That is to say, unless the evidence adduced by the prosecution establishes a prima facie case against an accused, no court is allowed to convict him for an offence simply because he fails to say anything or to give evidence in defense.. Any statement obtained from an accused through coercion or in any oppressive circumstance, will not therefore be admissible for the purpose of proving a case against an accused.[21]

In the context of the Constitution, proving an offence beyond reasonable doubt means all the essential ingredients of an offence must be proved by the prosecution to a degree which leaves the court with the irresistible conclusion that the accused has committed the offence before it could secure conviction.[22] Where the evidence before the court merely establishes possibility or likelihood of an offence, the standard of proof has not been met. This is so because the evidence of suspicion however grave, cannot grounds conviction of an accused.[23] In the case of *Alhaji Babangida Iro v The State*[24] the Court of Appeal held as follows:

It is now trite law that suspicion, however strong will not amount to proof. To establish the offence of murder or manslaughter for example, it must be proved not merely that the act of the accused could have caused the death of the deceased, but that it did. The fact that the defense did not suggest that death arose from other causes is no confirmation of evidence which falls short of showing that death did arise as a result of the accused's act. The onus to establish death is not on the defense, it is on the prosecution.

Similarly, in the case of*Shande vs. The State*[25]the deceased died immediately after receiving fire burns injury. There was direct evidence that the accused was not pleased with the relationship of the deceased to her husband. There was also direct evidence that the accused was the only adult

[14]Ayoade vs State (2020) 9 N.W.L.R. (Part 1730) p. 577 at 582 Ratio 2
[15] Ibid.
[16] Ugo Ngadi v. F.R.N. (2018) 8 N.W.L.R. (Part 1620) p. 29 at 41 Ratio 21
[17] State v. Zakari (2020) 8 N.W.L.R. (Part 1727) P. 464 at 488 Ratio 3
[18] Section 36(6)(a), Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[19] Sections 132 & 135(2) , Evidence Act, 2011
[20]Sughv.. The State (1988) 2 NWLR. (Pt. 77) P. 475.
[21] Section 29(2), Evidence Act, 2011
[22]Golit v. I.G.P. (2020) 7 N.W.L.R. (Part 1722) p. 40 at 44 Ratio 4
[23] Al Mustapha vs The State (2013) 17 N.W.L.R. (Part 1383) p. 350 at 363 Ratio 19
[24] (2008) 3 NCC. p. 1 at p. 6 ratio 9
[25] (2005) ALL F.W.LR. (PART 279) p. 1342

person in the room engulfed by the fire that caught the body of the deceased and presumably killed her. The evidence was also clear that the fire which consumed the deceased, started immediately after the accused entered the room where the deceased was staying. The accused confessed in writing to pouring kerosene on the deceased and setting her ablaze, which was tendered and admitted in evidence without objection from the accused. Yet, because the prosecution took it for granted that the deceased died of the burns received from the fire, and failed to produce medical evidence in prooving cause of the deceased, the Supreme Court discharged and acquitted the accused holding at page 1347 ratio 8 of the report as follows:

Omitted (from the case of the prosecution) is evidence of an autopsy on the corpse of the deceased. All that was tendered was a medical report said to have been written by a medical officer where it is written that " the immediate cause of death was due to shock" certified as the cause of death. There was no evidence to show that a post mortem examination was actually carried out so as to establish whether the deceased suffered from any ailment prior to her death by shock which could have contributed to or was solely responsible for the shock that terminated the life of the deceased. The onus was by law on the prosecution to prove that the appellant caused the death of the deceased. It was wrong in this case to assume that the burns of the deceased were solely responsible for the death of the deceased.

The very high standard of proof illustrated by the above cases stems from the need of the Constitution to guide against wrongful conviction. By the Constitution, no person shall be convicted for an offence on the mere probability or likelihood of the commission of an offence. This is so because, the judgment of probability necessarily admits of the courts confusion or uncertainty of the commission of the offence. In another case of *Zubairu vs. The State*,[26] the accused beat up the deceased, pushed him into gutter and thereafter took him to police station on the suspicion that he broke the weal screen of a car belonging to his father. Immediately the deceased was brought to the station, he was rushed to a hospital where he died the same day. However, because the Investigating Police Officer who took the deceased to hospital and the Medical Doctor who made autopsy on the corpse of the deceased were not called as witnesses for the prosecution, the Supreme Court held that there was gap of evidence that could lead to the conviction of the accused. The court further held that in the absence of evidence of what transpired at the police station, the hospital and the identity of the corpse said to have died there as a result of the action of the accused, the accused cannot be validly convicted for the death of the deceased. The Supreme Court took this decision despite the evidence of three eye witnesses who saw the accused beating the deceased and who also saw him in a difficult condition after receiving beatings from the accused.

In the Administration of Criminal Justice System in Nigeria, it is generally accepted that acquittal of an accused in circumstance such as the ones in the above cases, may be wrong but, the law has to pay the price for the purpose of upholding the tenet of democracy, and minimizing the risk of convicting persons for offences of which they may be innocent. The Constitution views the conviction of an innocent person as a greater legal and moral wrong than the discharge of a guilty person. This principle was illustrated by the decision of the Supreme Court in the case of the *State vs.Aibangbe.*[27]where the court held that:

There is a strong and marked difference as to the effect of evidence in civil and criminal proceedings. In the former, a mere preponderance of probability, due regard been had to the burden of proof, is a sufficient basis of decision; but in the later, especially when the offence charged amount to treason or felony, a much higher degree of assurance is required. The serious consequences of an erroneous condemnation both to the accused and the society, the immeasurable greater evil which flows from it than from an erroneous acquittal, have induced the laws of every wise and civilized nation to lay dawn the principle, though often lost sight of in practice, that the persuasion of guilt ought to amount to a moral certainty; or as an eminent judge expressed it, such a moral certainty as convinces the mind of the tribunal; as reasonable men beyond all reasonable doubt.

In the view of the writer, the above explained standard of proof was influenced by the rationalist model of justice developed by Twining. The theory views the object of adjudication in a nut shell, as the achievement of rectitude of decision making, so that judges should be purged of the moral burden of convicting an innocent person.[28] By this theory, rectitude of decision making may be achieved only by the correct application of the law to the true facts of a case after evaluating the relevant and admissible evidence presented to the court in a fair manner. To achieve rectitude of decision therefore, the process through which evidence was derived and presented by the prosecution, must as well be fair. The evidence must be presented before the court in a fair manner and must be closely subjected to probing through cross examination by the accused or his counsel. Every party who may be aggrieved by the decision of the court should be allowed liberty by the system to appeal and urge for the review of the same so that the justice process should get legitimacy.[29]It was in the light of this theory that the Constitution of the Federal Republic of Nigeria, 1999, provides for the right of appeal up to the Supreme Court so that parties to criminal proceedings could appeal against any decision against them to which they are not satisfied in the interest of justice.[30] In this process, the appellate court has a duty to examine the grounds upon which the conclusion or inference of a trial court is based, and if convinced that the inferences were erroneous, may quash the same accordingly.[31]

4. Legal Regime for the Protection of the Right to Fair Hearing in the Administration of Criminal Justice Act, 2015:

From the point of arrest to the time of charging a suspect to court and his trial, the Administration of Criminal Justice Act, 2015 provides for several safeguards to ensure fair trial in favour of the defendant. In the first place, the Act does not allow for the arrest of any person for an act or omission

[26] (2015} 6 SCM. P. 253

[27] (2007) 2 NCC. p. 648 at 661 para. C-E.

[28] Dennis I. H., (2002), *the Law of Evidence*, Sweet & Maxwell, pp. 24, 393-394.

[29]Ibd.

[30] Sections. 242, 233, *Constituion of the Federal Republic of Nigeria*, 1999 (as amended).

[31]*Adeyemo vs. The State* (2015) 8 SCM. p. 1 at 5 Ratio 5.

which does not constitute an offence. To that effect, the Act provides that "a suspect shall not be arrested merely on a civil wrong or a breach of contract."[32] Similarly, the Act does not allow any person to be arrested for an act or omission which does not constitute an offence.[33]

When a person who commits an offence or who is reasonably suspected of committing an offence is arrested, the law requires that the person shall be accorded human treatment having regard to his right to the dignity of his person. He shall not be subjected to any form of torture, cruel, inhuman or degrading treatment for the purpose of obtaining evidence against him.[34] Furthermore, the Act requires that the person be informed of the reason for his arrest immediately or within a reasonable time of his arrest. In its express provision to that effect, the Act provides that "except when the suspect is in the actual course of the commission of an offence, or is pursued immediately after the commission of an offence, or has escaped from lawful custody, the police officer or other person making the arrest shall inform the suspect immediately of the reason for the arrest."[35]

The purpose of the Act in making the above provision is to enable the suspect to know the allegation of the crime against him so that he could decide for himself whether to make any statement in defense. The Act does not allow any police officer, authority or person in custody of the suspect to force or influence his making of a statement for the purpose of securing evidence of crime against him. Instead, the Act places the police officer with a duty to, on the point of arrest or immediately thereafter, inform the suspect of his right to remain silent and to avoid answering any question concerning the offence until after consultation with a legal practitioner of his choice; or after receiving a free legal advice from the Legal Aid Council of Nigeria.[36]To ensure full realization of this liberty by the suspect, the Act provides for a duty on the authority taking custody of the suspect to inform or notify his next of kin or relatives of the facts of his arrest at no cost to him what so ever.[37]

When the suspect under investigation volunteers to make a statement, the Act requires that the statement shall be recorded in writing and that the same may be recorded electronically on a retrievable video compact disk or such other audio visual devices.[38] The making and the taking of the statement shall be made in the presence of the legal practitioner of the choice of the suspect. Where the suspect has no legal practitioner, the statement shall be recorded in the presence of the members of the Legal Aid Council of Nigeria, members of the civil society of Nigeria or any other person of the choice of the suspect.[39]Any statement of the suspect recorded without compliance with those requirements, is inadmissible in evidence against him at trial.[40] The purpose of the Act here is to protect private citizens who are suspected of committing crimes from the bullying or intimation by the police or other law enforcement agencies in the course of taking their statement for the purpose of obtaining confession. By making the provisions, the Act also protects the law enforcement agencies from false accusation of coercion in taking statement from suspects.[41]

At the close of investigation, and when the case is eventually charged to court for trial, the Act requires that every person charged for an offence, shall be informed promptly in the language he understand and in detail of the nature of the criminal charge against him before his plea thereon is taken.[42] He is also expected to be given adequate time and facilities for the preparation of his defense.[43]These facilities include anything that would make it easier for the defendant to prosecute effective defense to a criminal charge against him – such as the statement of witnesses interviewed by the police in the course of their investigation which might have absolved the defendant of any blame or which may assist the defendant to subpoena such favorable witnesses that the prosecution may not want to put forward to give evidence [44]

The defendant's right to facility in the context of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Act, includes his right to organize his defense in his own appropriate way and to put across relevant defense and argument before the trial court.[45] This right which encompasses the twin rights to 'time and facilities for defense' is an important element of the guarantee of fair trial and an application of the principle of equality of arms: in itself an inherent feature of a fair trial. It requires that the defendant be given reasonable opportunity to present his case under a condition that does not place him at a substantial disadvantage vis-à-vis his prosecution opponent.[46]

5. Critique of Issues

In the course of the introduction to this paper, we noted that the purpose of the Administration of Criminal Justice Act, 2015 in the protection of the rights and interests of the suspects and defendants; and its aversion to the idea of arrest and prosecution of innocent persons for an offence, does not prevent it from enacting a provision such as the provision of Section 221 and 396(2) of the Act, which seeks to force an accused go through complete trial for an offence even where he may have reason why he should not in the first place stand trial for the offence.

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[32] Section 8(2), Administration of Criminal Justice Act, 2015

[33] Ibid., Section 7

[34] Ibid., Section 8(1) (a&b)

[35] Ibid., Section 6(1),

[36] Ibid. Section 6(2)(a, b. c.) & Section 14(1)(2)(3)

[37] Ibid

[38] Ibid., Section 15(4)

[39] Ibid., Section 17(2).

[40]Nnajiofor v F.R.N. (2019) 2 N.W.L.R. (Part 1655) P. 157.

[41] Ibid. Ratio 7 at p. 162

[42] Section 271(2(a), *Administration of Criminal Justice Act,* 2016

[43] Section 14(2), *Administration of Criminal Justice Act,* 2015

[44]*Nweke v The State* (2017) 15 N.W.L.R. (PART 1587) . See also *Okoye &Ors. v C.O.P.&Ors.* (2015) LPELR., 24675

[45] Nweke v. The State (2017) 12 SCM. P. 97 at p. 99 Ratio 1

[46] Ibid.

In the Section 221, the Act provides that "Objection shall not be taken or entertained during proceedings or trial on the ground of an imperfect or erroneous charge." On the other hand, Section 396(2) provides that "after the plea has been taken, the defendant may raise any objection to the validity of the charge or information at any time before judgment provided that such objection shall only be considered along with the substantive issues and a ruling thereon made at the time of the delivery of judgment."The implication here is that even where a defendant is allowed to object to a charge against him or make any other objection in the course of criminal proceeding against him, the ruling on such objection will not be delivered until the close of evidence by the prosecution which may take agonizing times out of the times of the defendant. The purpose of enacting those provisions as explained by Momodu, is to control the incidence of trial where accused counsels use preliminary objection to stultify the progress of criminal proceedings against their clients. This view was expressed by him when he wrote that::

Through the operation of Section 221 and 396(2) of the Administration of Criminal Justice Act, 2015, the Act set up mechanism to ensure that certain objections are not entertained or considered during proceedings or trial in order to checkmate frivolous preliminary objections that could work against expeditious criminal trials. In the same spirit, by Section 260(2) of the Administration of Criminal Justice Law of Lagos State, an objection to the sufficiency of evidence disclosed in the proof of evidence attached to information is not to be raised before the close of the prosecution's case. The provision in the Section altered the law under which the cases of *Ikomi vs the State*[47] and *Abacha vs The State*[48] were decided".[49]

To buttress ground for his above expressed view, Momodu cited the case of *Alex vs Federal Republic of Nigeria*.[50] In this case, the respondent preferred a nine count information against the appellant before the Lagos State High Court for the offences of forgery, altering and conspiracy under Section 467 and 468 of the Criminal Code and obtaining by false pretence under the Advance Fee Fraud and other Fraud Related Act, a mere reproduction of Section 419 of the Criminal Code. After filing of the information and before the commencement of trial, the appellant filed an application before the trial court wherein he challenged the jurisdiction of the court and urged for the order of the court dismissing the case on the ground that the proof of evidence filed with the information did not disclosed a prima facie case against him. The court heard and dismissed the application.

Aggrieved by the ruling of the trial court, the appellant appealed to the Court of Appeal Lagos Division which dismissed the appeal holding that the trial court had jurisdiction to entertain the matter. The Court further held that having regard to the information and the proof of evidence filed along with it, a prima facie case was disclosed against the appellant to warrant his trial. Dissatisfied with this decision, the appellant appealed to the Supreme Court. Among other issues submitted for the determination of the Supreme Court by the appellant, was the issue 'whether having regard to the information and the proof of evidence filed along with it against the appellant, the Court of Appeal was right when it held that the information has disclosed a prima facie case against him to warrant his trial'. After hearing both parties to the appeal, the Supreme Court referred to the bundle of documents filed along with the information against the appellant, his confessional statement and found no merit in the appeal. It therefore dismissed it and ordered the appellant to return forth with to the trial court for the purpose of his trial there at. In the course of judgment, the Supreme Court ruled as follows:

By virtue of Section 260(2) of the Administration of Criminal Justice Law of Lagos State, an objection to the sufficiency of evidence disclosed in the proof of evidence attached to the information shall not be raised before the close of the prosecution's case. The provision in the Section therefore, altered the law under which the cases of *Ikomi vs The State* (1986) 3 N.W.L.R. (Part 28) p. 340 and *Abacha vs The State* (2002) 11 N.W.L.R. (Part 779) p. 437 were decided. In this case, the appellant made his no case submission even before the prosecution opened its case. The appellant should have waited until the prosecution had opened and closed its case. In fact, the appellant no case submission was premature.

However, careful perusal of the facts of the above case, the issues for determination and the decision of the Supreme Court thereon, reveals to the present writer that the issue as to the constitutionality of the provisions of Section 260(2) of the Administration of Criminal Justice Law of Lagos State (which is in *parimateria* with Section 221 of the Administration of Criminal Justice Act quoted above) was never raised and resolved by the Court in the case. Similarly, question of the law or the principle based on which *Ikomi vs the State* and *Abacha vs The State* were decided, was never raised and decided by the court to enable Momodu to hold the view that the position of the Supreme Court in the cases has been overruled. Consequently, it is the view of the writer that the decision of the Supreme Court in the above case of *Alex vs Federal Republic of Nigeria*,[51] does not provide an authority to the view that the law based on which the cases were decided has been altered by the provisions of Section 260(2) of the Administration of Criminal Justice Law of Lagos State or Section 221 and 396(2) of the Administration of Criminal Justice Act as posited by Momodu. This is so because the situation in the two cases was different from the situation in the Alex's case cited by Momodu.

At this juncture, it is pertinent for the reader to note that every case serves an authority only for the facts decided by it. In the application of a case as precedent to other case or cases, the rule of *stare decisis* does not require the court to apply the ratio of the case across the board without consideration to the peculiar facts and the circumstances of the particular case. As OputaJsc (as he then was) puts it, justice and fairness demand that the ratio of any case should not be pulled by the hair of the head and be applied willy-nilly to cases where the surrounding circumstances are different.[52] A case therefore, becomes a precedent to the other only when the facts and the circumstances of the two cases are similar.

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[47] (1986) 3 N.W.L.R. (Part 28) p. 340

[48] (2002) 11 N.W.L.R. (Part 779) p. 437

[49] Momodu B., (2019), Administration *of Criminal Justice Act, 2015 – Sequential Analysis and Cases*, Momodu B. Law Publishing, Benin City Nigeria, pp. 112 – 113.

[50] (2018) 7 N.W.L.R. (Part 1618) p. 228.

[51] (2018) 7 N.W.L.R. (Part 1618) p. 228.

[52] Ordu and Anor. v Elewa&Ors. (2018) 12 SCM p.123 at 128 Ratio 2.

In deciding whether to apply the decision of one case to another as precedent, the court is expected to determine the ratio of the case before applying it. In so doing, the Supreme Court held that:

It is safer to consider the claim before the court and the issue which the court was called upon to decide. The reasons given by the court for deciding the claim before it is the *ratio decidendi* which the court is obliged to follow in subsequent cases and will not lightly depart from unless to avoid the perpetuation errors … Accordingly, opinion in the judgment which are not part of the material fact even where relevant to the determination of the case do not constitute part of the *ratio decidendi* and are not binding.[53]

The practice of raising a preliminary objection to the competence of a charge for the purpose only of stultifying the progress of a criminal case is no doubt a dubious practice which for years hampers the efficient disposal of criminal cases. No advocate of justice will subscribe to the view that same should not be deprecated. The practice was condemned by the Supreme Court in plethora of cases, including the case of Joshua*ChibiDariye vs The Federal Republic of Nigeria*.[54]In that case, the Honourable Attorney General of the Federation received a petition wherein the appellant was accused of various offences bordering on money laundering, abuse of office and corruption. The petition was referred to the Economic and Financial Crimes Commission for investigation and prosecution, if need be. At the conclusion of the investigation, the respondent filed an application before the High Court of the Federal Capital Territory Abuja for leave to prefer a charge against the appellant. A proof of evidence was prepared and attached to the application. On 13th July, 2007, leave was granted to the respondent to prefer a criminal charge against the appellant. Upon his arraignment, the appellant pleaded not guilty to all the 23 counts of the charge preferred against him. The matter was then adjourned to the 13th November, 2007 for the prosecution to open its case and the appellant was admitted to bail.

On the 13th November, 2007, the date to which the case was adjourned for the respondent to open its case, the appellant through his lawyers, filed a motion before the trial court praying for an order to quash the charges against him on diverse grounds including lack of *locus standi* to prosecute him and lack of jurisdiction of the trial court to hear and determine the case. The respondent filed a counter affidavit and a written address in opposition to the motion. On 10th December, 2007, the trial court dismissed the application. The appellant's appeal to the Court of Appeal was dismissed on the 17th June, 2010. Still aggrieved, the appellant appealed to the Supreme Court. After hearing both parties, the Supreme Court dismissed the appeal as baseless and without any merit what so ever. In the course of judgment, the Court who was not satisfied by the conduct of the defense counsel, reprimanded the counsel in the following words:

It is not the duty of learned counsel to resort to motions aimed principally at delaying or even scuttling the process of determining whether or not there is substance in the charges as laid. In my view, this motion is a disservice to the criminal process and a contemptuous lip service to the fight against corruption. The tactics employed here is only one of the means by which the rich and powerful crippled the criminal process. There are cases where the accused develop some rare illness which acts up just before the date set for their trial. They jet out of the country to attend to their health and the case is adjourned. If the medical facilities are not available locally to meet their medical needs, it is only because due to corruption in high places the country cannot build proper medical facility equipped with the state of the art gadgets. There should be no clog in the process of determining whether or not a person accused of crime is guilty irrespective of his status in the society[55].

The furor of the Supreme Court quoted above notwithstanding, issue of concern may arise where a person is refused hearing to challenge a charge against him for a reason and on a ground known to the law. The ground for the challenge may be that the trial court lacks jurisdiction to try him for the offence charged. It may be that the accused person was tried and convicted or acquitted of the offence charged. The ground could as well be that on proper appraisal of the charge filed against him, the charge discloses no prima facie case to warrant his trial before the court *etcetera*. Where these kind of valid grounds exist, would it be proper for the court to ignore such objection? Answer to this question seems to be in the affirmative by the literal interpretation of Section 221 of the Administration of Criminal Justice Act, 2015, which is in *parimateria* with Section 260 (2) of the Administration of Criminal Justice law of Lagos State.[56]

However, in the view of this paper, the position of the Administration of Criminal Justice Act, 2015 here, is unconstitutional because, it conflicts with the basic idea of the right of the defendant to fair hearing at every stage of the proceeding against him. Such right under the Constitution is an inalienable right that cannot be scarified or waived.[57]Therefore, when an issue relating to the propriety or competence of a charge against a defendant is raised, a Constitutional issue affecting the jurisdiction of the court has been put before it for determination. The court is expectedly required to resolve that issue before proceeding with the case if the standard of fair hearing must be achieved.[58] This in essence, is the principle upon which the case of *Abacha vs The State*[59] and similar cases were decided.

In the Abacha's case, the accused challenged the competency of the information filed against him during the course of his arraignment at the Lagos State High Court for the offence of conspiracy to murder, murder and been an accessory after the fact of the murder of a lady called MrsKudiratAbiola. He urged for the order of the trial court quashing the charge on the ground that same did not disclose a prima facie case. The trial court dismissed the application holding that the proof of evidence filed with the information, has sufficiently linked him with the offences charged. On appeal to the Court of Appeal, the Court of Appeal affirmed the decision of the trial court and dismissed the appeal. In the course of delivering its ruling, the Court of

[53]*Wagbatsoma v. F.R.N.* (2018) 8 N.W.L.R. (Part 1621) p. 199 at pp. 214 – 215.
[54](2015) 10 N.W.L.R. (Part 1467) p. 325 at 338 Ratio 14
[55]*Nyame v. The F.R.N.* (2010) 7 n.w.l.r. (Part 1193 p. 344; *Shema &Ors.vs F.R.N.* (2018) 2 SCM. P.112.
[56]*Alex v. Federal Republic of Nigeria* (2018) 7 N.W.L.R. (Part 1618) p. 228.
[57]Menakaya vs Menakaya (2001) 16 N.W.L.R. (Part 738) p. 303.
[58]*Ugo Ngadi v F.R.N.* (2018) 8 N.W.L.R. (part 1620) p, 29 at 41 Ratio 21
[59] (200) 11 N.W.L.R. (Part 779) p. 437

Appeal expressed the view that the accused application was premature. It held that by filing an application challenging his indictment, the accused had taken a premature step when he should have waited for the time of the closure of the prosecution's case to make a no case submission. On further appeal to the Supreme Court, the Court allowed the appeal. In its reaction to the view expressed by the Court of Appeal in the case, the Supreme Court held:

The court below opined that a challenge to quash information should not be encouraged. With the greatest respect, in a democratic setting, as we now are, with no legislative ouster of court's jurisdiction, all perceived abuses should be tested if confidence is to be preserved for courts as final arbiter on people's right. The court have inherent power to prevent abuse of their process by any of the parties, whether plaintiff or defendant, prosecution or defense, so that as long as democratic process exists, nobody will have his right curtailed.

All power to settle issues between parties is vested in courts and the court must be vigilant that genuine issues and controversies are settled so that no accused person will be oppressed either directly or indirectly through the act of prosecution, if not, we shall have persecution in place of prosecution. It is for this reason that an accused person, despite the power to file indictment on information, should not be indicted to face trial from the outset, it is clear he should not face.

In the administration of criminal justice, the duty of the court is always the doing of substantial justice between the parties before it without any fear or favor, ill will, affection or sentiment.[60] This is so because, when the court decides a case based on sentiment, the requirement for justice in that case would have been compromised and same could lead to anarchy within the land. The danger of deciding cases for whatever reason based on sentiment has been explained by the Court of Appeal in the case of *Sule vs. The State.*[61] In that case, the appellants who were students of Kwara State polytechnic were accused of Illegal possession of fire arms and belonging to a proscribed secret cult. They applied for bail and deposed in their affidavit in support that prior to their arraignment before the trial Court, they had been on bail granted them by a Magistrate Court and had never failed to appear before the said court for one year, nor did they breach any of the bail conditions before their eventual arraignment at the High Court for trial. These facts were never contradicted by the prosecution. However, the prosecution opposed the bail application on the ground that the offences with which they were charged were so rampant amongst the youth of tertiary institutions in Nigeria and needs to be curved out. And that if released on bail, the accused will be a bad influence on other students of their institution. The trial court denied the Appellants bail on the prosecution's grounds of objection and on the ground that the life of the accused would be in danger if they were released on bail. No evidence was available to the judge to support those reasons.

On appeal to the Court of Appeal, the Court faulted the reasoning of the trial court and held that the refusal to grant bail to the applicant on the ground only that there is rampancy of the offence charged against them amounts to aberration, an abandonment of the path of Constitutionalism in a bid to stamp out a perceived anti social behavior via impunity. In the view of the Court, allowing such aberration in the control of crime, especially during the rampancy of crimes in the society, would open individual liberty to abuse based on sentiment. The Court holds the view that in such times of popular outcry as has been generated by the rampancy of the offences with which the appellants have been charged, the court is expected to be most vigilant. In the view of the Court, the tendency in such times and under such circumstances is for everybody to want to crucify any and everybody who has the misfortune of been linked to any such offences, no matter how remotely and even before the helpless individual is heard.

Under such times and circumstances according to the Court, the constitution casts the burden upon the judiciary to see to it that while the well being of the state is not jeopardized by the ills complained of by the executive; the liberty of the citizen is not unduly curtailed. The laws and the rules will not be bent just because a particular offence is thought by the generality to have become rampant and needs curving. It was thus, the decision of the Court that in the quest of the State to stamp out a perceived anti social behavior, no authority or person is allowed to abandon the path of Constitutionalism to the use of sentiment except in a situation where the superior demand of the state security or other overriding public interest justifies it. In that direction, the Court finally remarked:

That the menace of illegal possession of fire arms in our country and the menace of cultism by our youth no doubt needs to be addressed …The phenomenon is one that is worrisome and needs to be tackled by all of us if we are to survive as a free and progressive nation. This however, is no reason why any state functionary should work in opposition to the letter and spirit of the Constitution. Abandoning the path of constitutionality in the desire to stamp out a perceived evil is as dangerous, if not more dangerous, than the evil been targeted. In such a case, we risk the danger of enthroning the Rule of Man, or, rather, the Rule by sentiment, rather than the Rule of Law.

In the light of the foregoing decisions of the Court therefore, this writer hold the view that to refuse to allow a defendant to challenge the competence of a charge against him at the commencement of proceedings against him as implied by Section 221 of the Administration of Criminal Justice Act, 2015 will amount to not only aberration but abandoning the path of constitutionalism in a bid to ensure speedy conclusion of criminal trial thorough the back door contrary to the right of the defendant to fair hearing under the Constitution. Denying a defendant such liberty will force him to go through trial even in circumstances in which he may have genuine reason why he should not, in the first place, face it.

On the other hand, it will also be a travesty of justice to insist as implied by Section 396(2) of the Administration of Criminal Justice Act.2015, that when any objection to the validity of a charge or information is heard from a defendant after taking plea, ruling on the same shall not be delivered until during the course of judgment on the substantive case. This may be so where proof of evidence attached to a charge does not disclose a prima facie case; or where a defendant makes a no case submission at the close of evidence by prosecution. In such situations, one wonders why someone should be forced to proceed to suffer unnecessary agony, loss of time and expenses in the defense of a frivolous charge against him. If an accused is presumed

[60] *Uwazuruike vs A.G.F.* (2013) 10 N.W.L.R. (Part 1361) p. 105 at 114 Ratio 11

[61] (2007) ALL. F.W.L.R. (PART 340 p. 512 at 516 ratio 4.

innocent by the Constitution as explained in this paper, it is the view of the writer that forcing an accused to proceed with defense in such circumstances will amount to the breach of his Constitutional right to fair hearing and to the presumption of innocence.[62]

By the legal position in Nigeria, where the facts of a case, do not disclose an offence against a defendant, neither the court nor the prosecution or any other person and authority has power to subject him to trial on those facts. Thus, where such proceeding is arbitrarily instituted, the court has the inherent power and duty to prevent abuse of its process and protect the person from going through trial in the protection of his right to personal liberty and to freedom from arbitrary prosecution. In this light, the Supreme Court in the case of*Ugwu vs. The State*[63] held that "the powers of courts to prevent abuse of process includes the power to safeguard an accused person from oppression and prejudice he may suffer if sent to trial pursuant to an information which discloses no offence with which he is in any way linked".

At the risk of repetation, this paper is not unmindful of the fact that the provisions of Section 221 and 396(2) of the Administration of Criminal Justice Act, 2015 were enacted to ensure speedy dispensation of criminal justice and avoid delay in the process. But, the point it is making is that rushing a criminal trial by denying hearing to the defendant in challenge to a criminal charge against him at the earliest opportunity, and for the purpose only of ensuring speedy conclusion of the case, is an aberration and is as dangerous if not more dangerous than the delay thought to be checked by so doing.[64] In such way, we risk the danger of enthroning the Rule of Man rather than the Rule of Law. Chances in such way are that someone in the corrupt situation in Nigeria may be exposed to the danger of suffering the indignity of arbitrary prosecution by those in authority and others, who may be antagonistic to his own view of life, without immediate remedy. For such and other reasons, the defendant, who is the weaker party in the criminal contest; and who is entitled to justice as the State, deserves the priority of the law than the haphazard desire of the State for the control of crime. The right of an accused person to fair hearing and in particular his right to the presumption of innocence, is sacrosanct; and is so fundamental that a breach of the same in any criminal trial would render the decision of any court a nullity no matter how beautifully made.[65]For the purpose of doing justice in a particular criminal case therefore, the court is expected to consider all issues placed before it for adjudication by the parties except where the determination of the issue will be merely academic or hypothetical.[66]

When the purpose of the provisions of Section 221 and 396(2) of the Administration of Criminal Justice Act, 2015 is viewed in another direction, one wonders why should a defendant be punish for a contemptuous conduct which is usually the making of counsel involve in the defense of criminal cases? This question is more so, when in the defense of a criminal case for the defendant, counsel has the general authority to control the manner in which the defense is conducted.[67] The Rules of Professional Conduct for Legal Practitioners allow counsel prerogative to decide how to defend his client. By the Rules, whether, when and how to object to any step taken by the prosecution is within the exclusive preserve of the counsel without any control from the defendant.[68] A counsel also decides whether and when to examine and cross examine witnesses for the prosecution; and when to rest the case of the defendant on that of the prosecution *etcetera*. Therefore, if an offensive step is taken in the course of defending a case for the purpose of subverting the interest of justice, the punishment for that action should go to the counsel rather than the defendant. The punishment should go to the counsel because as a professional, he knows his duty to the court and the standard of his profession in the process to avoid taking unnecessary steps for the purpose only of stultifying the justice of a case in which he is involve.[69]

While counsel has the duty to give adequate legal representation to his client within the limit of his abilities; he owes a higher duty to assist the court in the course of justice and to the standard approved by his profession.[70] Thus, a defendant who is presumably lay person in law does not possess the professional ability to stultify the progress or justice of a case using the instrumentality of a preliminary objection. He should not therefore, be punished for the unholy act of his counsel as does the provisions of Section 221 and 396(2) of the Administration of Criminal Justice Act, 2015 and their likes within the Act.

6. Conclusion

The rights of an accused (i.e. defendant) to fair hearing and to the presumption of innocence are rights predicated on the need to ensure fair and equitable treatment to an accused before he is punished for an offence. The rights are also aimed at protecting the fundamental liberty; dignity, privacy and honour of an individual in general from the oppression of the state. The right to presumption of innocence in particular, is a right which recognizes the fact that criminal proceeding as a contest, is a contest between the almighty state and the weak accused person. Hence, its postulation that the weaker party in the contest ought to enjoy protection of the law to guard against his wrongful conviction for an offence. The principle of the right places on the state the duty of proving an accused guilty beyond reasonable doubt for an offence before securing conviction not because of any favour to the accused, but, for the purpose of ensuring that his liberty, dignity and honour is not demeaned without any lawful justification whatsoever. In the

62Ugwu vs. The State(2012) 12 (Part 2) S.C.M. P. 513 at 515 Ratio 2

[63]Ibid

[64]*State v. Zakari* (2020) 8 N.W.L.R. (Part 1727) p. 484 at 491 Ratio 9; *Danladi vs Dangiri* (2015) 2 N.W.L.R. (Part 1442) p. 124 at 135 Ratio 8

[65] Ibid.

[66]*Ofordum v. The Nigerian Army* (2015) 1 N.W.L.R. (Part 1439) p. 145 at 158 Ratio 23

[67] Rule 24, *Rules of Professional Conduct for Legal Practitioners* Cap. L11, Laws of the Federation of Nigeria, 2004.

[68] Ibid.

[69]*Nzekwe v Anaekwenegbu* (2019) 8 N.W.L.R. (Part 1674) p. 235 at 237 Ratio 2

[70]*Rondell v. Worsely* (1967) 1 QB p. 637; *Ojigbo v N.B.A.* (2019) 9 N.W.L.R. (Part 1678) p. 399; *Dariye vs F.R.N.* (2015)2 SCM. P. 48

context of the right, for the state to be entitled to trespass on the liberty of an accused, the state, which is possessed of the powers of arrest, investigation for evidence and resources for prosecution, must prove the accused guilty beyond reasonable doubt for an offence through a fair procedure of the law.[71]

On the other hand, the right to fair hearing ensures that someone must be heard in a fair and equitable manner before he is convicted or made to suffer any indignity for an offence. In the context of the Constitution, the desire for the protection of the right of the defendant to fair hearing takes precedence over the desire of the State for the punishment of law breakers. This protection is not only for the good of the accused but the society which should be protected from the impunity of men in authority. When therefore, the liberty of an individual is at stake through indictment for an offence, the person has the right to challenge the indictment at every stage of the proceedings, if he believes the indictment to be frivolous. The court before which such objection is brought also has unfettered discretion to entertain the objection and make ruling thereon at every stage of the proceedings. This power of the court stems from its inherent powers of the court to control proceedings before it for the purpose of doing justice under the Constitution of the Federal Republic of Nigeria, 1999 (as amended) as held by the Supreme Court in *Abacha v The State*.[72] Any provision of the law which derogates from this principle is unconstitutional and shall to the extent of its inconsistency with the Constitution be null and void. Based on the foregoing discussions, the paper found as follows:

(i). That the attempt of Section 221 of the Administration of Criminal Justice Act, 2015 to prevent the hearing of the defendant on preliminary objection to an indictment against him for an offence, is in conflict with the right of the defendant to fair hearing under Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

(ii). That the provision of Section 396(2) of the Administration of Criminal Justice Act, 2015 is derogatory to the right of the defendant to presumption of innocence and conflicts with the inherent powers of the court for the control of proceedings before it under Section 6(6)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

(iii). That the provisions of Section 221 and 396(2) of the Administration of Criminal Justice Act, 2015 constitute punishment against the defendants for the control of a conduct which is usually not his own making but the making of counsel representing him.

Based on the foregoing findings, the paper recommends as follows:

(i). That the provisions of Section 221 of the Administration of Criminal Justice Act, 2015 should be reviewed in such a manner as to allow the defendant to challenge the competence of a charge against him at the commencement of trial or at any other time during proceedings before judgment as he deems fit.

(ii). That the provisions of Section396(2) of the Administration of Criminal Justice Act, 2015 be reviewed to allow ruling for any objection by the defendant be delivered during proceedings and not necessarily during judgment in the light of the defendant's right to the presumption of innocence and to fair trial under the Constitution.

(iii). That the provision of Sections 221 and 396(2) of the Administration of Criminal Justice Act, 2015, should be reviewed to provide for express punishment for counsel who conducts the defense of his client in a manner only to stultifying the justice of the case in which he is involve.

[71] *Paul vs The State* (2019) 12 N.W.L.R. (Part 1685) p. 54 at 59 Ratio 4 & 5

[72] (2002) 11 N..W.L.R. (Part 779) p. 437 at 457 Ratio 16