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AN APPRAISAL OF QUALITY PROSECUTION

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1. INTRODUCTION

Prosecution is the act of officially accusing someone of committing an illegal act by bringing a case against that person in a court of law. Thus, prosecution refers to counsel in a trial who try to prove that a person accused of committing a crime is guilty of that crime. It is by and large, a criminal proceeding in which an accused person is tried.

By virtue of Sections 174 and 211 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Attorney-General of the Federation and of a state has power to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria. These sections does not exempt certain categories of offences over which the Attorney-General has power to prosecute except offences that fall under the jurisdiction of court martial.

It is also important to note that the powers conferred upon the Attorney-General under Subsection (1) of either Section 174 or 211 aforesaid, may be exercised by him in person or through officers of his department. Similarly, these powers may be delegated but where such criminal proceedings have been initiated by any other authority or person, it is only the Attorney-General that can take over criminal proceedings.

2. CHALLENGES OR OBSTACLES OF PROSECUTION

Quality prosecutions are enhanced by a variety of facts. First is the element of attitude. Any effective criminal justice system depends on attitude of three key players, namely the judges, legal practitioners and parties involved in the process. However, the focus for this discussion is on obstacles or challenges to successful prosecution. As in all professional endeavors, prosecutions are faced with a number of challenges and in order to mitigate the obstacles to successful prosecution, they need to have some knowledge of the nature, type, manifestation, location and possible occurrence of such challenges.

(i) Understanding the Law

One of the most serious challenges prosecutions face has to do with fully understanding the correct provisions of the specific sections of the law under which the offences they are prosecuting fall.

In some cases, the prosecutions of the law are or may seem imprecise, thus, leading to a misunderstanding of the real intent and purpose of that section of the law. In **F.R.N Vs James Onanefe Ibori & 6 Ors** – Charge No. FHC/ABJ/1C/2009 the first accused and other artificial persons connected to him were charged for corruption and

Money Laundering wherein 170 counts was preferred against them. Counts 1-3, 24-49, 107-122 and 134-147 alleging illegal transfer of various sum of money illegally withdrawn from Delta State Government Funds to the account of first accused person contrary to Section 4 of the Money Laundering (Prohibition) Act.

Counts 4-23, 50 and 67-106 alleging collaboration in concealment of various sums of money illegally withdrawn from the account of the Delta State Government contrary to Section 14(1) of the Money Laundering (Prohibition) Act.

Count 66 alleging that the first accused person made such payment of US ₴15 Million to influence criminal investigation against him.

Counts 123-133 alleging failure or refuse to declare his assets contrary to Section 27(3)(a) of the EFCC (Establishment) ACT.

Counts 51 and 148-170 alleging that the second and sixth accused persons retained in their respective accounts on behalf of the first accused person, various sums of money illegally withdrawn from the funds of the Delta State Government contrary to Section 16 of the Money Laundering (Prohibition) Act.

One of the issues considered in the case was the application of the ejusdem generis rule of interpretation which is to the effect that when special words in the statute are followed by general words; the general words are construed within the confines of the meaning of the special words.

Section 14(a) and (b) of the MLPA provides as follows:-

Any person who –

(a) Converts or transfers resources or properties derived directly or indirectly from illicit trafficking in narcotic drugs and psychotropic substances or any other crimes or illegal act with aim of either concealing or disguising the illicit origin of the resources or property or aiding any person involved in the illicit traffic in narcotic drugs or psychotropic substances or any other crime or illegal act, commits an offence under this section and is liable on conviction to a term of not less than 2 years or more than 3 years.

(b) Collaborates in concealing or disguising the genuine nature, origin, location, disposition, movement or ownership of the resources, property or right thereof, derived directly or indirectly from illicit traffic in narcotic drugs or psychotropic substances or any other

crime or illegal acts, commits an offence under this Section and is liable on conviction to a term of not less than 2 years or more than 3 years.

The argument was that by virtue of the ejusdem generis rule of interpretation of statutes, the words "any other crime or illegal act" used in the section apply only to funds derivable from offences traceable to narcotic drugs or psychotropic substances and not corruption. Consequently, the entire charge fell outside the powers of Section 14 of the MLPA. The trial court agreed with the above submission and held as follows:-

> ***"In the instant case, it is my view that the words "any other crime or illegal act" in Section 14 (1) of the Money Laundering Act are to be construed Ejusdem Generis with those which proceeded from them and are to be restricted or limited to funds even remotely connected to illicit traffic in narcotic drugs or psychotropic substances. For a charge under Section 14 (1) of the Money Laundering (Prohibition) Act, 2004 to***

be sustained, the prosecution must first and foremost establish that, or at least link such funds to those directly or remotely made or obtained in the course of illicit traffic or narcotic drugs and psychotropic substances."

(ii) **<u>Adjournment and Preliminary Objection</u>**

In a paper titled "ACJA 2015 and the Preservation of Constitutional Safeguard; A Renowned Professor of Law and Queens Counsel, Professor Fidelis Odita, SAN captured the position graphically as follows:

"The primary instruments through which the delay is achieved are adjournments, jurisdictional objections, the No Case Submission and interlocutory appeals from case management decisions as well as decisions in respect of jurisdictional objections and No Case Submissions.

Adjournments and preliminary objections are necessary tools in any system of civil or criminal justice. There is a variety of reasons why a case may be adjourned - key witnesses may be unavoidably absent from

court because of a cogent personal or business reason, e.g. ill health or attending a conference or training. The court cannot ignore the absence of the witnesses, press ahead with the trial and give a judgment, which may well be overturned on appeal thereby wasting both time and costs. Properly used adjournments are necessary. The same is true of the preliminary objection. A preliminary objection is a useful tool for the summary disposal of a matter or a substantial part thereof. If there is a question of law, the determination of which will dispose of the proceedings or reduce substantially the scope of the proceedings, it is better for the question to be tried as a preliminary matter in the interests of a saving of time and costs. What is the point in incurring the costs and delay of a trial if there is a fatal objection to the proceedings as formulated or if the evidence adduced by the

prosecution cannot sustain a conviction even if believed?

In practice, the problem is not the existence of useful procedural tools such as adjournments or preliminary objections. The problem is the deliberate abuse of the procedural tools. It is not uncommon for legal practitioners to go to the court deliberately to seek adjournments, in some cases very late adjournments, for no particularly pressing reason. There does not seem to be any limit to the number of adjournments that may be obtained. Because too many cases are often listed before our judges, they welcome rather than discourage applications for adjournments. By the same token, the preliminary objection is often used to mount spurious objections and thereby delay and frustrate the progress of proceedings. Interlocutory appeals against procedural and case management decisions are often used deliberately for delay

especially because they are often followed by applications for stay of the proceedings pending the disposal of the appeal.

In short," our civil and criminal justice system operates at a speed chosen for the convenience of the legal practitioners and their clients, rather than for the convenience of the public or the interests of justice. This is wrong. The abuse is made even more pernicious because of the derisory order for costs usually made by the court at the end of the proceedings. There appear to be few, if any, effective sanctions to ensure that one party cannot delay and frustrated civil or criminal proceedings.

It is astonishing that virtually any issue can be taken literally all the way to the Supreme Court provided the appellant can formulate grounds of appeal based upon error of law, regardless of whether the points being appealed involved any public interest. It is all too easy to dress up factual questions as questions of law. But even if

the law were to allow spurious interlocutory appeals, why should the criminal proceedings be stayed merely because an interlocutory appeal is pending? The result is that there is a substantial backlog of pending appeals both in the Court of Appeal and the Supreme Court and that trials are needlessly held up."

In the case of Ikechukwu v FRN (2015) 7NWLR (Pt 1457)1 the Supreme Court Per Nweze JSC while delivering the lead judgment observed as follows:

"So, since 2011, that is for four whole years now, the appellant, through the disingenuous ploy of his counsel, has held up proceedings at the trial court relating to his alleged offences under the Corrupt Practices and Other Related Offence Act."

This view was echoed by Aka'ahs JSC at 24E-B where His Lordship noted that:

"It is to be noted that the trial of the appellant is yet to commence. It should

become abundantly clear even to the layman that the sole aim of this appeal is to stall and eventually frustrate the actual trial of the appellant. It is in the interest of both appellant and the wider society that his innocence or guilt is established as public confidence in the administration of criminal justice is eroded where those with means or the powerful erect legal bumps in the judicial process to delay justice."

(iii) **<u>Lack of Effective Case Management</u>**

Ideally, a properly managed system of dispute resolution ensures that cases are disposed of fairly and justly and each case is allotted its appropriate share of court's resources.

Thus, a court under a properly managed court's system exercises its powers to enable it and all the parties dictate the pace of proceedings. To also contemplate that no case is conducted in a manner that interfere with the resolution of other disputes and of other and wasted the resources of the court. Going forward, it is important to make practice directions which are best for the active management of categories of cases to ensure speed and progress in these cases.

(iv) **Lack of Prosecutorial Confidence**

Indiscipline, corruption, lack of accountability and transparency as well as declining ethics of professionalism are major factors that affects the quality of justice delivery system. The courts and counsel are expected to know the law and rules of court. While ignorance of facts by counsel may be pardonable in the interest of justice. Ignorance of either the rules of court or law by counsel cannot be excused. See **Elias Vs Eco Bank (Nig.) Plc (2019) 4 NWLR (Pt 1663) 381**. Where a counsel cites a case that has not been reported, he owes a duty to produce a copy of the judgment if he wants the court to rely on such authority. However, where copies of the judgment are not produced, the court will have nothing to rely upon.

(v) **Trial Within Trial**

Where an accused person alleges that a confessional statement made by him in the course of investigation was made involuntarily as a result of inducement, threat or promise having reference to the charge against him, he may object to its admissibility in evidence. A trial within trial takes the entire and final procedure of a full trial wherein the prosecution calls witnesses, examines them, they are cross-examined and re-examined. The defence also calls its

witnesses, examines them, they are cross-examined, the parties address the court and a ruling is delivered, admitting or rejecting the statement. An aggrieved party may appeal and more often than not the appeal is coupled with a motion for stay of proceedings pending appeal.

The challenges and obstacles to successful prosecution or quality prosecution enumerated above are not exhaustive. They manifested in different ways and in various circumstances. The greatest challenge for the prosecution is to develop more creative solutions to over-come these obstacles or challenges.

(vi) **Negative Judicial and Counsel Attitude**

This take, various forms, late sitting, refusal to inform counsel in advance that court will not sit, e.g. by SMS or Email, resistance to use modern technology, inability to give bench ruling and in many cases indiscipline on the part of judges and counsel. Counsel may also stall the process by employing all manner of tactics, in many cases in negative terms to delay the trial process.

(vii) **Defective System of the Appointment of Judges**

This may constitute a challenge where merit has been largely surrendered to patronage. It may be a serious hindrance to the prosecutorial process depending on competence,

character and capacity particularly of appreciation of law and its application to criminal matter and prosecution.

3. QUALITY PROSECUTION

Undoubtedly, the role of the prosecutor in criminal justice process is quite profound and significant, given the wide discretion retained and exercised by him as a major stakeholder in the administration of the criminal justice system. Therefore, the overall need to ensure the integrity of the process and forestall abuse and corruption necessarily requires that the prosecutor must play a very fundamental and critical role. Thus, far reaching role expectedly carries with it a lot of responsibilities. These responsibilities require the prosecution to be above board and to possess certain innate and practical skills in order to be able to impact positively on the process. One of such skills is integrity as a prosecutor who is found lacking on the moral plane can hardly instill confidence in the process.

Secondly, the prosecutor must be highly knowledgeable. This will require ability to thoroughly understand the facts of the case, a good grasp of the issues and relevant principles of law applicable in particular cases. He must have an over view of the facts, the likelihood of success or otherwise in the final outcome; ability to gauge public opinion correctly, ability to balance the interest of the state, the accused person, the victim and that of the society. The

prosecutor must understand that the public interest in a particular case is and how such public interest would best be preserved. All these skills must be available in sufficient proposition.

The prosecutor must be able to recognize and approximate the outcomes of the trial adjudication at a lower cost given the background that the adversary procedure and the law of evidence may have made the trial procedure so costly that it may be inadequate in, dealing with serious crimes. He must deploy his skills in ensuring that serious offences are effectively prosecuted with results while also decongesting the court's list on less serious offences. What is thus required is the abundance of diplomatic skill and fact in finalizing the process. The prosecutor must also carry out a cost benefit analysis to save time and avoid unnecessary public trials as well as protect innocent victims of crime from going through ordeals of the trial process that could endangers their privacy and expose them to needless risks.

More fundamentally is the need for the prosecutor to guarantee the transparency of the prosecutorial process by not inducing threatening or coercing the accused person into entering negotiations that would lead to a compromise of interest by the accused. In effect, the prosecutor must build ground himself and the system sufficient confidence building mechanism that would

detach him from the process with his objective merely to ensure certainty of justice to all parties concerned.

4. RECOMMENDATIONS

In addressing the challenges of prosecution, the prosecutor is advised to note the followings:-

1. Need to comply with pre-trial investigation procedure.
2. Need for effective institution of criminal proceedings through filing competent charges,
3. Need to study the forms and contents of a charge, the rules of drafting and amendment of a charge.
4. The prosecutor must be familiar with preparation of trial process including trial preparation and consultation, how to handle witnesses by adherence to professional ethics in the conduct of criminal trials.
5. The prosecutor must know how to examine witnesses including the rights of the accused in criminal trial process.
6. The prosecutor must understand his/her duties during arraignment, plea and bail application.
7. The prosecutor must necessarily understand rules of admissibility, how facts are proved, means of proof of facts, burden and standard of proof and essential ingredients of offences; the subject matter of trial.

8. In the course of trial the prosecutor must understand how to present him/her case, how to deliver prosecution's opening address and order of witness to be called.
9. The prosecution must understand what is required during final address in terms of evaluation of evidence, evaluation of authorities and analysis of law regulating judgment generally.
10. The prosecution must understand post-conviction or post acquittal procedures including pending appeal, drafting of notice of appeal, forwarding of records of appeal to the Court of Appeal, filing briefs of argument, contents of brief of arguments and other conditions regulating appeal generally.
11. Finally, the prosecution must display excellent attitude throughout the proceedings based on the theory that "attitude is everything".

5. CONCLUSION

The goal to be achieved in the criminal justice process is effective and efficient investigation, effective and sufficient prosecution as well as effective and efficient adjudication. However, it is the duty of the prosecution to ensure that these objectives are achieved as the prosecutorial powers are essentially vested in the office of the Attorney-general under Sections 174 and 211 of the Constitution of the Federal Republic of Nigeria, 199 (as amended).

Thank you.