

The Administration of Criminal Justice Act (ACJA) 2015: An Overview in relation to criminal cases adjudication in the Federal High Court

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Preface: Tribute to Chief Wole Olanipekun, CFR, SAN, FCI Arb, LL.D

One is proud to be associated with this book project which is aimed at paying tributes to the iconic leader at the Nigerian Bar, Chief Wole Olanipekun, CFR, SAN, FCI Arb, LL.D. Some of his qualities from which I have personally drawn significant inspiration include humility, tenacity of purpose, friendly disposition and the fear of God. He is a man of conscience who places justice before money, nation before self and principle before expediency. Although he recorded great achievements under the PDP-led administration in the country, he was at the forefront in advocating for change and defending the candidacy of President Muhammadu Buhari which came under serious attack by retrogressive forces. I salute you sir. May your tribe continue to increase.

1. Introduction

Justice and development are inextricably interwoven. Without justice there can be no order and stability, the necessary conditions for development. Injustice breeds anger, social strife, disorder and instability.

The pursuit of development through justice ought to be central to the work of lawyers and judges. For too long, the legal profession in this country has been pre-occupied with the overly dry administration of law. The profession has, owing largely to the pursuit of material gain, lost much of the social relevance upon which its legitimacy was founded. The occasion of this Judges' Conference serves as a reminder of the central role thrust upon judges as agents of change and development.

There is probably no instrument more potent than criminal justice administration for initiating change and restoring sanity to a society which has become degenerate. The sorry state of our nation demands judges and lawyers imbued with a clear sense of law as an instrument of social engineering. The principle that *'the law is no respecter of persons'* should not remain a mere slogan. Rather it should be used as a springboard to rein in the excesses of anti-social elements intent on unleashing their greed to the utter detriment of the well-being of the society.

Our judges must borrow a leaf from the likes of Lord Mansfield who, in defiance of the exponents of crass legalism or *jus dicere* of his era, declared that,

The Court of the King's Bench is the *custos morum* of the people and has superintendence of offences *contra bonos mores*.¹

In simple terms, the courts ought to be the guardian of the morality of the society; particularly those aspects which have been incorporated into the *corpus juris*. Our nation earnestly yearns for a legal profession, including a judiciary that makes the pursuit of substantial justice and development its central agenda.²

The essence of the forgoing is to provide a context for our discussion of the innovative provisions of the Administration of Criminal Justice Act 2015. We will shed light on the ways in which the Act seeks to revamp the powerful role of the judge as the driver of criminal justice administration. Our main submission is that **unless the judges understand, embrace and proactively apply the provisions of the Act its lofty vision of restoring the effectiveness of the Nigerian criminal justice system may remain an illusion.**

2. The unique position of the Federal High Court (FHC) -a court of summary jurisdiction in criminal trials

It is neither an accident nor happenstance that the FHC is statutorily designed as a court of 'summary jurisdiction'. In **Uwazuruike & Ors v. AG, Fed.**³ the Supreme Court reaffirmed the nature of the court as a court of summary jurisdiction.

The appellants were arraigned before the Federal High Court, Abuja division upon a 4-count charge of treasonable felony, et al. They pleaded not guilty. They filed two motions seeking (1) bail pending trial, and (2) the dismissal of all the charges *in limine*. They also sought to retrain the Attorney-General of the Federation from further prosecuting them. They contended in the main that the 4-

¹ Quoted in KayodeEso, Foreword to: Akinseye-George and Gbadamosi, (Eds), *The Pursuit of Justice and Development, Essays In Honour of Hon Justice M.O Onalaja* (Diamond Publishers, Lagos, 2004) p.viii

²For an interesting discourse on the proper role and power of judges under the Constitution, see Hon. Justice KayodeEso, *'The 1999 Constitution: Interpretative Jurisdiction of the Courts and Interpretation of other Statutes'* in National Judicial Institute, *All Nigeria Judges' Conference 2003* (Specrum Books, Ibadan, 2005) pp.3-59.

³(2013) All FWLR (Pt. 691)1520 SC

count charge was improper because there was no proof of evidence accompanying them. The trial court rightly dismissed the objection. On appeal, it was contended on their behalf that the Court of Appeal erred by not dismissing the charges against them in the absence of proof of full evidence. The Court of Appeal admitted all the appellants to bail but refused to dismiss the 4-count charge.

Dismissing their appeal, the Supreme Court held that in a summary trial, accused persons are entitled to know the nature of the charge and not the nature of the evidence. Summary trials are short and fast. The court considered section 251(2) of the Constitution of the Federal Republic of Nigeria and section 33(2) of the Federal High Court Act. In a well-considered leading judgment, Rhodes-Vivour, JSC stated:

Section 251(2) of the 1999 constitution as altered by the first, second and third Alterations Act, 2010 states that: "*The Federal High Court shall have and exercise jurisdiction and powers in respect of treason, treasonable felony and allied offences.*" While section 33(2) of the Federal High Court Act states that: "*Notwithstanding the generality of subsection (1) of this section, all criminal cases or matters before the court shall be tried summarily.*"

The combined reading of section **251(2) of the Constitution and section 33(2) of the Federal High Court Act** is that jurisdiction is conferred on the Federal High Court by the Constitution to try treason, treasonable felony and allied offences, and these offences shall be tried summarily. **Section 277 of the Criminal Procedure Act** provides for summary trials. **Summary trials are short and fast. Cases tried summarily, are disposed in a prompt and simple manner.** Attached to a charge to be tried summarily are scanty summary of the evidence the prosecution would rely on. Put in another way, it is not all the evidence relied on by the prosecution that is made available to the accused person before trial. On the other hand, trials can also be on information. Section 334 of the Criminal Procedure Act provides for trial on information. An information is a comprehensive document which guides the court, the prosecution and the accused person, during trial.

It contains the following:

- (a) The charge, statement of offence and particulars of the offence;
- (b) The statement of the witnesses for the prosecution;
- (c) Statement of the accused person;
- (d) List of exhibits; and
- (e) All relevant documents etc. that the prosecution intends to rely on at trial.

Now, can it be said that the four count charge is improper because there is no proof of evidence accompanying the charge.

Courts are set up for the sole purpose to do substantial justice between the parties. **Substantial justice entails justice to the court, the accused person and the public.** The argument that the charge should be dismissed because it was not accompanied by proof of evidence, is a mere technicality designed to defeat the course of justice. In the light of the fact that the proof of evidence has been filed and is available to the appellants, trial should proceed with dispatch. The result is that the two issues urged in this appeal on behalf of the appellants fail, and the appeal must fail as there is no merit. This appeal is dismissed.⁴

The interlocutory appeal in Uwazuruike took about **six years** to travel through the three tiers of court.

In **FRN v. Ibori**⁵, the Federal High Court, Asaba quashed the 170-count charge filed by the EFCC against former Governor Ibori and others. The Court of Appeal, in a unanimous decision delivered **five years** later allowed the appeal and remitted the suit back to the Federal High Court for trial before another judge. The Court of Appeal, applying the Supreme Court decision in Uwazuruike, upheld the contention of the EFCC that the trial court was wrong when it evaluated the statements and documents gathered in the course of investigation as if they were testimonies given under oath, and documents tendered in evidence in a formal trial by way of an information. The Court of Appeal further held that the Supreme Court decision in **Abacha v. State** was inapplicable to a case flowing from the summary jurisdiction of the Federal High Court.

The decision of the Supreme Court in *Abacha v. State* strictly relates to cases triable by the State High Courts which are normally conducted on information. On the contrary, by virtue of section 33(1) and (2) of the Federal High Court Act and section 277 of the Criminal Procedure Act, offences are tried summarily in the Federal High Court.

3. Challenges of delay of criminal trials and negative public perception

Several factors pose serious challenge to the realisation of the goal of speedy disposition of criminal cases in our courts. These include frequent adjournment of

⁴at page 1527.

⁵(2014) 13 NWLR (Pt. 1423) CA 168

cases owing the ineptitude of public prosecutors, congested dockets of the courts, dilatory tactics of defence counsel and above all, anachronistic laws and convoluted procedures.

But by far the worst culprit is the abuse of interlocutory appeals which has literally rendered otiose the summary jurisdiction of the Federal High Court which was intended to yield expedited trials. The same affliction has equally bedevilled the system of trial by information which prevails in the High Courts of States and the Federal Capital Territory.

In FRN v. Babalola Borisade,⁶a case involving a former Minister of Education prosecuted by ICPC.Nweze, JSC decried the use of interlocutory appeals to frustrate criminal trials especially those involving politically exposed or highly placed defendants:

Before concluding this judgment we observe that the interlocutory appeal of the third accused person against the ruling of the trial court epitomises the frustration of trials at first instance, which our adversarial system of criminal justice unwittingly perpetuates. It actually speaks ill of our criminal jurisprudence. The trial of the accused persons, which commenced in 2008, had to abide the lower court's determination of the said interlocutory appeal: a decision that prompted the appellant's appeal to this court. In effect, since 2008, that is seven years ago, proceedings at the trial court had been stalled to await the outcome of the appeal against its ruling.

We find it curious that the third accused person could not exercise a little restraint even when the trial court was emphatic that, though it found it in favour of the said admissibility of the said statement, the "weight to be attached to it is a matter for the determination at the conclusion of this trial" (page 317 of the record)

Prudence therefore, ought to have dictated to him to await the conclusion of the trial. Thenceforth, he would if dissatisfied with the judgement in the substantive case, proceed to appeal against it. *International Agric Ind. (Nig) Ltd & Anor v. Chika Brothers Ltd* (1990)1 NWLR (Pt.124) 70, 81; *Dairo v. Union Bank of Nigeria Plc & Anor.* (2007) AllFWLR (Pt.392)1846, Paragraph D-F

We shall continue to look with askance at situations, such as those engendered by the said interlocutory appeal, which occasion the frustration of proceeding at trial courts. They shall not longer be condoned or brooked, International

⁶(2015) All FWLR (Pt. 785) 227

Agric Ind. (Nig) Ltd & Anor v. Chika Brothers Ltd ; Dairo v. Union Bank of Nigeria Plc & Anor. (supra). They scandalised the integrity of the judicial process. In all, this appeal succeeds in part.

We hereby set aside the order of the lower Court expunging exhibit AX from the record of the trial court. In this place, we shall order its restoration in the records. Appeal allowed. The trial Court shall continue, post-haste, with the hearing and determination of the charges before it.

Similarly in **Joshua Dariye v. FRN**,⁷ the Supreme Court denounced the eight years delay of the trial of the defendant through the uncanny interposition of interlocutory appeals.

In May 2004, a petition was submitted against Dariye, the former Governor of Plateau State. He was accused of various offences including money laundering, abuse of office and corruption. After investigating the allegations, the EFCC filed an application before the High Court of the FCT seeking leave to prefer a charge against the appellant. A proof of evidence was prepared and attached to the application. On 13 July, 2007, leave was granted to the EFCC to prefer a charge. Upon his arraignment, the appellant pleaded not guilty to all the 23 counts of the charge. The matter was then adjourned to 13 November, 2007 for the prosecution to open its case. The appellant was already on bail. On 13th Nov., the appellant filed a motion asking the trial court to quash the 23-count charge. The respondent filed a counter affidavit and a written address opposing the motion. On 10th December, 2007, the trial court dismissed the application. About three years later, on 17th June, 2010 the appellant's appeal was dismissed by the Court of Appeal. He appealed to the Supreme Court. The Appeal was finally thrown out on 27th Feb. 2015.

It has taken about 8 years for the interlocutory matters to be resolved.

The Supreme Court agreed with the two lower courts that there is *prima facie* case against the appellant of involvement in misappropriation of a whopping sum of one billion, one hundred and sixty one million, one hundred and sixty two thousand, nine hundred naira only. The case was thus remitted for retrial before another judge.

⁷(2015) 10 NWLR (Part 1467) 325

Ngwuta, JSC who read the leading judgment of the court expressed utter displeasure at the use of interlocutory appeals to frustrate the criminal justice system:

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 cripple 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 facilities...

Predictably he may open another avenue to derail the criminal justice delivery system in his case. He is using the rules of law to fight the law for justice delayed, not to mention unduly delayed, is a mockery of justice.⁸

There were similar lamentations by Justice Rhodes-Vivour, Nweze, Akaahs and other justices. Aka'ahs, JSC ponied out that the objection raised in the Dariye case regarding his arraignment by the EFCC and trial by the High Court of FCT were also raised and decided in **Nyame v. FRN.⁹**

Such inordinate delays are quite common regardless of whether the case was tried under the Summary Trial procedure of the FHC or the alternative trial by information procedure of the State and FCT High Courts.

The inability of the criminal justice system to conclude cases especially when the defendants are rich and powerful individuals are involved is the single most embarrassing feature of the Nigerian Criminal Justice system.

4. Background to the Administration of Criminal Justice Act (ACJA) 2015

Criminal Procedure in Nigeria was until May 2015 governed by two principal legislations. These were handed down to the country by the erstwhile British Colonial Administration. They are: the Criminal Procedure Act (CPA)¹⁰ and the

⁸Emphasis supplied

⁹(2010) 7 NWLR (Part 1193) 344.

¹⁰The Act came into being as ordinance N0. 42 of 1945 was re-enacted as ordinances N0 43 of 1948 and was at various times "amended". It was subsequently incorporated as Cap. 80 Laws of the

Criminal Procedure Code (CPC)¹¹. Each state in Nigeria adopted either the CPA or the CPC. These laws have in application for many decades without significant improvement. Over the years, defence lawyers have perfected the art of exploiting the loopholes in these laws to the advantage of their clients. As a result, the criminal justice system of the country has lost its capacity to respond quickly to the needs of the society: To check the rising waves of crime, speedily bring criminals to book and protect the victims of crime. The ACJA 2015 responds to Nigeria's dire need of a new legislation that could transform the criminal justice system to reflect the true intents of the Constitution and the demands of a democratic society; eliminate unacceptable delays in disposing of criminal cases and improve the efficiency of criminal justice administration. The Act makes a deliberate attempt to strengthen the hand of judges and restore their rightful position as the driver of criminal justice administration. It is hoped that the Administration of President Muhammadu Buhari, GCFR would urgently prioritise the implementation of the Act to prosecute its campaign against corruption and allied crimes.¹²

The ACJA merges the main provisions of the two principal legislations, CPA and CPC into one principal federal Act which is intended to apply uniformly in all federal courts across the Federation. Substantially, it preserves the existing criminal procedure systems. But it introduces innovative provisions aimed at

Federation of Nigeria (LFN 1990 and later as Cap. C41 LFN 2004). The Criminal Procedure Act is the principal enactment governing criminal procedure in the Southern States of Nigeria.

¹¹The Criminal Procedure Code was enacted by the Northern of Nigeria in 1960 and applied only to the Northern Region and later when states were created, to all the Northern States of Nigeria.

¹²The provisions for the reform of administration of criminal justice were first developed in 2005 by the National Working Group on the Reform of Criminal Justice Administration in Nigeria. The Group which was established by the then Hon. Attorney-General of the Federation and Minister of Justice, Chief Akin Olujimi, SAN was maintained by his successor, Chief Bayo Ojo, SAN. It consisted of individuals drawn from all segments of the criminal justice system. Subsequent Attorneys-General left the draft Bill on the shelf to gather dust. However, in 2011, the then Attorney-General of the Federation, Mohammed Bello Adoke, SAN established the Panel on Implementation of Justice Reform (PIJR) to implement the proposals for reform earlier put forward by the National Working Groups under the previous administrations. The PIJR was under the chairmanship of Hon. Justice I.U Bello, of the Federal Capital Territory High Court. It conducted a detailed review of the proposals, brought them up-to-date and adopted an improved version of the Administration of Criminal Justice Bill.

enhancing the efficiency of the justice system. In other words, the ACJA 2015 builds upon the existing framework of criminal justice administration in the country. However, it fills the gaps observed in the criminal procedure laws over the course of several decades.

The short title of the Act states that it is *'An Act to provide for the administration of criminal justice in the courts of the Federal Capital Territory and other federal courts in Nigeria; and for related matters.'* The long title or explanatory memorandum on its part states that, *'This Act provides for the administration of criminal justice system which promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crimes and protection of the rights and interest of the suspect, the defendant and victims in Nigeria.'*

The foregoing objectives of the Act are restated in section 1 (1). The criminal justice institutions referred to certainly include the Federal High Court. Others are the Nigerian Police, prosecutors and the legal profession in general, including the bar and the bench. Section 1(2) emphasises that, *'The courts, law enforcement agencies and other authorities or persons involved in criminal justice administration shall ensure compliance with the provisions of this Act for the realisation of its purposes.'*

In view of the forgoing, it is essential that all the authorities, institutions and persons involved in criminal justice administration must be familiar with their respective roles under this Act. They must also be familiar with the roles of other agencies with which they are required to work. The criminal justice system functions as a chain. Any weak link in the chain will hamper the effectiveness of the entire system. Each agency must communicate and endeavour to work in sync with all others. This will enhance the attainment of the objectives of the Act. The old practice whereby one agency blames another for the failure of the system could only become a thing of the past when they function in synergy with one another.

The Act places considerable responsibility on the shoulders of the heads of Federal Courts including the Chief Judge of the Federal High Court in making arrangements and rules to enhance the proper application of the Act.¹³

5. Salient underlying Principles of the ACJA

5.1 Paradigm shift-from Punishment to Restorative Justice

¹³See Section 490

As earlier noted, the main purposes of the Act include the following: To promote efficient management of criminal justice institutions and speedy dispensation of justice, protect the society from crime, and protect the rights and the interest of the defendant and the victim. These purposes of the Act are captured in section 1. These indicate a deliberate shift from punishment as the main goal of the criminal justice to restorative justice which pays attention to the needs of the society, the victims, vulnerable persons and human dignity. These objectives are reflected in the Sentencing Guidelines which are enumerated in different parts of the Act.¹⁴

5.2 Mainstreaming Human Rights

The ACJA adopts a deliberate policy of mainstreaming human rights and protecting vulnerable persons. For example it elaborates on the need to treat arrested persons humanely.¹⁵ Further, it imposes an obligation on the arrester to inform the arrested persons of their rights under the Constitution and the Act¹⁶ It promotes equality between men and women by clearly enunciating the rights of women to serve as sureties for arrested persons. Under section 167(3), a person shall not be denied, prevented or restricted from entering into a recognizance or standing as surety for any defendant or applicant on the ground only that the person is a woman.

Further, the Act removes the stigma attached to describing suspects as ‘accused persons’. It does this by changing the designation of accused persons to ‘defendants’, a term used mainly in civil proceedings. The justification for this is rooted in the Constitution which presumes a person innocent until proven guilty.

5.3 Holistic Approach to Criminal Justice

The ACJA recognises the fact that criminal justice administration requires the participation of the whole society in order to be effective. It makes elaborate provisions for pre-trial, trial and post-trial situations. The roles of private citizens, private complainants, private prosecutors, justices of the peace, Non-governmental organisations, etc are well depicted in the Act.

5.4 Mutual Accountability and Coordination among agencies of criminal justice

The underscores the need for timely performance of the roles ascribed to the diverse institutions of criminal justice. The arrest and detention powers of the Police are made subject to the oversight of magistrates who in turn report to the Heads of courts. The Attorney-General is equally empowered to play a more

¹⁴See Sections 401, 416 (2);454,

¹⁵See section 8

¹⁶See section 6

effective role in preventing abuse of power by law enforcement agencies and courts. Above all, the Act establishes a standing multi-agency committee to monitor its implementation and ensure synergy amongst all stakeholders.

6. Applicability

The general provisions of the Act apply to criminal trials in courts except where express provision is made in the Act or in any other law in respect of any particular court or form of trial. Specifically, section 2 of the Act provides that its provision shall not apply to a Court Martial. Nothing in the Act shall affect the use or validity of any form in respect of a procedure or an offence specified under the any other written law or the validity of any other procedure provided by any other written law. However, where there are no provisions in the Act, the courts are authorised to apply a procedure that will meet the justice of the case.

Selected ACJA provisions that are of particular relevance to the Federal High Court

7.1 Bail and Recognizances

The ACJA makes significant improvements in the law of bail. Section 158 affirms the constitutional entitlement of a suspect to bail. Section 159 (1) maintains inherent powers of the courts to order the production of a defendant in court. On production the court may make any order or directives it considers appropriate in the circumstances. (s.159 (2)).

The Act makes a deliberate attempt to clarify the law with respect to the grant of bail to suspects in capital and non-capital offences. A suspect arrested, detained or charged with an offence punishable with death shall only be admitted to bail by a Judge of the High Court, under exceptional circumstances. (Section 161 (1)). For the purpose of exercise of discretion in subsection (1) of this section, “**exceptional circumstance**” includes:

- (a) ill health of the applicant which shall be confirmed and certified by a qualified medical practitioner employed in a Government hospital, provided that the suspect is able to prove that there are no medical facilities to take care of his illness by the authority detaining him;
- (b) extraordinary delay in the investigation, arraignment and prosecution for a period exceeding one year; or
- (c) any other circumstances that the Judge may, in the particular facts of the case, consider exceptional.

In any other circumstance other than those referred to in sections 161 and 162 of this Act, the defendant shall be entitled to bail, unless the court sees reasons to the contrary. (S. 163).

The conditions for bail in any case shall be at the discretion of the court with due regard to the circumstances of the case and shall not be excessive. (S. 165 (1))

Under section 165 (2), the court may require the deposit of a sum of money or other security as the court may specify from the defendant or his surety before the bail is approved. The money or security deposited shall be returned to the defendant or his surety or sureties, as the case may be, at the conclusion of the trial or on an application by the surety to the court to discharge his recognizance.(S. 165 (3))

An application for bail in respect of non-capital offences may be oral or in writing. (Section 32(3)).

7.2.Cancellation of Bail at the Instance of the Attorney-General

Where a defendant has been admitted to bail and circumstances arise which, in the opinion of the Attorney-General of the Federation would justify the court in cancelling the bail or requiring a greater amount, a court may, on application being made by the Attorney-General of the Federation, issue a warrant for the arrest of the defendant and, after giving the defendant an opportunity of being heard, may commit him to prison to await trial, or admit him to bail for the same or an increased amount.(Section 169).

7.3 Registration of Bonds persons

The Chief Judge of the Federal High Court or of the High Court of the Federal Capital Territory, Abuja may make regulation for the registration and licensing of corporate bodies or persons to act as bondspersons within the jurisdiction of the court in which they are registered.(S. 187(1))

A person shall not engage in the business of bail bond services without being duly registered and licensed in accordance with the subsection (1) of this section.(S. 187(2))

A person who engages in bail bond services without registration and licence or in contravention of the regulation or terms of his licence is liable to a fine of five hundred thousand naira or imprisonment for a term not exceeding 12 months or to both fine and imprisonment. S. 187(3)).

On conviction under this section, the court shall forward a report to the Chief Judge and in instances of gross violation of the terms of the licence and revoke the licence. S. 187(4))

A bondsperson registered under subsection (1) of this section may undertake recognizance, act as surety, or guarantee the deposit of money as required by the bail condition of a defendant granted bail by the court within the division or district in which the bondsman is registered. S. 187(5))

A person or organisation shall not be registered as a bondsperson unless the person is, or the organisation is composed of persons of unquestionable character and integrity and deposits with the Chief Judge sufficient bank guarantee in such amount as may be determined by the Chief Judge in the regulation, having regard to the registered class or limit of the bondsman's recognizance. S. 187(6)).

A registered bondsperson shall maintain with a bank or insurance company designated in his licence, such fully paid deposit to the limit of the amount of bond or recognizance to which his licence permits him to undertake. S. 187(7))

The Chief Judge may withdraw the registration of a bondsperson who contravenes the terms of his licence. S. 187(8)).

8.1 Commencing Criminal Proceedings-

The ACJA devotes several sections to the different modes of instituting criminal proceedings in courts. These include Section 109 which provides:

'Subject to any other law, criminal proceedings may, in accordance with the provisions of this Act, be instituted

(a).....

(b) in the High Court, by information of the Attorney-General of the Federation, subject to section 104 of this Act.

(c)

(d) by information or charge filed in the court by any other prosecuting authority; or

(e) by information or charge filed by a private prosecutor subject to the provisions of this Act.

From the foregoing provision it seemthat Criminal proceedings may be commenced in the High Court by way of **information or charge**.However in view of section 33 (1) and (2) of the Federal High Court Act (Cap F12 LFN 2004), all criminal causes or matters before the Federal High Court shall be tried summarily. The summary trial procedure of the Federal High Court in criminal matters is preserved by section 492(1) of the ACJA.

Sections 377 to 383 clearly spell out the details that aninformation shall contain. Reinforcing section 109, section 381 again limits those who may file an information to (a) the Attorney-General of the Federation or officers in his office; (b) a public

officer acting in his official capacity; (c) a private legal practitioner authorised by the AG of the Federation and (d) a private person, provided the information is endorsed by a law officer that he has seen the such information and declined to prosecute at the public instance and the private person enters into a bond to prosecute diligently and to a logical conclusion. The time frame for the Chief Judge to assign an information to a court for trial is 15 working days after filing and the judge so assigned shall within 10 working days issue notice of trial to the witnesses and defendants. Since the Federal High Court Act is silent on this point, this provision of ACJA with respect to the time for assigning a case to a judge for trial will apply to the Chief Judge of the Federal High Court.

8.2 Procedure for Summary Trial-

The Federal High Court remains a court of Summary Trial with respect to criminal proceedings. Section 348(2) provides that trials shall be held in the Magistrate Court or any other court or tribunal exercising criminal jurisdiction in accordance with the provisions of this Act relating to summary trials. Further, section 350(1) provides that trial shall be held summarily (a) in the High Court in respect of perjury; (b) in respect of an offence which by an Act of the National Assembly is triable summarily, and (c) in respect of a trial for an offence punishable with less than 3 years imprisonment in the Magistrate Court or tribunal.

Under section 350(2), the prosecution in a trial in the Magistrate Court or Tribunal shall provide the defendant all materials that the prosecution intends to rely on at the trial, before or at the commencement of the trial. Curiously, this requirement is not extended to a summary trial in the High Court. This appears to be a serious oversight on the part of the lawmaker.

8.2 Quarterly report to the Chief Judge

By virtues of Section 110(5), A court seized of criminal proceedings shall make quarterly returns of the particulars of all cases, including charges, remand and other proceedings commenced and dealt with in his Court within the quarter, to the Chief Judge. (underlining for emphasis)

It is not clear whether this subsection is intended to apply to the Federal High Court. At least two views are possible. Firstly, it is arguable that this subsection applies only to magistrates' courts. This argument stems from the fact that subsections 1 to 4 of the section refers specifically to Magistrates. The marginal note of the section equally refers to 'Mode of Instituting Criminal Proceedings in Magistrate's Court'. On the other hand, it may be argued that this subsection deals with reports. A court is defined in section 494 as including Federal Courts. The Federal High Court is undoubtedly a federal court.

Marginal notes- 'The weight of authorities is to the effect that marginal notes are not part of the statute and so should not be considered in interpreting a statute, for they are not inserted by parliament or under the authority of parliament. See Langan, Maxwell on The Interpretation of Statutes (12th Edition, Bombay N.M Tripathi Private Ltd. 1976)pp.7-8.

In the absence of any other section in the Act providing for the making of quarterly reports to the Chief Judge in respect of pending criminal proceedings, an interpretation should be adopted which would promote the purpose of the sub-section.

8.3 The Role of the Chief Judge with respect to Quarterly Reports

The Act provides further that in reviewing the returns made by a Court under subsections (4) and (5) of this section, the Chief Judge shall have regard to the need to ensure that: (a) criminal matters are speedily dealt with; (b) congestion of cases in courts is drastically reduced; (c) congestion of prisons is reduced to the barest minimum; and (d) persons awaiting trial are, as far as possible, not detained in prison custody for a length of time beyond that prescribed in section 293 of this Act.

Under section 110(7), the Administration of Criminal Justice Monitoring Committee, shall have power to consider all returns made to the Chief Judge under subsections (4) and (5) of this section for the purpose of ensuring expeditious disposal of cases, and the National Human Rights Commission set up under the National Human Rights Commission Act shall have access to the returns on request to the Chief Judge.

9. Who may Prosecute Cases in the Federal High Court?

The well-known decision of the Supreme Court in **Osahon v. FRN**- was not well-received by many. Lawyers in particular were displeased with the decision of Belgore, JSC (as he then was) which opened the door to all police officers including non-lawyers to prosecute criminal cases in the High Courts including the Federal High Court. The National Assembly too appeared to have been persuaded by the arguments of the critics of the *Osahon* decision. This explains the inclusion in the ACJA of section 106 which clearly excludes non-lawyers from prosecuting any offence in any court. The section provides:

Subject to the provisions of the Constitution, relating to the powers of prosecution by the Attorney-General of the Federation, prosecution of all offences in any court shall be undertaken by:

(a) the Attorney-General of the Federation or a Law Officer in his Ministry or Department;

(b) a legal practitioner authorised by the Attorney-General of the Federation; or

(c) a legal practitioner authorized to prosecute by this Act or any other Act of the National Assembly.

10. Witness Protection

Section 232 of the Act permits witnesses to some offences to give evidence in camera. These include:

- (a) sexual related offences,
- (b) Terrorism offences,
- (c) offences relating to Economic and Financial Crimes,
- (d) Trafficking in Persons and related offences, and
- (e) any other offence in respect of which an Act of the National Assembly which permit the use of such protective measures.

Under this provision, the name and identity of the victims of such offences or witnesses shall not be disclosed in any record or report of the proceedings and it shall be sufficient to designate the names of the victims or witnesses with a combination of alphabets.

It further provides that where in any proceedings the court determines it is necessary to protect the identity of the victim or a witness the court may take any or all of the following measures:

- (a) receive evidence by video link.
- (b) permit the witness to be screened or masked.
- (c) receive written deposition of expert evidence.
- (d) any other measure that the court considers appropriate in the circumstance.

The Act also stipulates that anyone who contravenes the provisions of section 232 shall be sentenced to a minimum term of one year imprisonment.

11. Payment of Witness Expenses

The ACJA in Part 26 deals with the issue of witness expenses.

It provides in S. 251 that where a person attends court as a state witness, the witness shall be entitled to payment of such reasonable expenses as may be prescribed.

Accordingly, where a person attends court as a witness to give evidence for the defence, the court may in its discretion on application, order payment by the Registrar to such witness of court such sums of money, as it may deem reasonable and sufficient to compensate the witness for the expenses he reasonably incurred in attending the court. (S.252)

Further, the court may permit on application of a party for an adjournment of the proceedings and in so doing, may order the party seeking the adjournment to pay to a witness present in court and whose evidence it has not been possible to take owing to the adjournment, such sum in the amount payable to a witness in accordance with section 251 and 252 of this Act, or such sum as the court may fix. (S.253).The amount of the expenses payable to a witness pursuant to sections 251 and 252 of this Act shall be processed and paid by the Registrar of the Court to the witness out of the relevant vote as appropriated by the Judiciary.

12. Plea Bargaining-role of the judge

The plea bargain is a veritable caseload management tool in the hand of prosecutors. It is widely deployed in several jurisdictions around the world, including advanced societies. However, the application of plea bargaining in this country has often generated heated arguments in this country. That notwithstanding the legislature has, and I think rightly incorporated the plea bargain into the ACJA. Many perceptive commentators have hailed this as a welcome development. The ACJA elaborates concrete guidelines which may help to stem any abuse of plea bargain. Most importantly, the judge conducting the trial has the final say whether to allow a plea bargain or not. Subsections 10, 11, 12, 13 , 15 and 16 of section 270 spell out the role of the judge.

13. Procedure for Transfer of case from one court to another

Under section 98 (1) the Chief Judge of a High Court may, where it appears to him that the transfer of a case will promote the ends of justice or will be in the interest of the public peace, transfer any case from one court to another. This power of the Chief Judge shall not be exercised where the prosecution has called witnesses. (S. 98 (2)) Where the Chief Judge is to exercise this power subsequent to a petition, the Chief Judge shall cause the petition to be investigated by an independent body of not more than three reputable legal practitioners within one week of receipt of such petition. (4) The investigating body shall submit its report within two weeks of appointment except otherwise specified. (S.98(3)).

14. Stay of proceedings/practice direction

Just like the 2013 Practice Direction of the Federal High Court in Criminal Matters, the ACJA attempts to address the problem posed by interlocutory appeals. It provides in section 306 that an application for stay of proceedings in respect of a criminal matter shall not be entertained. This provision authorises a trial court from whose ruling an appeal has been filed to continue with the proceedings as there can be no application for stay of proceedings. However, having regard to the so-called constitutional right of appeal, it seems that the entering of an appeal against such ruling may operate as an implied stay of proceedings. The decided authorities are not consistent on this point.

15. Preliminary Objections, Case management, Trial De novo, et al

Section 396 (1) provides that the defendant to be tried on an information or charge shall be arraigned in accordance with the provisions of this Act relating to the taking of pleas and the procedure on it. After the plea has been taken, the defendant may raise any objection to the validity of the charge or the information at any time before judgement provided that such objection shall only be considered along with the substantive issues and a ruling thereon made at the time of delivery of judgement. (S.396 (2)). Upon arraignment, the trial of the defendant shall proceed from day-to-day until the conclusion of the trial. (S.396 (3)) However, Where day-to-day trial is impracticable after arraignment, no party shall be entitled to more than **five adjournments** from arraignment to final judgment provided that the interval between each adjournment shall not exceed 14 working days. (S.396 (4)). Where it is impracticable to conclude a criminal proceeding after the parties have exhausted their five adjournments each, the interval between one adjournment to another shall not exceed seven days inclusive of weekends. (S.396 (5)) It should be noted that in all circumstances, the court may award **reasonable costs** in order to discourage frivolous adjournments. (S.396 (6)) This reinforces the provision of section 353(2) to the effect that the court may order the payment of costs in the event of failure of either of the parties to appear at a scheduled hearing.

By far the most revolutionary provision of the ACJA may be that of subsection 353(7) which betrays the desperation of the law maker to confront headlong the problem of delay caused by the so-called trial *de novo* phenomenon. This usually arises whenever a judge is elevated to the Court of Appeal. The ACJA boldly provides:

Notwithstanding the provision of any other law to the contrary, a Judge of the High Court who has been elevated to the Court of Appeal shall have dispensation to continue to sit as a High Court

**Judge only for the purpose of concluding any part-heard criminal matter pending before him at the time of his elevation and shall conclude the same within a reasonable time:
Provided that this subsection shall not prevent him from assuming duty as a Justice of the Court of Appeal.**

This provision is not only novel, it is highly imaginative. It exemplifies the kind of 'thinking outside the box' that is required to achieve significant progress in addressing the deep-rooted problems of our criminal justice system. Rather than picking holes in it and finding reasons why it cannot work, the authorities should begin to put in place measures which would assist judges to conclude cases on time. Where however that becomes impossible by reason of elevation of a judge to a higher court, the provision of this subsection should be operationalized.

16. Sentence, sentencing Hearing and Guidelines

Where the court finds a defendant guilty, the convict shall, where he has not previously called any witness to character, be asked whether he wishes to call any witness and, after the witness, if any, has been heard, he shall be asked whether he desires to make any statement or produce any necessary evidence or information in mitigation of punishment in accordance with section 311 (3) of this Act. (S.310(1)). After the defendant has made his statement, if any, in mitigation of punishment the prosecution shall, unless such evidence has already been given, produce evidence of any previous conviction of the defendant. (S.310 (2)). Where the provisions of section 310 of this Act have been complied with, the court may pass sentence on the convict or adjourn to consider and determine the sentence and shall then announce the sentence in open court. (S. 311(1)).

Sections 311 (2) mandates the court , in pronouncing sentence, to consider the following factors in addition to sections 239 and 240 of this Act.

- (a) the objectives of sentencing, including the principles of reformation and deterrence;
- (b) the interest of the victim, the convict and the community;
- (c) appropriateness of non-custodial sentence or treatment in lieu of imprisonment; and
- (d) previous conviction of the convict.

After conviction, a court shall take all necessary aggravating and mitigating evidence or information in respect of each convict that may guide it in deciding the nature and extent of sentence to pass on the convict in each particular case, even though the convicts were charged and tried together. (S.311(3)). (Emphasis added).

17. Alternatives to Custodial Sentence

The ACJA adopts several alternatives to imprisonment. This is consistent with the laudable objective of decongesting the prisons. The sentences which may be applied by the court include compensation or damages (S.454(3)), restitution, restoration of property (S.454(4)), probation (SS 453-454), suspended sentence (S.460), community service (460), parole, deportation (S.442).

However, a convict shall not be sentenced to suspended sentence or community service for an offence involving the use of arms, offensive weapon, sexual offences or for an offence which the punishment exceeds imprisonment for a term of 3 years. (S. 460(3)).

Of these alternatives, it appears that only compensation or damages restitution and restoration of property may be utilised by the Federal High Court having regard to the serious nature of offences triable by that court.

18. Compensation to victims of crime

Victims of crimes are often neglected and left without any form of compensation even when the offender has been found guilty and sentenced. The ACJA has addressed this ugly trend by broadening the powers of the court to award costs, compensation and damages in deserving cases, especially to victims of crime. The Act adopted and improved on the provisions of the Criminal Procedure Act and the Criminal Procedure Code.

By the provisions of section 319 of the ACJA, court may within the proceedings or when passing judgment, order the convict to pay compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant, where substantial compensation is in the opinion of the court recoverable by civil suit. The court may order the defendant to pay a sum of money to defray expenses incurred in the prosecution. The court may also order the convict to pay compensation to an innocent purchaser of any property in respect of which the offence has been committed who has been compelled to give it up. The court may also order the convicted person to pay some money in defraying expenses incurred in medical treatment of any person injured by the convict in connection with the offence.

19. Shortcomings of the ACJA

Just like any other human system, the ACJA is not free of shortcomings. These include inelegant drafting of several provisions; use of complex terms which are probably lifted from the CPA and CPC, lack of proper sequence of the provisions.

Furthermore, several of the provisions of the Act are not sufficiently clear and may not lend themselves to easy application.

20. Recommendations for improving criminal justice administration

Notwithstanding the shortcoming of the Act, it is certainly a bold and courageous attempt to improve the criminal procedure system in the country. The law maker appreciates that the law is not perfect. Provisions are therefore made within the framework of the law permitting the heads of courts to make supplementary rules to fill up gaps which may be noticed.(Section 490) Judges are also authorised by the Act to innovate and apply a procedure which would meet the justice of the case where there are no express provisions in the Act.(Section 492(3)). The success or otherwise of the provisions may therefore depend on the willingness of the judicial authorities to embrace change and capitalize on the provisions of the Act to that end.

By far the most important recommendation one can offer for improving criminal justice administration is for the amendment of the Constitution to the effect that *'Notwithstanding anything to the contrary contained in the Constitution or any other law an application for stay of proceedings in any criminal matter brought before any court or Tribunal shall not be entertained until judgment is delivered by the court'*.

Conclusion

As we eagerly await such an intervention by the authorities through constitutional amendment, the judges should embrace the provisions of the Administration of Criminal Justice Act, 2015 and proactively apply them for improving the dispensation of criminal justice in the country.