

**APPRAISAL OF JUDICIAL REFORMS TOWARDS AN EFFICIENT
ADMINISTRATION OF JUSTICE IN NIGERIA**

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DECLARATION

I solemnly declare that this project is the product of my personal endeavour and it has to the best of my knowledge, not been presented anywhere before. All ideas from previous writers have been duly acknowledged. I remain solely responsible for all views expressed and errors therein.

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CERTIFICATION

This project titled “Appraisal of Judicial Reforms towards an Efficient Administration of Justice in Nigeria” meets the regulation governing the award of the Degree of Master of Arts Law (M.A Law) of Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and to literary presentation.

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DEDICATION

Dedicated to the Chibok Girls

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LIST OF ABBREVIATIONS

ACJA	–	Administration of criminal justice Act
ANLR	–	All Nigerian Law Report
C.A	–	Court of Appeal
CAP	–	Chapter
CPA	–	Criminal Procedure Act
CPC	–	Criminal Procedure Code
E.R	–	England Report
EFCC	–	Economic and Financial Crimes Commission
FWLR	–	Federation Weekly Law Report
ICT	–	Information and Communications Technology
LFN	–	Laws of the Federation of Nigeria
LPELR	–	Legal Pedia Electronic Law Report
NDLEA	–	National Drug Law Enforcement Agency
NIALS	–	Nigerian Institute of Advanced Legal Studies
NLR	–	Nigerian Law Report
NMLR	–	Nigerian Monthly Law Report
NWLR	–	Nigerian Weekly Law Report
SAN	–	Senior Advocate of Nigeria
S.C	–	Supreme Court of Nigeria
SCNJ	–	Supreme Court of Nigeria Judgement
WACA	–	West African Court of Appeal

ABSTRACT

Certain reforms had been put in place to address Nigeria's quest towards an efficient administration of justice in the country. The reason for this quest is because there is the problem of undue delay in determining cases as a result of the legal processes being usually very slow and complex. Two major reforms carried out with the aim of addressing this problem had been the passing into law of the Administration of criminal justice Act (ACJA) 2015, and the Evidence Act 2011. In many instances, these laws had shown innovations that make for speedy disposal of cases at least when compared to their previous kindred legislations. The Administration of criminal justice Act (ACJA) 2015 for instance, merged the provisions of the two principal legislations governing criminal procedure in Nigeria; the Criminal Procedure Act (CPA) and the Criminal Procedure Code (CPC) into one principal federal Act which is intended to apply uniformly in all federal courts across the entire Federation and in respect of federal offences. The Act preserves the existing criminal procedures, but also introduces new innovative provisions. As one practical example amongst several discussed in this work, the Act clearly provides that trial of a defendant is to proceed from day-to day until the conclusion of the trial. This is clearly a new and innovative attempt to ensure speedy criminal trials. While the Act yet builds upon the existing framework of criminal justice administration in the country, it however, filled the gaps observed in these laws over the course of several decades. The Evidence Act 2011, on the other hand, repealed the old Evidence Act, Cap E14 Laws of the Federation of Nigeria 2004, which was basically the same with the Evidence Act 1943 which came into force on 1st June, 1945. The justice administrative system in the country got a big boost with the coming into operation of this Act which amongst other innovations as discussed in the research, makes the coast clear for the admission of digital and electronic evidence. The days are gone when such would be rejected on accounts that their admissibility were not provided for under the law. The research adopts both a doctrinal and teleological approach to research in analysing all the issues discussed in the research work. As observed by the researcher, notwithstanding these innovations, there are still noticeable areas of both prospects and challenges for justice administration in Nigeria. The prospects in Information and Communication Technology (I.C.T) to enhance an efficient justice administration cannot be denied. Certain delays or inconveniences in the justice administrative system can be addressed using I.C.T. Similarly the challenge posed by Legal Pluralism, which exist as a result of the introduction of British laws into Nigeria to co-exist with the indigenous systems of customary and Islamic Laws, thereby producing a tripartite system of laws with all its complications, needs to be addressed. As posited by the researcher, what is both necessary and desirable to address this challenge is the need for a deliberate aim, especially at the national level, to foster the eventual harmonization of the principles of English Common Law and statutes with those of locally enacted laws and of Customary Law/Islamic Law into a general law for the whole country. The researcher concludes by recommending that as the society keeps changing at dazzling pace, the National Assembly must constantly review and update the laws. This is because we may soon find ourselves lagging seriously behind again, where reforms carried out no longer meet the needs of present or future realities of justice administration..

CHAPTER ONE

1.0 GENERAL INTRODUCTION

1.1 Background to the Study

Nigeria, like many other countries of the world usually undertake legal and judicial reforms as efforts geared towards their overall development programs. The reason for this is also quite obvious. Nigeria finds herself in a situation where her judiciary advance inconsistent case law and carry a large backlog of cases. The resulting implication is the eroding of individual and property rights and by implication, the stifling of the private sector and its growth. There is ultimately also, violation of human rights. Delay in justice delivery affects fairness and the efficiency of the judicial system. This is also acting as an impediment to the public's access to courts, which, in effect, weakens democracy, the rule of law and the ability to enforce human rights or even economic interest.

One of the ways of evaluating an effective justice delivery system is by the number of cases that it manages to dispose off and the time taken and even the process involved. The Nigerian judiciary reputed to be the last hope of the common man, crumbles under the weight of a heavy caseload. The criminal justice system in the country endures prolonged delay in the administration of justice. There is also the congestion of courts with inadequate infrastructure, the congestion of prisons with daily influx of either accused persons or suspects awaiting trial with several instances of arrest and detention for unduly lengths of time even before trial or conviction. A cardinal principle of justice under the Nigerian legal system is the presumption that a person accused of any crime is innocent

until proven guilty¹. However, the continued incarceration of an accused person without speedy trial questions the claims to observance of fundamental rights of liberty and fair hearing².

In the context of judicial reform programs, some measures have been taken to reduce the duration of the litigation process by identifying avoidable sources of delay, which tend to slow down and even halt proceedings unnecessarily. Such reform include repealing or amending some laws that have probably lost touch with present reality and enacting of new ones that can meet the needs of the ever-changing socio-economic conditions. It is true that there have been some reforms in the Nigerian judiciary. This for example had led to some changes in the Civil Procedure Rules of most courts, passing into law of the new Administration of Criminal Justice Act 2015 and Evidence Act 2011.

The necessity of such reforms is obvious. The truth is that no combat against corruption for instance or crimes such as terrorism, now plaguing the nation can be said to be credible or complete without an effective and robust judicial system that is to be relied on. It is only such properly administered judicial system with speedy capability of guaranteeing individual rights and freedoms, as well as protecting victims from the arbitrary exercise of power while punishing criminals, that is an essential catalyst for good governance and uplifting the socio-economic wellbeing of the nation and her citizens. Everyone, everywhere in Nigeria should enjoy the equal, but also speedy protection of the law if there is to be both justice for all and meaningful development.

¹Section 36 (5) 1999 Constitution of the Federal Republic of Nigeria Cap. C 23 Laws of the Federation of Nigeria (L.F.N) 2004

²as expressed in section 36 (1) of the said 1999 constitution.

1.2 Statement of Problem

It is a fact well known that the issue afflicting the judiciary is the problem of undue delay in determining cases. In Nigeria, like some other developing countries, the legal processes are usually very slow and complex. In the course of the trial process when it eventually starts, it is not unusual in Nigeria to find a matter (civil or criminal) lingering for up to fifteen years, leaving concerned parties frustrated. In *Ariori v. Elemo*³ for instance it took about 23 years before final determination of the case at the Supreme Court. *Union Bank Nigeria Plc v. Ayodare and Sons (Nig.) Limited*⁴ was instituted at the State High Court in 1989 but was not finally disposed off by the Supreme Court until 2007 – a period of 18 years. The trial court gave judgment in *Adisa v. Oyinwola*⁵ in 1985 while the appeal was not determined by the Supreme Court until year 2000 – the appeal lasted for 15 years from the Court of Appeal to the Supreme Court. In addition, in *Abayomi Babatunde v. Pan Atlantic Shipping And Transport Agencies Ltd & ors*,⁶ a matter that began at the High Court in Lagos on 18th April, 1988, was finally settled at the Supreme Court on the 20th day of April 2007.

The very negative effect of this type of situation is appreciated more when one realizes that it is now a fact that foreign investors are attracted to legal systems that are effective in dispensing justice speedily. Therefore, the effectiveness and speed of a judicial system also determine the economic performance of the country. Without an effective justice

³*Ariori v. Elemo*, Supreme Court of Nigeria, (1983) 1 SC 13

⁴*Union Bank Nigeria Plc v. Ayodare and Sons (Nig.) Limited* [2007]13 NWLR (Pt. 1052) 567

⁵*Adisa v Oyinwola* [2000] 10 NWLR (Pt.674) 116

⁶*Abayomi Babatunde V. Pan Atlantic Shipping And Transport Agencies Ltd & ors*, Supreme Court of Nigeria, S.C. 154/2002

administrative system, development in all its ramifications, including meaningful legal protection of human rights will remain a wish. An effective justice delivery system is a non-negotiable necessity. It is a condition precedent not just for affluent and economically advanced societies and economies, but also of any developing society and economy like Nigeria.

1.3 Aims and Objectives of the Study

The main aim and objective of the research is to appraise the innovative contributions of identified reforms towards an effective justice administrative system in Nigeria.

1.4 Justification for the Study

Not many people are aware of the innovative and positive contribution of the new Administration of Criminal Justice Act 2015 and its implication for criminal trials in Nigeria. There is a need to create such awareness. In addition to this fact, with other reforms that have been made towards an effective justice administration in Nigeria, such as the passing into law of the Evidence Act 2011, there is a need to know how much have, or can really be achieved with such reforms, especially since they are both key to trials in court, whether criminal or civil.

As it relates to the Evidence Act 2011, although it has been in force for over four years, it is sometimes surprising to see legal practitioners and even members of the bench cite the repealed Evidence Act⁷ as the applicable law of evidence in our courts. For example, in the judgment delivered by the Rivers State Governorship Election Petition Tribunal sitting in

⁷Cap E14, Laws of the Federation of Nigeria 2004

Abuja on 24th October 2015, in Petition No. EPT/RV/GOV/04/2015 (Hon. Dr. Dakuku Adol Peterside & Anor v. Independent National Electoral Commission (INEC) & Ors) (unreported), the tribunal consistently cited provisions of the repealed Evidence Act. There is therefore the need for consistent and focused study of its provisions by all persons involved in the justice sector in order to ensure its smooth application. Furthermore, it is the researcher's opinion that policy makers and members of the legislature have a positive duty to evaluate the effectiveness of reforms made so far. This should be done in order to see if the ideal behind such reforms has been actualized.

1.5 Scope of the Research

It is a fact that several factors outside the judiciary at the end of the day determine the effectiveness of a justice administrative system. The constraints or limitations preventing people from enjoying an effective justice delivery system are both within the formal justice system and outside it. It is the combined results of such constraints that affect the efficiency of justice administration in Nigeria. However, this research is limited to looking at the innovative provision and reforms of specific legislation and how they tend to actualize speedy dispensation of justice or efficient justice administration. The focus will include innovative provisions in The Administration of Criminal Justice Act (ACJA) 2015 and Evidence Act 2011. These reforms have specific and direct bearing to the pace, speed, or efficiency of trials before the courts, whether criminal or civil. Discussion is limited only to innovations contained in these identified reforms.

1.6 Research Methodology

The research will adopt a doctrinal approach to research. Primary source of data analyzed for this purpose will include statutes like the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Administration of Criminal Justice Act (ACJA) 2015, the Evidence Act 2011, as well as judgments of superior courts of record. Secondary source of data will include opinions and suggestions of experts in the area of research as expressed in textbooks, journals, paper presentations, and other platforms. The research will also adopt a teleological approach to research where as a researcher, personal experience is used to proffer or arrive at definite findings because of the researcher's personal experience as a legal practitioner.

1.7 Literature Review

The researcher had identified the concept of Legal Pluralism as a major challenge affecting the effectiveness of the justice administrative system in Nigeria. This exists because of the introduction of British laws into Nigeria to co-exist with the indigenous systems of customary and Islamic Laws, which has produced a tripartite system of law. Aguda, in his book titled "The Challenge for Nigerian Law and the Nigerian Lawyer in the Twenty-First Century",⁸ in proffering solution to this identified challenge, called for the teaching of Customary Law and Islamic Law in all our universities as part of subjects offered for basic degree in law (i.e. LL.B). The researcher disagrees with this position. There are several customary law practices of various communities, so how many of these should a lawyer or

⁸Aguda, T.A. (1988) *the Challenge for Nigerian Law and the Nigerian Lawyer in the Twenty-First Century*, Federal Government Printers.

law student grasp? Even the Sharia or Islamic Law is administered in some jurisdictions as a variant of customary law, and in some other jurisdictions, as a distinct and separate system, while at the same time, almost completely ignored in other jurisdictions or ethnic groups. The researcher is of the opinion that a better approach is exploring the possibility of integrating the tripartite system of law and unifying the diverse systems of court. This by the way is long overdue.

The researcher had amongst other things in the research, highlighted on innovations and the changes brought by the Evidence Act 2011. In their article titled “The Evidence Act, 2011: Closing the window for the application of common law rules of evidence”, as published in the *Journal of Contemporary Law*, Arishe & Oriakogba⁹ had posited that based on section 3 of the Evidence Act 2011, “the window for the application of common law rules of evidence in Nigerian courts has been closed and that our law of evidence is now strictly statutory.” Their position is because Section 5(a) of the repealed Evidence Act provided that, “Nothing in this Act shall prejudice the admissibility of any evidence which would apart from the provisions of this Act be admissible.” According to them, Section 3 on the other hand of the Evidence Act 2011 provides that “Nothing in this Act shall prejudice the admissibility of any evidence that is made admissible by any other legislation validly in force in Nigeria.”

The researcher disagrees with the position of the said authors. In the researcher’s opinion, there is indeed the need to make explicit provision as to the power of the court to resort to common law rules of evidence in determining the admissibility of a piece of evidence that

⁹ Arishe, G.O. & Oriakogba, D.O “The Evidence Act, 2011: Closing the window for the application of common law rules of evidence” (2013-June 2014) 2 *Journal of Contemporary Law* 151, 152.

is not specifically dealt with in the Act. However, such silence in the said Act cannot be bases for the position that “the window for the application of common law rules of evidence in Nigerian courts has been closed”. It is indeed therefore very doubtful if the law maker intended to completely exclude the application of the common law rules of evidence on matters of admissibility of evidence especially when it does not contradict the Act, or where the Act is silent. In fact, in view of this silence, the decision of the apex court in Queen v. Itule¹⁰ and Rex v. Onitiri¹¹ remains valid. The position of the court in these two cases is to the effect that Nigerian court could rely on such common law rules to admit a piece of evidence where the Evidence Act was silent on a particular subject-matter provided that there was nothing in the Act that **explicitly** rendered such evidence inadmissible.

In discussing some of the improvements or innovations of the Evidence Act 2011, the researcher had made comparisons of the implications of section 26 and 196 of the Evidence Act 2011 and section 25 of the repealed Evidence Act. Section 192 of the Evidence Act 2011 provides that “A statement in any document marked “without prejudice” made in the course of negotiation for **settlement of a dispute out of court** shall not be given in evidence in any civil proceeding in proof of the matter stated in it”. In his paper presentation titled “The Evidence Act 2011-An Appraisal”¹², Hon. Justice Akinyemi noted that the well-established common law principle that a document marked ‘without prejudice’ made in the course of negotiation or settlement of dispute shall not be

¹⁰ [1961]1 ANLR 481

¹¹ [1946-1949] 12 WACA 58.

¹²Hon. Justice Akinyemi, A. “The Evidence Act 2011: An Appraisal”, being a paper presented at the Ogun State Bar and Bench Forum, on Thursday, 11th July, 2013 at the June 12 Cultural Centre, Abeokuta. pp 27 - 28

admissible as evidence between the parties, has now being codified by Section 196 of the new Act.

This position is not entirely correct. From a literal interpretation of this section 196 of the Evidence Act 2011, the exclusionary rule will apply here only to statements contained in documents marked “without prejudice” made in the course of negotiation for a settlement of a dispute out of court. The implication here is that a document marked “without prejudice” which was not made in the course of negotiation for a settlement of a dispute out of court cannot be excluded pursuant to section 196 of the Evidence Act. Section 196 of the Evidence Act, 2011 has a limited application than both section 25 of the repealed Evidence Act and section 26 of the Evidence Act 2011 which both provides that “In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given or in circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.” In any case, pursuant to section 26 of the Evidence Act 2011 (and even section 25 of the repealed Act), a document marked or not marked “without prejudice” would still be inadmissible in civil cases. This is because “In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given or in circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.” Therefore, once the court can infer that the parties agreed together that evidence of it should not be given, or there is an express condition that evidence of it is not to be given, then it will be inadmissible. Marking a document “without prejudice” is not the only means to achieve this.

Similarly, the researcher had discussed the prospects of Information and Communication Technology (I.C.T) in enhancing the effectiveness of the justice administrative system in Nigeria. Patrick, (Senior Advocate of Nigeria), in his presentation titled ‘Speedy Administration of Justice, Which Way Forward’¹³, made a very good case for the inclusion of technology in the judicial process as a means of ensuring speedy administration of justice in Nigeria. However, he did not elaborate on what specific type or types of technology can, or should be deployed. He also did not state how, or the areas of the judicial administrative process where such can be deployed. The researcher does justice to this aspect especially in analyzing the type of technology, the ways, and the specific areas in the justice administrative system in which such technologies can actually be deployed.

Finally, the researcher had also appraised the importance and contributions of The Administration of Criminal Justice Act (A.C.J.A) 2015, towards an effective justice administrative system in Nigeria. In his paper titled “Summary of Some of The Innovative Provisions of The Administration of Criminal Justice Act (A.C.J.A) 2015”¹⁴, Professor Akinseye-George, (Senior Advocate of Nigeria) , described as novel and commendable the provision of section 296 of the Administration of Criminal Justice Act (A.C.J.A) 2015. According to him, it will address the problem of ‘holding charge’. The researcher, with all due respect to the professor and Senior Advocate totally disagree with this position. As a matter of fact, the combined effect of section 293 to 296 of the said Act is nothing more

¹³Patrick, I.N. (Senior Advocate of Nigeria), “Speedy Administration of Justice, Which Way Forward!!.” being a paper presentation at the Nigerian Bar Annual General Conference, held at The Civic Centre, Port Harcourt, Rivers State, From 21st To 27th, August 2011.

¹⁴ Professor Akinseye-George, Y. (Senior Advocate of Nigeria). “Summary of Some of the Innovative Provisions of the Administration of Criminal Justice Act (A.C.J.A) 2015” (unpublished).

than the given of statutory flavour to the ugly holding charge syndrome under the guise of “Applications for Remand”.

By virtue of these provisions, a suspect arrested for an offence which a Magistrate Court has no jurisdiction to try shall within a reasonable time of arrest be brought before a Magistrate Court for remand. The Court is then authorized to remand the suspect in prison custody if the Court is satisfied that there is probable cause to remand the suspect pending the receipt of a copy of the legal advice from the Attorney-General of the Federation and arraignment of the suspect before the appropriate court. The remand order shall be for a period not exceeding fourteen days in the first instance, and the case shall be returnable within the same period.

Such order can be renewed for a further period of fourteen days on application in writing with good cause shown. After this period of 28 days and the suspect is still in custody, the Court may grant the suspect bail. However, the court may instead of granting the suspect bail, issue hearing notices on any of the authorities in Section 296(4) of the Administration of Criminal Justice Act, 2015, and adjourn the matter for a period not exceeding fourteen days with the suspect still remanded. At the return date, if the authority concerned requests for and shows good cause to another remand, the Court may remand the suspect for a final period not exceeding fourteen days for the suspect to be arraigned for trial before an appropriate court. At the end of this final period or if good cause is not shown by the said authority, the suspect shall be immediately released from custody.

In the researcher’s opinion, this is a big step back in the fight for the protection of rights and a truly worrying inclusion. The continued incarceration of a suspect under this

circumstance is absolutely unacceptable in a democratic society. One may argue that a suspect could be in custody for about 56 days by virtue of the above provisions. Whether such provision enhances fairness or the presumption of innocence as a fundamental principle of the criminal justice system as guaranteed in the constitution is very doubtful.

1.8 Organizational Layout

This research is presented in five (5) chapters, covering all aspects of the study, from the introduction to the summary, findings and recommendations.

Chapter one dwells on the general introduction and background to the study, which highlights the problem facing the justice administration as well as steps taken to address this problem by way of some reforms. The chapter further looks at the statement of problem, the objectives of the study, the justification for the study, scope of the research and the research methodology used. It also included a look at literature review and the organizational lay out of the research.

Chapter two examines certain key terms connected to the research with a view to create better understanding and appreciation of issues to be subsequently discussed in the research. Such key terms includes judicial reforms, efficiency, justice and justice administration.

Chapter three discusses the crux of the research itself; an appraisal of the new innovations in the administration of justice in Nigeria. It delved into an overview or appraisal of some (in the author's opinion) basic and key law reforms towards an efficient justice administration in Nigeria. These laws looked at here in this chapter were the

Administration of Criminal Justice Act 2015 and Evidence Act 2011 as reforms that have specific and direct bearing to the pace, speed, or efficiency of trials before the courts, whether criminal or civil.

Chapter four highlights the prospect and challenges of justice administration in Nigeria. This is done with a view to appreciate what can still be done for an efficient justice administration in Nigeria, in addition to already discussed specific areas of reforms earlier on discussed in chapter three.

Chapter five is the concluding chapter. It contains the brief summary of the entire work, the findings drawn from all the analysis and some recommendations proffered on the basis of the research findings.

CHAPTER TWO

2.0 DEFINITION OF KEY TERMS

2.1 Introduction

For a better understanding of this research, it is important that certain terms be explained before an in-depth discussion of the topic is done. These key terms appear almost through out all aspects of the discussion. This makes the explanations or definitions of them given below relevant.

2.2 Judicial Reforms

The Black's Law Dictionary,¹⁵ defines the word 'Judicial' as "of relating to, or by the court or a judge". On the other hand, the Oxford Advanced Learner's Dictionary¹⁶, defines the word 'Reforms' as "To improve a system, an organization, a law etc, by making changes to it". From these definitions, the term 'Judicial Reforms', for the purpose of this research means improvements, changes, or new developments made in respect to the manner in which the judges or courts carry out their functions, including all administrative processes connected to the said functions. Areas of judicial reform may include for example enactment of new or amendment to existing criminal or civil laws and procedures, codification of law instead of common law, moving from say an inquisitorial system to an adversarial system. Others may include establishing of say stronger judicial independence by way of changes to appointment procedure of judges, establishing mandatory retirement age for judges or enhancing independence of prosecution etc. Judicial reform usually do

¹⁵Black's Law Dictionary, 9th edition, p. 922

¹⁶Oxford Advanced Learner's Dictionary 6th edition, p. 983

have as its objective the improvement of the quality of justice and may sometimes be done as part of a wider reform or changes of a country's political system which could be partial or total.

2.3 Efficiency

Again, the Oxford Advanced Learner's Dictionary, defines the word 'Efficiency' as the quality of doing something well with no waste of time or money¹⁷. Similarly, the same dictionary defines the word 'Efficient' as doing something well and thoroughly with no waste of time, money, or energy¹⁸. From the dictionary definitions given, one can add that efficiency may also be seen as a measurable ability to avoid wasting energy, materials, money, efforts and even time in either doing something or in producing a desired result or goal. To be efficient requires minimizing the waste of resources such as physical materials, energy and time, while successfully achieving the desired output. The advent of inventions such as the steam engines and motor vehicles during the Industrial Revolution for example allowed people to move farther in shorter periods of time, and contributed to efficiency in travel and trade. The said Industrial Revolution also introduced new sources of power, such as burning fossil fuels, that were cheaper, more effective, and able to be used more broadly. Similarly, for the purpose of this research, an efficient judiciary is one that is better able to serve the society's justice needs. When for example, it takes fifteen years for a matter in court to be finally settled as opposed to say three months, one will have to say that this falls short of the definition of the word "efficient". Because here, time is wasted, parties involved obviously will be dissatisfied with such a system as it may lead to self

¹⁷Ibid. p. 372

¹⁸ibid.

help mechanism in settling dispute because no body would like to wait for so ;long before their disputes are settled.

Efficiency therefore signifies a level of performance that describes a process using the lowest amount of inputs to create the greatest amount of outputs. It is a measurable concept that can be determined by ascertaining the ratio of useful output to total input. For the purpose of this research, the words 'efficiency' or 'efficient' is also synonymous with speed and ease.

2.4 Justice

Many people have different definition for the term 'justice'. For some, justice is viewed as a process. It is the process or result of using laws to fairly judge and punish crimes and criminals. This view looks at the term purely from a criminal perspective as opposed to civil. Others may see it as the maintenance of what is just, or the administration of what is just especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments. This view appears wider than the first since it recognizes that justice applies to both civil and criminal situations as well. In a way, the concept of justice can be said to be based on numerous fields, as well as many differing viewpoints and perspectives including the concepts of moral correctness based on ethics, rationality, law, religion, equity and fairness. In another sense, justice is also a legal or philosophical theory by which fairness is administered. Though the concept of justice may actually differ in every culture, society or class of persons, it usually entails a scheme, or system of law, or a fair, just, or impartial legal process in which every person receives his or her due from the system, including all rights.

The Black's Law Dictionary, defines the word 'Justice' as the fair and proper administration of the laws¹⁹. This definition is quite suited for the purpose of this research. Justice is the determination of rights according to the rules of law. This means closely related to the term 'justice', is 'law' because it is more of a measure of the quality of conforming to law. It is basically fairness in protection of rights and punishment of wrongs. It is at the end of the day, the process or result of using laws to fairly judge and punish crimes and criminals or determining dispute between opposing parties.

2.5 Justice Administration

Having understood the meaning of the word 'Justice', as stated above, the word 'Administration' needs to be explained. Again, the Oxford Advanced Learner's Dictionary, defines the word 'Administration' as the activities that are done in order to plan, organize, and run a business, school, or other institution²⁰. Therefore, for the purpose of this research, the term 'Justice Administration' means the activities that are done in order to plan, organize, and run the courts, its activities and its officials with the overall objective of ensuring the fair and proper administration of the laws. It is a compendious term that stands for all the complexes of activity that usually goes into operation to bring the law to bear. Therefore, Justice Administration includes the personnel, activity and structure in the detection, investigation, apprehension, interviewing and trial of suspects or cases in general. In a sense, Justice Administration is the process by which the legal system of a government is executed. The obvious goal of such justice administration is the provision of justice for all those accessing the legal system. It encompasses the process and structure

¹⁹Black's Law Dictionary op. cit. p. 942

²⁰Op.cit. p. 15

which allows dispute between parties to be resolved by the body dedicated to that purpose which is the judiciary.

The term Justice Administration is not just confined to the courts though. It encompasses also officers of the law and others whose duties are necessary to ensure that the courts function effectively. At the end of the day, Justice Administration is concerned with the fair, just and impartial upholding of rights, and punishment of wrongs, according to the rule of law. Administration of justice is the whole plenitude of adjudication and dispensation of justice. Justice in the context of our discourse is the whole gamut of what is just, equitable and conscionable.

CHAPTER THREE

3.0 AN APPRAISAL OF THE NEW INNOVATIONS IN THE ADMINISTRATION OF JUSTICE IN NIGERIA

3.1 Introduction

This segment of the research would not be discussing the entire provisions of the identified reforms. Most of the provisions of these reforms are actually a re-enactment of the provisions of repealed Acts. Such provisions are already well tested through constant application and judicial interpretation for years now, and stakeholders are generally familiar with them. In the researcher's humble view therefore, there is nothing new to be said about them. The researcher therefore is taking the liberty of devoting discussion in this segment only to what he considers to be the principal innovations in the laws or reforms to be discussed.

3.2 New Innovations in the Administration of Criminal Justice Act 2015

In Nigeria, two principal laws (both of which were handed down by the colonial administration), govern criminal procedure. The first is the Criminal Procedure Act (CPA), Cap C41, Laws of the Federation of Nigeria (LFN), 2004. This Act initially came into existence as ordinance No. 42 of 1945 and was re-enacted as ordinance No. 43 of 1948. Subsequently, it was incorporated as Cap. 80, Laws of the Federation of Nigeria (LFN) 1990 and later Cap C41, L.F.N, 2004. The CPA is the principal law governing criminal procedure in the southern states of Nigeria. The second principal legislation governing criminal procedure in Nigeria is the Criminal Procedure Code (CPC), Cap C42, Laws of the Federation of Nigeria (LFN), 2004. It was enacted by the Northern Region of Nigeria

in 1960 and applied to the Northern Region only. The various states in Nigeria have either modified or wholly adopted the CPA (applicable in southern states of Nigeria), or the CPC (applicable in northern states of Nigeria). Both the CPA and CPC have been applied for many decades in Nigeria without much amendments. This has made the criminal justice system lose the required capacity to respond quickly to the needs of a fast changing society. These laws could not check the rising waves of crime, or speedily bring criminals to justice and protect victims of crime.

The Administration of Criminal Justice Act, 2015 (ACJA 2015) which was signed into law in May 2015 was a response to Nigeria's dire need of a new legislation that will transform the criminal justice system. It is one of Nigeria's newest legislations that have introduced new mechanisms in Nigeria's criminal justice framework. Positioned to eliminate unacceptable delays in disposing of criminal cases and improve the efficiency of criminal justice administration in the country. By section 2(1), of the Administration of Criminal Justice Act, 2015, the provisions of the Act apply to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja. By section 2(2), of the Act however, its provision do not apply to a Court Martial. The ACJA 2015 repeals the Criminal Procedure Act²¹, Criminal Procedure (Northern States) Act²², and the Administration of Criminal Justice Act²³.

Section 1 of the ACJA 2015 states the purpose of the Act as "to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and

²¹ CAP C41, LFN 2004

²² CAP C42, LFN 2004

²³ CAP A3, LFN 2004

protection of the rights and interests of the suspect, the defendant, and the victim". The ACJA 2015 builds upon the existing framework of criminal justice administration in the country by filling the gaps observed in these laws over the course of several decades. Basically, it preserves the existing criminal procedures, while introducing new innovative provisions that will enhance the effectiveness of the justice system. Some of these innovative provisions or improvements in identified areas are discussed below.

3.2.1 Prohibition of Unlawful Arrests

It has been posited that unlawful arrests remains one of the major problems of the criminal justice system of Nigeria. It is one of the reasons why police stations and the awaiting trial sections of prisons are congested²⁴. This is because arrests are sometimes made on allegation that are purely civil in nature or on frivolous ground²⁵. The police is very notorious for this type of situation. This ugly scenario is further compounded by the provision of section 10 (1) of the CPA. By virtue of this provision, the police could arrest without a warrant, any person who has no ostensible means of sustenance and who cannot give a satisfactory account of himself. This provision has been abused by the police who use it as legal grounds to arrest people indiscriminately, especially the poor and uneducated members of the society. This provision no longer exists in our laws, thanks to the deletion of it from the provisions in the ACJA 2015.

²⁴Ani, C.C. Reforms in the Nigerian Criminal Procedure Laws, *Nigerian Institute of Advanced Legal Studies (NIALS) Journal on Criminal Law and Justice Vol. 1 2011*, p. 48.

²⁵Ibid p. 58

3.2.2 Mandatory Notification of Cause of Arrest and rights of the Arrested Person

Before now, by the provisions of sections 5 of the CPA and 38 of the CPC, a police officer or a person making an arrest is to inform the arrested person of the reason for the arrest. However, the exception is that where such a person is being arrested in the course of the commission of the offence or is pursued immediately after the commission of the offence or escaped from lawful custody, such notification or information may be dispensed with. While the ACJA 2015 retains this provision in section 6(1) of the Act, it however went a step further. By section 6(2) of the said Act, the police officer or any other person is now mandated to inform the suspect of his right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice. The police officer or any other person is also mandated to inform the suspect of his right to consult a legal practitioner of his choice before making, endorsing or writing any statement or answering any question put to him after arrest. The police officer or such other person is further mandated to inform the suspect of his/her right to free legal representation by the Legal Aid Council of Nigeria where applicable.

This provision reiterates the provision of section 35(2) of the Constitution²⁶, which provides that any person who is arrested or detained shall have the right to remain silent or answering any question until after consultation with a legal practitioner or any other person of his choice. This provision as contained in section 6(2) of the ACJA 2015 is quite innovative and laudable. Before now, there was no provision in any law in Nigeria, including the constitution for that matter, where the police are mandated to inform the suspect of his rights to silence and counsel. But now, the suspect have the benefit of being

²⁶Cap C 20, Laws of the Federation of Nigeria (L.F.N) 2004

informed of the offence he has committed and the right to counsel, including free legal counsel which can assist in securing the immediate release or expeditious trial of the suspect. All these will in one way or the other reduce the present situation of prolonged detentions of suspects in police cells or even prison.

3.2.3 Provision for Humane Treatment of an Arrested Person

A distinct characteristic of the ACJA 2015 is that it tends to reiterate some fundamental constitutional provisions. One of such fundamental constitutional provision reiterated is the right to dignity of person²⁷. Section 8(1) of the Act provides that a suspect shall be accorded humane treatment, having regard to his right to the dignity of his person, and not be subjected to any form of torture, cruel, inhuman or degrading treatment. It is an open secret that the police in particular use torture as part of interrogative tactics. The reason for this is usually to elicit confessional statements from the suspects with the hope of making prosecution easier and less contentious. By this provision and together with the provisions such as that of section 29 of the Evidence Act 2011, such unacceptable practice by the police or any other law enforcement agency for that matter has no bases to continue.

3.2.4 Electronic Recording of Confessional Statement

In line with the provision against torture or the elicitation of confessional statement from such an act, the ACJA 2015 went a step further by making provision for obtaining confessional statement. By section 15(4) of the ACJA 2015, where a suspect arrested with or without a warrant, volunteers to make a confessional statement, the police officer shall

²⁷ Section 34 (1) of the Constitution of the Federal Republic of Nigeria, Cap C20 L.F.N, 2004, provides that every individual is entitled to respect for the dignity of his person and accordingly, (a) no person shall be subjected to torture or to inhuman and degrading treatment.

ensure that the making and taking of the statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such other audio visual means. It must be noted that subsection (5) of the said section 15 further provides that notwithstanding the provision of subsection (4), an oral confession of arrested suspect shall be admissible in evidence. The purpose for this electronic recording of confessional statement of a suspect is not only just to ensure that the police do not use torture to extract confessional statements, but also that the statement in the first place was voluntary or at least not obtained through other involuntary means.

3.2.5 Recording of statement of suspect

Similar to the stipulation by the ACJA 2015 on the obtaining of confessional statements, section 17 of the Act also stipulates that statement of suspect must be taken. The Act provides that where a suspect is arrested on allegation of having committed an offence, his statement shall be taken. Such a statement may be taken in the presence of a legal practitioner of his choice. Where he has no legal practitioner of his choice, it may be taken in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organization or a Justice of the Peace or any other person of his choice. Provided that the Legal Practitioner or any other person mentioned does not interfere while the suspect is making his statement. It is very interesting to note here that the persons listed before whom a suspect is to make his statement must be people of his/her choice. The statement of the suspect here could actually be that he did not commit the crime, or that he has been falsely accused. It does not matter whether the statement is palatable to the police or not. What matters is that the statement is taken in the presence of some other person other than the police. This is quite innovative and creative of the Act. All these are some of

the ways the Act had tried to entrench the spirit of due process and accountability. It at least helps check a system or practice where the police could easily manipulate such statement unfairly.

3.2.6 Prohibition of Arrest in Lieu

A very distinct but ugly characteristic of the criminal investigation system in Nigeria is the situation where law enforcement agencies are of the habit of arresting relatives or close associates of suspects in lieu of the suspects. This usually occurs when such law enforcement agency have challenges in apprehending the suspect. The goal is usually to compel the suspect to give up himself. Sadly though, the person arrested in lieu is in most cases, if not in all cases, usually not linked in any way to the crime the suspect is being accused of. The ACJA 2015, in showing innovation clearly prohibits such ugly practice. Section 7 of the Act provides that “A person shall not be arrested in place of a suspect.”²⁸

3.2.7 Prohibition of Arrest in Civil Cases

Section 8 (2) of the ACJA 2015 is a very proactive provision that seeks to address another ugly occurrence in the criminal justice system. In Nigeria, it is not uncommon to find people engage the police wrongly for civil matters. These matters could range from breach of contract to landlord tenant disagreements. Surprisingly, the police are also notorious for following up such matters as if they were criminal. This sometimes happens when for instance a party that have failed to meet an obligation in say a contractual agreement is taken to the police. This is done to “teach him/her a lesson” in order to pay up. This provision is quite a laudable one. It checks arbitrary arrest of persons. The section clearly

²⁸ Section 4, Administration of Criminal Justice (Repeal and Re-enactment) Law of Lagos State, 2011, also provides that no person shall be arrested in lieu of any other person.

provides that “a suspect shall not be arrested merely on a civil wrong or breach of contract.”

3.2.8 Mandatory Inventory of Property of Arrested Person

In the spirit of accountability, transparency, and due process, the ACJA 2015 introduced new requirements to be complied with by a police officer making an arrest. By section 10 of the Act, a police officer making an arrest or to whom a private person hands over a suspect, is compelled to take an inventory of all items or properties recovered from the suspect. Such an inventory is to be signed by the police officer and the suspect. Although if for whatever reason the suspect refuses to sign, it will not invalidate the inventory taken. This provision mandates that a copy of the inventory so made must be given to the suspect, his legal practitioner, or such other person as the suspect may direct. The police is permitted however to release such property upon request by either the owner of the property or parties having interest in the property pending the arraignment of the suspect before a Court. In a situation where a police officer refuses to release the property to the owner or any person having interest in the property, such police officer is to make a report to the court of the fact of the property taken from the arrested suspect and the particulars of the property. At this stage, it will be for the court to decide whether to release the property or any portion of it in the interest of justice to the owner or person having interest in the property. The section further provides that where any property has been taken from a suspect, and the suspect is not charged before a court but is released on the ground that there is no sufficient reason to believe that he has committed an offence, any property taken from the suspect shall be returned to him, provided the property is neither connected to nor a proceed of crime.

The above provision is laudable. It is obvious that the provision tries to address cases where police officers take properties from suspects and such properties are misplaced, converted or unaccounted for. Such a provision also puts a check on the police so that the recovered items are kept safe and the suspect can afterwards recover all his properties. Furthermore, this provision ensures that items which may be used as exhibits are not only just recovered and properly recorded, but that such is done at the time and place of arrest.

3.2.9 Mandatory Record of Personal Data of an Arrested Person

Here is another new innovation in the ACJA 2015. By section 15(1), the said Act, a police officer making arrest is compelled to immediately take records of the suspect arrested. Such record is to include the alleged offence(s), the date and circumstances of arrest, full name, occupation and residential address. Also for the purpose of identification, the height, photograph, full fingerprint impression or such other means of the arrestee's identification must also be taken.

In order to prevent a situation of prolong pre-trial detention under any guise, especially of recording the personal data of the arrested person, subsection 2 of the above provision provides that the recording is to be concluded within a reasonable time but not exceeding 48 hours. A very interesting point to note in this provision like other provisions in the ACJA 2015 is that it is responsive to the fact that there are other agencies with law enforcement powers besides the police. Besides the police, other law enforcement agencies such as the Economic and Financial Crimes Commission (EFCC), National Drug Law Enforcement agency (NDLEA) and a host of others are all bound by these various provisions.

3.2.10 Establishment of a Police Central Criminal Registry

In 2003, in the case of *Agbi v. Ibori*²⁹, a very ugly scenario played out. In this case, Chief James Onanefe Ibori, (the then Governor of Delta State) who was a gubernatorial candidate for the 2003 election, had his qualification to so stand in the said election challenged. The bases for this challenge by the plaintiff are based on the allegation that having been an ex-convict, he lacked the legal bases to contest in the election. The action did not succeed at the High Court of the Federal Capital Territory, Abuja. On appeal to the Court of Appeal, the Court in a unanimous judgment allowed the appeal and set aside the judgment of the High Court and ordered that the case be heard afresh by another Judge of the High Court. At the new hearing before the High Court of the Federal Capital Territory, one of the main issue was whether the record of proceedings of Bwari Upper Area Court in case N0. CK 81-95 (Exhibit A) wherein one James Onanfe Ibori was convicted was sufficient to act against the defendant, as an ex-convict. During the trial, the Area Court Judge came to court and testified that James Onanfe Ibori was an ex-convict, while James Onanfe Ibori however, contented that Exhibit A did not conform to section 157 (1) of the Criminal Procedure Code. Although the court gave judgment in favour of James Onanfe Ibori and the matter was dismissed, this case highlighted the importance of proper verifiable record keeping.

With the innovations brought by the ACJA 2015, cases like this would no longer pose a major problem because there would be sufficient information on all convicted persons which would make it easy to identify them in subsequent proceedings or dispute regarding

²⁹ (2004) All FWLR (PT.202) 1799

the identity of someone of interest as it regards any criminal case. Section 16 of the ACJA 2015 provides for the establishment at the Nigeria Police Force, a Central Criminal Records Registry as well as a Criminal Records Registry at every state police command. The said record at the state command is to be kept and transmitted to the Central Criminal Records Registry. Similarly, the Chief Registrar of the courts is to transmit the decision of the court in all criminal trials to the Central Criminal Records Registry within thirty-days after delivery of judgment. There is no doubt that such Central Criminal Record Registry will ensure proper and well documentation of all arrests and judgments which will in turn prevent a repeated occurrence of what happened in the case of *Agbi v. Ibori*³⁰. Furthermore, such recordings and returns to the Registry acts like a tool for checking arbitrary arrests or even detentions. Also minimised in this type of arrangement will be cases where people, apart from being arbitrarily arrested, are detained without any one being held responsible to give adequate account. It should be noted however that though the Act did not specifically provide for it in the above stated section 16, it would be appropriate if such records were computerized and maintained in a database that can be accessible by stakeholders in the criminal justice system.

3.2.11 Establishment of Administration of Criminal Justice Monitoring Committee

The provisions of Section 469 of the ACJA 2015 have established a committee known as the Administration of Criminal Justice Monitoring Committee (the Committee). This Committee is comprised of nine members with the Chief Judge of the FCT as the Chairman. By the provisions of Section 470 of the Act, the Committee has the responsibility of ensuring effective and efficient application of the Act by relevant

³⁰ibid

agencies. The Committee is to ensure that criminal matters are speedily dealt with and that congestion of criminal cases in courts is drastically reduced. Similarly, the Committee is also to ensure that congestion in prisons is reduced to the barest minimum, while persons awaiting trial are, as far as possible, not detained in prison custody. The Act also went a step further to establish a secretariat (Section 471) and a fund (Section 472) for the Committee, while also providing for proceedings and quorum of the Committee (Section 476).

By virtue of this arrangement, the Act will be the first legislation in the Nigerian administration of criminal justice framework to have established a body solely charged with the responsibility of ensuring effective application of the Act. Such innovative provision is quite remarkable.

3.2.12 Quarterly Report of arrests to the Attorney-General of the Federation

By section 29 of the ACJA 2015, the Inspector General Police and heads of every agency authorized by law to make arrest shall remit quarterly to the Attorney-General of the Federation a record of all arrests made in relation to federal offences or arrests within Nigeria. It is important to note that this provision does not just make reference to the Inspector General of Police alone, but also to heads of every agency authorized by law to make arrest. This therefore would include agencies such as, but not limited to the Economic and Financial Crimes Commission, (EFCC), the Independent Corrupt Practices Commission (ICPC), the National Drug Law Enforcement Agency (NDLEA), the Nigerian Customs Service, and the National Food and Drug Administration and Control (NAFDAC).

Furthermore, by subsection (1) of section 29 of the Act, the Commissioner of Police in a State and head of every agency authorized by law to make arrest within a State are compelled to remit to the office of the Attorney-General of that State, a record of all arrests. The record in question is to contain the full particulars of the person arrested as prescribed in Section 15 of the Act. By section 29(5), the Attorney-General of the Federation shall establish an electronic and manual database of all records of arrests at the Federal and State level. The fact that such database is to be electronic shows that the Act is forward looking. This means that information contained therein can easily be accessed when the need arises by relevant stakeholders.

3.2.13 Monthly report by Police to supervising magistrate

Section 33(1) of the ACJA 2015 provides that an officer in charge of a police station or an official in charge of an agency authorized to make arrest shall on the last working day of every month report to the nearest Magistrate the cases of all suspects arrested without warrant within the limits of their respective stations or agency whether the suspects have been admitted to bail or not. Again, the Act takes cognizance of the fact that there are other officials or agencies authorized to make arrests. It also fixes a time limit for the report to be “on the last working day of every month”. The report in question is to contain the particulars of the persons as prescribed in section 15 of the Act. The Magistrate shall on receipt of the reports, forward them to the Criminal Justice Monitoring Committee, which shall analyze the reports and advice the Attorney-General of the Federation as to the trends of arrests, bail and related matters. These provisions serve as a form of check and balance on the activities of law enforcement agencies like the police. In addition to this, the Chief Magistrate or where there is no Chief Magistrate within the police division, any magistrate

designated by the Chief Judge for that purpose, shall conduct monthly, an inspection of police stations and other places of detention within his territorial jurisdiction (Section 34 of the Act). During such visit, the magistrate may call for and inspect the record of arrests, direct the arraignment of the suspect, and where bail has been refused, grant bail to any suspect where appropriate. This checkmates the unnecessary incarceration of suspects in police custody and puts such officers in charge of such a place on their toes to ensure due process at all times.

3.2.14 Returns by Comptroller-General of Prisons

Section 111 of the ACJA 2015 provides that the Comptroller-General of Prisons shall make return every ninety days to the Chief Judge of the Federal High Court, Chief Judge of the Federal Capital Territory, the Chief Judge of the State in which the prison is situated and to the Attorney-General of the Federation of all persons awaiting trial held in custody in Nigerian Prisons for a period beyond one hundred and eighty days from the date of arraignment. Upon receipt of such return, the recipient shall take such steps as are necessary to address the issues raised in the return in furtherance of the objectives of the Act (Subsection 3). It is very interesting in that again, the Act tends to commit relevant stakeholders in the criminal justice administrative system to one form of responsibility or the other. All these again help in the promotion of an effective justice delivery system for Nigeria.

3.2.15 Provisions on Bail

The ACJA 2015 makes elaborate provisions on the rights of an arrested person to be admitted on bail. For example, by section 30(1) of the Act, where a suspect is arrested

without a warrant for an offence other than a capital offence, the officer in charge of a police station, where it is impracticable to bring the suspect before a court of competent jurisdiction, shall release the suspect on bail within 24 hours after the arrest. The Bail is to be granted upon the suspect's entering a recognisance with or without sureties for a reasonable amount of money to appear before the court or at the police station at the time and place named in the recognisance. This provision is innovative as it helps guarantees the rights of suspects to personal liberty and will reduce the congestion at police cells which has become a normal practice in Nigeria. This is particularly true because while the rich and mighty could easily get their way out of such custody, the poor always will remain languishing in such police cells.

However, by Section 30(3) of the Act, where the offence is a capital offence, the suspect shall be detained in custody, and the police officer may refer the matter to the Attorney-General of the Federation for legal advice and cause the suspect to be taken before a court having jurisdiction within a reasonable time. Section 494 of the Act defines "Reasonable time" here to have the same meaning as defined in Section 35(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Section 31(1) of the Act allows the police officer in charge to release the suspect on same bail terms as above if it appears to the officer that the inquiry into the case cannot be completed forthwith. The fact that this provision does not distinguish between capital offences and non-capital offences means that the provision applies to both types of offences. Section 32 of the Act went a step further to provide for remedy for a suspect detained in custody and refused bail pending investigation. The Act provides that by application made on behalf of the suspect, a court

having jurisdiction can admit the suspect on bail after inquiries made into the circumstances constituting the grounds for detention.

Notwithstanding all the above stated, where a person is charged with a capital offence, such a person can only be admitted to bail by a High Court Judge under exceptional circumstances. Specifically, section 161 of the Act list these circumstances to include ill health of the applicant, extraordinary delay in the investigation, arraignment and prosecution for a period exceeding one year, or any other circumstances that the Judge may, in the particular facts of the case, consider exceptional. The Act still went further in section 162 to provide that as a defendant charged with an offence punishable with imprisonment for a term exceeding three years shall on application to the court, be released on bail except in certain circumstances. These exceptional circumstances include where there is reasonable ground to believe that the defendant will, where released on bail, commit another offence, attempt to evade his trial or attempt to influence, interfere with, intimidate witnesses, and or interfere in the investigation of the case. Others include attempt to conceal or destroy evidence, prejudice the proper investigation of the offence, or undermine or jeopardize the objectives or the purpose or the functioning of the criminal justice administration, including the bail system. It has been posited that these provisions of the Act regarding conditions for grant of bail in capital offences are clearer and more detailed.³¹

³¹Ani, C.C. op. Citpp 75-76

3.2.16 Provision as to Persons Authorised to Undertake Criminal Proceedings

In the case of *Federal Republic of Nigeria v. Osahon*³², the Supreme Court reaffirmed the powers of the police to prosecute cases in any court whether qualified as a legal practitioner or not. Such unqualified persons find it difficult to respond to question raised by defence counsels during trial. Apart from this resulting in prolonged criminal trials, it also leads to cases where criminal go free as a result of one legal technicality or the other. However, by section 106 of the ACJA 2015, the prosecution of all case in any court is to be undertaken by the Attorney-General of the Federation or a Law Officer in his Ministry or Department, a legal practitioner authorised by the Attorney- General of the Federation and a legal practitioner authorized to prosecute by this Act or any other Act of the National Assembly.

The provision is novel as it tries to ensure that in any way, only qualified legal practitioners can prosecute criminal cases in any court. Furthermore, by section 110 of the Act, charge sheets used to institute criminal proceedings in a Magistrates' Court is now to be signed by any of the persons mentioned above and none other. By necessary implication, these provisions override the provision in Section 23 of the Police Act³³ as it relates to courts to which the ACJA 2015 applies. By the provision of the said section 23 of the Police Act, Police are empowered to prosecute cases in any court in Nigeria. Similarly, the decision of the Supreme Court in the case of *Federal Republic of Nigeria v.*

³²(2006) 5 NWLR (PT. 973) 361

³³ CAP P19, LFN 2004

Osahon³⁴ is no longer good law as it relates to courts to which the ACJA 2015 applies, including but not limited to the Federal High Court.

3.2.17 Plea Bargain

By Section 270 of the ACJA 2015, the prosecutor can both offer and accept a plea bargain from a defendant. A plea bargain can be entered into during or after the presentation of the evidence of the prosecution, but before the evidence of the defence³⁵. Plea bargain is an arrangement or compromise reached in a criminal case where the suspect pleads guilty to a charge or a lesser charge against him or her. The goal of such compromise is that in exchange, the prosecutor may decide to drop the charge, reduce it, or recommend that the trial judge enter a sentence that is acceptable to both parties. It has been posited that besides other numerous advantages of plea bargain, it provides a release valve for congestion of the criminal justice system and also creates avenue for the prosecution to manage their case load³⁶. Section 14(2) of the Economic and financial Crimes Commission (EFCC) Act, 2004 formed the bases for the use of plea bargain by the EFCC. The said section provides that subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria 1999 (which relates to the power of the Attorney-General of the Federation to institute, continue, takeover or discontinue criminal proceedings against any person in any court of law), the Commission may compound any offence punishable under the said Act by accepting such sums of money as it thinks fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence.

³⁴supra

³⁵ Section 270 (2), ACJA 2015

³⁶Ani, C.C. op. Cit p. 78

There has been much debate about plea bargain because some people see it as an arrangement that benefits the rich, powerful and influential. Indeed a number of influential Nigerians have benefited from plea bargain, especially when charged with corruption and financial crimes. In 2005, in the trial of former Inspector-General of Police Mr. Tafa Balogun, he conceded to plead guilty to an amended eight-count charge of corruption and embezzlement of public funds to the tune of 10 billion naira. Consequently, he gave up most of the funds and got just six months for an offence that attracted a maximum of five-year jail term. Similarly, a former Governor of Bayelsa State (Alamieyeseigha) was sentenced to 12 years in prison on a six -count charge that bothered on corruption and other economic offenses. He was sentenced two years on each count but all sentences ran concurrently. In accordance with the Criminal Procedure, the sentences ran from the day he was arrested and detained. Also, in October 8, 2010, the Economic and financial Crimes Commission (EFCC) charged the Former Chief Executive Officer of Oceanic Bank International Nigeria PLC, Mrs. Cecilia Ibru with a twenty-five count criminal information bothering on financial crimes. She entered into a plea bargain with the prosecution and pleaded guilty to a lesser three-count charge. She was subsequently convicted on the three-count charge and ordered to forfeit her assets amounting to about N191billion. She was sentenced to six months on each of the three counts that are to run concurrently.

Perhaps sensitive to the concern of some members of the public that plea bargain may be abused, the ACJA 2015 sought of provided some guidelines to prevent its abuse. By section 270(2) of the Act, the prosecutor can offer or accept a plea bargain when such is in the interest of justice, in public interest, with regard to public policy and the need to prevent abuse of the legal process. By section 270(4), the prosecutor must also consult the

police officer responsible for the case and the victim or his representative. Section 270(4) (b) further provided that in determining whether it is in the public interest to enter into a plea bargain, the prosecution shall weigh all relevant factors, including the defendant's willingness to cooperate in the investigation or prosecution of others, the defendant's history with respect to criminal activity and the defendant's remorse or contrition and his willingness to assume responsibility for his conduct. Other relevant factors include the desirability of prompt and certain disposition of the case, the likelihood of obtaining a conviction at trial, the probable effect on witnesses, the probable sentence or other consequences if the defendant is convicted, the need to avoid delay in the disposition of other pending cases, and the expense of trial and appeal. The defendant's willingness to make restitution or pay compensation to the victim where appropriate is also to be weighed in as well.

The presiding judge or magistrate before whom the criminal proceedings is been held cannot participate in the plea bargain arrangements³⁷. After the agreement has been reached, the prosecutor shall inform the court of the agreement. The court shall then confirm from the defendant the correctness of the agreement, whether the defendant admits the allegations in the charge to which he has pleaded guilty, and whether he entered into the agreement voluntarily and without undue influence³⁸. If in the opinion of the Court the defendant cannot be convicted of the offence in respect of which the agreement was reached and to which the defendant has pleaded guilty or that the agreement is in conflict with the defendant's right, the Court shall record a plea of not guilty in respect of such

³⁷Section 270 (7), ACJA 2015

³⁸ Ibid, at Section 270 (8) and (9)

charge and order that the trial proceed³⁹. If however, the Court is satisfied that the defendant is guilty of the offence to which he has pleaded guilty, the Court shall convict the defendant on his plea of guilty.⁴⁰ However, the presiding Judge or Magistrate is required to make an order that any money, asset or property subject to forfeiture under the plea bargain be transferred to and vest in the victim or his representative or any other appropriate person⁴¹. This aspect of restitution to the victim is very both interesting and innovative. The Act went further in section 270 (12) and (13) to place on the prosecutor the responsibility of ensuring that the above is complied with, and makes it an offence punishable with imprisonment of 7 years without an option of fine for any person to wilfully and without just cause impede or obstruct such transfer.

In convicting, the Court is to consider the agreed sentence, and may impose that sentence if it deems the sentence appropriate, or impose a lesser or heavier sentence⁴². Where however the Court chooses to impose a heavier sentence than that agreed, the defendant has the right to either abide by the plea of guilty in the agreement and agree to the heavier sentence, or to withdraw from the plea agreement. In which case, the trial shall commence *de novo* (i.e. all over again) before another Judge or Magistrate⁴³. Where the trial commences *de novo* before another Judge or Magistrate, the plea agreement earlier on reached or any admission made in it shall not be admissible in evidence⁴⁴.

In all, it is safe to say that the Act had introduced some innovative provision that will not only enhance the practice of plea bargain, but prevent its abuse. All provisions in the Act

³⁹Ibid, at Section 270(9) (b)

⁴⁰ Ibid, at Section 270(9) (a)

⁴¹ Ibid, at Section 270 (11)

⁴²Ibid at Section 270 (10)

⁴³Ibid at Section 270 (14)

⁴⁴Ibid at Section 270 (15)

as regards this subject matter is focused in the interest of justice, public interest, with regard to public policy and the need to prevent abuse of the legal process.

3.2.18 Provision for Professional Bondsmen

The ACJA 2015 in section 187 makes provisions for professional Bondsmen in the criminal justice administrative system in Nigeria. It provides for the registration and use of Bondsmen and gives the Chief Judge powers to make regulations in developing the details of the best practices in use of Bondsmen. The Chief Judge may withdraw the registration of a bondsperson who contravenes the terms of his licence. By section 187(5) of the Act, a bondsperson 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. A bondsperson can arrest a defendant or suspect who is absconding or who he believes is trying to evade or avoid appearance in court⁴⁵. The bondsperson is to immediately hand over such defendant or suspect to the nearest police station⁴⁶. The defendant arrested shall be taken to the appropriate court within twelve hours⁴⁷.

3.2.19 Electronic Record of proceedings

The provision of legislation entrenching the practice for court proceedings to be recorded electronically is also one very important area of innovation brought by the ACJA 2015. This aids in speedy dispensation of justice. Section 364 of the Act provides that Court proceedings may be recorded electronically and verbatim such that at the end of each day's

⁴⁵Section 188 of ACJA 2015

⁴⁶ibid

⁴⁷ibid

proceeding, a transcript of such recording shall be printed to enable certification or authentication by the judge or magistrate who conducted the proceedings. This will really enhance speedy criminal trials because the use of long hand by judges to record proceedings is a big minus for speedy dispensation of justice. Sadly though, this remains largely the situation in most courts. Even the Act in the said section provided that “Court proceedings may”. It becomes an option not a must. Although the fact that such provision exists, what may be required is to educate the judges and employ specialist to operate such devices during court proceedings. Furthermore, section 362 of the Act provides that in certain exceptional circumstances, where the evidence of a technical, professional or expert witness would not ordinarily be contentious as to require cross-examination, the court may grant leave for the evidence to be taken in writing or by electronic recording device, on oath or affirmation of the witness, and the deposition shall form part of the record of the court. Again, here we see the Act allowing the use of electronic device that makes taking down such evidence not only easy and timely, but also easily retrievable when needed.

3.2.20 Service of court processes by courier companies

By section 392 of the ACJA 2015, the Chief Judge may engage the services of a reputable courier company for the purpose of undertaking service of criminal processes. The implication here is that in addition to court bailiffs, service of court processes can also be handled by professionals for efficient delivery of service. This is another innovative provision of the Act.

3.2.21 Provision Relating to Trial of Corporation

Corporations are legal entities that can sue or be sued and found liable for a plethora of offences. For this reason, the ACJA 2015 makes provisions for the trial of a corporation and with its representative appearing on its behalf. By section 478 of the Act, a corporation can take its plea to a criminal charge or information either orally or in writing through its representative.

If however, the corporation does not appear or if it appears, fails to enter any plea, the court shall order a plea of not guilty to be entered and the trial shall proceed accordingly. However, there are requirement in the Act where it is provided that certain things must be done in the presence of the defendant, or shall be read or said or explained to the defendant. By Section 482 of the Act, as it relates to a corporation, it shall be construed as a requirement that that thing shall be done in the presence of the representative or read or said or explained to the representative of such corporation. Section 481 of the Act provides for powers of a representative to include determining on behalf of the corporation, whether the corporation is ready to be tried on a charge or information, or altered charge or information to which the corporation has been called on to plead. The said representative can also consent to the hearing and determination of a complaint before the return date of a summons, express assent to the trial of the corporation on information, notwithstanding that a copy of the information and notice of trial have not been served on (the corporation three days or more before the date on which the corporation is to be tried. Similarly, Section 484 of the Act expressly provides for application of the provisions of the Act to a corporation as they apply to an adult. The same section also expressly provides that a corporation may be charged jointly and tried with an individual for any offence.

3.2.22 Provision as It Relates To Women Sureties

There is a practice in Nigeria where women are denied the right to stand as sureties for the purpose of entering into recognizance for bail. This discriminatory practice received the attention of the ACJA 2015. The Act provided in section 167 (3) that no person shall be denied, prevented or restricted from entering into any recognizance or standing as surety for any defendant or applicant on the ground only that the person is a woman. Even Section 118 of the Administration of Criminal Justice Law Lagos State, 2007 addressed this issue in the same words as the Act. The researcher believes that the practice in the first place had no legal bases and if challenged, would probably have been declared void and unknown to law, especially in view of the fundamental rights provisions in the 1999 constitution of Nigeria and indeed other legal instruments such as the Convention on the Elimination of Discrimination Against Women (CEDAW). Notwithstanding, it is good to point out that the Act in its innovative nature had identified a negative practice and had expressly abolished same, whether or not such practice had any legal bases.

3.2.23 Provision for Compensation to victims of crime

Before now, victims of crimes are usually left without any form of compensation. This is even still the case after the offender has been found guilty and sentenced. Section 319(1) of the ACJA 2015 has addressed this ugly trend by providing that the court may order the defendant or convict to pay a sum of money as 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 or convict, where substantial compensation is in the opinion of the court recoverable by civil suit. The Act has therefore broadened the powers of the court

to award costs, compensation and damages in deserving cases, especially to victims of crime. In doing this, the Act has actually adopted and improved on provisions such as sections 365-366 of the CPC and section 255 of the CPA.

3.2.24 Provision Relating to Sentencing

The ACJA 2015 made some very interesting reforms in the area of sentencing. By the combined effect of Sections 311(2), 401(2), and 416(2) of the Act, certain factors are to be considered by the court in this regard. These factors include prevention (that is, the objective of persuading the convict to give up committing offence in the future, because the consequences of crime is unpleasant), restraint (that is, the objective of keeping the convict from committing more offence by isolating him from society), and rehabilitation (that is, the objective of providing the convict with treatment or training that will make him into a reformed citizen). Other relevant factors include deterrence (that is, the objective of warning others not to commit offence by making an example of the convict), interest of the victim, convict and community. Similarly, public education, retribution (that is, the objective of giving the convict the punishment he deserves, and giving the society or the victim revenge), restitution (compensating the victim), the convict's antecedents, the period spent in prison custody awaiting or undergoing trial, etc. are also important considering factors as well.

The forms of punishment under the Act include death (Sections 401-415). In making provisions for the death sentence, the Act differed from other kindred legislations in that it has provided for the use of the lethal injection. The sentence of death in the Act has this form; "The sentence of the court upon you is that you be hanged by the neck until you are dead or by lethal injection". Imprisonment (Sections 416-437), is also another form of

punishment under the Act. The Act provides that a defendant may not be given consecutive sentences for two or more offences committed in the same transaction. It appears this provision is more restorative than retributive in nature and as such, very much commendable. For consecutive sentencing by the Magistrates' Court, the Act provides that where two or more sentences passed by a Magistrate Court are ordered to run consecutively, the aggregate term of imprisonment shall not exceed four years of the limit of jurisdiction of the adjudicating Magistrate.

The Act has also introduced some innovative alternatives to the usual imprisonment as the only means of sentencing a convict in order to address the problem of imprisonment excessively used as a disposable method. In exercising its power the court is to have regard to the need to reduce congestion in prisons, rehabilitate prisoners by making them to undertake productive work, and prevent convicts who commit simple offences from mixing with hardened criminals. These alternatives to imprisonment includes fines and compensation (Sections 319-328), deportation (Sections 439-451), probation (Sections 453-459), community service (Sections 460-466), and confinement in rehabilitation and correctional centres (Section 467).

Furthermore, The Act also differs from other kindred legislations on sentencing in the cases of a pregnant woman. By sections 368 (2) of the Criminal Procedure Act, 270 and 271(3) of the Criminal Procedure Code, and 302 (2) of the Administration of Criminal Justice (Repeal and Re-enactment) Law of Lagos State, 2011, when a woman found guilty of a capital offence is ascertained pregnant, the sentence of death shall not be passed on her but shall be substituted with sentence to imprisonment for life. However, Section 404 of the ACJA 2015 provides that “where a woman found guilty of a capital offence is

pregnant, the sentence of death shall be passed on her but its execution shall be suspended until the baby is delivered and weaned”. Some may argue that the trend internationally is a departure from the death penalty and that the provision sentencing a pregnant woman to death is more a digression from the internationally acceptable trend. The researcher completely disagrees with this position. Firstly, the researcher believes that the death penalty should be retained. Secondly, in so far as the death sentence remains in Nigeria’s statutes as a means of punishing criminals, then a woman who takes the life of another for example, has no right to life just because she is nursing a child. In any case, the Act provides that the sentence is not to be carried out until after the child is born and weaned. It must be born in mind that restorative justice is not the underlying principle of the ACJA 2015. Retributive justice is as much an important underlying principle of the Act.

3.2.25 Some Speedy Trials Enhancing Provisions

The ACJA 2015 made some very interesting and innovative provisions that are clearly targeted at ensuring speedy trials that are not found in the CPA or CPC. For example, Section 382(1) of the Act provides that where an information has been filed in the court, the Chief Judge shall take appropriate steps to ensure that the information filed is assigned to a court for trial within fifteen working days of its filing. Section 382(2) of the Act further provides that on assigning the information, the court to which the information is assigned shall within ten working days of the assignment issue notice of trial to the witnesses and defendants and a reproduction warrant properly endorsed by the Judge in respect of the defendant charged, where he is in custody, for the purpose of ensuring his appearance on the date of arraignment. The Chief Registrar by this section is also

compelled to ensure the prompt service of the notice and information not more than three days from the date they are issued.

By putting timing to it, the Act had ensured that stake holders (in this case the Chief Judge, the judge the case was assigned to and the Chief Registrar) do not just perform a particular duty, but do so within a stated period. Such compliance to timing at the end of the day will ensure speedy criminal trials and an effective criminal justice administrative system. Similarly, section 376 of the Act provides for the time limit for the issuance of legal advice by the Attorney-General of the Federation in cases where an offence for which the Magistrate court has no jurisdiction to try is preferred against a defendant. The Attorney-General of the Federation shall, within fourteen days of receipt of the police case file, issue and serve his legal advice indicating whether or not there is a prima facie case against the defendant for which he can be prosecuted. In a related context, by section 349(7) of the Act, a legal practitioner other than a law officer, engaged in any matter shall be bound to conduct the case on behalf of the prosecution or defendant until final judgment. Such a legal practitioner is allowed by the court or upon application by the legal practitioner for special reason to cease from acting. However, a legal practitioner intending to disengage from a matter, shall notify the Court, not less than three days before the date fixed for hearing and such notice shall be served on the Court and all parties⁴⁸.

Furthermore, section 396(3) of the Act makes a very important provision not found in either the CPA or CPC also. The said section provides that upon arraignment the trial of the defendant shall proceed from day-to-day until the conclusion of the trial. There is no doubt that this provision ensures that criminal trials are to be expeditiously dealt with in

⁴⁸Section 349 (8) of the ACJA 2015

line with the spirit and intent of the constitution. Where however, day-to-day trial is impracticable after arraignment, no party shall be entitled to more than five adjournments from arraignment to final judgment, provided always that the interval between each adjournment shall not exceed fourteen days⁴⁹. Again, 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 weekends⁵⁰. In all circumstances, the court may award reasonable costs in order to discourage frivolous adjournments⁵¹.

Another innovation provided by the Act which shows clearly the desire to enhance speedy dispensation of justice is that as contained in section 396(7). The said section provides that 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.

This provision is meant to address the problem of trial *de novo*⁵². This provision amongst other things saves the time that would have been wasted if the trial should start *de novo* (i.e. all over again) before another High Court Judge, as a result of the elevation of the judge handling the case. It also saves the defendant the stress of being put through trial a second time. There is no similar provision such as this in both the CPC and CPA. In a similar vein, by section 306 of the Act, an application for stay of proceedings in respect of

⁴⁹Ibid at Section 396(4)

⁵⁰ Ibid, at Section 396(5)

⁵¹ Ibid, at Section 396(6)

⁵² Latin expression meaning “from the beginning”

a criminal matter before the Court shall not be entertained. This is meant to address the problem where such frivolous applications are usually employed, especially by defence attorneys to stall or frustrate criminal proceedings.

3.3 New Innovations in the Evidence Act 2011

The first evidence law in Nigeria was originally promulgated in 1943, but effective from 1945. It was known then as the Evidence Ordinance and was only sparingly amended in 1950, 1955 and 1958 when it became known as the Evidence Act. It was again slightly amended in 1977. However, in 1990, it became the Evidence Act, Cap 112, Laws of the Federation of Nigeria 1990, and again after a slight amendment, was enacted into the Evidence Act, 2004 as Cap E.14, Laws of the Federation of Nigeria 2004. In effect, this Evidence Act cap E.14 and Its provisions, remained wholly or substantially as they were originally in 1945.

Given the long clamour by interested stakeholders for a serious and if possible, complete amendment of the 2004 Act, the passage of the Evidence Act 2011 by the 6th National Assembly, in May, 2011, was a welcome development for all stakeholders in the Justice Administration sector. The date stated in the Act as the date it was signed by the President, was 22nd July 2011, hence, this date is to be regarded as its commencement date. By Section 257, of this Evidence Act 2011, it repealed the old law, i.e. the Evidence Act, 2004 Cap. E14, Laws of the Federation of Nigeria, 2004.

An examination of the Evidence Act, 2011 in relation to the Evidence Act Cap E.14, Laws of the Federation of Nigeria 2004, shows that the 2011 Act is a considerable improvement on the repealed 2004 Evidence Act. It contains a number of improvements and innovative

provisions. These innovative provisions as contained in the Evidence Act, 2011 in the researcher's opinion can be said to have fallen in to two categories. The first category is that of total and completely new provisions not contained in the repealed Evidence Act at all, and the second category is that of modifications, or expansions, or what can be referred to as adaptations of provisions contained in the repealed Act. These innovative provisions falling under both categories are now to be discussed below.

3.3.1 Hearsay Evidence and Exceptions.

This is one area where the law was improved upon by the 2011 Act. Unlike the old Act, hearsay is now specifically defined and made inadmissible in accordance with established legal principles⁵³. The 2004 repealed Evidence Act did not contain any specific or explicit provision on the inadmissibility of hearsay evidence in judicial proceedings or even a reference to the term "hearsay evidence".⁵⁴ However, the Evidence Act, 2011 contains two substantive provisions dealing specifically with hearsay evidence⁵⁵. The first is section 37 of the Evidence Act, 2011 that provides that "hearsay" means a statement, oral or written made otherwise than by a witness in a proceeding, or contained or recorded in a book, document or any record whatever, proof of which is not admissible under any provision of the Act, which is tendered in evidence for the purpose of proving the truth of the matter stated in it.

⁵³Hon. Justice Akinyemi, A. "The Evidence Act 2011: An Appraisal", being a paper presented at the Ogun State Bar And Bench Forum, on Thursday, 11th July, 2013 at the June 12 Cultural Centre, Abeokuta

⁵⁴Adangor, Z. "What is Innovative in the Evidence Act, 2011?", *Journal of Law, Policy and Globalization*, Vol.43, 2015. p. 37

⁵⁵ibid

According to Adangor⁵⁶, the above definition which is a reproduction of Article 14 in Sir James F. Stephen's Digest of the Law of Evidence has been widely adopted in law case on hearsay evidence⁵⁷. This is a codification of the general rule of exclusion of hearsay evidence. "Section 37 of the 2011 Act was specifically applied and interpreted by the Court of Appeal in *Uweh v. State* (2012) Lpelr-19996(CA), and *Magaji v. Ogele* (2012) Lpelr-9476(CA)."⁵⁸

The second is section 38 of the Evidence Act 2011 that provides that "hearsay evidence is not admissible except as provided in this Part or by or under any other provision of this or any other Act." A literal interpretation of this provision means that the admissibility of hearsay evidence is permissible either under the Act itself or by virtue of the provisions of any other Act of the National Assembly. This is obviously a departure from the repealed Evidence Act because the exclusion of hearsay evidence was never expressly stated in that Act. It was rather merely inferred from the combined provisions of sections 77 and 91 of that Act⁵⁹.

The codification of the rule of exclusion of hearsay evidence as provided for in Section 37 and the express provision in Section 38 as well, that hearsay evidence may be admitted in evidence in judicial proceedings under certain circumstances specified either in the Act or in any other Act made by the National Assembly have both provided undisputed measure of certainty into our law on the subject-matter. This makes further references or citation of

⁵⁶ibid

⁵⁷*Ojiako v. State* [1991] 2 NWLR (Pt.175) 578 at 584; *Ajiboye v. State* [1994]8 NWLR (Pt.364) 587 at 600, *Utteh v. State* [1992] 2 NWLR (Pt.223) 257 at 272-283; *Onuoha v. State* [1995] 3 NWLR (Pt.383) 591 at 598.

⁵⁸ Hon. Justice Akinyemi, A. op.cit p. 16

⁵⁹*Ogbonna v. Ogbuji* [2014] 6 N. W. L. R. (Pt. 1403) 205 at 231.

cases on the general rule of inadmissibility of hearsay evidence in case law absolutely unnecessary.

Interestingly, the Evidence Act 2011 actually retained all the exceptions to hearsay as contained in sections 33 to 37 of the old Act, which can now be found in Sections 39 to 54 of the new Act, but in appropriate cases, with little but very meaningful modifications. An example is section 33(1) of the repealed Evidence Act on dying declaration. A dying declaration is a statement made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death. This was rendered relevant and admissible only in trials for murder or manslaughter of the deceased person and only when such person at the time of making such declaration believed himself to be in danger of approaching death although he may have entertained at the time of making it hopes of recovery. The implication of this provision is that a dying declaration was inadmissible in all judicial proceedings except those involving murder and manslaughter. However, by section 40(2) of the Evidence Act, 2011, this has now been modified by relaxing the restriction when it provides that a dying declaration “shall be admissible whatever may be the nature of the proceeding in which the cause of death comes into question.” As it stands now, evidence of a dying declaration is admissible in all judicial proceedings civil or criminal, where the cause of death of the maker is a fact in issue and irrespective of whether the proceeding involves murder or manslaughter.

Furthermore, section 39 of the Evidence Act 2011 is worthy of some explanation because of the innovation it has also added to the whole mix. Section 33 of the repealed Act limited the admissibility of statements made by persons who cannot be called as witnesses only to dead persons. However, unlike the repealed Act, by virtue of section 39 of the Evidence

Act 2011, the scope has now been widened to include statements, whether written or oral off acts in issue or relevant facts made by a person who is dead, who cannot be found, who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are admissible under section 40 to 50.

In criminal trials generally, delay may sometimes be occasioned by the absence of the Investigating Police Officer (I.P.O) and the inability of the prosecution to get them to court to testify in a matter. Sometimes this could happen because such I.P.O has been transferred to another station. The Evidence Act 2011 tried to salvage this situation as shown in section 39(d) above. However, the situation has not been completely dealt with squarely as the same Act provides in Section 49 thus:

Notwithstanding anything contained in this Act or any other law but subject to this section, where in the course of any criminal trial, the court is satisfied that for any sufficient reason, the attendance of the investigating police officer cannot be procured, the written and signed statement of such officer may be admitted in evidence by the court if-

- (a) the defence does not object to the statement being admitted; and
- (b) the court consents to the admission of the statement.

This Section 49(a), is a re-enactment of Section 36 of the repealed Act, and it does not do justice to section 39 or to speedy dispensation of justice. This is because a defence counsel will definitely oppose such a statement if it is injurious to his client's case and then making it necessary for the prosecution to locate such an I.P.O, hence, undoing the rational behind

section 39 as mentioned earlier, and delay the course of the criminal trial. Section 49(b) alone as stated above should have sufficed or alternatively, the word ‘and’ in between section 49(a) and 49(b) should have read ‘or’ as in; “(a) the defence does not object to the statement being admitted; **OR**(b) the court consents to the admission of the statement”.

Notwithstanding the above, the Evidence Act 2011 tried to salvage other related situations on this area of discuss. Under section 34 of the repealed Act, the only instance where the evidence of persons who could not be found, were incapable of giving evidence, kept away by the opponent, or could not be procured without much delay and expense, were admissible, was if such evidence had been given in a previous judicial proceeding or before any person authorized by law to take it. By virtue of the new section 39 quoted above, it is now possible to admit the evidence of all these categories of persons even where not given in a previous judicial proceeding or before an authorized person, provided they come within any of the situations itemized in sections 40 to 50.

Speaking of these situations itemised in the said sections 40 to 50 of the Evidence Act 2011, it is important to remember that one of the documentary exceptions to the rule against hearsay evidence in the repealed Act as contained in section 33(1) b of same is that dealing with statement made in the ordinary course of business by a person who cannot be called as a witness. In the previous provision, the admissible record in question must be ‘a book’. But by section 41 of the Evidence Act 2011, such record or entry, contained in an electronic device is also now admissible. The section provides thus;

A statement is admissible when made by a person in the ordinary course of business and in particular when it consists of any entry or memorandum made by him in books, electronic device kept in the ordinary course of business, or in the discharge of a

professional duty, or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind or of a document used in commerce written or signed by him or of the date of a letter or other document usually dated written or signed by him:

Provided that the maker made the statement contemporaneously with the transaction recorded or so soon thereafter that the court considers it likely that the transaction was at that time still fresh in his memory.

There is no doubt in the mind of the researcher that such 'electronic device' as stated in the above provision would definitely include devices such as a compact disc, a flash drive, tape and indeed any other electronic storing devices.

As it relates to the admissibility of statements against interest of maker, it is important to remember that at common law, one of the exceptions to the general rule against hearsay evidence is the admissibility of statements or declarations made against interest. By this exception, statements, oral or written of relevant facts made by deceased person are admissible between third persons when the statements are against their proprietary or pecuniary interest. The principle here is that what a man says against his interest is in all probability true or that in the ordinary course of business, a person is not likely to make a statement to his own detriment unless it is true. However, at common law, the condition for admissibility of such statement is that such statement or declaration must be prejudicial to the pecuniary or proprietary interest of the maker. It must be a statement by which the maker acknowledges that his legal right to recover certain sum of money or debt from a

named third party or that his entitlement to certain estate has ceased to exist or that he holds a lesser estate than he originally possessed⁶⁰.

In compliance with the above, in *Higham v. Ridgway*⁶¹, it was held that an entry in a deceased man's midwife book showing that his fee for midwifery services had been paid was admissible in evidence as a statement against the pecuniary interest of the maker. Similarly, in *Briggs v. Wilson*⁶², it was held that a statement made by a deceased declarant wherein he acknowledged that he was an illegitimate child was admissible as being against his pecuniary or proprietary interest. In *Alli v. Alesinloye*⁶³, the Supreme Court held that the evidence of one Ladejo Adeleke Alesinloye, a member of the respondents' family, who had testified on behalf of his family as a boundary man in a previous suit involving the appellants' family and another family to the effect that the land in dispute belonged to the appellants' family was admissible as a declaration against the proprietary interest of the respondents in the land in dispute within the meaning of section 33(1)(c) of the repealed Evidence Act. However, statements or declarations against other interest, such as penal, which could render for example, the maker liable to criminal prosecution or payment of damages in a civil action, were inadmissible. For example, in *Sussex Peerage Case*⁶⁴, a statement made by a deceased clergyman which would have exposed him to criminal prosecution if alive was held inadmissible under the rule since it did not affect his proprietary or pecuniary interest.

⁶⁰Adangor, Z. op. cit. p. 44

⁶¹(1808) 10 East 109, 119; 103 E. R. 717.

⁶²(1854) 5 DEGM & G 12; 43 ER 772.

⁶³ [2000] 6 N.W. L. R (Pt. 660) 177 at 214-5; see also *Joe Iga v. Amakiri* (1976) 11 S. C. 1 at 12-13.

⁶⁴(1844)11 C1 & F 86.

All the above stated common law rules were well captured and codified in section 33(1)(c) of the repealed Evidence Act, which provides that statements, written or verbal, of relevant facts made by a deceased person against his pecuniary or proprietary interest were admissible if the person making the statement had personal knowledge of the matter stated therein and had no interest to misrepresent it. The reasonable conclusion to draw here is that under the said repealed Evidence Act, only two forms of statement or declaration against interest were admissible. These two statements are statements against pecuniary interest and those against proprietary interest only.

However, the Evidence Act, 2011 has made a departure from the provisions of section 33(1) (c) of the repealed Evidence Act and by extension, the common law position on this issue as well. The principle that statement or declarations against interest were admissible only if it was against the pecuniary or proprietary interest of the maker is no longer applicable. By section 42(b) of the Evidence Act, 2011, four distinct interests are now admissible. They are pecuniary interest, proprietary interest, criminal liability, and civil liability. Thus, a statement which renders the maker liable to criminal prosecution or to damages in civil action is admissible. The implication is that the decision of the English court in *Sussex Peerage Case* mentioned earlier is no longer the current position of the law on this issue as applicable in Nigeria.

3.3.2 Admissibility of Illegally or Improperly Obtained Evidence.

The repealed Evidence Act has no express provision in it that dealt with the issue of admissibility or inadmissibility of improperly or illegally obtained evidence in judicial proceedings. What the Nigerian courts were doing was to rely on principles of English

common law. In which case, evidence which is relevant will not be excluded merely because it was improperly obtained⁶⁵, and in admitting such evidence subject to the court's discretionary power, especially in criminal proceedings to exclude such evidence where its admittance would be prejudicial to the accused in all the circumstances of the case⁶⁶.

The innovation to be noticed here is that this gap or silence in the Nigerian law of evidence has now been filled up properly or given a very loud voice. This has been achieved by the codification of the principles governing the subject of admissibility of illegally or improperly obtained evidence. Such codified principle as now contained in the provisions of sections 14 and 15 in the Evidence Act, 2011 had no such provisions in any law in Nigeria, particularly of Evidence. The said section 14 of the Evidence Act, 2011 provides that evidence obtained improperly or in contravention of a law, or in consequence of an impropriety or of a contravention of a law, shall be admissible unless the court is of opinion that the desirability of admitting the evidence is out-weighed by the undesirability of admitting evidence that has been obtained in the manner in which the evidence was obtained.

As might have been observed from the above provision, Section 14 now makes the proviso which was before now only applicable in criminal cases, (i.e. enabling the court to exclude such evidence in appropriate cases), also applicable to civil cases, since the provision in a forward looking approach, does not make any distinction between criminal and civil cases.

It appears that the new law even went further than the then prevailing legal principle by

⁶⁵Fawehinmi V. N.B.A. (No. 2) (1989) 2 NWLR (Pt. 105) 558, Haruna v. A-G, Federation (2012) All FWLR (Pt. 632) 1617; Ibrahim v. Ogunleye (2012) 1 NWLR (Pt 1282) 489. Asuquo v. Eyo (2013) LPELR 20199 (CA)

⁶⁶Kuruma son of Kaniu V Queen (1955) AC 197. Sadau V State (1968) 1 ALL NLR 125; Abubakar v. Chucks (2008) ALL FWLR (PT. 408) 207;

specifically providing in Section 15, the matters that the Court will take into consideration in exercising its discretion under section 14 concerning the admissibility or inadmissibility of such improperly obtained evidence. By the said section 15, the matter that the Court shall take into account include the probative value of the evidence, the importance of the evidence in the proceeding, the nature of the relevant offence, cause of action or defence and the nature of the subject-matter of the proceeding. Others include the gravity of the impropriety or contravention, whether the impropriety or contravention was deliberate or reckless, whether any other proceeding (whether or not in a court) has been or is likely to be taken in relation to the impropriety or contravention, and the difficulty, if any, of obtaining the evidence without impropriety or contravention of law.

The presupposition or argument that there is nothing innovative about sections 14 or particularly section 15 of the Evidence act 2011 because the guidelines contained in Section 15 is an unnecessary stifling or circumscription of the court's discretion, is quickly rebutted by Hon. Justice Akinyemi. He had noted that the legislature has done well to stipulate these guidelines as they will assist the Courts in exercising their discretion more judiciously and judicially, thereby preventing arbitrariness and possible injustice⁶⁷. He further stated that an unguided discretion to admit evidence improperly obtained, based only on relevance, could be quite dangerous and give room for mischief, especially in criminal trials, cases with political content and matters between individuals and the State⁶⁸. "I therefore consider Section 15 a provision in the right direction".⁶⁹

⁶⁷Hon. Justice Akinyemi, A. op.cit p. 8

⁶⁸ibid.

⁶⁹ibid.

It is very clear, that the purpose of section 15 of the Evidence Act, 2011 is to act like a guide for the exercise of the Nigerian court's discretion to exclude improperly or illegally obtained evidence in cases where the circumstances may call for such, but without necessarily limiting or abolishing such discretion. The situation as it now stands in Nigeria on the admissibility or inadmissibility of improperly obtained evidence is that it is now governed expressly by the provisions of the Act. In fact, in *John v. The State* (2013) LPELR-20536, delivered on the 3rd of May, 2013, the Court of Appeal applied with approval, Sections 14 and 15 of the Evidence Act 2011, in upholding the decision of the lower court to admit a statement said to have been irregularly or wrongly obtained by the police. This renders the law in Nigeria on this matter not only predictably certain, but again also, makes further references or citation of cases or even notable statements on the rule of admissibility or inadmissibility of such an evidence in case law absolutely unnecessary.

3.3.3 Character Evidence

Prior before now, the principle that guides the court in the use of evidence of previous conviction to prove bad character of an accused is that of the English Common Law principle as established in the case of *R v. Winfield*⁷⁰. There, it was held that there is no such thing "as putting half a prisoner's character in issue and leaving out the other half." The principle established from this case and others like it is that at common law, whenever evidence of bad character is admissible, in subsequent proceeding against an accused, such evidence needs not be confined to those bearing direct relevance to the offence charged in the said subsequent proceeding. Therefore, if Mr. A was convicted for say criminal trespass in 2005, and in 2016, he is been charged for murder, the previous conviction in

⁷⁰(1939) 27 C. A. R. 139.

2005 for criminal trespass can be used as evidence against him in this present murder charge in 2016.

Section 70 (4) of the repealed Evidence Act, which by the way is identical with section 82(4) of Evidence Act, 2011, provides that whenever evidence of bad character was admissible, evidence of previous conviction was also admissible. However, the repealed Evidence Act was silent on what kind or nature of evidence of previous conviction can be tendered to prove bad character pursuant to the said section 70(4) of the repealed Act. In other words, it was not a certainty from this provision whether the evidence of previous conviction should be related or connected in substance to the offence charged in a latter proceeding. In other words, the repealed Evidence Act was not explicit on whether evidence of a previous conviction for criminal trespass, for instance, would be admissible to prove the accused bad character in a latter proceeding of money laundering since both offences are not related. This “conspiracy of silence” in the repealed Evidence Act was worrisome because there is the unrestricted use of evidence of previous conviction to prove bad character of an accused in a subsequent criminal proceeding even if it involves an offence completely unrelated to the subject-matter of the previous criminal conviction. This no doubt may not advance the cause of justice as it merely permits the admissibility of evidence of a highly prejudicial nature by the courts.

As noted earlier, Section 70 (4) of the repealed Evidence Act is identical with section 82(4) of Evidence Act, 2011. However, in showing its innovation in this area, the 2011 Act contains a new provision in section 82(5) which restricts the application of section 82(4) of the Act (identical to section 70(4) of the repealed Act). It provides that “In cases where sub-section (4) of this Section applies, the court shall only admit evidence of previous

convictions which are related in substance to the offence charged”. A previous conviction therefore of Mr. A in 2005 for criminal trespass, cannot now be used against him in a subsequent charge in 2016 for money laundering since they are not related in substance to the offence now charged. The effect of section 82(5) of the Evidence Act, 2011 is that it has displaced the common law principle that gives the prosecution the right to tender evidence of previous conviction of an accused to establish his bad character in subsequent proceeding irrespective of whether the previous conviction is related to the offence charged in the subsequent proceeding.

Similarly, in civil proceedings, as it relates to the admissibility of previous conviction in civil proceedings, Section 63 of the Evidence Act 2011, made some crucial changes that must not be overlooked. This provision is new because it has no equivalent provision in the repealed Act. It provides that conviction of a person by a court of competent jurisdiction is now admissible in a civil proceeding involving a party provided the conviction has not been quashed or is still under appeal. Section 81 of the new Act also made some slight but critical change to Section 68 of the old law. Whereas the old provision stated that evidence of bad character is ‘relevant’, the new provision says, evidence of bad character is ‘admissible’. Flowing from the said section 81, throughout section 82 also, the word ‘admissible’ replaces the word ‘relevant’ in the old law. The two words are not exactly the same. ‘Admissibility’ is much wider than ‘relevance’ in terms of their legal implications. While admissible facts must be relevant, not all relevant facts are admissible. A fact may be relevant but also inadmissible if it is excluded by law for certain reasons. In addition, facts otherwise irrelevant may be made legally admissible (section 9 of 2011 Evidence Act and section 12 of the repealed Evidence Act). While

admissibility is a question of law, relevance on the other hand is a question of fact, logic or common sense. However, relevance is fundamentally the basis of admissibility under the new Act.

3.3.4 Judicial Notice of Custom Based On a Single Previous Decision of a Superior Court of Record.

It is not in dispute that customary law is a question of fact which needs to be pleaded and proved by evidence by the party asserting its existence unless it can be judicially noticed. The burden of proving the existence of the alleged custom lies on that party alleging its existence⁷¹. This is trite law. Where a custom cannot be established as one judicially noticed, it shall be proved as a fact⁷². Therefore, the proof of a custom either by judicial notice or by evidence was expressly provided for, and is in fact the same both under the repealed Evidence Act and under the Evidence Act 2011. The difference between the repealed Evidence Act and the 2011 Evidence Act, lies in the condition precedent to be satisfied before a court can take judicial notice of a custom. Section 14(2) of the repealed Act provides that a custom may be judicially noticed if it has been acted upon by a court of superior or co-ordinate jurisdiction in the same area to an extent which justifies the court asked to apply it in assuming that the persons or the class of persons concerned in that area look upon the same as binding in relation to circumstances similar to those under consideration. Section 17 of the new Act on the other hand provides that “A custom may be judicially noticed when it has been adjudicated upon **once**, by a superior court of

⁷¹ Section 14(1), (2), (3), Evidence Act, cap E14, L.F.N 2004 (i.e. the repealed Evidence Act); Section 16, Evidence Act, 2011; Dong v. A-G., Adamawa State [2014] 6 N. W. L. R. (Pt. 1404) 558 at 573.

⁷² Section 14(1), Evidence Act, cap E14, L.F.N 2004 (i.e. the repealed Evidence Act); Section 18, Evidence Act, 2011; Dong v. A-G., Adamawa State [2014] 6 N. W. L. R. (Pt. 1404) 558 at 573-4; Onyengev. Ebere [2004] 13 N. W. L. R. (Pt. 889) 20 at 38; Chukwuv. Amadi [2009] 3 N. W. L. R. (Pt. 1127) 56 at 84.

record.” The position under the repealed Evidence Act is that more than one previous decision of a court of superior record on the applicability of a particular custom was required before a another court could take judicial notice of it without requiring proof of same by way of evidence. In other words, the custom in question must have been pronounced upon repeatedly by superior courts of record for it to become judicially noticed. The problem question that arises from this position is how many times, or how frequent must a court have acted on a position of custom in other for it to be judicially noticed. In *Larinde v. Afikpo*,⁷³ the court declined to take judicial notice of a custom which had been acted upon only once by a superior court of record, while in *Olabanji v. Omokewu*⁷⁴, Wali, J.S.C. stated that “A custom can only be judicially noticed after it had been considered, accepted and applied in many decisions”. However, in *Cole v. Akinyele*⁷⁵, the Federal Supreme Court relying on the provision of Section 14(2) of the repealed Evidence Act, took judicial notice of a custom which had been acted upon only once in an earlier case of *Alake v. Pratt*⁷⁶. In *Osinowo v. Fagbenro*⁷⁷ however, the court took judicial notice of a custom which had been acted upon thrice.

The confusion as seen above shows the importance of the amendment that has now been brought by the Evidence Act, 2011 which provides that a custom may be judicially noticed when it has been adjudicated upon once by a superior court of record. As it stands now, a single decision by a superior court of record is now sufficient for judicial notice of a custom to be taken. While this new position does not necessarily contradict existing decisions of the appellate courts as shown earlier as to whether one, two, three or what ever

⁷³(1940) WACA 108.

⁷⁴ (1992) 7 SCNJ 266 (or (1992) NWLR(Pt. 250)671

⁷⁵(1960) 5 FSC 84.

⁷⁶(1955) 15 WACA 20.

⁷⁷(1954) 21 NLR 3.

number of decisions of superior court would suffice to baptise a custom with the status of a judicially noticed one, it has however given statutory grounds or bases to justify the views of their Lordships that in an appropriate instance, one judicial affirmation may be sufficient to confer judicial notice upon a custom. It will all now depend on the facts and peculiarity of each and every given circumstance. This is particularly important to note because section 17 used the phrase “A custom **may**....”.By way of further analysis on this issue, it is important to note that it is only the decisions of “superior court of record” that is to be relied upon for purposes of taking judicial notice of a custom in a subsequent judicial proceeding. Therefore, the decision of say a customary court does not have such a weight, only decisions delivered by the High Court, Court of Appeal and Supreme Court (being superior courts of record), on an applicable rule of customary law can be relied on in subsequent proceedings to take judicial notice of a custom in question.

3.3.5 Oral Evidence of Tradition

There is also another innovation in the Evidence Act 2011 in section 66 as it relates to oral evidence. It provides that “Where the title to or interest in family or communal land is in issue, oral evidence of family or communal tradition concerning such title or interest is admissible”. This provision is actually a codification one of the five accepted methods of proving title to land in Nigeria as stipulated in the case of *Idundun V. Okumagba*⁷⁸ and several such cases. If nothing at all, this shows the new Act had really taking developments in case laws into consideration.

⁷⁸(1976) 1 NMLR 200.

3.3.6 Admissibility of Electronic or Computer-Generated Evidence

The introduction of this aspect of transactions or activities can, in the opinion of the researcher, be described as the key catalyst for the clamour for the new law. Far-reaching innovations introduced by the Evidence Act, 2011 are the inclusion of several provisions dealing specifically with the admissibility of computer-generated evidence. Finally, such statutory recognition of electronic communication and other computer related transactions or activities, though long overdue, is without doubt the most valuable contribution of the Evidence Act 2011 as a major judicial reform to the progress of Nigeria's challenged Justice delivery system.

The repealed Evidence Act had been criticised for most of its archaic provisions, especially, its lack of recognition of modern documentary probative tools like electronic or computer generated print-outs, electronic digital messages, online documents or communications and other activities of business and commerce in such an Information and Communication Technology age. The inconvenience accessioned by such a situation is quite understandable because the use of computers in the world at large and even Nigeria in particular had grown significantly. Most of every day activities, whether work or personal, such as communication systems, financial transactions, Smart Card Reader for election purposes, security systems etc all depend on computers or other computer related or electronic devices. The Nigerian judiciary, therefore, faced serious challenges to cope with technological development, especially as it affects the treatment of electronically generated evidence. The issue of admissibility of evidence in a court is very crucial to any trial, civil or criminal because it has the capacity to determine the outcome of a case. A

case could be won or lost on the strength of a particular piece of evidence that has been admitted or rejected.

Prior to the enactment of the Evidence Act 2011, there were many cases decided in Nigeria over the years when the court have rejected computer-generated print-outs on the bases of the fact that the then existing Evidence Act did not specifically recognise or made provisions on them even when such evidence were relevant and crucial to the case. On the other hand also, there were also cases when the courts had approached the issues with some degree of flexibility when interpreting the old provisions of the Evidence Act by holding that for example, computer-generated evidence was admissible. With these conflicting decisions and approach, the confusion and uncertainty created continued to haunt the evidentiary procedure in courts.

A good example of a case where computer and electronic generated evidence was rejected is the case of Federal Republic of Nigeria v. Fani-Kayode⁷⁹ where the presiding judge, Justice A. R. Mohammed of the Federal High Court sitting in Lagos held that a computer-generated statement of account was inadmissible. The respondent (Fani-Kayode, a former Minister of Aviation under the erstwhile Administration of President Olusegun Obasanjo) was being prosecuted by the government on a 47-count charge of money laundering. During the trial, the prosecution called an Officer of First Inland Bank, and sought to tender through him a certified true copy of the computer-generated statement of account of the respondent. These computer print-outs of bank statements allegedly showed the illicit transactions in which the Minister was implicated. His defence team objected to the admissibility of the statements on the ground that they were produced by computers and

⁷⁹ [2010] 14 N. W. L. R. (1214) 481

could therefore not be relied upon in a Nigerian court because the Evidence Act did not recognise such evidence. The defence objected on the grounds that the document was not admissible under section 97 of the Evidence Act. The trial judge, Mohammed upheld the objection and ruled that the document was inadmissible.

Justice Mohammed held that a statement of account produced by way of computer print-out is not admissible under Section 97(1) (b) and 2 (e) of the Evidence Act, (i.e. under the repealed Evidence Act), even if the statement of account was relevant to the proceedings. However on appeal, this interlocutory ruling was reversed by The Court of Appeal which held inter alia that in the instant case, it is rather inarguable that the certified true copy of the computer generated bank statement of account of the respondent domiciled with the First Inland Bank at Wharf Road, meets all the requirement of being admitted as an exhibit at the trial. It held that the document does not fall within the category of evidence made completely inadmissible by the law. The Supreme Court eventually ruled in favour of admissibility of electronically-generated evidence and ordered a retrial of the case by the High Court. Sadly, all this ‘drama’ as to the admissibility of a computer generated evidence delayed the main trial for about three and half years.

Interestingly, in reaching its decision of rejecting the document, the trial judge, Justice Mohammed had relied on an older decision of the Supreme Court in the 1976 case of *Yesufu v. ACB Ltd*⁸⁰, wherein the Supreme Court, per Fatai-Williams, CJN, held computer print –outs to be inadmissible. However earlier in 1969, the same Supreme Court had in the case of *Esso West Africa INC. v. Oyegbola*⁸¹, acknowledged the relevance of computer

⁸⁰ (1976) 1 All NLR (Part 1) 264 at 273

⁸¹ (1969) N.S.C.C pages 354 - 355

generated evidence by stating that “Section 37 of the Evidence Act does not require production of "books" of account but makes entries in such books relevant for purposes of admissibility. The law cannot be and is not ignorant of modern business methods and must not shut its eyes to the mysteries of the computer”

A very fundamental innovation introduced therefore into Nigeria’s evidentiary rules by the Evidence Act, 2011 is the express provision for admissibility of statements in documents produced by computers. Specifically, Section 84(1) expressly provides that in any proceedings, a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that the conditions in sub-section (2) of the said section are satisfied in relation to the statement and computer in question. The coast is therefore now clear for admission of digital and electronic evidence which could be a computer print-out. The days when all these would be rejected on accounts that their admissibility were not provided for under the law in Nigeria are over. This will not only aid commerce and industry, but ensures that justice is done. This is because those involved in e-crimes for example would definitely no longer have legal escape route because various e-mails, faxes and other e-messages forwarded to their victims is now admissible in evidence during their trials for e-crimes. It is now clear that the admissibility of computer-generated evidence or even documents downloaded from the internet in any judicial proceeding is admissible. In *Kuborv. Dickson*⁸², it was held by the Supreme Court that a party that seeks to tender in evidence a computer-generated document needs to do more than just tendering it from the bar. Evidence in relation to the use of the computer must be called to establish the

⁸²[2013] 4 N. W. L. R. (Pt. 1345) 534 at 577-8.

conditions specified in section 84(2) of the Evidence Act, 2011 and that failure to fulfil those conditions will render the computer-generated evidence inadmissible. Therefore, the conditions set out in section 84(2) must be satisfied by the party seeking to tender computer-generated evidence before it can be admitted by the court. The conditions are;

1. That the document containing the statement was produced by the computer during a period over which the computer was regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by anybody, whether corporate or not, or by any individual;
2. That over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information is derived;
3. That throughout the material part of that period the computer was operating properly, if not, that in any respect in which it was not operating properly or was out of operation during that period was not such as to affect the production of the document or the accuracy of its contents; and
4. That the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

Section 84(4) requires that the party who seeks to tender a computer generated statement or document to file a certificate identifying the document or statement, describing the manner of its production, and stating the particulars of the device used in the production of the document. This certificate is to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities.

Some have argued that it is just strict construction of the law that prevented computer-evidence from being admitted in many judgments by the Nigerian courts in the past. To them, these were not specifically forbidden by the repealed Evidence Act hence, such evidence should have been admissible even under the said repealed Evidence Act. Such view is also predicated on the fact that since the repealed Act is generally not silent on documentary evidence, a computerised statement of account is a document and, therefore, admissible as documentary evidence the same way that typewritten documents and printed books have been and are being admitted as documents by the courts. However, these are mere opinions and their existence did not resolve the controversies concerning the issue. The Evidence Act, 2011 contains broader, elaborate and far reaching provisions dealing with the admissibility of computer-generated evidence and completely settled any controversy that may arise or that had been propping up concerning the admissibility of electronic or computer generated evidence.

3.3.7 Expansion of the Definition of the words ‘Document’ and ‘Computer’

Very much directly related to the above is the innovation relating to the definition of the words ‘Document’ and ‘Computer’ in the new Evidence Act 2011. This clear statutory interpretation of the two contentious words has cured the inadequacy of section 2 of the repealed Evidence Act, 2004, which had a problem of the non-definition of the word “computer” and inclusion of a “computer output”.

Prior to the passage of the Evidence Act, 2011, there was divided opinion on the issue whether the definition of “document” contained in Section 2 of the repealed Evidence Act, included electronic or computer generated evidence. This is because under the said section

2 of the repealed Evidence Act, “document” was narrowly interpreted to include only “books, maps, plans, drawings, photographs, and also includes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used or which may be used for the purpose or recording the matter”. This definition excluded materials stored in disc, tape, video cassette, film, negative etc., from the categories of document, and based on the restrictive provision, it was held in *Udoro v. Governor Akwa Ibom State*⁸³ that a video cassette did not qualify as documentary evidence under the repealed Evidence Act. However, under the Evidence Act, 2011, section 258 which is the interpretation section, now defines “document” to include;

1. Books, maps plans, graphs, drawings, photographs, and also includes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter;
2. Any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it;
3. Any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; and
4. Any device by means of which information is recorded, stored or retrievable including computer output.

⁸³[2010] 11 N. W. L. R. (Pt. 1205) 322 at 334-6.

The implication is that evidence tendered by any of the above listed means can now be regarded as documentary evidence. Similarly, ‘Computer’ in the same section 258 of the Evidence Act 2011 “means any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived from it by calculation comparison or any other process”. This definition is wide enough to cover all hand-held phones, ipads, ipods, ATM machines, and any other electronic device(s) that store, process and retrieve information.⁸⁴ Statements from telecommunication companies showing records of call logs, text messages, etc and even receipts or records of cash withdrawals and other transactions from ATM machines, internet banking, online product purchases, on-line bill payments, e.g. of utility bills, flight bookings and tickets, and other online transaction records, should no longer present difficulty when being tendered in Court, once the stipulated conditions are met.⁸⁵ Interestingly, section 51 of the Evidence Act, 2011 succinctly provides that entries in books of accounts or electronic records regularly kept in the course of business are admissible whether they refer to a matter into which the court has to inquire, but such statements shall not alone be sufficient to charge any person with liability. Without a doubt, “computer outputs” are documents provided for as admissible primary evidence.

3.3.8 Presumption Regarding Electronic Mails (e-mail).

This provision reflects modern development in the area of communication technology because whether we like it or not, electronic messaging is now one of the most, if not even the most common means of correspondence. Section 153(2) of the Evidence Act 2011,

⁸⁴Hon. Justice Akinyemi, A. op. cit. p. 21.

⁸⁵ibid

specifically provides that the court may presume that an electronic message forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission. However, by the said section also, the court shall not make any presumption as to the person to whom such message was sent. It is interesting to note from this section that it does not make any presumption as regards the recipient of the message, but does make a presumption as it relates to the sender. This perhaps is done in view of the realisation of the possibility that such communication may be intercepted.

3.3.9 Electronic Signature

This is also connected to admissibility of computer-generated or electronic evidence discussed earlier. Section 93 (2) of the Evidence Act, 2011 which has no similar provision in the repealed Act, in dealing with admissibility of electronic signatures provides that where a rule of evidence requires a signature, or provides for certain consequences if a document is not signed an electronic signature satisfies that rule of law or avoids those consequences. This is particularly interesting because apart from recognising electronic signatures it has also clearly created an exception to the general legal rule that an unsigned document has no probative value in court for the purpose of tendering same in evidence. “With this provision, a dangerous legal pitfall for electronic documents has been effectively removed”⁸⁶. Although the Act did not define the term ‘Electronic Signature’, Black’s Law Dictionary defines the term as “an electronic symbol, sound, or process that is either attached to or logically associated with a document (such as a contract or other

⁸⁶Hon. Justice Akinyemi, A. op. cit. p. 25

record) and executed or adopted by a person with the intent to sign the document.”⁸⁷ Types of electronic signatures include a typed name at the end of an email, a digital image of a hand written signature, and the click of “I accept” button on an e-commerce site.⁸⁸ Section 93(3) of the Act went further to provide that all electronic signature may be proved in any manner, including by showing that a procedure existed by which it is necessary for a person, in order to proceed further with a transaction to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of the person.

3.3.10 Documents Admissible In Other Countries

Section 117 of the repealed Evidence Act limited the presumptions of admissibility in respect of documents admissible in other countries to those documents emanating from Common Wealth countries only. It also limited the standard of admissibility to what was obtainable in the United Kingdom. This position seemed hinged on the fact that as at 1945, when the first Evidence Act was passed, Nigeria’s foreign interactions with other nations was limited largely to Britain. Nevertheless, this position since then has changed greatly. The Evidence Act 2011 therefore captures such reality and has made some innovative provision relating to this aspect. By Section 149 of the Evidence Act 2011, the presumption of admissibility in respect of documents admissible in other countries without proof of seal or signature has been expanded. Document emanating from any country in the world (and not just Common Wealth countries) can now be admissible in Nigeria provided it meets the standard of admissibility in its country of origin.

⁸⁷Blacks Law Dictionary, 9th edition, p. 1508

⁸⁸ibid

3.3.11 Inadmissibility of Statements Contained In Documents Marked “Without Prejudice”

Section 25 of the repealed Evidence Act provided that “In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given or in circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.” In compliance with this provision, marking a document “without prejudice” usually implies an understanding by parties that evidence of the statements or facts contained in it is not to be used against the maker of such document if negotiations failed. The inadmissibility of such documents so marked is justified on the ground that parties to a dispute should be encouraged to negotiate settlement or compromise without any fear that concessions or admissions made by them in the course of the negotiations could be used against them in court. Flowing from this, statements contained in a letter for example, marked “without prejudice” are not admissible in evidence. Even evidence of facts emanating from out of court settlement of dispute negotiations, or offers of compromise, or even preliminary contractual negotiations similarly marked are also not admissible in evidence.

The provision of section 25 of the repealed Evidence Act has been re-enacted as section 26 of the Evidence Act 2011. However, the new Act went further when it provides in section 196 that “A statement in any document marked “without prejudice” made in the course of negotiation for a settlement of a dispute out of court, shall not be given in evidence in any civil proceeding in proof of the matters stated in it.” From a literal interpretation of this section 196 of the Evidence Act 2011, the exclusionary rule will apply here only to statements contained in documents marked “without prejudice” made in the course of

negotiation for a settlement of a dispute out of court. The implication here is that a document marked “without prejudice” which was not made in the course of negotiation for a settlement of a dispute out of court cannot be excluded pursuant to section 196 of the Evidence Act. Section 196 of the Evidence Act, 2011 has a limited application than both section 25 of the repealed Evidence Act and section 26 of the Evidence Act 2011.

In any case, pursuant to section 26 of the Evidence Act 2011 (and even section 25 of the repealed Act), a document marked or not marked “without prejudice” would still be inadmissible in civil cases. This is because “In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given or in circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.” Therefore, once the court can infer that the parties agreed together that evidence of it should not be given, or there is an express condition that evidence of it is not to be given, then it will be inadmissible. Marking a document “without prejudice” is not the only means to achieve this.

3.3.12 Recognition of Marriages Celebrated Under Customary and Islamic Laws for the Purposes of Enjoying Testimonial Privileges

The formal recognition accorded marriages celebrated under customary and Islamic laws for the purposes of enjoying testimonial privileges is another major innovation introduced in the Evidence Act, 2011. By the provisions of section 2(1) of the repealed Evidence Act, cap E14, the terms “wife” and “husband” were defined to mean respectively “the wife and husband of a monogamous marriage.” The implication of this definition was that spouses of polygamous marriages, such as those celebrated in accordance with customary and

Islamic laws were denied the testimonial privileges guaranteed under sections 161(2), (3) (4), 162, 163 and 164 of that Act. The problem was well analysed by Hon. Justice Niki Tobi when he said “it is rather sad that the immunities contained in the section are restricted only to monogamous marriages, excluding polygamous marriages”⁸⁹. In a society which is mostly polygamous, both in its cultural and sociological content, the restriction is out of tone with the practice and realities of the people.⁹⁰ It is obvious that the discriminatory piece of legislation is a relic of colonialism which should no longer find a place in modern Nigeria. Certainly, the sociological and cultural content of the society will not lend support to that parochial and sophisticated definition of wife and husband⁹¹.

The Evidence Act 2011 addressed the above concern. The provision in section 258 (1) of the said Act, now define “wife and husband” to mean respectively “the wife and husband of a marriage validly contracted under the Marriage Act, or under Islamic or Customary law applicable in Nigeria, and includes any marriage recognized as valid under the Marriage Act.” The obvious implication of such a recognition granted to customary and Islamic marriages is that the testimonial privileges guaranteed under sections 182(2), (3), (4), 183, 186 and 187 of the Evidence Act 2011 now extends also to spouses of customary and Islamic marriages. The discriminatory provision under the repealed Evidence Act no longer exists.

⁸⁹ Adangor, Z. op. cit. p. 40. The learned Justice was said to have restated his criticism in his judgment in *Udobong v. State*[1996]6 D. T. L. R. (Pt. 1) 116. p. 120

⁹⁰ *ibid*

⁹¹ *ibid*

3.3.13 Presumption of Marriage from Co-Habitation

Closely related to the above discussed innovation of the Evidence Act 2011 is another major innovation which presumes the existence of marriage under either Islamic or customary law, from the fact of co-habitation. The said innovation is found in section 166, which provides that when in any proceedings there is a question as to whether a man or woman is the husband or wife under Islamic or Customary law, of a party to the proceedings the court shall, unless the contrary is proved, presume the existence of a valid and subsisting marriage between the two persons where evidence is given to the satisfaction of the court, of cohabitation as husband and wife by such man and woman. It is very obvious that this provision has clearly extended the common law presumption of marriage to local peculiarities (i.e. Islamic and Customary) where co-habitation between persons who may not be formally married but live together as man and woman with all the incidents of marriage, including having children together is present.

3.3.14 Evidence As To Affairs of State and Official Communications

The Evidence Act 2011 in seeming conformity with the intent and purpose of the Freedom of Information Act 2011 has made some very important changes. It should be recalled that the purpose of the said Freedom of Information Act 2011 was to grant more access to information by members of the public. By sections 167 and 168 of the repealed Evidence Act, no public officer could be compelled even by the courts to produce any unpublished official records relating to affairs of State or confidential official communication. However, by sections 190 and 191 of the Evidence Act 2011, the courts are now empowered to order the production of such evidence, if need be.

3.3.15 Power Of the Minister of Justice to Make Regulations

Section 255 of the Evidence Act 2011 provides that “The Minister charged with responsibility for justice may, from time to time, make regulations generally prescribing further conditions with respect to admissibility of any class of evidence that may be relevant under this bill”. It is observed however that the minister here can only make subsidiary legislation prescribing further conditions for admissibility of any class of relevant evidence under the Evidence Act⁹². Any subsidiary legislation that goes beyond this limit may be challenged as being *ultra vires* the power granted under section 255 of the Act⁹³. The researcher however aligns himself with the views of Hon. Justice Abiodun Akinyemi when he noted that the provision is also potentially dangerous especially in our situation where the offices of the Minister of Justice and Attorney General are combined, and the occupant of that office is a political appointee⁹⁴. “The possibility therefore exists that this provision may be used to achieve clandestine or mischievous objectives especially in electoral and high profile corruption matters or other cases in which the government of the day may have a vested interest.”⁹⁵

3.3.16 Admission by Conduct

Under section 19 of the repealed Evidence Act, the definition of admission was limited only to oral or documentary statements made by the maker. It provides that an “admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and in the circumstances,

⁹²Adangor, Z. op. cit. p. 44

⁹³ibid

⁹⁴Hon. Justice Akinyemi, A. op. cit. p. 31

⁹⁵ibid

hereinafter mentioned”. The Evidence Act 2011 however has added conduct to the list. In other words, ‘admission’ is now defined to include the conduct of the maker.

Section 20 of the Evidence Act 2011 provides that “An admission is a statement, oral or documentary, **or conduct** which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and in the circumstances, hereafter mentioned in this bill”. The act seems to recognise the fact that words spoken or written are not the only forms of communication. The conduct or action therefore of someone could be interpreted as admission of certain facts. Action speaks louder than words after all.

3.3.17 Confessional Statements

Section 28 of the Evidence Act 2011 provides that “a confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime”. This is identical to section 27(1) of the repealed Evidence Act. However, section 27(2) of the repealed Evidence Act went ahead to provide that “Confessions, if voluntary, are deemed to be relevant facts as against the persons who make them only”. In other words, for a confessional statement, to be admissible as relevant against the maker, it must be voluntary. The primary consideration was the voluntariness of the confession even before its relevance was considered⁹⁶. Furthermore, the prosecution had the primary burden of proving at least, prima facie, the voluntariness of the confession⁹⁷. This remains the case even when no objection had yet been taken by the

⁹⁶Hon. Justice Akinyemi, A. op. cit. p. 12

⁹⁷ibid

defence, although it is the law that a confessional statement admitted without objection is sufficient to grant a conviction.

Section 29 however of the Evidence Act 2011 has brought some variation to the above stated position of the law. By the said section a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of the section. The section provided further that if it is represented to the court that the confession was or may have been obtained by oppression of the person who made it, or in consequence of anything said or done which was likely in the circumstances existing at the time to render unreliable any confession which might be made by him in such consequence, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of the section. Meanwhile, section 29(5) of the law above provides that “oppression” ‘includes torture, inhuman or degrading treatment, and the use or threat of violence whether or not amounting to torture’. The implication here is that unlike the repealed Evidence Act, the Evidence Act 2011 “emphasizes relevance above voluntariness, as the fundamental and primary consideration for admissibility of the confessional statement”⁹⁸.

It does appear that the primary burden on the prosecution by this new provision is to show that the confession is relevant and that it was made by the defendant or accused⁹⁹. Once this is done, the statement may be tendered and admitted even without any initial effort by

⁹⁸Ibid at page 13

⁹⁹ibid

the prosecution to prove that it was made voluntarily, unlike what previously obtains¹⁰⁰. It is only when it is represented to the court that the confession was or may have been obtained by oppression, or in consequence of anything said or done which was likely in the circumstances existing at the time to render unreliable any such confession, will the prosecution now be required to prove its voluntariness. Under the repealed Act, the prosecution would have to start off by showing prima facie, that the statement was voluntarily made. Flowing from this, the present situation is that where the defendant does not show that the statement is disqualified under section 29(2) of the Evidence Act 2011, the statement once relevant, may be admitted without its voluntariness being tested. “Though relevancy has now being elevated above voluntariness, unlike previously, voluntariness is still a critical requirement because inherent in the legal definition of a confession is the fact that it must have been freely made without any impairment whatsoever.”¹⁰¹

3.3.18 Special Restrictions In Respect Of Permissible Evidence in Trial for Sexual Offences

This is another area where the Evidence Act 2011 has shown innovation and improvement that conforms to judicial thinking of the time. By section 234 of the Evidence Act 2011, when a person is being prosecuted for rape or attempt to commit rape or for indecent assault, no evidence shall be adduced except with the leave of Court. This leave of the Court will also be required during cross examination to ask questions which tend to show the sexual experience of the complainant with persons other than the accused. This is

¹⁰⁰ibid

¹⁰¹Ibid at page 15

obviously a drastic change or departure from what previously obtains under the repealed Evidence Act where the complainant could be asked any question relating to her sexual habit.

3.3.19 Exclusion of Evidence under the Evidence Act or Under Other Legislation

The West African Court of Appeal in *R v. Agwuna*¹⁰² held that there was no provision in the Evidence Act (i.e. the repealed Evidence Act) which allows any evidence to be rejected as inadmissible save as provided in the Act itself. Therefore, when any piece of evidence was rendered admissible under the then repealed Evidence Act, such evidence could not be rejected in any judicial proceeding. Not even by reference to either the common law or any other Nigerian law. In *Jadesimi v. Egbe*¹⁰³, it was held by the court that the common law rules of evidence that barred the admissibility of statements made without prejudice could not be used to exclude evidence in Nigerian courts since the matter was specifically dealt with in section 25 of the repealed Evidence Act. The implication here is that the inadmissibility of evidence was governed by the Evidence Act alone. One can say that the settled principle of law was that no piece of evidence could be excluded in any judicial proceeding except as otherwise provided by the Evidence Act. No court could reject a piece of evidence except such rejection was permitted by the Evidence Act. Neither the common law of England nor any other local Nigerian legislation could form the basis for the inadmissibility of evidence.

However, the position above has now been modified by the Evidence Act, 2011. Section 2 of this Act provides that all evidence given in accordance with section 1 of the Act shall,

¹⁰²12 WACA 456 at 458.

¹⁰³ [2003] 10 N. W. L. R. (Pt. 827) 1 at 25

unless excluded in accordance with this very Act or any other Act or any other legislation validly in force in Nigeria be admissible in judicial proceedings to which this Act applies, provided that admissibility of such evidence shall be subject to all such conditions as may be specified in each case by or under this Act.

From the above provision, the inadmissibility of any evidence is to be permitted by the Evidence Act, 2011, “or any other Act or any other legislation validly in force in Nigeria”. In the researchers opinion, the phrase “or any other Act or any other legislation validly in force in Nigeria” will include an Act of the National Assembly¹⁰⁴ or any law passed by the House of Assembly of a State¹⁰⁵ of the Federation which is validly in force in Nigeria.

In concluding this chapter, one can say that the two legislations considered had made significant improvements to what previously existed before them. In many instances, these laws had shown innovations that make for speedy disposal of cases at least when compared to their previous existing kindred legislations.

¹⁰⁴Example is section 23 of the Legislative Houses (Powers and Privileges) Act, Cap. L12 L. F. N. 2004, which provides amongst other things, for the inadmissibility of debate or other proceedings in a Legislative House, or the contents of the minutes without the permission of the President of the senate, or Speaker, as the case may be, of the House or the chairman of the committee.

¹⁰⁵Example is section 20 of the Land Instruments (Preparation & Registration) Law , Cap. 74 Laws of Rivers State of Nigeria, 1999, which provides that: “No instrument shall be pleaded or given in evidence in any court as affecting any land unless the same shall have been registered.”

CHAPTER FOUR

4.0 JUDICIAL REFORMS IN NIGERIA; PROSPECTS AND CHALLENGES

4.1 Introduction

Notwithstanding the innovations discussed in the previous chapter, there are still noticeable areas of prospect and even challenge of justice administration in Nigeria. This chapter discusses this prospect and challenge with a view to appreciate what can still be done for an efficient justice administration in Nigeria. In addition to specific areas of reforms earlier on discussed in chapter three, an appreciation of the prospect and challenge discussed below will help in knowing how to position the Nigerian Judiciary for an effective justice delivery system.

4.2 Prospect of Information and Communications Technology (I.C.T) in Justice Administration in Nigeria

We are now in the Information Age. It is an age that is as earth shaking as the Industrial Revolution in terms of how we work, transmit, store and retrieve information. This presents enormous opportunities for developing country like Nigeria and developed countries alike, to do things both cheaper and differently. This is the crust of the information revolution; it is about manipulating, transporting and storing information and knowledge. Technological advancement enhances the way and enables us to process, store, retrieve and communicate information in whatever form it may take, unconstrained by distance, time and volume and therefore constitutes a resource which changes the way we work and even live together.

Basically, the information age revolves around the advances so far made in Telecommunications and Information Technology comprising of hardware and software as well as media for collection, storage, processing, transmission, and presentation of information. The whole concept encompasses communication and computing equipment and programmes, which include satellites, transmission lines, computers, modems, operating systems and applications.

The natural and logical question that will follow the above analysis is the relevance of Information and Communication Technology (I.C.T) to an efficient judicial delivery system in Nigeria. Because the fact remains that if the way people work and live, is changing, then, since justice administration in Nigeria is part and parcel of such changing society, this would no doubt affect the administration of justice or efficiency of justice delivery. Therefore, it is only commonsensical that a judicial system like that of Nigeria, take advantage of new and evolving developments that may enhance the delivery of its own services, which in this case is justice dispensation.

But how can I.C.T enable effective justice administration."Most of the distinguished members of the Bench still operate with the 19th Century tools in the 21st Century - courts records are still primarily done in long hands..."¹⁰⁶ In *Sommer v. Federal Housing Authority*¹⁰⁷ Omo, JSC reiterated that:

"This court is bound by the record of the proceedings before it and it cannot depart there from; certainly not on the basis of speculation. Until such a time as electronic recording is introduced into the proceedings of our courts in this country, we will have to

¹⁰⁶ Malam Nasir El-Rufai, "The Cost of Justice." In: This Day Newspaper Friday June 24 2011. Back page

¹⁰⁷ (1992) 1 NSCC (Vol. 23) 82 at 87

rely on the evidence as recorded manually by the courts".

Delay in the dispensation of justice remains a major challenge due, in large measure, to institutional incapacities in the area of infrastructure (especially e-infrastructure)¹⁰⁸. The 21st century requires an efficient and effective machinery to meet the needs of justice¹⁰⁹. Court performance would be significantly enhanced by information technology¹¹⁰. There are certain delays or inconveniences that can be well taken care of by the inclusion of specific technology to address challenges in given areas. Such appropriate technology can enable the courts to render speedier, effective and efficient justice to the public and in turn, earn public confidence. This earned confidence will in turn also, empower and enable the courts to preserve and protect the democratic values and freedoms expected in a democratic society such as we aspire to become. I.C.T can be effective in many areas of justice administration.

4.2.1 Text Creation, Storage and Retrieval

Judges in Nigeria apart from the hearing function, also produce written judgements, rulings, and reasons for the decisions that they continuously make. With the coming on board of the typewriter, judges often wrote decisions in long hand, and the typists would then type the same out in typescript. But now, it is possible for a judge to type out such documents like decisions directly on the computer. This presents many reasons why the judge should be familiar with word processing skills. With this, a judge is able to produce a decision much faster. With the ability to manipulate different documents through copy,

¹⁰⁸ Chief Justice Mogoeng M. (Chief Justice of South Africa) "The Judiciary and the Challenge of Satisfying Justice Needs of the 21st Century: Putting Our Foot Forward", being a keynote address at the judicial reforms conference, held at Transcorp Hilton Hotel, Abuja From the 7th - 9th Of July, 2014.

¹⁰⁹ibid

¹¹⁰ibid

cut and paste, or working from templates, it is much easier to produce a document with the information one want included into it.

On a computer or other storage medium or database, it is possible to store documents, and retrieve it very fast, call up other documents, without having to move from one's workstation. Judgements, records of proceedings, decisions and or rulings can be produced much faster in final form for release to parties. At the same time, the said decisions, records of proceedings, judgements or rulings can go into a court system database to which judges and other people may have access should they need to use the same for whatever purpose. This very initiative though very visible, is lacking in the court or judicial administration of justice in Nigeria. Such a system can make judgments of the court accessible within minutes of delivery. With I.C.T in court administrative mechanism, production and release of decisions can be done much more efficient than was previously the case.

According to Chief Justice Mogoeng, "Electronic filing enables practitioners to file documents at any hour on any day of the week wherever they may be. And on-and off-site electronic record-keeping protect court records from theft which has caused untold injustice in South Africa."¹¹¹ The researcher is in agreement with this statement and believes it is applicable to Nigeria as well. Most of the documents in our case files, whether from lawyers, or witness depositions, or even the court, are now generated on computers. This means that such copies are available electronically as they are produced digitally. Even if they have been produced manually, or typed on a typewriter, and only hard copies are available, yet, even at that, it is still possible to scan them and convert them

¹¹¹ibid. p. 18

into a convenient digital format. The current use of out-of-date, paper-based system, in virtually all aspects of the justice administrative process in Nigeria is an aspect itself responsible for the delay in the administration and dispensation of justice. This should create the need and opportunity of creating and maintaining electronic copy of case files or any other form of court records, which would eliminate problems of loss of the physical file, whether as a results of fire outbreaks, theft, or mysterious disappearance which sometimes happens in our courts.

The researcher believes firmly that government at all levels, and in particular, the judicial arm of government of this country has the capacity to acquire the necessary hardware for this purpose if determined to do so. If electronic versions of court files are to be maintained for example, it would speed the cost of preparing records for appeal purposes, thus eliminating one of the bottlenecks to the speedy delivery of justice. This is because to appeal for example, one will have to request and facilitate the transfer of court file to the appellate court, making several photocopies and hoping that the registrar of such court would be able to find such file on time without ‘motivation’. All these will not be necessary when with a database for example, even the appellate court would get or access such court records. Chief Justice Mogoeng seems to have agreed with this position when he noted that “Electronic record keeping would not only secure the records from being stolen but would also address the inordinate delays in prosecuting appeals caused by the transcription of court records.”¹¹²

¹¹²ibid. p. 19

4.2.2 Case Management

With the information age, greatly enhanced is our capacity to capture study and manipulate data producing reports and other records that one might be interested in. With a well-developed database programme for example, tracking of events and cases with a view to availing the decision maker information in a timely manner is certain. Funny enough, it is possible to do so in considerably much less time than if the same were to be done manually. Armed with such information, it is possible for the decision maker to take appropriate action, to move a case forward, or to assign it, list it for trial or take whatever action is appropriate.

The ability to manage cases before courts appropriately, timely and prevent unnecessary delays is one area where I.C.T can be of tremendous help. Chief Justice Mogoeng noted thus:

Delays are partly occasioned by witnesses who are in far-removed areas and are not able to present themselves to court on the date of hearing owing to circumstances beyond their control. I have seen video-conferencing address this with ease. And I also saw it save clients costs that they would otherwise have had to pay for the postponement of a case. It facilitates speed without compromising the quality of the trial.¹¹³

In Nigeria, sometimes prisoners or suspect are not brought to court because the prison vehicle to convey them broke down, or was held up in traffic, or even probably, there was no fuel. But with such technology, such a prisoner would probably still have a day in court right from the four walls of the prison itself through this video conferencing. This by the

¹¹³ibid. p. 18

way even saves costs for the prison officials who have to convey prisoners, from one court to another. This though, not forgetting the inconvenience and possibility of a prisoner running away in the course of such transit from prison to court. With this simple technology, speed is facilitated without compromising the quality of the trial.

With the inclusion of I.C.T, through for example, a judiciary integrated system, case management will be a lot easier for legal counsels as they can file their cases and make payments over a secured web portal with a credit, debit card or direct bank payment from the comfort of their chambers. Counsels can keep accurate track records of their cases from anywhere in the world through the internet using a secure log-in for example. These are not necessarily far-fetched concepts or ideas; this is because other aspect of our lives runs on these concepts, whether is A.T.M, or various aspects of online or mobile bank transactions. The services the judiciary or courts offer should be no different.

In addition to all above discussed, apart from the fact that incoming revenue is better accounted for and tied to judiciary services, judiciary manpower is effectively and efficiently utilized, even case management is streamlined resulting in a higher number of cases been processed yearly or at any given time. Under such a system, a standardised work flow can be utilized across various judiciary divisions, whether of a High Court or Court of Appeal for example, and would ensure conflicts are resolved timely, and even economically.

4.2.3 Recording of Court Proceedings

For a long time now in Nigeria, proceedings are still recorded in long hand by the judge despite new developments in recording devices. With voice recognition technologies for

example it is now possible to have digital audio recordings of voice on the computer, allowing the judge capacity to annotate this record and listen to whatever portion he may want to listen to later. This record can then be transcribed into a hard copy format (for as long as a hard copy file is maintained), of which e-versions would be available too. It is also possible to have audio and visual recording of the proceedings that can also be viewed by the judge at any time. Furthermore, it is also possible to have instantaneous recording of proceedings by court reporter which can be viewed by the judge and counsel at their respective desks as the proceedings continue. The advantage of the digital format is that it is easy to manoeuvre whether it is text, voice (sound) or images.

In 2016, most Nigerian court proceedings are still predominantly recorded in long hand. While it is true that some states including the F.C.T, have provided their Judges with Laptops and Computers and even installed Law Pavilion software and other Database search engines in these laptops, nevertheless, even in such places where the court has computers and laptops, the court process still run "records" kept by the Judge of the proceedings before the court.¹¹⁴ "I am not aware that any of our courts has a functional digital recording machine, commonly called transcribers"¹¹⁵, which by the way, should be a norm in a working environment such as the courts. Apart from the fact that our courtrooms do not have stenographers, in the researcher's opinion, there appears to be no concrete plan of action at the moment to have them in our courts soon enough.

¹¹⁴Patrick, I.N. (Senior Advocate of Nigeria), "Speedy Administration of Justice, Which Way Forward!!" being a paper presentation at the Nigerian Bar Annual General Conference, held at The Civic Centre, Port Harcourt, Rivers State, from 21 - 27 August 2011.

¹¹⁵ibid

According to Patrick, deploying this technology in our courts simply require surmounting two challenges existing in this area; acquiring the equipment and having the right personnel to operate it¹¹⁶. From the researcher's enquiries, digital court recorder/transcribers are actually relatively cheap, the cost range between US\$1500 - \$2500. It should be noted that training as a courtroom stenographer is totally different from becoming a typist or even a computer operator. To qualify as a court recorder/stenographer will require a specialized training in a recognized institution, but this also is achievable.

With the use of an appropriate I.C.T, the pace of proceedings can be speeded up considerably. Even the quality of the record is enhanced immensely as it can be far more accurate than what presently obtains. The ideal thing is that cases ought to be resolved faster, both at trial, and on appeal. With Judges been freed completely from the task of recording proceedings (other than jotting one or two notes), they can pay more attention to the function for which they are hired to perform; deciding cases before them. The main business of the judiciary should not just be to hear and determine cases, but to do it timely, and at reasonable cost. In doing so, the processes that lead to the conclusion of the cases before the courts must be efficient and effective.

4.2.4 Pitfalls in Acquisition and Deployment of I.C.T for efficient justice delivery in Nigeria.

Having discussed the importance of adoption and deployment of I.C.T, it is however important that mention is made of some critical factors for the success of adoption of

¹¹⁶ibid

I.C.T. in the Nigerian justice administrative set up. I.C.T acquisition is not an end in itself, but a means to an end, which is efficient or speedy justice delivery. I.C.T is after all, just a tool. The process of acquiring these tools is quite important as it will impact on whether such acquisition meets the desire or intended benefits. In the researcher's opinion, failure rate in IT projects both in the private and public sectors is caused by the following reasons and more:

1. Lack of top management commitment
2. Inadequate planning
3. Abandoning the project plan
4. Inadequate user input
5. Inexperienced project managers
6. Failure to satisfy user needs
7. Inadequate documentation
8. Unrealistic cost estimates
9. Imprecise specifications
10. Non-compliance by Vendors

There are other problems that may plague the I.C.T sector in the Nigerian judiciary. The researcher strongly believes that one of the most significant of these problems will be staffing. In the traditional establishment for the Nigerian Judiciary, there seems, as it can

be expected, no provision for I.C.T staff. The sector or its applicable benefits appears to have only emerged quite recently. The Nigerian judiciary cannot afford to have an I.C.T infrastructure and services without the required number of well-qualified staff to maintain and run same. The result will be a very unsatisfactory one. In such an instance, end users whether judges or lawyers will not have the support that they ought to have.

In concluding this discussion, it is save to say that all technological advances made in the area of I.C.T and its role in efficient justice delivery hinges on the undeniable fact that they are only but tools. If not handled with skill and commitment, this may instead frustrate efforts at modernisation or efficient justice delivery. But, as long as our court continue to ignore the undeniable opportunities and benefits of technology in justice delivery, such as in filing cases, allocating and managing the cases up to the actual hearing, and the rest of it, the desire for a speedy administration of justice will be a mere dream. With the obvious and glaring delays occasioned in recording proceedings, obtaining certified copies of proceedings, rulings or judgments, and associated logistical issues, it is not out of place to suggest strongly that until there is adequate attention given to the deployment of technology in our court processes, Nigerian courts will not have started the expected movement towards a speedy administration of justice.

Yes, it is true that Information and Communication Technology creates both opportunities and challenges. However, these opportunities and challenges need to be fully grasped, and mastered, in order for the judiciary as an institution, to take full benefit of what Information and Communication Technology offers. The good news is that we have a country like South Korea as an example to copy. This country is perhaps one of few federations with an effectively integrated court technology infrastructure. It is boldly

submitted that the judiciary and the whole justice administrative apparatus needs to step up to the present and practical realities of the times in the discharge of its traditional role of dispensing Justice.

4.3 The Challenge of Legal Pluralism in Nigeria

Perhaps, the first issue here to address is to understand what Legal Pluralism entails. The introduction of British laws into Nigeria to co-exist with the indigenous systems of customary and Islamic Laws has produced a tripartite system of law. It is this type of multiple system of law that is often referred to as legal pluralism.¹¹⁷ This is off course a basic and distinctive legacy of British colonial rule bequeathed to most independent African states of which Nigeria is one. By sections 2 and 3 of the 1999 Constitution¹¹⁸, Nigeria is one indivisible and indissoluble Sovereign State consisting of thirty six states and the Federal Capital Territory, Abuja.

By section 1(1) and (3) of the 1999 Nigerian constitution¹¹⁹, the said constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. If any other law is inconsistent with the provisions of the constitution, the constitution shall prevail, and that other law shall, to the extent of the inconsistency be void. Furthermore, if any law enacted by the State House of Assembly is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the

¹¹⁷Agbede, I.O.(1991) *Legal Pluralism*.Shaneson Publishers, p 1

¹¹⁸ 1999 Constitution of the Federal Republic of Nigeria Cap.C.23 LFN 2004

¹¹⁹:ibid

inconsistency be void¹²⁰. By way of clearer analysis, it is important to understand the sources of Nigerian Law. The main sources of Nigerian Law may be classified as follows:-

(1) The Received English Law (the English Common Law and Certain English Statutes made Applicable to Nigeria as part of the General Law);

(2) Nigerian laws or statutes (i.e. laws enacted by both the Federal and State legislatures since independence);

(3) Rules of Customary Law deemed to be applicable in causes and matters between Nigerians, and between Nigerians and non- Nigerians, provided they are not repugnant to natural justice, equity and good conscience, nor incompatible with any law for the time being in force;

(4) The rules of Sharia or Islamic Law which has been introduced mostly into the northern part of Nigeria between the 14th and 15th century A.D. In this region, after many years, Islamic observances and practices had more or less supplanted those of the customs of the people in the affected states¹²¹;and

(5) Decisions of superior courts of record in Nigeria, which will be the Court of Appeal and the Supreme Court in particular.

This legal entity known by the name of the Federal Republic of Nigeria is according to Agbede,¹²² undoubtedly one of the few countries in the world which experience conflict of law problems of every conceivable dimension. The conflict is international, inter-state, inter-local (or inter-personal) and inter-temporal¹²³. First, there is what may be seen as a conflict between the various territorial systems of law arising from the co-existence of

¹²⁰ibid, Section 4(5).

¹²¹Spencer, T.(1962)*A History of Islam in West Africa*. Oxford University Press, London.

¹²²Agbede, I.O.op. cit. p. 272

¹²³ibid

federal and state laws by virtue of the fact that the country is a federation consisting of several states. In fact, we have 36 states and the Federal Capital Territory, Abuja. Now, each of these states also has separate State High courts, State Sharia Courts of Appeal, and State Customary Courts of Appeal constitutionally established. By section 240 of the 1999 constitution¹²⁴, Appeals from these courts go to the Court of Appeal and from there to the Supreme Court both of which by the way, (i.e. Court of Appeal Supreme Court) are federal institutions.

Similarly and on the other hand, there is also it appears, conflict between the Received English Law or Common Law and Nigerian Statutes (i.e. the general Law) all on the one hand and the Customary/Islamic Laws, as well as between Islamic and Customary Laws and between systems of Customary Law inter-se¹²⁵.

Nigeria is made up of some 250 ethnic/linguistic groups, making her one of the world's most populous and ethnically diverse societies.¹²⁶ The ethnically diverse groups that constitute Nigeria each have its own system of customary law.¹²⁷ Although the rules within one group are broadly similar yet, there could be significant difference as to matter of details. On the other hand, as between the customary law of one ethnic group and another there could be wide divergence¹²⁸.

Furthermore, the existence of Sharia or Islamic Law which is administered in some Jurisdictions as a variant of customary law and in some others as a distinct and separate

¹²⁴1999 Constitution of the Federal Republic of Nigeria op.cit.

¹²⁵Agu, P.N. (1975) "The Dualism of English and Customary Laws in Nigeria", in Elias, T.O., Nwabara, S.N., and Akpamgbo, C.O., (eds.) African Indigenous Laws: Proceedings of workshop (7-9 August, 1974, Institute of African Studies, University of Nsuka) Enugu: Government Printer. Chapter 12, p.251.

¹²⁶ International Commission of Jurists (ICJ):- (1996), Nigeria and the Rule of Law – A Study, Geneva, Switzerland, p.30.

¹²⁷Ladan, M.T. (1999) Effects of the Test of Enforceability of Customary Law on the Application of Islamic Law in Nigeria. *ABU Journal of Islamic Law, Faculty of Law A.B.U., Zaria, Nigeria*, Vol. 1, pp.41 – 74.

¹²⁸Obilade, A.O. (1979) *The Nigerian Legal System*, Sweet and Maxwell, p.83.

system, poses a problem within this context. As a matter of fact, this system of law at the same time is almost completely ignored in other jurisdictions, ethnic groups, regions or states. For example, it should be noted that Islamic law is applicable in some Northern States as a distinct system whereas in the South Western States, it is applied as a variant of customary law, whilst it is almost totally ignored in the Eastern and South-South States of Nigeria. Therefore, a major concern in Nigeria's legal system is that there is not a single system of justice administration but in a real sense, three systems of justice administration. However, the three systems somehow still merge at the very top of the judicial hierarchy. According to Elias,¹²⁹ if Nigeria is to develop a truly Nigerian Common Law, it appears necessary to re-examine the position critically and see what changes that would be necessary for the attainment of the suggested goal.

By section 6 of the Nigerian 1999 Constitution¹³⁰, Judicial powers of the Federation and of the States are vested in the mentioned superior courts of record which are¹³¹:

- a) The Supreme Court of Nigeria;
- b) The Court of Appeal;
- c) The Federal High Court;
- d) The High Court of the Federal Capital Territory, Abuja;
- e) A High Court of a state;
- f) The Sharia Court of Appeal of the Federal Capital Territory, Abuja;
- g) A Sharia Court of Appeal of a State;
- h) The Customary Court of Appeal of the Federal Capital Territory, Abuja and;
- i) A customary Court of Appeal of a state.

¹²⁹Elias, T.O. (1972)*Law and Social Change in Nigeria*. University of Lagos and Evans Brothers Ltd.,

¹³⁰1999 Constitution of the Federal Republic of Nigeria op.cit.

¹³¹Section 6 (5) *ibid*

However, in addition to all the above stated, both the Federal and the State Legislatures have powers to establish other courts by statute. It is under this power that some of the States have established Sharia/Area/Customary/District/Magistrate Courts of various grades, powers and Jurisdiction.

It is important to note here that Nigeria's legal or justice administrative system is premised upon an established court hierarchy in which a litigant can, by way of successive appeals and if dissatisfied, keep climbing from the lowest court to the highest court.

The effect of all these is that while at the state level Nigeria has in some states three systems of courts meant to be administering three different types of laws, yet, appeals from all these courts converge in the Court of Appeal established by the constitution. This Court of Appeal is expected to, and in fact makes authoritative pronouncements in respect of the three systems and of all the sources of law. This perhaps forms the bases for the constitutional requirement that the Judges of the court of Appeal must consist of at least three members learned in Islamic and Customary Laws respectively. It is intended that such Judges will constitute the Court of Appeal in deciding appeals from the Sharia or Customary Courts of Appeal¹³². At the very pick of the Nigerian court hierarchy is the Supreme Court which has the final responsibility of deciding the course of justice in the country. This is because an appeal from the Court of Appeal comes to this court as the court of final and last resort. A decision of the court at this stage renders a matter *res judicata* i.e. finally decided and to which, there is no appeal.

¹³²Section 240, 244, 245, and 247, 1999 Constitution of the Federal Republic of Nigeria op.cit.

4.3.1 The Problems of Legal Pluralism

This tripartite system of law and of court has created uncertainty or lack of uniformity, at times, in the administration of justice in the country. This extends even in the teaching of the law, especially customary and Islamic family and Penal Laws and Jurisprudence. Notwithstanding this, it is obvious that there is very high increase in the fluidity and frequency of movement of individuals and groups in Nigeria. Similarly, there is the penetration of Western education and culture into the traditional circles such that these formally traditional cultures and institutions as well as ethnic and even family cohesion are not as strong and distinct as they once were. It is now very common to find a Nigerian from say Kano State, or even several Kano indigenes born and brought up in say Lagos State for example or Oyo State, and eventually even schooling in such community and getting married there. There is also large convergence of diverse people of different ethnic nationalities in certain cities like Lagos, Port Harcourt, Abuja and other such cities. The reality is that a wholly new situation is arising (in fact, has long already arisen), which demands the formation of new rules in the regulation of personal rights irrespective of ethnic, cultural or religious backgrounds.

The researcher whole-heartedly believes that “the idea of subjecting individual citizens to different laws within a single state is a mark of legal under-development. It is indeed absurd that different courts still exist to administer these different laws.”¹³³ As is to be expected in situations like this, the concern and problem is not just limited to conflict of Jurisdictional rules but also of the divergence in the form and quality of Justice that at the end of the day is obtainable in the various systems of court. This is inevitable owing to the

¹³³Agbede, I.O, op.cit. The Korsah commission made this observation over a quarter of century ago. See Native Courts commission of Inquiry (gold Coast) Ghana 1951 at p.3.

different rules of procedure, and the marked differences in the quality of the judicial personnel of these courts. It may not be out of place to state that a greater shortcoming of the arrangement is the possibility that a litigant may, on occasion, be left without a competent court to hear his complaint.

The above assertion or possibility finds fulfilment in the Brooke Commission's Report¹³⁴, where a case was cited in which the Native Court, the Magistrate Court and the Supreme Court all declined Jurisdiction. The unfortunate plaintiff was a Syrian who was claiming title to land subject to customary law. According to Agbede,¹³⁵ one of the major challenges of legal pluralism in Nigeria is not the desirability of simply abolishing Customary and Islamic Laws and courts but the failure or neglect to explore the possibility of integrating the tripartite system of law and unifying the diverse systems of court which, in his view, is long overdue for the following reasons:-

1. Economic consideration: - It is his view that mounting separate system of customary, Islamic and general court is hardly a healthy way of utilising scarce human and material resources within the context of the prevailing adverse economic situation of a developing economy like Nigeria. Even the arrangement sometimes demands setting up separate courts in the same locality without regards to the actual judicial work-load within the locality.
2. Legal Certainty: - It is also his view that the performance of the Judges in matters of internal conflict of law has made it almost impossible to tell in advance, in most cases, which particular system of law the court will apply to a given situation.

¹³⁴ See Brooke Commission's Report at p.82. Established by the Governor of Nigeria under the Commission of Enquiry Ordinance Cap.37 Laws of Nigeria, 1948.

¹³⁵ Agbede, I.O.op.cit. p. 276

3. Legal Simplification: - According to him, an integrated system of law will not only simplify the teaching of law but also its administration. The courts will be spared the perplexing task (of which the law reports show more than ample evidence) of having to decide in any given case whether the general or customary law applies and to ascertain the particular customary law to be applied.
4. Matter of Policy: - There is, according to Agbede, the issue of policy as to whether it is right and proper that citizens of a sovereign state in modern times should continue to be governed by different laws in their legal relations.
5. Social Convenience:- He is also of the opinion that an integrated system of law which takes account of contemporary social requirements will be more suitable to the needs of the time than either the inchoate and somewhat outdated rules of customary laws, the exotic rules of the received English Law or the immutable rules of Islamic law describe as “excessive reliance on ossified and outdated fiqh literature, legal rules and procedures of a particular School of Islamic Jurisprudence, especially the Maliki”¹³⁶.

4.3.2 The Solution to the Problem of Legal Pluralism

The issue is that if Nigeria considers it a must for the side by side coexistence of what can be referred to as the general law (including the received English Law), customary or religious laws, then, she should at least ensure that these diverse systems of law are judiciously applied. Arguably, it can be said that no single principle could cover satisfactorily the juristic analysis of the process of choosing between two or more

¹³⁶Ladan, M.T.(2001) Law, Human Rights and the Administration of Justice in Nigeria,: - Essays in Honour of Justice M.L. Uwais: - Department of Public Law, Faculty of Law, A.B.U., Zaria, Nigeria, pp. 66-90.

applicable systems of law. This formed the bases for the plea for the evolution of a Nigerian Common Law in the search of a Nigerian national identity¹³⁷. If Nigeria must have a national identity, she must have a Common law. In other words, one way, and perhaps the best way in which Nigeria can forge a national identity is through the instrumentality of the law.

Two problems emerge at once in the search for Nigerian Common Law: the problem of the existence of different substantive laws on the one hand and the problem of the existence of different systems of courts. As we have seen there are three broad systems of laws operating in this country: - (a) the customary laws, (b) the Sharia or Islamic Law, and (c) what we can call the general law.

Elias¹³⁸ in trying to proffer a solution on the fusing together of the customary law, the Shariah and the General Law, is of the view that the problem is not really the fusing completely together of the customary law, the Sharia and the General Law, but one of synthesizing the three systems of law and in the process producing a Nigerian Common law.

The researcher is of the view that a Nigerian Common law is possible. It should be a system that is largely based on the General Law, but with necessary provisions for cultural or religious concerns. Virtually all laws, whether contract, criminal, marital, etc can be made with this balance in mind hence, having a system where Nigerians can point to any law and know that it is applicable irrespective of cultural, religious differences, and not as it is, a system where there seem to be laws applicable to 'believers' and another for 'un

¹³⁷Aguda, T.A. (1985)*The Nigerian Legal System and the Problem of National Identity*. University of Ife, Dec. 13, p. 15

¹³⁸Elias, T.O. (1972), *Law and Social Change in Nigeria* University of Lagos and Evans Brothers Ltd. pp. 254 – 271.

believers'. As a matter of fact, and in compliance with the urgent need for a judicial reform that will lead to speedy justice delivery, the researcher strongly advocates for the complete abolition of all so called Area courts, Customary courts or Customary courts of Appeal, Sharia courts or Sharia courts of Appeal and even Magistrate courts all over Nigeria. The court hierarchy should be made simply of The High Court, Court of Appeal and Supreme Court. This will make for certainty and quick dispensation of justice. As it has been noted earlier on in this research, "the idea of subjecting individual citizens to different laws within a single state is a mark of legal under-development. It is indeed absurd that different courts still exist to administer these different laws¹³⁹."

Finally, in concluding this whole chapter, it is safe to say that I.C.T remains one major area where the Nigerian judiciary and indeed the government as a whole can take advantage of in order to have an effective justice delivery or administrative system. The words of Patrick on this issue are also very true when he stated thus:

With the delays occasioned in recording proceedings, obtaining certified copies of proceedings/ruling or judgments and associated logistical issues, it is not out of place to posit that until we pay adequate attention to deployment of technology in our court processes, we will not have started the expected movement towards a speedy administration of justice.¹⁴⁰

On the other hand, Legal Pluralism is a serious challenge to the quest for a more effective justice delivery system in Nigeria. "The co-existence in Nigeria and indeed in many African and Asiatic countries of diverse system of law within a localityhas posed

¹³⁹Agbede, I.O.(1991) *Legal Pluralism*Shaneson Publishers.

¹⁴⁰Patrick, I.N.op.cit

complex problems of legal administration.”¹⁴¹ While this remains the case in Nigeria, Agbede’s view is also true when he further stated thus:

Regrettably, the solution to these problems have not been given deserving attention by legal writers in Nigeria in spite of the complexity of conflict of laws problems in the country. Nigeria experiences, as it were, all the possible dimensions of conflict of laws problem viz. international, inter-state, inter-local (inter-personal) and inter-temporal.¹⁴²

The solution as discussed earlier on to this challenge of legal pluralism is to have a Nigerian Common Law. Again, the view of Agbede on this point is very instructive and the researcher agrees with him when he posited thus:

... an effective unified system requires the co-operative efforts not only of the central legislature, the judiciary and the local authority but also those of legal practitioners, law teachers and the public at large. There must be opportunity for consultation and discussion. The legislation must take account of the feelings of the public whose affairs the law is intended to regulate. He must listen to the views of the judges and the legal practitioners. He must take advantage of the result of research carried out by law teachers. And above all the government must “hasten slowly”.¹⁴³

With the issues discussed in this chapter properly addressed and complimenting the innovations discussed in chapter three of this research, there is no doubt that the Nigerian judiciary will be the better for it in terms of the effectiveness, speed or efficiency with which justice is delivered.

¹⁴¹ Agbede, I.O.op.cit p. 253

¹⁴² ibid

¹⁴³ ibid, p. 285

CHAPTER FIVE

5.0 SUMMARY AND CONCLUSION

5.1 Summary

The researcher has endeavoured to show that the reforms in the area of justice administration by way of the discussed legislations (i.e. the Administration of Criminal Justice Act 2015, and the Evidence Act 2011), have all helped in no small measure in advancing the efficiency of justice administration in Nigeria. In their own unique way, these reforms are trying to keep up with latest trends and have tried to block the weaknesses before now in our system that lead to unnecessary delays and at worst, permit the manipulation of the system by some litigants and their counsel.

However, notwithstanding the innovations made by the discussed reforms, or indeed any other existing or proposed reforms in the future, certain fundamental issues still go a long way to affect the efficiency of justice administration in the country. The challenge posed by Legal Pluralism as discussed by the researcher is a key issue that needs to be resolved quickly for a more robust justice administration in Nigeria. This is because the idea of subjecting individual citizens to different laws all within a single state is a mark of legal under-development. It is absurd that different courts still exist to administer different laws. Furthermore, the researcher believes that this is obviously now the appropriate time, in the reform process to begin to design and develop information technology policies for justice administration and effectively implement these policies, to the extent possible. The aim should be to provide a far-reaching technological solution tailor-made for the Nigerian

judiciary. Information and Communication Technology (I.C.T) is an area to explore which has great prospects in Nigeria's justice administration.

Lord Woolf in his Access to Justice Report that formed the basis for the substantial alteration of the Civil Procedure Rules in the United Kingdom, identified a number of principles which the system should meet in order to ensure access to justice, one of which is the ability to 'deal with cases with reasonable speed'. Notwithstanding reforms carried out to ensure efficient justice delivery or administration, more still needs to be done. The research has shown how, with the ideas presented, a more robust, and pro-active justice administrative system in Nigeria that is more user- friendly can be achieved, where people can find a system that can dispense justice speedily. Justice delayed is justice denied. 'Slow and steady' no longer wins the race. 'Fast and steady' does.

5.2 Findings

1. As it relates to the Evidence Act 2011, there is no doubt that one of the most notable innovations of the Act as it relates to efficient justice administration, is the introduction of provisions relating to electronic or computer evidence. There is also the definition of words like 'Document' and 'Computer' that covers quite a large spectrum of electronic and computer related technologies. In view of advancement in information and communication technology, this can be said to be a laudable development. Before now, admissibility of this class of evidence had been controversial due to the absence of specific provisions thereto in the repealed Evidence Act or even of a simple definition of the word 'computer'. Such an innovation although long overdue, increases the confidence and faith of the

business community, especially international business community, in the ability of the Nigerian legal system to properly deal with legal issues arising from various forms of their commercial transactions which are undeniably mostly conducted by, or with the aid of such computerised or electronic technology platforms. As virtually all of their transactions are electronically based, professionals, who handle maritime matters for example, or aviation and even oil and gas as well as international financial transactions, for example, can always say how relieved, they and their clients are by virtue of these innovative provisions in the said Act. With these extensive provisions, it is obviously clear that unlike under the previous Act, the controversy about the admissibility of computer-generated evidence will largely reduce.

2. It was observed that a comparison of section 84 of the Evidence Act 2011 reveals that it is more or less a replication of section 65B of the Indian Evidence Act, 1872 as amended, and substantially similar also to section 69 of the Police and Criminal Evidence Act, 1984 of England and Wales¹⁴⁴. This is quite commendable as it shows the existence of wide consultations and comparison in fashioning out this new law. This very section by the way is one notable innovative provision of the Evidence Act 2011 dealing with the admissibility of computer generated evidence.
3. It was also observed that concerning the Administration of Criminal Justice Act 2015, the infamous holding charge syndrome under the guise of “Applications for Remand” in section 293 of the same Act is sadly still in existence and is not innovative nor worthy of any positive comment. In furtherance to this, it appears

¹⁴⁴ otherwise called the PACE Act

section 296 is nothing but an unfortunate step back for civil rights and liberties. This is because Section 296 provides that “Where an order of remand of the suspect is made pursuant to section 293 of this Act, the order shall be for a period not exceeding 14 days in the first instance, and the case shall be returnable within the same period.” Meanwhile, it should be noted that section 293(2) and (5) allow for a further extension of the period of remand without charge of 28 days. The implication here is that a Nigerian citizen, right here in Nigeria can be legitimately arrested and held for up to 42 days on ordinary suspicions. In the researcher’s opinion, such provisions calls for a review since it in a sense, defeat the cardinal principle of presumption of innocence of the accused (not to mention a suspect) until proven guilty. Regardless of what argument may be said to justify such a provision, a better way to handle the situation should have been perhaps putting pressure on law enforcement agencies such as the police, to as a matter of legal compulsion, ensure speedy investigations and similar arrangement for state counsels to be prompt as regards their legal advice in criminal matters.

4. It was observed that the countries judicial system as a whole is yet to take full advantage of I.C.T in enhancing its operations. For example, there is the absence of an I.C.T judiciary integrated system that will coordinate all I.C.T related activities of the judiciary, from filling of cases to payments of fees and all other forms of court records. With a well-developed database programme for example, tracking of records, events and cases with a view to availing the decision makers like judges information in a timely manner is certain. Greatly enhanced now is our capacity to

capture, study and manipulate data producing reports and other records that one might be interested in.

5. It was also observed that the tripartite system of law and of court existing in Nigeria has created uncertainty or lack of uniformity, at times, in the administration of justice in the country. Different High court rules of the various State High Courts in Nigeria, as well as different rules and laws of all other lower courts (such as magistrates, Sharia, Customary, Area courts etc) of the various states, all create a web of a complex judicial structure. This extends even in the teaching of the law, especially customary and Islamic family and Penal Laws and Jurisprudence. There is a need to create a less complex judicial system and even of hierarchy of courts.

5.3 Recommendations

1. Notwithstanding the notable innovations of the Evidence Act 2011 as it relates to the introduction of provisions relating to electronic or computer evidence, it is hereby recommended to judicial officers like judges and all those involved in one form of justice administration or the other apply caution. This is because coming along with the advancement in computer technology is some dangerous negative tendencies, requiring that the Nigerian courts or judiciary be very cautious in admitting electronic evidence. Impersonation and identity theft, hacking of e-mail addresses, and all other manner of manipulations are now possible with the computer use. Not to mention that even passwords can be broken, online document can be altered, and photographs can be manipulated and images super-imposed with such computer use. It is possible to send text

messages using someone else's phone number. The point here is that notwithstanding the laudable innovations of the law, it is strongly recommended that there is still the need for caution and vigilance by the Nigerian courts in this area of evidence. Imagine a situation where for example Mr. A is been charged for a criminal offence, and messages allegedly sent by him to a co-conspirator, or something he allegedly said in his Face book page or twitter account concerning the crime is to be tendered as evidence against him. In a world where it is possible to hack the face book account of even Mark Zuckerberg (the founder of face book) himself, to simply accept and convict Mr. A on such evidence stated could be a mistake.

2. As it relates to the similarity of section 84 of the Evidence Act 2011 and section 65B of the Indian Evidence Act, 1872 as amended, as well as section 69 of the Police and Criminal Evidence Act, 1984 of England and Wales, it is recommended that the Nigerian courts and even lawyers take the liberty of looking into such persuasive judicial authorities of such jurisdictions. The reason for this is quite simple. Given the novelty of these provisions in our law, and with undoubtedly many Judicial decisions and precedents from these jurisdictions and even more besides them on various aspects of electronic evidence, it is a logical decision to make. It is also further recommended that bodies like the National Judicial Institute, Council of Legal Education and even the Nigerian Bar Association should consider it an urgent need now for Judges and even lawyers to be trained not just in basic computer literacy anymore, but also in serious computer intelligence, cyber-crime detection, imaging and

forensic evidence. This will be one way of ensuring that justice is not sacrificed on the altar of electronic evidence.

3. It is recommended that the National Assembly, in the interest of the civil liberties of citizens consider amending sections 293 and 296 of the Administration of Criminal Justice Act 2015. In a society like ours where rights and liberties are dispensable easily and quickly or sacrificed against the wanton execution of arbitrary power, such provisions are obviously counter-productive.
4. In compliance with the undeniable truth as to the importance of I.C.T in justice administration, it is recommended that the National Judicial Institute (N.J.I) and all Judicial Service Commissions ensure that all judicial officers and judiciary staff are trained on the use and application of I.C.T systems necessary for the discharge of their functions. The said Judicial Service Commission should consider having I.C.T experts employed within the judicial administration while the office of the Chief Justice and all relevant Judiciary administrators should consider the development of a National Judicial Computerised Case Administration System an urgent necessity. This system should serve as base operation for all I.C.T administrative process or activities of the Nigerian judiciary.
5. The researcher strongly recommends that the Nigerian Law Reform Commission and the National Assembly, in conjunction with other relevant agencies or organizations should as a matter of urgency, consider the development of a Nigerian Common Law. This should entail a system where all citizens are subjected to the same legal system and not as we currently have,

different courts administering different legal systems. Also, in the spirit of drastic reforms all aimed at speedy dispensation of justice, the same Law Reform Commission should also promote, advocate and liaise with necessary institutions such as the National Assembly for the complete abolition of all Customary, Sharia, Area and even Magistrates' Courts all over Nigeria. Court composition should consist simply of the High Court, Court of Appeal and Supreme Court. This will ensure quick and easy determination of disputes from the court of first instance to final appeal. Even if some may argue that these inferior courts to be abolished dispense 80% of cases that come before the judiciary, there is nothing wrong in increasing for example, the number of high courts so more cases can be tried at that level. The idea here is to reduce the stress or time it takes or may take before a matter is finally settled. As a matter of fact, in considering a more daring and drastic approach, there is nothing wrong in even having just two levels of court. Court of first instance and court of second instance or final appeal. What this may entail for instance is that trial at the courts of first instance for example may consist of a panel of say five or seven judges, while at the final appeal stage (second instance), trial may consist of a panel of say twelve judges or more.

In the researcher's opinion, it is time to think outside the box and come up with solutions that really work. There is nothing wrong in having dispute finally settled at the apex court within six months of the commencement of the case at the lower court.

Finally, while it is true that the discussed reforms are laudable, as it has synchronised our law with modern realities, it is not yet victory for the administration of justice in Nigeria.

The problem we have had in the past is that the laws do not keep pace with the realities of everyday life. With the growth in science and technology and as the society now keeps changing at dazzling pace, the National Assembly must constantly review and update the laws or else, we may soon find ourselves lagging seriously behind again not only in all aspects of our laws, but even in the discussed reforms of this research.

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