



## Legal implication of abuse of power in public Institutions: The economic and financial crimes commission as a case study

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### Abstract

It is often said that “power corrupts and absolute power corrupts absolutely.” The truth of this statement is evident in cases of abuse of power by public officials in Nigeria. For the purpose of this work, the spotlight is on the Economic and Financial Crimes Commission. The Commission, which was established as an anti-graft agency has soon become an unbridled horse in the exercise of its powers and performance of its duties. The paper is segmented discusses the arbitrary use of power by the Economic and Financial Crimes Commission (EFCC) in order to ensure that these powers are curbed or adjusted to meet the standards of human rights as contained in various treaties and conventions ratified and acceded to by Nigeria. The aim of this paper is to weigh the arbitrary use of power against principle of Natural Justice such as fair hearing which appears to be utterly disregarded by EFCC officers. Instances of Abuse of Power by the EFCC will be examined and alternative ways of ensuring that perpetrators of financial crimes will be charged properly as provided for under the Nigerian Constitution and other laws protecting the rights of citizens. Thus, there is no gainsaying that the law is an indispensable tool to remedy the abnormality of abuse of power by the EFCC and such laws can be amended for the purpose of enforcing laws in such a manner that justice will be done.

**Keywords:** Abuse of power, public institutions, Economic and Financial Crimes Commission, natural justice

### Introduction

The Economic and Financial Crimes Commission (EFCC) is a Nigerian law enforcement agency that investigates financial crimes such as advance fee fraud and money laundering <sup>[1]</sup>.

Economic and Financial Crime Commission powers to investigate and prosecute corrupt malpractices are further widened by Section 46 of the Act which defines economic and financial crimes. The section defines economic and Crimes as:

“...The non-violent criminal and illegal activity committed with the objectives of earning wealth illegally or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, briber, any form of corrupt malpractices, illegal arms dealing, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractice looting and including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic waste and prohibited goods, etc”

The Economic and Financial Crime Commission investigates people in all sectors who appear to be living above their means, and is empowered to investigate and prosecute money laundering and other financial crimes <sup>[2]</sup>.

It is one of the top law enforcement agencies in Nigeria that focuses on the investigations of different types of financial crimes <sup>[3]</sup>.

The Commission also investigates reports of allegations made for money laundering and advance fee fraud (also known as 419) <sup>[4]</sup>.

The Economic and Financial Crimes Commission is a creation of statute and has been given the responsibility to enforce laws against fraudulent banking, advance fee fraud,

money laundering, miscellaneous offenses, and other crimes relating to economic and finances. <sup>[5]</sup>

The provisions of Sections 6, 7, 14-18 of the Economic and Financial Crime Commission Act, <sup>[6]</sup> particularly Sections 6(b) <sup>[7]</sup>, 7(1) (a <sup>[8]</sup>), 7(2)(f) <sup>[9]</sup>, and 13(2 <sup>[11]</sup>) gives the Economic and Financial Crime Commission powers to investigate and prosecute offenders for any offence, whether under the Act or any statute in so far as the offence relates to the commission of economic and financial crimes. The provisions are reproduced below to demonstrate the enormous powers of Economic and Financial Crime Commission.

### Section 6(b)

The investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc.

### Section 7(1)

The Commission has power to—

(a) Cause investigations to be conducted as to whether any person, corporate body or organization has committed any offence under this Act or other law relating to economic and financial crimes.

### Section 7(2)

(f) Any other laws or regulations relating to economic and financial crimes, including the Criminal and Penal Code.

### 1. Abuse of power

Abuse of power entails the use of official authority in such a way that contradict the interests of the service. Usually, for such “services,” an official receives a certain reward for themselves or another person/company <sup>[11]</sup>.

Abuse of power can occur in different ways. An example of abuse of power includes causing emotional stress to other individuals. Another instance is when a leader engages in sexual contact with their juniors without their consent, such as unwanted touching<sup>[12]</sup>.

Abuse of Power can also occur in a situation where an individual uses his/her authority to deride/oppress or ridicule those below or the less-privileged. When an individual in charge of an office takes advantage of his power to bully, manipulate and intimidate his subordinates, it is considered an abuse of power.

### 1.1. Types of abuse power

Abuse of power is categorized into physical, financial, and sexual abuse. Physical abuse involves causing bodily harm to other individuals, Financial abuse involves using funds meant to help the public or other individuals for personal or family gains.

**Sexual abuse:** is unwanted sexual activity, with perpetrators using force, making threats or taking advantage of victims not able to give consent. Most victims and perpetrators know each other

**Typical cases of abuse of power are:** illicit assistance in appointing a person to a position that he ordinarily may not be qualified for.;

Unlawful interference in the activities of government bodies, local self-government bodies, or officials:

Illegitimate provision of benefits to individuals or legal entities during the preparation of drafts, publication of regulatory acts, decision making, etc.;

### Misuse of funds

Illicit exemption of persons from paying taxes, fees (mandatory payments);

Creation of surplus goods or other material values for subsequent possession of them.

This work particularly analyses abuse of power by the Economic and Financial Crimes Commission.

## 2. Structure of the Economic and Financial Crimes Commission (EFCC)

The Economic and Financial Crime Commission was established in 2003, partially in response to pressure from the Financial Action Task Force on Money Laundering (FATF), which named Nigeria as one of 23 countries non-cooperative in the international community's efforts to fight money laundering. The agency has its head office in Abuja, Nigeria<sup>[1]</sup>.

### 2.1. Functions and powers of economic and financial crime commission

#### Section 13(2)

The Legal and Prosecution Unit shall be charged with responsibility for

- a. Prosecuting offenders under this Act
- b. Supporting the general and assets investigation unit by providing the unit with legal advice and assistance whenever it is required
- c. Conducting such proceedings as may be necessary towards the recovery of any assets or property forfeited under this act
- d. performing such other legal duties as the commission may refer to it from time to time.

### Investigation of financial crimes

The Economic Financial Crime Commission is responsible for investigating a wide range of financial crimes, including fraud, money laundering, cybercrime, and financial mismanagement. It has the authority to investigate both individuals and institutions involved in illegal financial activities.

#### Example

The Agency investigated Diezani Alison-Madueke, the former Minister of Petroleum Resources in Nigeria, who was accused of looting state funds and engaging in money laundering activities. The EFCC initiated investigations into her assets both within and outside Nigeria.

### Prosecution of financial crimes

The EFCC has the legal mandate to prosecute individuals and entities involved in financial crimes. This includes bringing charges against corrupt public officials, fraudsters, and financial institutions involved in illegal activities.

#### Example

The EFCC successfully prosecuted Joshua Dariye, the former Governor of Plateau State, who was convicted for embezzling state funds. He was sentenced to prison for money laundering and related offenses.

### Prevention and deterrence of financial crimes

One of the EFCC's key roles is to prevent financial crimes by promoting awareness and creating deterrence through visible enforcement of the law. This includes setting up initiatives to educate the public and institutions on anti-corruption measures and financial integrity.

#### Example

The EFCC runs public education campaigns to raise awareness about the dangers of financial crimes and corruption, such as workshops for government officials, businesses, and the public.

### Asset forfeiture

The EFCC is authorized to seize and forfeit assets gained through illegal activities, including assets linked to corruption, money laundering, and fraud. The commission can request a court order to confiscate such assets.

#### Example

The EFCC seized assets belonging to James Ibori, the former Governor of Delta State, who was convicted for embezzling public funds. These assets, which included luxury properties and cash, were forfeited to the Nigerian government.

### Collaboration with other law enforcement agencies

The EFCC collaborates with other national and international law enforcement agencies, such as the Nigeria Police Force (NPF), Interpol, and the Financial Action Task Force (FATF), to combat financial crimes that transcend national borders.

#### Example

The EFCC worked with Interpol in apprehending Alhaji Bola Tinubu associates, who were involved in fraudulent

investment schemes. These international collaborations helped to track down criminal activities outside Nigeria.

#### Recovery of Stolen Assets

In addition to prosecuting offenders, the EFCC is actively involved in the recovery of assets that have been illegally acquired. This includes funds stashed abroad or hidden in various financial institutions.

#### Example

The EFCC played a significant role in the repatriation of \$321 million that was looted by former military dictator Sani Abacha and stashed in foreign banks. The funds were returned to the Nigerian government after legal battles, which the EFCC oversaw.

#### Monitoring and regulation of financial institutions

The EFCC monitors and investigates financial institutions, including banks and insurance companies, to ensure they comply with anti-money laundering laws and regulations. The commission works with the Central Bank of Nigeria (CBN) and other regulatory bodies to ensure that financial institutions are not complicit in illegal activities.

#### Example

In 2018, the EFCC investigated several Nigerian banks for money laundering activities involving the transfer of illicit funds to offshore accounts. Some banks were sanctioned or required to strengthen their anti-money laundering measures.

#### Investigation of cybercrime and fraud

With the rise of technology, the EFCC has expanded its role to include cybercrime investigations. The commission investigates online fraud, including activities like Yahoo Yahoo (internet fraud), phishing, and other types of cybercrimes.

#### Example

The EFCC has successfully investigated and prosecuted individuals involved in internet fraud or cybercrimes such as the case of Ruth Oyekunle, who was convicted for internet fraud under the EFCC's cybercrime unit.

#### International cooperation on corruption cases

- The EFCC cooperates with international bodies like the United Nations, FATF, and Interpol to tackle cross-border financial crimes, ensuring that those who commit economic crimes in Nigeria cannot escape justice by fleeing abroad.

#### Example

The EFCC cooperated with international law enforcement in investigating and prosecuting Alhaji Abacha's associates in the United States and Europe, leading to the recovery of stolen funds from foreign accounts

## 2.2. Instances of abuse of power by the economic and financial crime commission

The Economic and Financial Crime Commission has become something of a menace to Nigerians. Studies and research show that rather than combating Corruption, they have become part of the enablers of corrupt Practices that is: they select the corrupt officials to arrest and collect bribes amongst others. It is noteworthy to state that some leading

officials of the commission have been accused of siphoning money recovered from criminals and looting billions of naira. Prominent example is the former chairman of the commission, Ibrahim Magu who was later dismissed.

The commission has also resorted to witch hunting some persons in the guise of uncovering financial crimes to conduct unlawful search and seizure and arrest without warrant which is against section 5 Criminal Code Act and declaring people wanted without first obtaining a court order to that effect. Other instances of abuse of power by the Economic and Financial Crime Commission are as follows:

**Unlawful detention:** The Economic and Financial Crime Commission are fond of detaining suspect indefinitely without formal charge, as against what the Constitution stipulated, Section 35 of the 1999 Constitution provides that "any person who is arrested or detained shall be informed in writing within 24 hours (and in a language that he understands) of the arrest or detention."

Unlawful detention is contrary to Section 35 of the Constitution because it is unconstitutional to remand a person beyond the time provided by law, and to circumvent it again is another offence.

Abuse of power under the concept of holding charge to keep corruption suspects beyond the stipulated time by the law: Sub-section 4 (a) and (b) provides for commencement of trial within two months or three months depending on the nature of the case.

Sections 293 to 296 of the Administration of the Criminal Justice Act (ACJA, 2015) provides that a remand obtained from court can be valid for 14 days and renewable for another 14 days-if the authority shows 'good cause.'

The Economic and Financial Crime Commission are fond of circumventing these legal requirements by obtaining different remand after the expiration of the previous one to keep on holding a suspect on the pretext of non-conclusion of investigation and trial. Arrest without investigation or justification, witch-hunting political opponent parties.

Unnecessary arrest just as seen in the case of Morakinyo vs EFCC <sup>[13]</sup> The EFCC had, on March 19, 2021, arraigned Morakinyo on a 23-count charge in which he was accused of engaging in money laundering. The respondent pleaded not guilty to the charge and was granted N200 million bail with two sureties, among other conditions. He met the bail conditions few days later, following which the court endorsed his release order. But before he left the court premises, EFCC agents arrested him on March 19, 2020 and detained him in its Jabi, Abuja facility until April 4, 2020, claiming he was to face another charge before a Lagos High Court.

Morakinyo challenged his re-arrest and detention via a fundamental rights enforcement suit he filed before Justice Ekwo. In his judgment on March 1, Justice Ekwo faulted EFCC's conduct and awarded N50 million in exemplary damages against the commission "for abusing its statutory powers and arbitrarily trampling on the fundamental rights of the applicant".

The judge ordered the Economic and Financial Crime Commission to tender a public apology to Morakinyo in two national dailies over his illegal arrest and detention. He also held that the conduct of the Economic and Financial Crime Commission was "an aberration of the tenets of the democracy we profess to practise".

Justice Ekwo, who said Economic and Financial Crime Commission's decision to arrest Morakinyo in the court was

disrespectful of the Judiciary, added that in a democracy, no arm of government is to be made to appear as subjugated to the other.

“Unconstitutional and illegal courthouse arrest is condemnable and punishable. And the courthouse arrest of the applicant by the respondent is no less so.” “Where the court has granted bail to a person and the person has met the terms of bail and a release warrant has been issued to him but he is facing arraignment in another court, he needs not be re-arrested.” He can be served the subsequent charge and given the opportunity to appear in court on the date fixed for his arraignment. The assumption that such a person is likely not to appear in court for the other trial is unfounded as his particulars of bail are in the custody of the court already. The court, in which he is appearing next, has the discretion to grant him bail upon the previous terms or modify same. He is aware that it is in his interest to appear in court to answer to the allegations against him. “Therefore, there is no valid foundation for the subsequent arrest of the applicant on the excuse of a pending charge in Lagos, when he had been granted bail by a court of coordinate jurisdiction in Abuja upon arraignment for another charge,” the judge said.

On appeal to the Court of Appeal, the decision of the trial court was affirmed save for the reduction in the fine to be paid by the EFCC.

### 3. Recommendations

The fact of abuse of power by the EFCC cannot be gainsaid, which has made the establishment of the commission to be somewhat counter productive. The question is ‘‘who watches the watchers’’. The EFCC was established to be a watchdog against corrupt individuals/officials but they are left to themselves, hence the abuse of their powers. There is therefore a need to establish a body which will have oversight over the Commission. Such a body will help to curb the excesses of the Commission and ensure that it stick to the objective of the objective of its establishment. The Commission needs to work assiduously towards restoring the Commission to its proper role of leading Nigeria’s war against financial crimes.

The Commission needs to resist all partisan pressures to use the agency as a tool for political persecution, harassment of dissenting voice, settling of personal scores as well as personal enrichment.

#### Strengthening Institutional Oversight

There should be independent internal and external oversight of the EFCC to ensure transparency and accountability in its operations. Oversight bodies, such as an Independent Review Commission, could be tasked with reviewing EFCC investigations and ensuring that due process is followed.

#### Enhancing Transparency in Investigations

The EFCC should maintain transparency in its investigative processes. This can be achieved by publishing regular reports on the progress of investigations and prosecutions, especially for high-profile cases, and making public the criteria for selecting cases to investigate.

#### Safeguarding human rights and preventing arbitrary detention

There should be a more stringent adherence to human rights standards, especially regarding the detention of suspects and

the presumption of innocence. The EFCC should avoid arbitrary arrests and ensure that any detention is done within the boundaries of the law.

#### Professionalism and training of EFCC Personnel

The EFCC should enhance the professionalism of its officers through regular training on legal ethics, human rights, accountability, and international best practices in law enforcement. Special attention should be paid to avoiding excessive use of force and respecting the rights of those under investigation.

#### Reducing political influence and ensuring independence

The EFCC should operate with greater autonomy to reduce political interference. This can be achieved by establishing a clear framework for the appointment and removal of its leadership, ensuring that decisions about investigations and prosecutions are based solely on evidence and legal principles, rather than political considerations.

#### Clearer guidelines on the use of investigative powers

The EFCC should create and implement clearer **guidelines** regarding the use of its investigative powers (e.g., surveillance, searches, and seizures) to ensure that they are not abused. This includes ensuring that investigations are carried out in a manner that respects the law and the rights of individuals.

#### Regular audits and accountability measures

The EFCC should undergo regular audits to assess its financial management, operational integrity, and the legitimacy of its activities. These audits should be conducted by independent auditors and be made publicly available.

#### Improved public communication and feedback mechanism

The EFCC should strengthen its public communication strategies by creating more open channels for feedback from the public and stakeholders. This includes creating accessible mechanisms for people to report abuses of power or misconduct by EFCC personnel.

#### Strengthening internal discipline and anti-corruption measures within the EFCC

The EFCC should establish a robust internal discipline mechanism to investigate and sanction any allegations of corruption or abuse of power within the commission itself. This would involve setting up an Ethics and Compliance Unit to ensure officers adhere to ethical standards.

#### Conclusion

While the EFCC plays a critical role in combating corruption and financial crimes in Nigeria, there is an urgent need for reforms to prevent and address potential abuse of power. By adopting these recommendations, the EFCC can improve its effectiveness, enhance public trust, and ensure that its anti-corruption efforts are not tainted by the same issues it seeks to eradicate. Establishing strong oversight, improving transparency, and safeguarding human rights will go a long way in ensuring that the EFCC remains a force for good in Nigeria's fight against corruption.

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