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An appraisal of the powers of police to prosecute electoral offences in Nigeria

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Abstract
A research was carried out appraising the powers of police to prosecute electoral offences in Nigeria. Prior to the coming of the police Act 2020, there were no specific limitation in the provision of the law on the powers of the Police to prosecute electoral offences in the courts in Nigeria. Furthermore, with the coming of the Police Act 2020, only a legal practitioner in the police establishment is permitted to prosecute criminal cases in the superior courts. This is provided for the in the provisions of section 62 of the police Act, 2020 to the effect that only a police officer who is a qualified legal practitioner shall have the power to prosecute. However, the Electoral Act, 2022 empowers only legal officers of the Commission to prosecute Electoral offences and any legal practitioner appointed by the Commission. The article aims at addressing this misconception on the power of police to prosecute electoral offences in Nigeria. Here there is a gap as to whether the Police has the power to prosecute Electoral offence, despite their powers of arrest, detention, search and investigation of electoral offences. This is also aimed at achieving smooth administration of justice in Nigeria. The article employs reliable doctrinal approach relying on primary and secondary sources of law such as statutes and case laws. I therefore recommends the amendments of the provisions in the Electoral Act 2022 in order to bring it in line with provision of ACJA 2015.

Keywords: Power of Police, Appraisal, Prosecute, Electoral Offences

Introduction

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) established the Nigerian Police force [1]. The section provides that:-

"There shall be a Police force for Nigeria which shall be known as the Nigeria Police force, and subject to the provisions of this section no other Police force shall be established for the Federation or any part thereof."

The Nigerian Police is established for the purposes of protection and detection of crime, apprehension of offenders, the preservation of law and order and the protection of life and property. EKUM V. THE STATE [2], the Supreme Court said:-

"The wanton gruesome murder of an innocent citizen by the person employed to protect the citizen is horrific and should not be condoned in any society. Policemen are to be properly trained to perform their Duties to serve and protect members of the community and not to cause them harm without any legal excuse."

That apart from the above mention duties the police has the power to arrest a suspect or defendant alleged or charged with commission of an offence [3]. The Police have the power to investigate crimes [4] and to execute search warrants [5] and can prosecute cases [6]. Also in the case of STATMARK V. COP [7], the court said:-

"Section 4 of the police Act, cap.19, Laws of the Federation 1990 States the duties of the police, to include among others, the Prevention and detection of crimes, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are charged. Once criminal allegations are made against a citizen, the police have the constitutional and statutory duty to investigate the allegation. In carrying out these tasks, the police is empowered under the provision of section 24 of the police Act to arrests without warrant any person whom any person charges with having committed a felony or misdemeanor. Provided as state in section 27 of the Police Act, that a person so arrested without a warrant shall be taken before a magistrate within a reasonable time or granted bail with or without surety at the police station. By these provisions of the Police Act read along with the provisions of section 35 (1)(c) and 41 (2)(a) and 45 of the 1999 Constitution, it is clear that where it is shown that the Police acted reasonably within its powers under the Police Act in investigation of a criminal complaint and with reasonable grounds to believe that a person had committed a criminal offence or is likely to commit one, the necessary curtailment of the fundamental rights of such a person cannot amount a breach of that person`s fundamental rights."

Statement of Problem

However, it is worrisome that despite legislations and other innovations introduced in the electoral process, elections in Nigeria's present democratic dispensation have seriously been marred by irregularities. Therefore, the loss of confidence and legitimacy by the electorate on their leaders on account of poor governance and the leaders' insistence to remain in power turned elections into war theatres in recent years, as elections must be won at all cost amidst mounting opposition [3]. Electoral abuses, such as bribery or intimidation of the individual voter, disseminations of scurrilous rumors about candidates and deliberate false campaign propaganda, tampering the election machinery by stuffing the ballot box with fraudulent returns, dishonest counting or reporting of the vote and total disregard of electoral outcomes by incumbent office holders [1] are the basis of electoral offences. Furthermore, the arrest and prosecution of electoral offenders have been fraught with a

lot of challenges. The Police with the responsibility for the arrests, investigation and giving evidence in court on electoral matters are sometimes posted out of their State Commands and moved to contiguous states on Election Day. This is done to ensure their neutrality on Election Day. Unfortunately, some of the officers on duty on Election Day are posted back to their State

Despite the legal order for the prosecution of electoral law violators in Nigeria, yet the country saw only few prosecutions [1] and that commission of electoral offences is in the increase and did not change the malpractices nor reduces commission of electoral offences. The police abdicate their responsibilities in the prosecution of electoral offences.

However, there are provisions in the Electoral Act dealing with electoral offences, though there are few prosecutions considering the number of offences committed. This may not be unconnected with the fact that the institutions responsible for the prosecution of the offenders are not performing this duty effectively and efficiently. Despite recurring incidents of commission of electoral offences during elections, the lack of prosecution allowed impunity persists These are gaps under the Nigerian Legal framework which the study set to focus on the issues with a view to inform policy on effective and efficient prosecution of electoral law violators for prevention of crimes, especially looking at the scope of criminal responsibility towards the realization of democratic elections. This study is intended to study the Police to prosecute electoral offenders with a view to fill in the gaps. The significance of this study lies in its potentialities to explore and offer empirical evidence regarding the efficacy of prosecuting electoral offences in Nigeria. It`s finding could show some vital needs to pursue legal action against electoral Law violators, thereby ensuring the sustainability of democracy in Nigeria. The empirical findings will assist the legislatures in providing the necessary amendments of the Laws as may be recommended in this research. Policies may be introduced. It will assist researchers, police, academics, students, INEC, legal practitioners and judges

Objectives of the Study

a. To study the laws empowering the Police to prosecute electoral offences under the Nigerian legal framework.
b. To analyses the legal issues in the prosecution of electoral offences in Nigeria by the Police
c. To make suggestions and recommendations to ensure effective and efficient prosecution of electoral offences in Nigeria.

Literature Review

Nigeria's elections since the inception of Democracy before independence have been characterized with rampant cases of violence, murder, arson, fraud gerrymandering, misuse of the institutional tools, elite cohesion pacts and mal-apportionment etc. The state's institutions responsible for the prosecution of such crimes abdicated their roles and in some certain cases have been complicit in the crimes [2]. Another problem is that in some certain cases the mechanisms set up for the achievement of these goals were ineffective. On the nature of electoral offences, this area attracted academics debate whether electoral offences are classified as misdemeanor or felony.

Methodology

The study, utilizes doctrinal method of research which is predominantly in legal research, particularly within common law jurisdictions [3]. This method primarily involves logical analysis of legal provisions without extensive reliance on empirical evidence [4]. Often conducted through desk or library research [5] the choice of methodology significantly impacts the acceptance of the findings of the research.

Methodologically, this research is a further proof that doctrinal method will compliment empirical research which is one of the best ways to investigate law as it applies to society. A qualitative method using interview medium will be used to collate data from the stake holders. This singular act makes the findings dependable and acceptable as the real happenings in Nigeria

Data gathered pertaining to secondary sources encompasses relevant literature and other sources obtained from the library, body of laws, legal precedents, vis a vis the powers conferred on the police to prosecute Electoral Law violators in Nigeria, by the Act. The researcher will collect the data using semi structured interview. This approach will give researchers opportunity of having first-hand information from the respondents and streamline the data collection process.

The Nigeria Police

However, before the coming into force the Police Act, 2020, the position under the Police Act, Cap, P. 23 Laws of the Federation of Nigeria 2004 is that there were so many arguments that the Police cannot prosecute before the superior courts of record in Nigeria. That, the matter was laid to rest in the case of OLUSEMO V. COP [15], where the court said:-

" From the provisions of section 23 of the Act it is manifest that the Police officer is vested with the right to conduct in person all prosecutions before any court whether or not the information or complaint is valid in his name. it is also clear that by the provisions, a police officer may prosecute any case before court. From this wide definition it can be said that a police officer may prosecute before the High court. The provisions of section 98(1) of the High court of Abuja really also has the same effect. The powers so vested in a police officer to conduct criminal prosecutions in any court are however subject to the powers vested in the Attorney-General of the Federation, per section 160 (b) and (c) and the Attorney-General of the state ,per section 191 (1)(b) and (c) of the 1979 constitution. Thus, the only fetter in law to the prosecution of cases by a police officer lies in the exercise of the powers of the Attorney- General of the Federation or that of the state. In instant, the trial court was right to have held that the police officer who appeared for the respondent had the right to so appear and conduct criminal prosecution against the appellant".

From the above decision, the only restriction placed against the police officers concerns the officers who are not legal practitioners [16]. OLUSEMO V. C.O.P [17], the court said:-

"By virtue of section 2 (3) of the Legal practitioners Act, cap, 207, laws of the federation of Nigeria , 1990, a legal practitioner is entitled to and has the right to appear and have audience in any court of law or tribunal in Nigeria. In the instant case, the counsel for the respondent apart from being a Commissioner of Police, is also a qualified lawyer. He is therefore, as a legal practitioner, entitled to appear, as

of right and prosecute cases in the High court of the federal capital territory Abuja without being so authorized by the Attorney-General of the federation.'

Again, notwithstanding any prosecutorial power conferred on any agency, the power of the police to prosecute still exists. IGP V. DANIEL ANDREW [18], construing the provisions of section 8(2)(a) of the National Drug Law Enforcement Agency(NDLEA) which section confers the NDLEA with the power to prosecute drug related offences and contrasted it with section 23 of the Act, the court said:-

"None of those sections ousted the prosecutorial powers of the police which are donated by the Constitution. The fact that the agency is given concurrent with the police to pros Under the Act cannot amount to usurpation of its powers by the police. Both the police and National Drug Law Enforcement Agency are fighting Crime in the country. Any power tussle between the Federal agencies charged with responsibility to fight crimes will lead to anarchy and the Federal Government`s efforts will Remain prostrate."

Also in FRN V. DANIEL ABUAH [19] the court held that the Nigerian police can prosecute all offences including those under the Nigerian Security and Civil Defence Corps Act (NSCDC), where the court up turned the judgment of the Federal High court (Lokoja Judicial Division), who held that since section 3(1)(f)(iv) of the Nigerian Security and Civil Defence Corps Act, 2007 has expressly conferred on NSCDC, the authority to investigate offence of oil pipeline vandalisation and the power to initiate proceeding thereto on behalf of the Attorney-General of the Federation, the police is under a duty to hand over any such suspect apprehended by them in respect of such offence to NSCDC for prosecution.

However, the police Act, 2022 categorically stated that police officers who are legal practitioners may prosecute in person before any court whether or not information of complaint is laid in his name [20]. Again a Police officer may, subject to the provisions of the relevant criminal procedure laws of the Federal or state level, prosecute before the courts those offences which non-qualified legal practitioner can prosecute [21]. Section 66(1) of the Police Act, 2022 as follows:

"Subject to the provisions of section 174 and 211 of the constitution and section 106 of the administration of criminal justice Act, 2015 which relates to the powers of the Attorney-General of the Federation? and of a state to institute, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria, a police officer who is a legal practitioner, may prosecute in person before any court whether or not information or complaint is laid in his name".

Sub section 2 of section 66 of the police Act provides

"A police officer may, subject to the provisions of the relevant criminal procedure laws in force at the Federal or State level, prosecute before the courts those offences which non-qualified legal practitioners can prosecute".

The effects of these statutory provisions is that the power of the police to conduct in person all prosecutions before any court whether or the information is or complaint laid in his name" is subject to the overriding powers of the Attorney-General of the Federation and states respectively under sections 174 and 211 of the constitution [22].

Can the police terminate and or withdraw an electoral offences matter filed in court?

Even though the Police have the power to institute and undertake criminal prosecution, yet they lacked the power to terminate and or withdraw an election offence matter from the court. Only the Attorney-General has the power to do so. for example, the Police filed charges before the Federal High court Kano, bordering on conspiracy, arson and attempt to tamper with electric transformer against one Maged Ali-Taan a Lebanese national and his employee Mustapha Tiamiyu. Were alleged to have conspired willfully and maliciously set fire to a building at No. 5C, Murtala Mohammed way, Kano. The prosecuting Police officer applied to the court to withdraw the charges against the defendants. Counsel to the defendants opposed the police application, asserting that under the Nigerian Constitution, the police didn't have the right to withdraw the charges except the Attorney-General. Justice Muhammad Nasir Yunusa and upheld the objection of the defence counsel [23].

On the meaning of police officer, OLUSEMO V. C.O.P [24] the court interpreted it to mean

"A Police officer is defined in section 1 of the police Act, to Mean Any member of the Police force."

Also MITIN V. COP [25], the supreme court said

"Police power is the exercise of sovereign right of a government to promote order, safety, health, morals and general welfare within constitutional limits and as an essential attribute of government."

In OLUSEMO V. COP (supra), the gist of the case is that the Appellant was the Accountant General of the federation. The appellant and 5 others were arraigned on a First information report (FIR) on allegation for the alleged offences of criminal conspiracy, forgery, using as genuine forged documents, attempted theft, criminal breach of trust and causing disappearance of evidence under the penal code, before the chief magistrate court in the federal capital Territory, Abuja. Counsel to the Appellant demanded for the proof of evidence and list of witnesses. The prosecuting counsel objected the application as it was premature. The trial court ruled that the although the applicants were entitled, it was too early at that stage to do so. The application was refused. The Appellant appealed to the FCT, High court. The Appellant contended that, the prosecutor, then a commissioner of Police representing the state. The High court ruled that the commissioner of police was entitled to represent the state in the state. On appeal to the court of Appeal, the affirmed the decision up till the Supreme Court.

Historically, police officers are been involved in the prosecution of criminal cases in Magistrates, customary and Area courts. At the time of promulgating the police Act, of 1943, the magistrates court were manned by lay men, mostly District officers and the police had the unfettered powers of prosecution in all Magistrate courts and later Customary, Native and Area courts [26]

Prosecution of Electoral Offences by the Police

In OLUSEMO V. COP, (supra) the court said:-

"…the relevant provisions of the 1979 constitution as amended and section 23 of the Police Act, (cap 359 Laws of Nigeria, 1990) the combined effect of this is that any police officer can prosecute before any court in Nigeria without the

consent or authorization of any body. It could have been described as unfettered Police power, but for the fact that the Attorney-General of a state or of the federation can at any stage of the proceedings shall have the power to enter nolle prosequi pursuant to section 191 and 160 respectively of the 1979 of constitution of the federal Republic of Nigeria as amended. In other words, section 23 of the Police, Act,(supra) is restricted by the provisions sections 191 and 160 of the constitution [27]."

From the above, it is expressly clear beyond doubt that the service of the police is very germane as long as criminal justice must be administered efficaciously. The Police are saddled with the responsibility of investigating crimes, power of arrests, detention, search of all crimes irrespective whether it is electoral offence or not except where the statute expressly permitted other institutions to arrest, investigate, search and detained [28]. So the Police have the power in fact the duty to investigate crimes. In FAWEHINMI V. IGP [29] the Supreme Court said

"Section 214 of the 1999 Constitution recognizes one Police Force for Nigeria and the said Police are given a duty under section 4 of the Police Act, Cap, 359, Laws of the Federation of Nigeria 1990, to:

a. Prevent crime
b. Detect crime
c. Apprehend offenders
d. Preserve Law and order
e. Protect life and property and
f. Enforce all laws and regulations with which they are directly charge

It is important statutory duty which Police owe to the generality of Nigerians

And all other persons lawfully living within Nigeria. It follows, therefore that, in their duty to detect crime, the Police should normally investigate allegations of crime committed by any person".

From the above dictum of the Supreme Court, the Police are empowered to investigate arrests, search, detain and prosecute electoral offender's [30]. Also the police are required to protect all eligible citizens participating in electoral process [3]. However, In KURE V. COP [32]. The court said:-

"By virtue of section 4 of the Police Act, Cap, P19 Laws of the federation of Nigeria, 2004 the primary duty of the Police is the prevention of crime, investigation and detection of crime and the prosecution of offenders…"

Again in FAWEHINMI V. IGP (supra) on the powers of the Police to investigate any person who is alleged to have committed a crime, whether a president, vice president, Governor and Deputy Governor, the Supreme Court said:

"That a person protected under section 308 of the 1999 Constitution, going by its provisions, can be investigated by the police for alleged crime or offence is, in my view, beyond dispute. To hold otherwise is to create a monstrous situation whose manifestation may not be fully appreciated until illustrated. I shall give three possible instances. Suppose it is alleged that a Governor, in the course of driving his personal car, recklessly ran over a man, killing him; he sends the car to a workshop for the repairs of the dented or damaged part or parts. Or that he used a pistol to shoot a man dead and threw the gun into a nearby bush. Or that he stole public money and kept it in a particular bank or used it to acquire property.

Now, if the Police became aware,, could it be suggested in an open and democratic society like ours that they would be precluded by section 308 from investigating to know the identity of the man killed, the cause of death from autopsy report, the owner of the car taken to the workshop and if there is any evidence from the inspection of car that it hit an object recently, more particularly a human being; or to take steps to recover the gun and test for ballistic evidence; and generally to take statements from eye-witnesses of either incident of killing. Or to find out (if possible) about the money in the bank or for acquiring property, and to Get particulars of the account and the source of the money; or of the property acquired? The Police clearly have a duty under section 4 of the Police Act to do all they can investigate and preserve whatever evidence is available. The evidence or some aspect of it may be the type which might be lost forever if not preserved while it is available, and in the particular incidences given it can be seen that the offences are very serious ones which the society would be unlikely to overlook if it had its way. The evidence may be useful for impeachment purposes if the House of Assembly may have need of it. It may no doubt used for prosecution of the said incumbent Governor after he has left office. But to do nothing under pretext that a Governor cannot be investigated is a disservice to the society."

Despite the enormous powers of the Police in Nigeria to arrest, search, detain and prosecute electoral offences, it has been observed with utter dismay, that in most cases the Police tend to abuse their powers or exercised them in the most accursed way due to corruption, petulance or in some cases due to ignorance. This undoubtedly led to miscarriage of justice. On the meaning of miscarriage of justice.

Moreover, only the Police have the power to investigate electoral abuses. Yet the police lacked the political will and independence to carry investigations of elections- related cases [33]. Crimes are investigated by the police normally in Nigeria, but the police have shown themselves incapable of effectively investigating election related crimes and in some cases the police the police may not want to prosecute [34] in the few cases in which the police have conducted investigation into electoral offences. The police, federal and states prosecutors have failed to follow with criminal prosecution [35].

Further, in spite of numerous and unutilized judicial findings brutal killings during the last general elections, no single suspect has been arrested let alone being prosecuted in court by the Nigerian police even when some of the killings in fact took place right inside police station and in presence of the police and soldiers [36]. Again, in 2007 elections, Human Rights Watch discovered that, the Police leadership consistently refused to investigate incidence of political violence orchestrated by influential politicians or senior members of the ruling People`s Democratic Party (PDP) [37].

It is interesting to note that, the powers of the Police to prosecute criminal offences is subject to the High court law of the particular state or the enabling statute permitting them to prosecute in that court. Where the statute did not expressly permit the police to prosecute, then the police have no power to do so. For example section 56 (1), Federal High Court Act, [38] provides:-

"In the case of the prosecution by or on behalf of the Government of the federation or by any public officer in his official capacity the Government of the federation or that officer may be represented by a law officer, state counsel or by any legal Practitioner duly authorized in that behalf by or on behalf of the Attorney-General of the federation."

Again, section 145(2)(a) and (b) of the Electoral Act, 2002 did not confer power on the police to prosecute electoral offences, wherein the section provides:-

"Without prejudice to 26 (8) of this Act, prosecution under this Act shall be undertaken by-

a. The Attorney-general of the state in which the offence is committed or by a legal officer in the Ministry of Justice of that state; or
b. The Attorney-General of the Federation or by a Legal officer in the Federal Ministry of Justice if the offence is committed in the Federal Capital Territory, Abuja".

It is evidently clear that according to the Electoral Act, 2022 only Attorney-General of the state or of the federation or Legal officers in their ministries can prosecute electoral offences. However, in the case of FRN v. JIMMY ITAUMA AKPAN & 2 OTHERS [39]. Here, the accused were arraigned for electoral offences, under the Electoral Act, 2002 at the Federal High court sitting in Uyo, capital of Bayelsa. The charge was filed by a Police officer who happens to be a Legal practitioner. Counsel to the accused persons contended that the prosecutor being a police officer does not have the competence to prosecute electoral offences relying on sections 144 and 145 of the Electoral Act, 2002. According to them it is only the Attorney-General of a state or of the federation or someone authorized by him can prosecute electoral offences, on the other hand the prosecutor relied on section 145 (2) read together with section 151 of the Electoral Act and section 23 of the Police Act, permitted them to prosecute electoral offences.

The trial court in a considered ruling delivered and held that only the Attorney-General of a state in which the offence is committed or a legal officer in the Ministry of justice of that state to undertake prosecution under section 145(2) of the Act. The judge said:

"As stated earlier on in this ruling, the Electoral Act is clear in its language about who should prosecute offences under it. It did not leave any room for doubts or any imports.

It specifically prescribed that it is the Attorney-General of the state in which the offence was committed or a legal officer in the state`s Ministry of Justice. The provision cannot be stretched to include police officer; neither can section 23 be used permit a police officer to prosecute electoral offences. The power of the Attorney-General to prosecute electoral offences is derived from the Electoral Act in addition to the Constitution and the power does not accommodate any other officer of Government other than the one prescribed therein to undertake the prosecution nor would it permit a police officer Under the powers vested in him by section 23. Section 145(2) appears actually to have ousted the prosecution of electoral offences by a police officer. If the Law makers have intended the police to prosecute, it is my belief that, the Act clearly would have stated so or at least left room to accommodate them. There is no apparent conflict between Section 23 of the police Act and section 145(1) and (2) of the Electoral Act, 2002. It is true that when there is a conflict of this nature between two laws, the latter in time will prevail. The Electoral Act, 2002 is obviously the later in time and so it will prevail over the Police Act which enacted in 1943".

However, it is to be noted that since from the above provisions of the law and the above decision, it is expressly clear that a police officer whether or a legal practitioner or not does not have the power to prosecute electoral offences in Nigeria. Moreover, relying on the Supreme Court decision in OLUSEMO V. COP [40] and section 66 of the Police Act, empowers the police to prosecute any criminal matter before any court in Nigeria. The Supreme Court further said:-

1. A Police officer qua Police officer can prosecute criminal matters in any court in Nigeria by virtue of Section 23 of the Police Act. They do not need the fiat of the Attorney-General of the federation;
2. Section 174(b) of the 1999 constitution recognizes the right of "any other authority Or person" to institute criminal proceedings in Nigeria. A police Officer is such "Person" who can institute criminal proceedings.
3. A police Officer , irrespective of the fact that he is a qualified legal practitioner, has The power under Section 23 of the Police Act and section 174 9(1)(b) of the 1999 Constitution to institute criminal proceedings in any court in Nigeria."
4. When section 56(1) of the Federal High Court Act is read together with section Section 23 of the Police Act and section 174(1)(b) of the 1999 Constitution, it is Clear that a police officer has the power to initiate criminal proceedings before the Federal High Court without first and foremost obtaining the Attorney-General of the Federation`s fiat."

Onnoghen (JSC as he then was said)

"The fact that such is a lawyer is a bonus or excess luggage".

It is importantly known that now, the Police Act, 2020 classified Police Officers into two for the purposes of prosecuting criminal offences in Nigeria. Category "A" is qualified Legal practitioners who are police officers and category "B" non-legal officers. From this classification it is settled that police officers who are not qualified legal practitioners cannot prosecute criminal offences in Nigeria.

Going by the provisions of the High court Laws of various states of the federation, police officers can prosecute not in the magistrate court, even in the High court once is a qualified legal practitioner. For example Section 105 (1) of the High court Laws of Bauchi state provides:-

"In the case of a prosecution by or on behalf of the state or by any public Officer in his official capacity, the state or that officer may be represented by a law officer, director of public prosecutions, Deputy solicitor General, Deputy Director of public prosecutions, state counsel, Police officer or by any legal practitioner or other person duly authorized in that behalf or on behalf of the Attorney-General or, in revenue cases, authorized by the head of the ministry, department or office concerned."

Appearance Of Police Officers To Prosecute And Or Defend Appeals Arising Out Of Elcetoral Offences Cases Before The Court Of Appeals And Supreme Court

Court Of Appeal

The provisions of the court of Appeal Act [41] provides:-

"Subject to the provisions of any other enactment, in all proceedings before the Court of Appeal, the parties may appear in person or be represented by legal practitioners".

Further, the Supreme Court Act provides as follows:-

Section 15 (1) of the Supreme Court Act [42]

" Subject to the provisions of any other enactment, in all proceedings before the Supreme Court the parties may appear in person or be represented by a legal practitioner entitled by or under any enactment or rules of court to practice in that Court."

(2) "A person entitled to practice in the Supreme Court immediately before the commencement of this Act shall be entitled to practice as a legal practitioner in the Supreme Court unless he is suspended or prohibited from so practicing by or under the provisions of any enactment or rules of court."

From the above provisions of the law, a legal practitioner may represent any body subject to the provisions of any other enactment. The expression subject has been defined by the Supreme court in the plethora of cases as follows:-

"The expression "subject to" means liable, subordinate, subservient, or inferior to; governed or affected by; provided that or provided; answerable for [43]. It must therefore be understood that "subject to" introduces a condition, a restriction, a limitation, a proviso. Oke v. Oke [44]. It subordinates the provisions of the subject section to the section empowered by reference thereto and which is intended not to be diminished by the subject section. LSDPC v. Foreign Finance Corporation [45].

The expression generally implies that what the section is subject to shall govern, control and prevail over what follows in that subject section of the enactment, so that it renders the provision to which it is subject to conditional upon compliance with or adherence to what is prescribed in the provision referred to. Tukur v. Government of Gongola State [46]

(2) "Where the expression is used at the commencement of a statute, it implies that what the subsection is "subject to" shall govern, control and prevail over what follows in that section or subsection of the enactment. *Tukur v. Government of Gongola State* [47] " In the instant case, though the phrase occurs at the beginning of the deed of sub-lease exhibit 1, but at the end, it does not make any difference to the fact that the use of that phrase was inserted in its provisions in order to make in favour of the respondent that as it was aware of the provisions of exhibit 1, which requires the the increases of rent in respect of the allotted housing units to be subject to the approval of the Federal Government. The appellants have argued that the respondent did not receive any such approval. But throughout the proceedings in the case, there is no positive evidence or indeed any pleading to that effect. Without any challenge concerning this aspect of the case. It must be presumed approval of the Federal.

Oloruntoba-Oju v. Abdul-Raheem [48] , Adekeye, J.S.C., had this to say of subject to: "Whenever the phrase "subject to" is used in a statute, the intention, purpose and legal effect is to make the provisions of the section inferior, dependent on, or limited and restricted in application to the section to which they are made subject to. In other words, the provision of the latter section shall govern, control and prevail over the provision of the section made subject to it. It renders the provision of the subject section subservient, liable, subordinate and inferior to the provision of the other enactment." See, also, FRN v. Osahon [49].

Onnoghen, J.S.C., in the case of Global Excellence Comm. Ltd. v. Duke [50], stated: "...By the provision of subsection 2 of section 308, it is clear that the immunity conferred on the persons occupying the offices mentioned under section 308 of the 1999 Constitution does not extend to cases or actions instituted against the same persons in which the persons are nominal parties and in their official capacities such as the President, Vice-President, Governor or Deputy Governor." also, Tinubu v. IMB Securities Plc. (supra)." - Per Ogbuinya, J.C.A., in F.R.N. v. Dariye [51]. "The words "subject to" which are the prefix to the provisions of section 240 of the Constitution are words of subordination.

From the above definitions of subject to when used in a statutes as in the court of Appeal and the Supreme Court Acts, they limited the appearance to represent persons before them based on other enabling statutes. Here the Acts limited the appearance in these courts and is not just of course.

Institution of Electoral Offences under Administration of Criminal Justice Act, 2015

The Administration of Criminal Justice Act, 2015 came into being on the 26th may, 2015, for the Administration of Criminal Justice system in Federal Capital Territory, Abuja and other Federal courts in Nigeria.

This Act provides for the administration of criminal justice system which promotes efficient Management of criminal justice institutions, speedy dispensation of justice, protection of the Society from crimes and protection of the rights and interest of the suspect, the defendant and Victims in Nigeria.

However, section 109 [52] provides the mode of instituting, criminal proceedings in FCT, High court and Federal courts in accordance, with the provisions of this Act, be instituted:

a. In a Magistrates court, by a charge or a complaint whether or not on oath or upon receiving a First Information Report.
b. In the High Court, by information of the Attorney-General of the Federation, subject to section 104 of this Act;
c. By information or charge filed in the court after the defendant has been summarily committed for perjury by a court under the provisions of this Act;
d. by information or charge filed in the court by any other prosecuting authority; or
e. by information or charge filed by a private prosecutor subject to the provision of this Ac

By section 110 (1) [53] Criminal proceedings instituted in a Magistrate court may be:

a. Upon receiving a First Information Report for the commission of an offence for which the police are authorized to arrest without a warrant and which may be tried by the court within the jurisdiction where the police station is situate, the particulars in the report shall disclose the offence for which the complaint is brought and shall be signed by the police officer in charge of the case; or

Further, section 106 [54] provides the persons entitled to institutes criminal proceedings in these courts mentioned above as follows:-

a. The Attorney-General of the Federation or a Law Officer in his Ministry or Department;
b. A legal practitioner authorized by the Attorney-General of the Federation; or
c. A legal practitioner authorized to prosecute by this Act or any other Act of the National Assembly.

Based on these provisions, it is directly implied that only individuals with legal knowledge and who are qualified as legal practitioners can file charges or information in both Magistrate and High Courts where criminal cases are initiated in Nigeria. This requirement is not only stipulated by the relevant statutes but is also upheld as a matter of practice and professional conduct [55].

Institution of Electoral Offences under the Administration of Criminal Justice Law, Bauchi State 2022

The Administration of criminal justice Law, Bauchi state, 2022 [56] provides the modes for instituting criminal proceedings as follows:-

a. in a Magistrate or Shari `a courts by a complaint whether or not on oath or upon receiving a First Information Report,
b. in the High Court, by a charge filed by or on behalf of the Attorney-General, with or without police investigations subject to Section 117 of this Law;
c. by a charge filed in the court after the defendant has been summarily committed for perjury by a Court under the provisions of this Laws;
d. by a charge filed in the Court by any other prosecuting authority; or
e. By a charge filed by a private prosecutor subject to the provisions of this Law.

However, the modes of instituting an action in the magistrate or sharia courts [57], prosecution of all offences in any court shall be undertaken by the following persons:-

a. The Attorney-General or a Law officer in his ministry or Department;
b. A legal practitioner authorized by the Attorney-General or any other person;
c. A legal practitioner authorized to prosecute by this Law or any other Law of the State House of Assembly.

Again, initiation of any criminal prosecution in the High court in the south is by way of laying information [58]. However, before a person can file information for prosecution in the High court of southern states, a Law officer must have endorsed on the information, to the effect that he has seen the information and decline to prosecute in the interest of the public instance [59].

Finally, it is the candid opinion of this writer, that the decision of the supreme court in the cases of OLUSEMO V. COP and FRN V. OSAHON earlier cited are no longer the position of the law with the passing of the Administration of Criminal Justice Act, 2015 regulating institution of criminal cases before the Federal Courts and the Federal capital Territory, Abuja in Nigeria and some states that passed into law the Administration of Criminal Justice Law as in Bauchi state (Administration of Criminal Justice Law, 2022). Although the Police ACT, 2022 categorized Police into two for the purposes of instituting and or prosecution of criminal offences *viz*; qualified legal practitioners and non-qualified legal practitioners who can only prosecute in the magistrate courts and sharia or Area courts.

Therefore, the Police are not divested from prosecuting a crime so long as the act or omission constitutes an offence. it does not matter under what enabling law the offence was created, the police can still exercise residual powers to investigate and prosecute such offence [60]. Though, the creation of new agencies covering special fields is to heal police inefficiency, however, it demands police cooperation [61].

Conclusion Recommendation

The prosecution of electoral offences by the Police in Nigeria has been facing so many challenges ranging from shortage of manpower, lack of zeal or will to prosecute the offenders, political interference by the Government in power etc. Further, the Police Act, 2020 prohibit police officers who are not legal practitioners to prosecute crimes in superior courts. Again, the Electoral Act, 2022 restricted the powers of the police to prosecute electoral offences, even though the Police are vested with the power and responsibility of arrest, detention, search and investigation of electoral offences. However, there are enough laws on the prosecution of electoral offenders, but very few were prosecuted by the police, this may not be unconnected with the fact that there are multiple prosecutors.

However, to bridge this gap of multiple prosecutors and the lack of will by the police to prosecute electoral offenders, by concentrating the power of arrest, detention, investigation, search and prosecution on a single body to be established and charged with that responsibility. The police and any other agency should be excluded in the prosecution of such offenders and to provide efficient and effective mechanisms.

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