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Fast Tracking Justice in Criminal Trials in Nigeria: Analysis of some Select Provisions of the Administration of Criminal Justice Act (ACJA) 2015

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Abstract

The Administration of Criminal Justice Act of 2015 is a beautiful and legendary enactment. In the Act are many provisions regulating the modality for criminal prosecutions. Nigeria, for some time now, has been bedeviled by the evil of prison congestion and unnecessary delay in the criminal justice system. These delays sometimes appear to make a mockery of the saying that justice delayed is justice denied. In this work, the author looks at some salient provisions of the Administration of Criminal Justice Act which when fully invoked and applied will speed up the process of criminal trials. The work introduced the topic and sought to find out the reason(s) for the delays. It went further to look at these provisions and came to a conclusion that an effective application of these sections will increase the efficiency and speed up criminal trials. It is to be noted that this work did not set out to look at all the beautiful provisions of the Act but solely at the few sections considered of paramount importance to the speed of criminal justice.

Keywords: *Administration, Criminal Justice, Justice System, Provisions, Prosecutions*

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Introduction

The Nigerian Criminal Justice system has been bedeviled with a lot of problems. Chief among them is the issue of inordinate delay. A satire popular among social media has it that an elephant was running when it saw an antelope who inquired as to the reason for such race for survival. The elephant answered that the police are approaching looking for culprits of a particular offence, the antelope was puzzled and further inquired as to why the elephant should run since it committed no offence, that it can only stay and explain to the police who actually is the culprit. The elephant retorted that it will take a minimum of twenty years to explain to the police that it was not the actual culprit. That is the situation in Nigeria. A suspect can languish in jail awaiting trial for more than ten years for an offence not within his knowledge. The case of *Idoko v State(2018)* is an apt illustration of this fable. The appellant at the Supreme Court was arraigned for the offence of conspiracy to commit robbery in Benue State in 2001, for the first time. He, among other suspects, was convicted in 2003. The appellant appealed and the appeal was decided in 2013 by the Court of Appeal against him. He further appealed to the Supreme Court. The Nigerian Supreme Court allowed the appellant's appeal in 2017. It followed by simple calculation that Idoko spent close to 17 years in prison while battling to prove his innocence. There was yet the case of one Olaide Olatunji who was released from death row after 24 years for a crime he did not commit(Owolawi:2019).

1.2: What are the Causes of Delay?

In an interview granted to *Premium Times(Ezeamalu:2018)* by Justice Owoade of the Court of Appeal, the jurist submitted that the delays were not solely due to any particular organ in the country's Criminal Justice system but as a result of numerous defects in the society. He further explained, “Delay could be caused by indiscriminate transfer of police prosecutors. Usually, it is caused by the inability of the prosecutor to produce witnesses, which in turn could be caused by the public perception of police and/or the problem of frequent adjournments.” He also stated that “sometimes, delay in the Criminal Justice System is caused by uncompleted investigation and also more generally by the inadequacy of courts and judicial personnel.” According to him, “it is needless to add that unnecessary adjournments usually caused by the attitude to work of legal practitioners and some judicial officers is also a

major factor of delay in the Criminal Justice System." Justice Owoade concluded by stating that the problem of delay could be largely overcome if "compensatory and reconciliatory procedures in the criminal process are further encouraged." The Justice of the Court of Appeal is not far from the truth, yet this is just but one of the causes of these delays.

Justice David G Mann of the High Court of Plateau state had this to say about the causes of delay in our judicial system:

> Many factors are responsible for the delay experienced in the smooth, efficient and quick disposal of cases. Some of these factors are case-specific while other factors are systemic. They include the absence of basic infrastructure, convenient and comfortable courtrooms, lack of adequate funding and poor working conditions, lack of training and retraining of personnel and corruption. These are by no means exhaustive.(Mann:2017)

This work specifically seeks to review the impact of certain sections of the ACJA in fast tracking justice in Nigeria. One thing is clear so far, and that is that there is delay in our justice system and opinion had come together to seek for a remedy against these delays. It is the need to obviate these delays that led into the enactment of the Administration of Criminal Justice Act of 2015.

2.1: What is the ACJA, 2015?

The Administration of the Criminal Justice Act of 2015, abbreviated to ACJA, 2015 is one of the signature legislations of the Goodluck Jonathan Administration. The said ACJA was a parting gift from a government that was worried about the congestion in our prisons and the delays inherent in our criminal justice system. The coming of the Act was long overdue. It is to be noted that the Act merged the existing two principal legislations on Crime in Nigeria, the Criminal Procedure Act applicable in the South and the Criminal Procedure Code applicable in the North. The Act also sought to make criminal trials fast and efficient. Nevertheless, more than three years down the line, we are still worried about the problems of delay in criminal trials. The question then is why?

Is it because the ACJA did not make adequate provisions or because those who ought to utilize its provisions are yet to be aware of the beautiful provisions of the ACJA? It is in respect of these questions that this topic was chosen. The aim is to highlight those salient provisions that are specifically geared towards fast tracking the wheel of justice in view of the truism that justice delayed is justice denied, even as we assert that justice rushed is justice crushed.

2.2: The Salient Provisions of the ACJA for Fast Tracking Criminal Trials

It is to be noted that in totality the function of the ACJA is to fast track our criminal justice system and ensure that the innocent does not suffer. However, there are certain provisions that are germane for consideration with particular emphasis on the fast tracking of Criminal trials in Nigeria. The writer will focus on some of these sections that are critical to the overall intendment of the ACJA.

3.1: Section 110 Modes of Instituting Criminal Proceedings in a Magistrate Court

Section 110 of the ACJA revisited the issue of instituting Criminal proceedings. Subsection 1 of the said section is interested in who brings and how the person can bring a charge before a Magistrate Court. That is not the issue here as Subsection 2 of the same section placed emphasis on time protocol. Indeed Section 110(2) made it emphatic that service of the charge sheet on the defendant must be done within seven days or within any other time as allowed by the court. This provision therefore shortens the time for the service of the process in a criminal charge. Section 110(3) seeks to curb unnecessary delay in criminal trials when it provided that the trial of a charge preferred under subsection 1 a and b of this section shall commence not later than 30 days from the time of filing the charge and the trial of the person shall be completed within reasonable time. This section is important because it considers the trial of persons arrested without warrant. Ordinarily, these classes of persons are usually arraigned and dumped in prison and that ends the matter. With this provision, there is now a time protocol for their trial. By Section 110(4), the court is enjoined to make a report to the Chief Judge giving reasons for failure to commence and complete the trial of such a person arrested without warrant within 180 days. This is commendable as it will make all sides to the trial to sit up. The Section 110 is not yet

done. In subsections 5, 6 and 7, it encourages quarterly returns to the Chief Judge on criminal matters and these returns shall be used to monitor the fast dispensation of criminal matters, reduction of court congestions and prison congestions. This report shall also be made available to the Administration of Criminal Justice Monitoring Committee and as well the National Human Rights Commission. It is therefore correct to say that there are oversight functions over the trial courts by these authorities and in fulfilling these functions, these authorities encourage fast tracking of criminal matters.

3.2: Analysis of the Imperatives of Section 379

It is imperative here to state that Section 379 of the ACJA had provided that in filing information, the prosecutor shall file the following documents:

a. The proof of evidence consisting of
    i. The list of witnesses
    ii. The list of exhibits
    iii. The summary of statements of the witnesses
    iv. Copies of statement of the defendant
    v. Any other document, report, or material that the prosecution intends to use in support of its case at the trial
    vi. Particulars of bail or any recognizance, bond or cash deposit, if the defendant is on bail
    vii. Particulars of place of custody, where the defendant is in custody
    viii. Particulars of any plea bargain arranged with the defendant
    ix. Particulars of any previous interlocutory proceedings including remand proceedings, in respect of the charge and
    x. Any other document as may be directed by the Court.

These documents are to be served within the stipulated time to encourage the fast pacing of the trial as both sides of the divide would have been ready for the trial before it commences.

3.3: Section 306 of the Administration of Criminal Justice Act 2015

Section 306 of the Administration of Criminal Justice Act, 2015 provides as follows: "An application for stay of proceedings in respect of a criminal matter before the Court shall not be entertained." This is one of the controversial aspects of the ACJA because the said section appears to have ousted the jurisdiction of the court. The said section appears to have deprived the individual of his right to appeal a ruling which obviously goes against his interest. Usually, when such rulings are given, this interlocutory appeal preserves the *res* pending the delivery of the Appellate Court judgment. In essence the section appears to be an ouster clause in view of the Constitutional provisions for the right of appeal.(Constitution:1999) It should be noted at this outset that stay of proceedings clearly delays the trial of a criminal matter pending the outcome of the appeal lodged. With this provision, such delays are obviated and issue of fast track is achieved. Indeed, this provision emphasizes that the Court shall not entertain any stay of proceedings in a criminal matter.

It should be borne in mind that this provision had earlier been encapsulated in Section 40 of the EFCC Act as follows: 'Subject to the provisions of the constitution of the Federal Republic of Nigeria1999, an application for stay of proceedings in respect of any criminal matter brought by the Commission before the High Court shall not be entertained until judgment is delivered by the High Court'. The provision in Section 40 of the EFCC Act was not pronounced upon by the Supreme Court until the coming of the ACJA. Perhaps the reason may have to do with the proviso in the provision 'subject to' as this proviso seems to be absent in Section 306 of the ACJA.

In *Metuh v FRN*,(2017) the Supreme Court gave verve to this provision of the ACJA. In that case, the appellant came before the Supreme Court praying that the Court order a stay of the criminal proceedings against him at the Federal High Court. It is to be noted that he had earlier appealed to the Court of Appeal which ignored his application hence the appeal to the Supreme Court. At the Supreme Court, Ogunbiyi JSC posited that, 'The Supreme Court, like the two lower courts, also lacks the power to stay proceedings under Section 22 of the Supreme Court Act or under its inherent powers'. My Lord continued by saying that 'the

conclusion as stated earlier, is predicated squarely on the contention of Section 306 of the Administration of the Criminal Justice Act, 2015 and Section 40 of the Economic and Financial Crimes Commission (Establishment)Act, 2004 whereby the trial court lacks the powers to order for stay of proceedings; also the Court below under Section 15 of the Court of Appeal Act as well as under Section 22 of the Supreme Court Act also lacks the power to order for stay of further proceedings pending before the trial Court." The Court in its *obiter* emphasized that the Constitution of the Federal Republic of Nigeria 1999 as amended being the *grundnorm* also provides for dealing with criminal trials within a reasonable time. Section 36(4) specifically provides thus, 'Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or a tribunal. It is only logical to interpret the spirit of the foregoing constitutional provision to translate that where the grant of an application for stay will unnecessarily delay and prolong the proceedings, it will not be granted.

The researcher wishes to emphasize that this is a criminal proceeding. It is pertinent to state that in criminal proceedings the liberty of an individual is at stake and where unnecessary delay is employed, the rights and liberties of such individual are affected. There are also clear constitutional and statutory provisions that enjoin and mandate the trial court not to delay criminal cases. There is no doubt that the grant of an order for stay of proceedings in the case would result in undue delay in the determination of the pending charge before the trial court. In the same case, KekereEkun JSC observed the new trend in criminal trials and submitted that "it is pertinent to observe that the new dispensation throughout the hierarchy of our courts, as evidenced by the recent practice directions issued by respective heads of court in relation to matters pertaining inter alia to corruption, economic and financial crimes, human trafficking, money laundering, rape, kidnapping and terrorism is to fast track the hearing and determination of such matters. Eko JSC nailed the mischief that Section 306 sought to cure. He stated that, 'contemporary Nigerian history shows the widespread abuse of injunctive remedies to stall trials of high-profile offenders in the country being crippled by corruption. That is the mischief that section 306 Administration of Criminal Justice Act (ACJA), 2015 is addressing'

An instance of what my Lord Eko JSC was lamenting about could be found in the case involving the former Governor of Abia State who had faced a corruption related trial since 2007 (Sahara Reporters: 2018) to about 2019. The provisions of Section 40 of the EFCC Act can be said to be a particular provision in the sense that it applies only to matters instituted by the EFCC. Section 306 of the ACJA on the other side is a general provision as the ACJA is applicable to all criminal matters in Nigeria. This provision of the ACJA is laudable as it ensures the speedy dispensation of criminal trials by not giving room for any delay tactics on the part of the defendant especially the high-profile ones facing criminal trials.

At this juncture, the author posits that outside the issue of deliberate delays by high profile defendants in criminal matters for their selfish interests, there exists a deliberate delay which affects the defendants in criminal matters and which in most cases puts off individuals from accessing our criminal justice system. It therefore becomes absurd that the prolongation of a criminal matter will ultimately reopen the wounds of the complainant or in some circumstances punish an innocent defendant for a period longer that his sentence were he to be sentenced for the said crime.

3.4: Trial Procedures under Section 396

Section 396 of the ACJA made diligent efforts to fast track the pace of justice. Section 396(1) provides that the arraignment shall be done in the normal method of taking pleas. By Section 396(2), "after the plea has been taken, the defendant may raise any objection to the validity of the charge or the information at any time before judgment provided that such objection shall only be considered along with the substantive issues and a ruling thereon made at the time of delivery of judgment". The effort here is geared towards delay. Thus, any form of objection raised can only be decided during the delivery of judgment and appeal thereon carried out as an appeal over a final decision and not interlocutory. Section 396(3) emphasizes on day to day trial. Indeed, the courts have been enjoined to conduct the trial day to day till conclusion. As a follow up to Section 393(3), the Act in Section 396(4) considered the impossibility of day to day trial and provided that in the event of such, no party shall be entitled to more than five adjournments and the interval between one adjournment and the other shall not exceed 14

working days. Still on this adjournment, the ACJA provided in its Section 396(5) that where both parties have exhausted their five adjournments and the matter is yet to be concluded, the court may grant adjournment to a party that needs same but it shall not exceed seven days interval from the last adjournment and the seven days shall include weekends. To discourage the incessant application for adjournment in a criminal matter, Section 396(6) made provisions for courts to award reasonable costs. By Section 396(7), the ACJA empowered a Judge that has been elevated to a higher court to finish a matter pending before him before the elevation to avoid trial *de novo*. It is essential to submit at this stage that justice is a three-way traffic. In *Okomu Oil Palm Ltd v Okpame(2007)*, the Court of Appeal per Aderemi JCA, stated,

> After all, it must be remembered that justice is not a one-way traffic. It is not justice for the plaintiff alone. It is not even only a two-way traffic in the sense that it is justice for the plaintiff and the defendant alone. I think really justice is a three-way traffic in justice for the plaintiff who is crying for a redress of the wrong done to him; justice for the defendant who is crying that he should be heard and his defence considered before being ordered to pay any sum claimed against him and also before being mulcted in cost; and finally but very important, justice for the society at large whose social norms and psyche are certainly going to be adversely affected if it cannot be seen by the common but reasonable man that upon the facts as laid down, justice, in the real and true sense of that word, has been seen to have been done by the arbiter.

It is further to be noted that it is an essential attribute of the administration of justice that justice must not only be done, it must be manifestly seen to be done. In *LPDC vs Fawehinmi(1985),* it was quoted by the Supreme Court that 'it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."

3.5: **Trial *De Novo***

What is trial *de novo*? Trial or hearing *de novo* means trying a matter anew, same as if it had not been previously rendered. It is a new hearing or a hearing for the second time, contemplating an entire trial in same

manner in which the matter was originally heard and a review of previous hearing. On hearing *de novo*, the court hears the matter as a court hears of original and not appellate jurisdiction. A trial de novo means nothing more than a new thing trial. This further means that the plaintiff is given another chance to re-litigate the same matter or, rather, in a more general sense, the parties are at liberty once more to reframe their case and restructure it as each may deem it appropriate.(Babatunde v PAS &TA Ltd:2007) Oseji JCA, in *Nwaosu v ors v HFP Engineering Nigeria Limited (2014)*stated that:

> I am therefore comfortable with the stance that a trial de novo does not include refilling a suit afresh. It thus presupposes the existence and therefore the continuation of the hearing or trial of a suit already filed. In other words, for there to be a trial de novo there must be a subsisting action filed by the claimant. It is therefore my humble view that an order of trial de novo precludes or does not extend to any action taken or any order made towards the initiation of an originating process such as the filing of a writ of summons and statement of claim.

In *Fadiora v Gbadebo*,(1978) it was held by the Supreme Court that in trials de novo the case must be proved anew or rather reproved de novo, and therefore, the judge's findings at the first trial are completely inadmissible on the basis that prima facie they have been discarded or got rid of. The court of second trial, therefore, is entitled to and, indeed, must look at the pleadings before it in order to ascertain and decide the issues joined by the parties before it on their pleadings'.

This provision abrogating *de novo* in the ACJA obviously sets a new trend. It is painful to watch several years of sweat go down the drain simply because the *judex* handling the matter has been elevated to a higher court or in some circumstances has been transferred. The time spent in starting the trial de novo may cost the lives of some of the *participes* in the trial.

When can a matter be said to resume de novo? In the Nigerian Jurisprudence, a matter may start *de novo* in any of the following circumstances:

a. Where the Trial Judge dies during the pendency of the matter
b. Where the trial Judge is transferred
c. Where the trial judge is elevated or given another appointment.

It is imperative to state that where a judge dies during the pendency of a matter, the only way for the matter to continue is by the matter starting afresh or de novo. In the case where a judge was transferred the matter may be taken to the judge in his new division especially where the matter has gone into hearing. For such matters, applications for assignment orders are made to enable the judge to move to his new division with the case file. The current trend these days in ACJA is for the assignment order to operate automatically, that is to say, the Judge moves with all files that are part-heard to his new division. Where, however a Judge is elevated to a higher bench or given another appointment outside the Bench, it is usually problematic and most times operates as if the Judge had died. The ACJA, having noted the difficulty usually occasioned by these elevations, has decided that where the Judge has been elevated to a higher bench, such a judge shall have the leave to continue with the hearing of this matter till conclusion. This is a very laudable method geared towards fast tracking the pace of justice by the ACJA having taken cognisance of the delay usually occasioned by trial *de novo* and its attendant cost and case implications.

Unfortunately this laudable provision of the ACJA has been struck down by the Supreme Court in the case of *Ude Jones Udeogu, Orji Uzor Kalu & Another* (2019).The rationale adopted by the Supreme Court in the above decision was that the section offends the provision of the Constitution and accordingly is null and void to the extent of its inconsistency as provided in 1(3) of the 1999 Constitution (as amended), and further expatiated in *Oloyede Ishola v Ajiboye.(1994)* To many, this is a return to archival technicality that defeats the aim of the law. It has indeed moved the pace of the administration of criminal justice backwards. To others, the Constitution is supreme and no legislation should ride roughshod over it. This is the current situation as we await a resolution of this legal dilemma.

3.6: Electronic Recording of Evidence under Section 364

Part of the delays occasioned in trials generally in Nigeria is caused by the long hand direct recording of court proceedings including testimonies of witnesses. The time it costs the court to do this recording is sufficient for the court to have finished a trial. In trying to fast track the pace of justice, Section 364 of the ACJA recommended that proceedings shall be recorded electronically. It is however unfortunate that in making this recommendation the Act made it optional when it used the word

'may'. It is correct to say that electronic recording of Court proceedings will make the Courts more productive and efficient. However, it is understandable why the provision has to be optional. In Nigeria where most courts lack infrastructure including buildings, recommending the provision of electronic recording equipment is certainly living in a dream world. It is submitted that implementation of this Section will certainly assist in fast tracking the pace of justice in Nigeria.

3.7: Time Protocol for Issuance of Legal Advice Section 376

A person alleged to have committed a crime is usually arraigned before a Court that has no jurisdiction and remanded in prison custody. Such a person may remain there for more than six months as he awaits the DPP advice. It has in some cases become a perfect excuse for non-arraignment of an awaiting trial inmate. In fast tracking the pace of justice, the ACJA has made beautiful provisions relating to time for the DPP advice. Section 376(1) insists that upon investigation of an offence and before a charge, the Police shall remit the file to the Attorney General of the Federation especially relating to an offence of which the Magistrate Court lacks jurisdiction to try. Subsection 2 of the section gives the AGF 14 days upon receipt of the file to make his advice. It is the provision of the law that if he offers advice that there is no prima facie case, then he shall cause same to get to the Police and as well the Court where the defendant was remanded assuming he has been remanded. It is to be noted that upon receipt of this advice, the Police is expected to release the suspect immediately and where such person has been charged, to make the advice also available to the Court. It is imperative to state that it is not enough for the AGF to write, the Act mandates him to send a law officer to the Court where the charge is pending to inform the court of the advice accordingly. In making these provisions, the Act considers the need to fast track the system hence the inclusion of time protocol for each action.

4.0: Conclusion

This work did not set out to review the ACJA. Indeed, the contribution merely scratched the surface of the Act by taking a look and making enabling practical suggestions at those sections that encourage fast tracking of criminal justice system in Nigeria. The provisions of the ACJA are beautiful but then as usual in Nigeria the question borders on application. However, where there is a will there is a way. This paper

seeks to encourage the will for ending delays in Criminal trials in Nigeria. The authorities in charge are expected to give adequate funding to the Judiciary, Ministry of Justice, and the Police to enable them to carry out the work as expected. It is obvious that the police, courts and lawyers who are in the forefront of the administration of criminal justice must sit up to put into practice the ACJA, 2015. In the end a proper application of these sections shall assist the courts to fast track the pace of justice delivery in criminal matters in Nigeria.

5.0: **Recommendations**

The author recommends

- A public awareness of the provisions of the ACJA, 2015,
- A sensitization of all the relevant key players in the ACJA.
- A synergy among the criminal justice institutions in Nigeria and a departure from unnecessary technicality.
- A change of attitude by all the relevant stakeholders
- The political will by the policy makers to implement the provisions of the ACJA

It is believed that if these recommendations are followed, the objectives of the ACJA, 2015 will certainly be achieved.

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