

## POLICE PROSECUTORIAL POWERS IN NIGERIAN COURTS: MATTERS ARISING

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### ABSTRACT

*Prosecution of criminal cases is one of the responsibilities assigned to the Police in Nigeria. The police power of prosecution is only subject to the overriding prosecution power of the Attorney-General of the Federation, or the State. It is however observed that whereas the enabling Act of the Police expects police officers who are legal practitioners to, prosecute cases in the courts, a great number of cases in the lower courts in Nigeria are prosecuted by lay prosecutors. In theory or paper, police officers who are qualified Lawyers are prosecutors, whereas, in practice, it is otherwise. Shortage of qualified lawyers in the Nigeria Police Force is responsible for this aberration and the Act took cognisance of this by allowing police officers to prosecute before the courts those offences which non-qualified legal practitioners can prosecute but the Act failed to identify or define "those offences which non-qualified legal practitioners can prosecute." Existing literature or socio-political and legal analysts appear not to have sufficiently interrogated the topic to cover identified gaps, hence the necessity to address same in this paper. This paper identifies the missing links and offers some recommendations which if implemented would frontally address the issues with beneficial results to the Nigerian Criminal Justice System.*

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**INTRODUCTION**

This article focuses on Police prosecutorial powers in Nigeria with special reference to the exercise of this power in the lower courts<sup>224</sup> in Nigeria. Prosecution may be generally seen as "the commencement and carrying out of any action or scheme."<sup>225</sup> Thus, in relation to a legal action, it means the institution and pursuance of a legal action which may be civil or criminal. It is thus, imperative from the outset to say that we shall be concerned with criminal prosecution in this article.

Criminal prosecution means the institution, commencement and conduct of legal proceedings against a person accused of, or suspected to have committed a crime for the purpose of seeking redress or punishment for the crime committed or the law violated. The legal action is expected to be brought before a court of competent jurisdiction. The court determines whether the accused person or person suspected of the commission of the crime actually committed the offence in a fair trial so that appropriate or Commensurate punishment can be meted on him if found guilty and where otherwise, is discharged.

The person who prosecutes is called a prosecutor and it is his responsibility to present the case for the prosecution through a carefully drafted charge or information against the accused person and calling of relevant witnesses on behalf of the State or prosecution. Some Well-known prosecutors in Nigeria are the Attorney-Generals of the Federation<sup>226</sup> and the States<sup>227</sup> as provided for in the Constitution of Nigeria,<sup>228</sup> and the Police as provided in section 66 of the Police Act.<sup>229</sup> It is important to remark here that private prosecutors may also undertake criminal prosecution on fiat being issued by an Attorney-General and some enactments can also make provisions for prosecution of the offences under them as is the case with the EFCC Act,<sup>230</sup> ICPC Act<sup>231</sup> and the NDLEA Act.<sup>232</sup>

<sup>224</sup> The judicial system in Nigeria operates in a hierarchical order. The lower courts are the courts whose status in the judicial hierarchy is below the High Courts. They include the Magistrates Courts, Area Courts, Customary Courts and the Sharia Courts. In the judicial hierarchy, all High Courts, Appeal Courts, National Industrial Court and the Supreme Court of Nigeria belong to the privileged class, called the Superior Courts of Record. See section 6(3) (5) of the Constitution of the Federal Republic of Nigeria, 1999, as amended.

<sup>225</sup> *Black 's Law Dictionary*, 8<sup>th</sup> ed., (West Publishing Co., 2004), p. 1258.

<sup>226</sup> *Infra* in footnote 5. See section 174.

<sup>227</sup> *Infra* in footnote 5. See section 211.

<sup>228</sup> The Constitution of the Federal Republic of Nigeria, 1999, as amended.

<sup>229</sup> Nigeria Police Act, 2020.

<sup>230</sup> Economic and Financial Crimes Commission (Establishment) Act, 2004. See section 6.

<sup>231</sup> Independent Corrupt Practices and Other Related Offences Act, 2000. See sections 5 and 61.

<sup>232</sup> National Drug Law Enforcement Agency Act. See section 8(2) (a).

The foundation or principle on which criminal prosecution is based is the commission or suspected commission of a crime.<sup>233</sup> In other words, without the commission or incident of suspected commission of a crime, there can never be criminal prosecution in the real sense of the concept.

## CONCEPT OF CRIME

The definition of the word crime is full of controversy as there is no universally accepted definition for it. This is so because the acts or omissions that are identified as criminal vary with time, space and location. For instance, in the Southern part of Nigeria where the Criminal Code<sup>234</sup> is in operation, no doubt, some persons may have been arrested and charged to court in the 1970s and 1980s for the offence of “wandering or idle and disorderly person”<sup>235</sup> but it is not so at the moment because the gravity or seriousness with which the society views the act has waned down. Besides, what one society may regard as a crime may not be a crime in another society.<sup>236</sup> This underscores the United Nations Research Institute observation that:

Crime, in the sense of the breach of a legal prohibition, is a universal concept, but what actually constitutes a crime and how seriously it should be regarded, varies enormously from one society to another. Perceptions of Crime are not determined by any objective indicator of the degree of injury or damage but by cultural values and power relations.<sup>237</sup>

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<sup>233</sup> Crime and offence may be used as synonyms. This is confirmed by the Criminal Law of Lagos State, 2011 in section 1(2) where it is stated that, “the word ‘offence’ may be used interchangeably with crime’ in this Law or any other Law or Regulation.” However, we must observe here that although crime and offence may be taken as synonyms and used interchangeably, it must be noted that in specific terms, a distinction exists between the two terms because all crimes fall under the purview of offence but not all offences are crimes. See Barnabas, C. O., *Police, Law and Your Right*, (Princeton Publishing Co., 2013), p. 22

<sup>234</sup> Cap. C38”, Laws of the Federation of Nigeria, 2004.

<sup>235</sup> *Ibid* in section 249(b) where it is provided that “every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children so to do, shall be deemed idle and disorderly persons, and may be arrested without warrant and shall be guilty of a simple offence, and shall be liable to imprisonment for one month.” If we examine this provision critically, we will realise that a strict enforcement of it will inhibit freedom of movement which is guaranteed in section 41 of the constitution of the Federal Republic of Nigeria, 1999 as amended. Besides, sentiments will not only be attached to the enforcement of that legal provision but a serious controversy on religious grounds will be generated which can lead to religious unrests and disturbances of public peace since in Nigeria, it is common knowledge that the *Alimajaris* normally beg for alms.

<sup>236</sup> For example, Nigeria regards same sex marriage as a crime whereas the United States of America sees nothing wrong in two consenting adults marrying themselves. Similarly, adultery is not a crime in the Southern part of Nigeria where the Criminal Code operates but it is a crime in the Northern part of Nigeria having been declared so in the Penal Code. See the case of *Aoko v. Fagbemi* (1961) 1 All NLR 400.

<sup>237</sup> States in Disarray: The Social Effects of Globalisation, United Nations Research Institute for Social development, 1995.

The above notwithstanding, some scholars have provided some general definitions for the concept of crime. While A. S. Hornby<sup>238</sup> defines it as “activities that involve breaking the law” or “an illegal act or activity that can be punished by law”, Bryan A. Garner et al<sup>239</sup> defines crime as “an act that the law makes punishable; the breach of a legal duty treated as the subject matter of a criminal proceeding.” Similarly, Glanville Williams<sup>240</sup> defines crime to mean “a legal wrong that can be followed by criminal proceedings, which may result to punishment.” He stated that crimes are wrongs whose sanctions are punitive and it is in no way remissible by any private person but it is remissible by the crown (State). Afeisimi D.Badaiki<sup>241</sup> defines crime as “an act or omission done in a particular state of mind, the result of which makes the person doing the act or making the omission liable to be prosecuted by the State or any other person or body authorized by the State, and if found guilty liable to be punished.”

In like manner, while Justice Emmanuel Olayinka Ayoola<sup>242</sup> sees crime as “any conduct which the State regards as criminal”, Sheila Bone (ed.),<sup>243</sup> describes crime as “an act, default or conduct prejudicial to the community, the commission of which by law renders the person responsible liable to punishment by fine or imprisonment in special proceedings, normally instituted by officers in the service of the crown,” On his part. N. A. Inegbedion<sup>244</sup> said crime has as many definitions as there are scholars. He sees crime as ‘an illegal act, omission or event, whether or not it is also a tort, breach of contract or breach of trust, the principal consequences of which is that the offender if detected, and the police decides to prosecute, is prosecuted by or in the name of the State, and if he is found guilty is liable to be punished whether or not he is also ordered to compensate his victims.’

Beside the above, C.O. Okonkwo described “criminal procedure”<sup>245</sup> as the distinguishing Factor which marks off a crime from a civil wrong. Consequently, he sees crime as those

<sup>238</sup> *Oxford Advanced Learner's Dictionary of Current English*, 7 ed., (Oxford University Press, 2005), p. 347.

<sup>239</sup> Footnote 2 at p. 399.

<sup>240</sup> *Criminal Law: The General Part*, 2<sup>nd</sup> ed., (Sweet and Maxwell, 1953). P. 6.

<sup>241</sup> *Interpretation of Statutes*, (Tiken Publishers, 1996), p. 6.

<sup>242</sup> He is a retired Justice of the Supreme Court of Nigeria and a one-time Chairman of the Independent Corrupt Practices Commission, Abuja. He gave that definition in his article titled, “Law, Morals and Criminal Justice”, In John O. A. Akintayo, (ed.), *Law, Politics and the Legal Profession in Nigeria* being Essays in Honour of Hon. Justice Augustine Nnamani SAN., JSC., (Zenith Publishers, 2006), p.4.

<sup>243</sup> *Osborn's Concise Law Dictionary*, 9<sup>th</sup> ed., (Sweet & Maxwell, 2001), at p. 116.

<sup>244</sup> He attributed the unavailability of a universally accepted definition of crime to the variable nature and the content of crime as well as the introduction of philosophy, ideology and culture into the legal field. See his book: *Criminal Law*, (Ambik Press), p. I.

<sup>245</sup> Okonkwo and Naish, *Criminal Law in Nigeria*, (Spectrum Books Limited, 2003). P. 19.

breaches of the law resulting in special accusatorial procedure controlled by the State, and liable to sanction over and above compensation and costs. Furthermore, while using unliquidated damages to distinguishing tort from criminal liability, W.V.H. Rogers,<sup>246</sup> sees crime as a wrong the sanction of which involves punishment. He went further to identify punishment to include death, imprisonment and pecuniary fines but quickly added that death and imprisonment have nothing in common with unliquidated damages which are claimed in tort. He however noted that with the empowerment of criminal courts to order an offender to pay compensation, the distinction between tort and crime has become less obvious.

Furthermore, A. B. Dambazau<sup>247</sup> sees crime as “a violation of the criminal law, which is subsequently followed by legal punishment.” Similarly, while the Criminal Code<sup>248</sup> defines offence<sup>249</sup> as an act or omission which renders the person doing the act or making the omission liable to punishment under this code, or under any Act, or law, is called an offence.”; the Penal Code defines it in section 28 as “except where otherwise appears from the context, the word ‘offence’ includes an offence under any law for the time being in force.”

From all the above definitions, it could be observed that there is a consensus among scholars, jurists and criminal law experts as regards some notable characteristics of crime which include: (1) a conduct, act or an omission which the State regards as criminal. In other words, the State must declare such conduct, act or omission as a crime: (2) the consequence of the act or omission makes the person involved to be liable to prosecution. In other words a person who contravenes the declaration by the State is liable to be prosecuted; and (3) where the person is found guilty in the course of prosecution or criminal proceeding, he is liable to be punished.<sup>250</sup> Consequently, we can define crime as:

A conduct, act or omission which the state regards as criminal and which renders the person doing the act or making the omission liable to prosecution by the State or its Agent which will lead to punishment where he (she) is found guilty.

<sup>246</sup> In his book *Winfield & Jolowicz on Tort*, 15<sup>th</sup> ed., (Sweet & Maxwell, 1998), p. 13.

<sup>247</sup> He is a retired General in the Nigerian Army and was the Minister of Interior in former President Muhammadu Buhari's cabinet. He stated this in his book: *Criminology and Criminal Justice*, (Spectrum Books Limited, 2012). P. 48.

<sup>248</sup> *Op.cit.*, in footnote 11.

<sup>249</sup> *Ibid* in section 2. See also section 1(1) of the Criminal Law of Lagos State 2011

<sup>250</sup> Various types of punishment can be meted on a person convicted of a crime. It ranges from the very severe punishments such as death sentence, life imprisonment and long term imprisonments to the less severe punishments such as short term imprisonment, fines and caning.

**LAW RELATING TO POLICE PROSECUTION**

Following the establishment of the Nigeria Police Force, the grundnorm<sup>251</sup> Specified that the members of the Police Force shall have such powers and duties as may be conferred upon them by law.<sup>252</sup> The principal Act of the National Assembly that assigned power and duties to the Nigeria Police Force is the Nigeria Police Act.<sup>253</sup> Amongst the numerous duties assigned to the police force are the powers to prevent and detect crimes<sup>254</sup> as well as the power of prosecution of criminal cases. We must quickly remark here that apart from constitutional limitation<sup>255</sup> imposed on the prosecution power given to the police, the ability of the police force to prosecute criminal cases is facing a lot of challenges such that its retention of that power is swinging on a pendulum. This, as we shall see shortly is as a result of the innovations that are contained in the ACJA<sup>256</sup> and the recently enacted Police Act,2020.

It is Noteworthy that under the repealed Police Act,<sup>257</sup>any Police officer may conduct in person all prosecutions before any court of law whether or not the Information or complaint is laid in his name subject only to the authority of the Attorney General as specified in sections 174(1) (2) and 211(1) (2) of the Constitution of the Federal Republic of Nigeria, 1999 as amended. The above statutory empowerment notwithstanding, It is important to state that although the police can prosecute in any court of law in Nigeria, police officers discharge the bulk of prosecutorial duties in the lower court when compared with what obtains in superior courts of record.

Again, it is imperative to say that it was on the above statutory<sup>258</sup> authority that the Nigeria Police Force was victorious when its prosecutorial powers were challenged in the cases of *Sunday Olusemo v. Commissioner of Police*<sup>259</sup> and *FGN v. George Osahon & Seven*

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<sup>251</sup> The Constitution of the Federal Republic of Nigeria, 1999, as amended.

<sup>252</sup> *Ibid.* See section 214(1) (b).

<sup>253</sup> The Nigeria Police Act, 2020.

<sup>254</sup> *Ibid.* See section 4(a).

<sup>255</sup> Sections 174 and 211 of the Constitution of the Federal Republic of Nigeria, 1999, as amended empowered the Attorney-General of the Federation and of the States to institute, undertake, take over, continue or discontinue any criminal proceeding even when being undertaken by any other authority or person without explanation to anybody.

<sup>256</sup> Administration of Criminal Justice Act, 2015.

<sup>257</sup> Cap. P19, Laws of the Federation of Nigeria, 2004. Section 23.

<sup>258</sup> *Ibid.*...in section 23.

<sup>259</sup> (1998) 11 NWLR 573 at p. 547.

*Others*.<sup>260</sup> It was also on this statutory power of the police to prosecute cases that the Court of Appeal held in *Inspector-General of Police v. Daniel Andrew*<sup>261</sup> that the power to prosecute narcotic cases given to the National Drug Law Enforcement Agency does not preclude or deprive the Nigeria Police Force from prosecuting narcotic cases.

However, the ACJA, in section 106, its domesticated counterpart in Edo State<sup>262</sup> also in section 106 and the New Police Act, 2020 in section 66 have some restrictions on the power of prosecution as it affects the police. Apart from the overriding constitutional power of the Attorney-General in respect of prosecution, the ACJA only empowered, legal practitioners who are authorised to prosecute by this Act or any other Act of the National Assembly to prosecute criminal cases in the Federation.

In more specific terms, the Edo State ACJL, by extension, the ACJLs of all other states, only authorised Police Officers or other Officers who are “authorised by any other law of the State or Act of the National Assembly<sup>263</sup> to undertake the prosecution of all offences in any court in the State<sup>264</sup> and by extension their respective States.

The following fundamental question readily comes to mind. Is there any law enacted by the Edo State House of Assembly that specifically authorized police officers to prosecute cases in Edo State? The answer is in the negative. Therefore, we can conveniently say that the Edo State ACJL is relying on whichever police officer that is authorized to prosecute cases by an Act of the National Assembly.<sup>265</sup> It is pertinent to remark here that unlike the repealed Police Act that gave a blanket approval to any police officer (all police officers) to prosecute cases in any court in Nigeria, the Police Act, 2020 is concerned about the quality of Police Officers that may prosecute cases in Nigeria. We shall now examine the provisions of the Act <sup>266</sup>of the

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<sup>260</sup> (2006) 5 NWLR 973 at p. 366.

<sup>261</sup> (2014) All FWLR 729 at p. 1202.

<sup>262</sup> Edo State Administration of Criminal Justice Law, 2016. It is noteworthy to say here that with the recent assent of the Bauchi State ACJL on 25<sup>th</sup> August, 2022, that of Niger State on 27<sup>th</sup> May, 2023 and the Borno State ACJL on 6<sup>th</sup> September, 2023, all the States in Nigeria have domesticated the ACJA. Visit: <https://www.partnersnigeria.org/acjl-tracker/> Accessed on 2 October, 2023 at 2:50 am.

<sup>263</sup> Footnote 33. See section 106(c).

<sup>264</sup> Footnote 39. See section 106(d).

<sup>265</sup> This is because whichever Federal Agency or institution or person that is authorised by an Act of the National Assembly to prosecute will discharge that responsibility anywhere in the Federation, Edo State inclusive.

<sup>266</sup> Nigeria Police Act, 2020.



National Assembly that donated prosecution power to the Police. The Act provides as follows:<sup>267</sup>

- (1) Subject to the provisions of sections 174 and 211 of the Constitution and section 106 of the Administration of Criminal Justice Act, 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 proceeding 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 the information or complaint is laid in his name.
- (2) 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.
- (3) There shall be assigned to every Police Division at least one police officer: (a) who is qualified to practice as legal practitioner in accordance with the Legal Practitioners Act; and (b) whose responsibility is to promote human rights compliance by officers of the Division.

No doubt, by the clear provisions of this Police Act, the legislators want police officers who are qualified legal practitioners to handle prosecution duties in the law courts of Nigeria. This is why the provisions of the Act have restrictive effect on the category of police officers who can prosecute cases in the law courts of Nigeria and essentially. They are only police officers who are qualified lawyers, The essential deduction is that the law is out to discourage “lay prosecution” in the courts in Nigeria for obvious reasons which include the inability of lay prosecutors to respond to questions of law when raised by defence counsel in the course of criminal litigation.

### **FACTORS THAT INHIBIT POLICE PROSECUTORIAL POWERS**

As can be seen from the above statutory provisions and the deductions that can be made therefrom, the law has largely phased out lay prosecution. However, this is in theory because empirical evidence in the lower courts all over Nigeria is indicative of the contrary fact that many police officers who are not qualified lawyers are still prosecuting criminal cases. Thus, we have a situation where there is a marriage between the “old and new orders” whereby, on

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<sup>267</sup> *Ibid.* See section 66.



paper, qualified police lawyers are handling prosecution whereas in practice, police officers who are not qualified lawyers are prosecuting.

At the moment, this situation is unavoidable because as at 2019, there were a total number of 1,533 Police Divisional Headquarters, 1,091 Police Stations and 2,347 Outposts in Nigeria.<sup>268</sup> No doubt, the above figures have been jerked up within this period of four years due to demands for more Police Divisions and police presence by various communities and the need for the Police to be close to the people in line with the “Community Policing” philosophy. It must be remarked here that there are some Police Divisions in Nigeria that cover many autonomous communities and others in highly populated cities that cover up to 5 courts within their territorial jurisdictions where according to the Police Act, qualified lawyers in the police ought to handle prosecution of criminal cases.

The question that readily comes to mind is that how many police officers are qualified to practice as legal practitioners in accordance with the Legal Practitioners Act as required by law?<sup>269</sup> It is thus, the wide gap between the number of the various points where qualified lawyers are needed in the police and the actual number of available police lawyers that is responsible for the continued prosecution of criminal cases by lay prosecutors.

Besides the above, it is noteworthy to state that. The Police Act, 2020 in section 66(2) seems to have realised the inadequacy or shortage in the number of police officers who are legal practitioners in the Nigeria Police Force and has granted police officers the power to prosecute before the courts those offences which non-qualified legal practitioners can prosecute. The challenge here is that those offences which non-qualified legal practitioners can prosecute are not defined in the Act. Thus, that provision constitutes a temporal reprieve or relief intended to officially delay the plans to end “lay prosecution”. In the face of all the above challenges, which is the way forward? We shall proffer solution to this question in our recommendations.

<sup>268</sup> 2019 Annual Report of the Nigeria Police Force, published by the Department of Research and Planning, Force Headquarters, Abuja. See page 371.

<sup>269</sup> Perhaps, the word of Okpako, O., in, *Policing – The Science of Discretion*, (Nareva Publishing and Educational Service, 2021), at p. 67 are apposite thus: “Given the time lag of three (3) years wherein some communities must have been demanding police presence, the number of Police Divisions and Area Commands must have jerked up by now. Although the number of police lawyers was not stated (in the Police Annual Report that was examined), it is doubtful if the number is up to 300. In the face of this widening gap between the number of Police Divisions and the number of legal practitioners in the Nigeria Police Force whereas the law is aiming at a minimum of equilibrium between the two variables, how would the Nigeria Police Force resolve this problem and retain its prosecutorial power?”

**POLICE PROSECUTORIAL POWER AND THAT OF OTHER AGENCIES:  
JUDICIAL PERSPECTIVES**

It must be stated here that apart from the Attorney-Generals who are the “almighty prosecutors” having overriding constitutional powers as regard prosecution in Nigeria and the Nigeria Police Force, there are other agencies in Nigeria that have prosecutorial powers. These agencies include the EFCC, the ICPC and the NDLEA. Power tussle and unwarranted quest for superiority had brought conflicts and disagreements between some of these agencies in the past in the course of prosecution of criminal cases in our courts which were resolved in the court. For example, the power of the Nigeria Police Force to prosecute narcotic cases was challenged by the NDLEA in the case of *Inspector-General of Police v Daniel Andrew*.<sup>270</sup>

In that case, the appellant the Inspector-General of Police arrested and arraigned the respondent Daniel Andrew before the Federal High Court Holden in the Ado-Ekiti judicial Division for unlawful possession of 56 kg of narcotic drugs suspected to be Indian hemp which was contrary to section 20(1) (a) and punishable under section 20(2) (b) of the National Drugs Law Enforcement Agency Act, Cap. “N30”, Laws of the Federation of Nigeria, 2004. Before the plea of the Respondent could be taken, Mr. Femi A. Oloruntoba, Director, Prosecution and Legal Services, National Drug Law Enforcement Agency, (NDLEA) issued a notice of preliminary objection which reads as follows:

Take notice that at the arraignment of the accused person herein the National Drug Law Enforcement Agency as an interested party shall by way of preliminary objection contend that the Inspector-General of Police has no statutory power to arraign or prosecute the accused herein for the offence of unlawful possession of 56 kg of narcotic drugs and shall pray that the charge be struck out *in-limine* and the accused handed over to NDLEA for prosecution.

He gave the followings as the grounds of objection:

- (1) The accused person was arrested for a drug related offence – 56 Kg of narcotic drugs.
- (2) The offence of unlawful possession of narcotic drugs is an offence contrary to the NDLEA Act.

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<sup>270</sup>(2014) Ail FWLR 729 at page 1202.

- (3) By the provisions of section 8(2) of the NDLEA Act, Cap. “N30”, Laws of the Federation of Nigeria, 2004, it is the prosecution unit of the NDLEA that has the statutory power to prosecute an offence under the NDLEA Act.
- (4) The Inspector-General of Police is divested of any power to investigate and prosecute an offence under the NDLEA Act by the provisions of section 3(2) of the NDLEA Act.
- (5) The filing of the charged No.: FHCIAD/7C/2013 by the Inspector-General of Police is a usurpation of the functions of NDLEA by the Inspector-General of Police.

Upholding the preliminary objection Hobon, J., ruled as follows:

The present charge being on drug related offence under the Act is not within the competence of Police prosecution. The preliminary objection ought to succeed and be granted. It is hereby granted per terms of the motion paper.

It is against the decision of the lower court that the Inspector-General of Police brought an appeal and after due consideration of same, Galinje, JCA (as he then was) said:

Section 8(2) (a) of the National Drugs Law Enforcement Agency Act gives right of prosecution the NDLEA and section 3 of same Act spells out the functions of the Agency. None of these sections has ousted the prosecutorial power of the Police which is donated by the Constitution. The fact that the Agency is given concurrent power with the Police to prosecute under the Act cannot amount to usurpation of its powers by the Police. Both the Police and National Drugs Law Enforcement Agency are fighting crimes in this country. Any power tussle between the two Federal Agencies charged with responsibility to fight crimes will lead to anarchy and the Federal Government’s effort at checking criminal activities will remain prostrate.

*On that note and on the reasons I have articulated in this judgment, I find merit in the appeal which I hereby allow. The preliminary objection at the lower court is overruled. The decision of the lower court is hereby set aside and quashed. In its place, it is hereby ordered that the inspector-General Of Police has statutory power to arraign and prosecute the respondent herein who is the accused person for the offence of unlawful possession of 56Kilogrammes of narcotic drugs.<sup>271</sup>*

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<sup>271</sup> Italics mine just for emphasis.

The foregoing decision appears to have been given a statutory backing in section 4(d) of the Nigeria Police Act, 2020 which provides thus, “the Police Force shall enforce all laws and regulations without any prejudice to the enabling Acts of other security agencies. “With the above statutory provision, the decision of the Court of Appeal giving judicial nod or approval to the Police to prosecute any kind of criminal case created by law in Nigeria and the power to prosecute criminal cases before any law court in Nigeria as enunciated in the cases of *Sunday Olusemo v. Commissioner of Police*<sup>272</sup> and *FGN v. George Osahon & 7 Others*,<sup>273</sup> we can conveniently say that the prosecutorial power of the police is second to that of the Attorney-Generals only and no other agency in Nigeria. The issue is just how the NPF can get the required qualified personnel who are legal practitioners to prosecute criminal cases in all the courts in Nigeria.

This is because in line with the position of law that the finality of decision of the Supreme Court in civil proceedings is absolute unless specifically set aside by a later legislation as decided in *Ojo v. Attorney-General Oyo State*,<sup>274</sup> this new position of law whereby only police lawyers in the Nigeria Police Force are authorised to prosecute cases in our courts is sure to stand in the nearest future. This is because this new or later law has modified and set aside the various decisions in the cases cited above that authorised any police officer to prosecute cases whether or not the information or complaint is laid in his name in any court to the extent that such police officer must be a legal practitioner. This position of law can be seen as putting the ability of the Nigeria Police Force to prosecute cases under trial and its retention of the prosecution powers will depend on the ability of the Nigeria Police Force to quickly increase the number of its personnel who are qualified lawyers or legal practitioners.

## CONCLUSION

So far this study has revealed the enormous prosecutorial powers donated to the Nigeria Police Force by statute and judicial decision. The combined effect of the statutory provisions and the decision of court is the establishment of the fact that the Nigeria Police Force can prosecute any case bordering on crime in any court of law in Nigeria irrespective of the existence of any specialised agency or institution for that crime. However, the retention of all its prosecutorial power is swinging on the pendulum as the law is gradually phasing out lay

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<sup>272</sup> *Supra.*

<sup>273</sup> *Supra.*

<sup>274</sup> (2008) Vol. 164 LRCN 130.

prosecutions. This is because lay prosecutors can neither respond to questions on the point of law or effectively reply defence lawyers on points of law. These inadequacies for which the law is striving to prohibit lay prosecution has led to lose of good cases on technical grounds.

It is thus, very obvious that police prosecutorial powers in Nigeria are fraught with socio-legal and administrative problems. These challenges have jeopardized the prosecution of cases in our lower courts where the police feature mostly in the course of discharging their duties of prosecution. This situation may remain for a long time unless positive steps are taken to address or remedy the situation. In this connection, we have made some recommendations hereunder and we are optimistic that if implemented, the regime of police prosecutorial power in Nigeria courts will be greatly enhanced and we shall all be better for it.

## RECOMMENDATIONS

The paper has presented an exposition of the perspectives to the Police Prosecutorial Powers and challenges that are inherent in the exercise of such powers. As a way of surmounting the identified challenges the following recommendations are hereby made in the hope that if implemented, the regime of police prosecution would be greatly enhanced.

- i. The amendment of section 66(2) of the Police Act should be pursued so as to identify or define the cases which non-qualified legal practitioners can prosecute or handle.
- ii. The management of the Nigeria Police Force should give priority attention to the appointment of qualified lawyers in its enlistment drive into the Police Service.
- iii. The Nigeria Police Force should without delay embark on the identification and registration of all qualified lawyers in its service.
- iv. After the identification and registration of qualified lawyers in the Nigeria Police Force, depending on the number and pending the enlistment of sufficient number of legal practitioners into the force, the Nigeria Police Force should deploy the available qualified lawyers to the various Police Area Commands across the country. This will enable the Police Divisions under the Area Commands to enjoy their legal services.
- v. Qualified lawyers in the Nigeria Police Force should be elevated to the level of their contemporaries in other professions.

- vi. The Nigeria Police Force should motivate the legal practitioners in its service by taking up the payment of their yearly or annual practicing fees since it is part of the essential tools needed to be allowed to practice law in the Nigerian courts.
- vii. Lawyers should be deployed by the management of the Nigeria Police Force for the performance of prosecution and other duties where the knowledge of the law is needed. In other words, square pegs should be put in square holes without sentiments.