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DELAYED JUSTICE: A CLOG IN THE DISPENSATION OF CRIMINAL JUSTICE IN NIGERIA

Ganiat Mobolaji Olatokun (Mrs.)^{*}

Introduction

Ever since the dawn of history, Crime has been with us. It is a product of the society, no matter the level of sophistication, manifesting itself both in private and public lives. The definition of crime varies from one society to another. However, criminologists have agreed broadly that, a crime is what each society by its law says is a conduct which breaches the social, moral or other norms of the society and is therefore, resented by the said society. In other to express the resentment the conduct, the society punishes such conduct in one way or the other, under the criminal law of the society. Perhaps the most widely accepted definition of crime is the one given by Lord Atkins, when he said: -

The criminal quality of an act cannot be discerned by intuition; nor can it be discovered by reference to any standard but one, is the act prohibited with penal consequences? This is I think is the true test of criminality.¹

The Constitution of the Federal Republic of Nigeria, has vested the judicial powers of the country in the courts.² Since crime is an offence against the state, it follows therefore, that the state will prosecute the accused in the criminal court. This is unlike a civil

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¹ *Proprietary Articles Trade Association v Attorney General for Canada*, (1931) AC 310, at p.324

² Sec 6(1), Constitution of the Federal Republic of Nigeria, 1999 (hereinafter called "the 1999 Constitution").

case where the offence is against an individual and, it is the individual that will go to court himself as the plaintiff against the offender, who is the defendant. The states normally prosecute the accused through the Attorney General of the Federation or the state or any person so delegated by the Attorney General himself.³ The Attorney General prosecutes criminal offences in the higher courts, while the police prosecute criminal offences in the lower courts. The police also prosecute less serious offences.⁴ It suffices to mention here that, not all courts are criminal courts. Some have no criminal jurisdiction, and so, have no right to try criminal cases.⁵

The constitutional guarantee is to the effect that any person charged with a criminal offence shall be entitled to fair hearing within a reasonable time before a court.⁶ What constitute a reasonable time has been subject of a lot of controversies so that, what constitute a reasonable time in one case may be unreasonable in another case. Base on the wordings of the constitution, the time to bring an accused to trial is not specific and thus, "reasonable time" will have to be determined in the circumstances of each case. The right to speedy trial has been said to be necessarily relative. It depends on each circumstance.⁷

Failure on the part of the court to give an accused a fair hearing within a reasonable time, amounts to a denial of the constitutional rights of an accused and worst still, it will lead to delayed justice. It has often been said times without number that, it is no use singing, "Justice delayed is justice denied" without our making deliberate effort to correct the situation.

³ Ibid, sections 174 (4) and 211 (1).

⁴ Section 19, Police (Miscellaneous Provisions) Decree, 1989 (No. 5 of 1989).

⁵ Various courts in Nigeria with criminal jurisdiction at one stage or the other include: Magistrate Courts, Customary Courts, Area Courts, Federal and State High Courts, Court of Appeal and Supreme Court, see sections 233 (2), 241 (1), 243, 252 and 272, 1999 Constitution.

⁶ Ibid, section 36(4), 1999 Constitution. See also *Maji and ors v Ukonu and ors* (1985) 2 N.W.L.R. (Pt. 686) 26.

⁷ *R. Ariotti v M. Elemode and ors* (1983) 1 S.C. 13.

The present incredibly slow process of administration, with particular regard to the administration of criminal justice in Nigeria is frightening. A judicial system, which permits a single case to remain in court for over five (5) years, cannot be said to be running smoothly.⁸ A lot of reasons have led to this slow process in administering criminal justice.⁹ The courts, the counsels from the ministry of justice, the accused persons and even the governments have a share of blame in bringing about delayed justice. Thus, in the process of bringing about justice, injustice is occasioned because of the delay involved. Furthermore, a lot of consequences have been associated with this problem of delayed justice. Prominent amongst them is the problem of prison congestion from where several other consequences emanate. In the course of this present study, the dispensation and administration of criminal justice in Nigeria will be analysed, with particular reference to the problem of delayed justice. Empirical analysis will be highlighted to show the problem of delayed justice in practical terms. Based on the findings in this present study, reasonable recommendations will be made with the aim of finding a lasting solution to the problem that might have arisen.

Machinery for the Administration of Criminal Justice.

Whenever a law is successfully passed, whether in the form of edict, a decree, an Act of parliament or in any form, forbidding the particular type of conduct in question, it must be upheld and enforced by the courts, which is also the judiciary, aided substantively by the bar, through such offices as the police, the Attorney General and even to a lesser extent, the social welfare department which must also be recognized as an organ in for the administration of criminal justice. Their supervision of parole, probation, suspended sentence and rehabilitation of discharged prisoners cannot be underestimated. Earlier, we have made mention of the courts as a major pillar in the administration of criminal

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justice. It suffices at this juncture to define a court. A court has been defined as a:

"place where justice is administered; the person or the judges assembled for hearing and deciding causes, as distinguished from the counsel or jury, any judicial body, civil, military, or ecclesiastical; the sitting of a judicial assembly".¹⁰

Since the judicial power of the federation has been vested in the courts, it follows therefore that, be it civil or criminal case, the court is the umpire before which justice is to be administered.¹¹

Right of an Accused to a Speedy Trial.

Sec 36(4) of the 1999 constitution provides,

"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 before a court or tribunal."

From the above provision, it would be seen that sec 36(4) contemplates three clear elements namely; (i) fair hearing, (ii) before a court or tribunal, and (iii) such trial to take place within a reasonable time. Therefore, a proper trial within its meaning clearly implies a fair and speedy trial before a properly constituted court. Furthermore, it would appear that this constitutional guarantee has three main purposes, namely, (a) to protect the accused person against prolonged imprisonment, (b) to neutralize the anxiety and public suspicion which leaving a case hanging on the neck of an accused may engender, and (c) to prevent the disappearance of means of proving innocence as a result of loss of witnesses and dulling away of memory.¹²

⁸ See the illustrations in T. Akinola Aguda (1985), *Quintessence of Justice* (Maiduguri: University of Maiduguri, undated, being the 6th Convocation Lecture delivered on Thursday, January 31st, 1985) pp. 16 – 20.

⁹ See A. A. Sanda, *Justice delayed is Justice Denied: Problems and Solutions* (Ibadan: Spectrum Books Limited, 2001) pp. 22 – 28.

¹⁰ *Encyclopaedic World Dictionary* (London: The Hamlyn Publishing Group Ltd, 1971).

¹¹ Section 6 (1), 1999 Constitution.

¹² *Arioni v Elemo*, op cit.

In *Effiom vs. State*,¹³ the Supreme Court held that what amount to a reasonable time within the context of sec 33(1) and (4) of the 1979 constitution must depend on circumstances, peculiarities and the fact of each case. It is not therefore possible to lay down any hard and fast rule as to what a reasonable time is in the trial of every case. But on a balance, the term "reasonable time" must mean among other things, the period of time which, in all circumstances of a case, is necessarily required to ensure that justice is not only done but appears to reasonable persons to have been done to all concerned in the case. It means such length of time as may fairly properly and reasonably be allowed in the trial of a case having regard to the surrounding circumstances and the overall interest of justice.

It does not appear that any length of time may parse be dismissed outright as too long to warrant a close scrutiny for the purpose of determining whether there have been a fair hearing within a reasonable time as prescribed in the constitution. All the circumstances of each and every case must be considered very closely before a fair, reasonable and just conclusion can be arrived at. Fair hearing must involve a fair trial and a fair trial of a case consists of the whole hearing. A one time Chief Justice of this country said that,

The true test of a fair hearing.... Is the impression of a reasonable person who was present at the trial whether, from his observation, justice has been done in the case".¹⁴

Adamu, JCA in the case of *Chinemelu v COP*¹⁵ said:

It is a fundamental principle both under the Common law and under the Constitution - 33(4) of

¹³ (1995) 1 NWLR pt 373 at 503 SC. *Nnajiogor v Ukonu* (1985) 2 NWLR (Pt. 9) 686 at 695, *Unongo v Aku* (1983) 2 SCNLR 332.

¹⁴ Per Ademola, C.J.F. in *Isiyaku Mohammed v Kano Native Authority* (1968) 1 ALL N.L.R. 424 at p. 426 see also, *Ariori v Elemo*, op cit.

¹⁵ (1995) 4 NWLR (Pt. 390) 467 (CA)

the 1979 Constitution that an accused person is entitled to a fair trial within a reasonable time."¹⁶

There is no doubt that trial within a reasonable time in itself amount to a fair trial, whereas, one that is conducted outside what could be so termed may render a trial unfair. "Reasonable time" must mean the period of time which in the search for justice, does not wear out the parties and their witnesses¹⁷ and which is required to ensure that justice is not only done but must appears to reasonable persons to have been done.¹⁸

In view of the aforesaid, it is worthy to point out here that, the right to a speedy trial is necessarily relative, it is consistent to delays and depends upon circumstances. It secures the right to the defendant and does not preclude the rights of public justice. On when time begins to run in determining whether a criminal trial took place within a reasonable time, the crucial period is the period beginning with arraignment and ending with judgment, particularly the period of actual trial.¹⁹

Delayed Justice

Delay in the dispensation of criminal justice is a common phenomenon in Nigeria. The primary purpose of law is to give a litigant his dues, which is justice. The litigant's dues must be given to him at the right and appropriate time. However, we found out that, sometimes, this purpose is not achieved. We stand to ask at this juncture, what are the reasons that bring about delayed justice.

Delays in the dispensation of criminal justice have been caused in some cases by the law enforcement agencies e.g. the police. In some other instances, such delay can be occasioned by the accused himself, where he refuses to cooperate with his counsel in regards to given accurate evidence. Prosecuting counsels from the Ministry of

¹⁶ Ibid, pp. 491 - 492.

¹⁷ Aguda, op cit, p. 2.

¹⁸ Ibid.

¹⁹ *Oyeyemi v Commissioner for Local Government, Kwara State* (1992) 2 NWLR (Pt. 226) 661, *Asakitipti v The State* (1993) 5 NWLR (Pt. 296) 625, *Sofekun v Akinyemi* (1981) 1 NCLR 135.

Justice as well as the courts is not helping matters, for they too had occasioned many delayed justice. This is because, the counsels from the Ministry of Justice ask for adjournment on several grounds. Notably among their grounds are, either (a) that the counsel handling the case is on another assignment and wants adjournment to appear personally, (b) that the Ministry of Justice has asked for more investigation from the police in respect of a particular aspect of the case and are awaiting their report, etc. Another reason for the delayed justice can be attributed to the liberal interpretation of the phrase, "reasonable time" by our judges. Happily, it has been settled that this is to be determined in the light of the circumstances of each case.²⁰

Several delayed justice has been occasioned by the Nigerian Police because of the procedure which investigation follows. A special section of the Nigerian Police known as the Criminal Investigation Department is in charge of the investigation of all crimes in Nigeria. The Nigerian Police, being a federal agent, it follows therefore that officers of this agency are subject to frequent transfer to any part of the country. Most times, these officers are transferred without any regard to the assignments, which they have on hand. Invariably, they might be handling several cases, which would be at different stages of completion. It follows therefore that, such investigation officer will have to come back to his previous station any time the case is to come up for hearing. This position has posed a lot of problem to the investigating officer because of the traveling expenses, which they would incur. The officers have always complained that both traveling and night allowances are usually not refunded to them.

The court on their part, have the ultimate responsibility of making the final orders which dispose off the case, but we found out that the number of cases which come before the courts have grown beyond what any one can imagine.²¹ It is virtually impossible to get through all the cases on the cause list. The result is that adjournments are frequently sought and granted. The judges have to devise a means of protecting himself from fatigue and consequent breakdown in

²⁰ *Effiom v State* (1995) 1 NWLR (Pt. 313) 507.

²¹ Sanda, *op cit*, p. 20.

health. Furthermore, some of the buildings used as courts are neither convenient for judicial officers nor for litigants and members of the public. What is more, these courts halls have no cooling gadgets, no that, by noon, the whole hall is so hot and uncomfortable that no serious work can be done. The judge can simply adjourn cases of our courts regardless of their status, lack voice recorders for recording proceedings, comfortable and adequate furniture befitting modern courts, fan or air conditions necessary in a tropical climate such as ours, efficient secretarial system for easy recall of cases and modern library among other facilities.

Consequences of Delayed Justice

The effect of this bane on our legal system is multidimensional. It indirectly negate the enjoyment of the rights guaranteed under our constitution, for rather than enforce his right as provided under the constitution, a citizen will prefer to suffer in silence or have his right compromised. In some other cases, he may decide on self-help, thereby taking the law into his hand. Indeed, any legal system that unwittingly, through neglect or indifference encourages self-help is inviting anarchy.

It appears that before any delay can have a legal effect in criminal proceedings, a miscarriage of justice occasioned by the delay must be established. According to Adio, JSC in the case of *Effiom v State*²²

"...It does not appear to be enough for an accused person to show that there unreasonable delay in his trial. He must go further, if he wants judgment of the trial reversed, to show that the unreasonable delay has occasioned a miscarriage of justice."

Thus miscarriage of justice is one of the legal consequences of delayed justice. Without the accused person showing that there was indeed a miscarriage of justice, even where there was an unreasonable delay, the court will still dismiss the appeal. This is

²² *Op cit* at p.3

because, by virtue of Sec 26(1) Supreme Court Act, 1960, the Supreme Court may, notwithstanding that it decides in favour of the appellant, the point raised in the appeal, dismiss the appeal if it considers that no miscarriage of justice actually occurred. See the case of *Asikitipi v. The State*.²³

Another major consequence of delayed justice, and from where several other consequences emanates is, Prison congestion. Prison congestion, it suffice to say, remained overcrowded, squalid brutal and dehumanizing. On January 1st, 1990, the Federal Military Government took a commendable decision somewhat to decongest the prisons by granting presidential amnesty to 4 categories of prisoners totaling, 5300, nonetheless, the prison population still remained astronomically high.²⁴ Efforts to decongest the prisons are not helped by the sentencing policy of some judges who impose custodial punishment even for very minor offences and juvenile misdemeanors.

Talking about empirical analysis, a practical example of delayed justice is the case of two men, Razak Koleoso and Taiwo Omosowon²⁵ who were released from prison after spending 5 years in custody. At the time of their release, the prosecuting counsel admitted that the police had no file on them and that there was no evidence to link them with the alleged crime of armed robbery for which they have been arrested and remanded all those years. Another case that comes to mind is that of one, Joseph Odogu²⁶ who was detained in March 1979 and had no trial until his freedom in April 6, 1988. At this juncture, it is important to say they a lot of Odogus, Koleosos and Omosowons are in our cells today, being victims of delayed justice. Certainly, these citizens have been denied their constitutional rights in all ramifications.

This is far from justice and can best be described as injustice. These cases are not isolated ones, one can cite hundreds of cases of similar

²³ (1993) 5 NWLR (Pt. 296) 625

²⁴ China Uban, *Annual Report on Human Rights in Nigeria* (Lagos: Civil Liberties Organisation, 1990)

²⁵ *Ibid.*, p. 26.

²⁶ *The Guardian Newspaper*, Wednesday, 7th September 1988

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frightening delays in the courts, which must invariably result in
"injustice" whitewashed by our system and said to be "justice".
Warren Burger, a one-time Chief Justice of United States is
reported to have said:

"A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to the society. That people come to believe that inefficiency and delay will drain even a just judgment of its values; that people who have long exploited in the similar transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over reaching; that people come to believe the law in the large sense cannot fulfill its primary function to protect them and their families in their homes, at their works, and on the public streets."²⁷

One consequence in respect of capital cases is the commutation of death sentence to life imprisonment if there has been unreasonable delay in the appeal process while the accused remained on the death row.²⁸ In Nigeria, persons condemned to death spend inexplicable long periods of time on death row. As at February 1990, in the Kiriiri Maximum Prison, 5 condemned convicts had been on death row for 14-12 years and 23 others, for between 3 Months to one year.²⁹ One of such cases is that involving three murder convicts - Monday Sampson, Felix Ogunmelu and Ebere George. They have been on death row since 1969, 1970 and 1971, that is, periods of 21, 22 and 20 years respectively in solitary confinement, chained to

²⁷ Melvin P. Sikes, *Administration of Injustice*, p. 75 quoted in Aguda, *op cit*, p. 19.

²⁸ Oba, A. A., "The Cruel and Inhuman Aspects of Delaying Execution of Capital Punishment" *Journal of International and Comparative Law*, Vol. 1, 1997, p. 158 and Oba, A. A., "Capital Punishment, the Death Row Phenomenon and the Supreme Court of Nigeria" *Journal of Public Law* Vol. 2 No. 1, 2001, p. 1.

²⁹ Uban, *op cit*, 103.

solid pillars in their respective isolated cells at Kirikiri Maximum Security Prison. These three men have lost sanity. They were not provided psychiatric or other medical treatment.³⁰ They urinate and defecate on the same spot.³¹ From the experience of these men, it would be seen that life on death row in Nigeria is generally cruel and inhuman. It is therefore more imperative that justice is carried out at the right time within reasonable time especially in these types of cases.

Conclusion and Recommendation.

Based on the above, it will not be an overstatement to say that delay in the dispensation of criminal justice is rampant in Nigeria, that the causes of such delays in the judicial process are myriad, and most consequences emanating from delayed justice is glaring and most fatal and that the empirical analysis are true to life. All through the years, men have protested against delay in bringing about justice and counted it as a grievous wrong, hard to bear. Shakespeare³² ranks it among the whips and scorns of time; Dickens tells how it exhausts finances, patience, courage and hope.³³ Therefore, it is hoped that with the following recommendations, the problems raised in the course of this present study will be a forgone issue.

1. In view of the lack of specificity of time within which to bring an accused to trial, it is recommended that the provisions of the constitution should be more specific. The drafting committee of the constitution should make it a point of duty to specify within which period of time an accused is to be brought to trial thereby, going in line with the provisions of such sections like, section 35(1)(c) of the 1999 constitution which provides:

Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty except for the purpose of bringing him

³⁰ Ibid.

³¹ Ibid.

³² Hamlet, Act III, Scene 1.

³³ Charles Dickens, *Bleak House*, quoted in Lord Denning, *The Due Process of Law* (London: Butterworths, 1979) p. 92.

before a court or upon reasonable suspicion of his having committing an offence, or such extent as may be reasonably necessary to prevent his committing a criminal offence."

Section 35(4) goes on to say that:

"any person who is arrested or detained in accordance with subsection (1)(C) of this section shall be brought before a court of law within a reasonable time and if not tried within a period of:-

- (a) 2 months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or
- (b) 3 months from the date of his arrest or detention in the case of a person who has been released on bail, he shall without prejudice to any further proceedings that may be brought against him be released either unconditionally or upon such condition as are reasonably necessary to ensure he appears for trial at a later date".

This is the type of specificity we require from the Constitution Drafting Committee. The phrase "within reasonable time" in section 36(1) of the 1999 constitution should be reframed to give some sort of specific time frame.

2. In addressing the issue of delayed justice, the courts are implored to do all in their powers to enforce expedition and if need be, the courts should strike out actions when there has been excessive delay. Happily, some of our courts are in the habit of doing just this. Although this is a stern measure, it is within the inherent jurisdiction of the courts and the rules of the courts expressly permit it. The principle upon which the courts should stand is clear: when the delay is

prolonged and inexcusable, and is such as to do grave injustice to one side, or the other, or both, the court may, in its discretion strike out the action straight away.

3. To tackle with the problem of prison congestion, it is recommended that the number of awaiting trial persons which constituted more than half of the total prison population³⁴ in the country could be reduced or, rather, this situation would definitely be helped (speaking more positively), if the judges make greater use of their constitutional discretion to grant bail to persons awaiting trial instead of remanding them all the time.

4. The judiciary as a sentinel on the *qui vive*, has the constitutional obligation to enforce the fundamental human rights of the accused to a speedy trial by issuing the necessary directions to the courts which may include the taking of positive actions such as, augmenting and strengthening the investigating machinery, setting up new courts, adequate maintenance of existing courts, providing more staffs and equipment to courts, appointments of additional judges and other measures calculated to ensure speedy trial. In other words, the judiciary should adopt an activist approach and issue to the courts directions, which may include taking a positive action with a view to securing and enforcement of the fundamental right of speedy trial.

5. The government, non-governmental organisations and wealthy individuals should assist in providing employment for citizens. This gesture will reduce the crime rate to a large extent.

It is our hope that, with the strict compliance to the recommendations discussed earlier, the dispensation of criminal justice in Nigeria will be a process to be proud of with the incidences of delayed justice cum prison congestion, being a thing of the past.

³⁴ Ubani, *op cit*, p. 26.