



INTERPRETATIVE REGIME OF SOME SELECTED PROVISIONS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015: GAINS AND DIMINUTION

By

Abdulrahman Muhammad Jumah*

Abstract

The courts' main role is to decode the law, seeking the legislature's intent through the text. In this context, Nigeria's Administration of Criminal Justice Act 2015 (ACJA) stands as a significant legislative milestone. Using the doctrinal research methodology, this study examines the judicial attitude toward interpreting ACJA 2015. As to the specific objectives, the paper will identify whether the interpretations advanced so far by the Nigerian courts on relevant sections of ACJA 2015 promote its spirit and purpose. The paper finds that, in some of the cases, the trial courts were more conservative than purposive towards interpreting the provisions of ACJA, hence the courts refused to be strictly guided by the purpose of ACJA 2015. In contrast, the appellate courts (Court of Appeal and Supreme Court) in most cases refused to tread this part of judicial ineptitude. The paper recommends that judicial officers manning courts, especially, the lower bench should be regularly trained and retrained by the National Judicial Council (NJC) regarding interpreting newly enacted Acts and laws to conform with age-long principles of law and the constitution. It is further recommended that the Supreme Court of Nigeria and the Court of Appeal of Nigeria should drive the process of judicial activism by overturning decisions of lower courts that contradict the purpose of ACJA 2015. The study also suggests parliament should lead the push to amend the Constitution and the ACJA 2015 to enhance the solutions the latter aims to provide.

Keywords: Criminal Justice, Judicial Interpretation, mischief, remedy,

1.0 INTRODUCTION

The primary and constitutional function or role of the courts is to interpret the law

* Abdulrahman Muhammad JumahLLM, Lecturer, Nigerian Law School, Yenagoa Campus, Bayelsa State, Nigeria. abdulrahman.jumah@nigerianlawschool.edu.ng

¹ See *Onasile v Sami* (1962) 1 All NLR 272.



and in doing so, the courts are expected to find the intention of the legislature or the draftsman from the law itself and the wordings used.¹ In this wise, ACJA 2015, which is a landmark piece of legislation in Nigeria is not exempted.

However, before ACJA 2015, the Criminal Procedure Act (CPA) and the Criminal Procedure Code (CPC) were in operation in southern and northern Nigeria respectively. Some of the challenges inherent in the smooth and effective administration of the criminal justice system under the CPA and CPC include the abuse of power to arrest and detain a suspect by the police,² incessant delay³ in the conduct of an investigation, rendering legal advice, delay in the trial of defendants due to technical delays in the form of interlocutory applications⁴, holding charge,⁵ stay of proceedings,⁶ etc.

Informed by these shortcomings, the ACJA took the bull by the horns to provide solutions.⁷ This has been acknowledged by scholars and jurists in the realm of criminal justice.⁸ Some of the novel provisions introduced by ACJA include inter alia humane treatment of a suspect and prohibition of arrest in civil cases,⁹ electronic recording of confessional statements,¹⁰ remand proceedings,¹¹ timeline for commencement and conclusion of criminal trials,¹² witness protection,¹³ ruling on objections along with substantive judgment,¹⁴ abolition of stay of proceedings during interlocutory appeals, etc.¹⁵

² AB Mahmoud, 'Institutional Framework and the Constraints in Criminal Justice Administration' (being a paper delivered on Administration of Criminal Justice and Human Rights in Nigeria (Human Rights Commission Publication, 1998).

³ See the lead judgment of Ngwuta, JSC in *Dariye v FRN* (2015) 10 NWLR (Pt 1467) 325.

⁴ Ibid.

⁵ AA Imam and IB Mohammed, 'Legal Issues in Remand Proceedings Under the Administration of Criminal Justice In Nigeria' *ABUAD Law Journal (ALJ)* (2023) (11)(1) <78-96https://doi.org/10.53982/alj.2023.1101.04-j> accessed on 3rd May 2024.

⁶ Ibid.

⁷ A Adekunle, 'An Overview of the Administration of Criminal Justice Act 2015' (*Being a paper presented at the 2016 induction course for newly appointed Judges and Kadis, organized by the National Judicial Institute 23rd May- 3rd June, 2016, Abuja*).

⁸ Y Akinseye-Geoge, 'Keynote Address on the Administration of Criminal Justice Act (ACJA) 2015 (*Being a paper presented at the Nigerian Bar Association (NBA) Conference on Administration of Criminal Justice in Nigeria held on 9th November, 2017*).

⁹ S. 8(1) and (2) of ACJA, 2015.

¹⁰ ACJA 2015, s 30.

¹¹ ACJA 2015, s 293.

¹² ACJA 2015, s 110.

¹³ ACJA 2015, 232.

¹⁴ ACJA 2015, s 396(2).

¹⁵ This particular provision enjoyed judicial pronouncement in the case of *Metuh v FRN* (2017) 11 NWLR (Pt1575) 157.



This paper explores the interpretative regime of some of the provisions of the ACJA, by identifying the attitude of Nigerian courts, and examining whether the interpretations advanced so far by the Nigerian courts on the selected relevant sections of ACJA 2015 promote its spirit and purpose. The writer has compartmentalized the paper into an introduction, historical evolution of ACJA 2015, rules of interpretation, interpretation of some selected provisions of ACJA, conclusion and recommendations.

2.0 HISTORICAL EVOLUTION OF ACJA, 2015

Prior to the formation of an entity known as Nigeria, a large number of systems of criminal law existed in both the South and North.¹⁶ In the year 1861, king Dosunmu of Lagos ceded Lagos to British control and Lagos became a Crown Colony. In the year 1863, the British introduced the criminal justice system which was applied in Britain to Lagos. In 1916 the CPA was enacted as a criminal procedure law of general application throughout Nigeria up to attainment of political independence on October 1, 1960.¹⁷ It ceased to be applicable to the whole country as a result of controversy from Northern Nigeria that it was more Judeo-Christian.¹⁸ Some of the cases that generated controversy include *Gubba v Gwandu Native Authority*,¹⁹ *Kano Native Authority v Fagoji*,²⁰ etc. In response to the controversy, the use of CPA was restricted to the Southern parts of Nigeria while CPC was enacted, and it became the applicable law of criminal procedure for the Northern parts of the country.²¹

The CPA and CPC witnessed serious challenges which include inter alia, incessant delay,²² holding charge syndrome, etc. In *Joshua Dariye v FRN*²³ the Supreme Court denounced the eight years of delay by the defendant through the uncanny interposition of interlocutory appeals. In a similar case of corruption involving the former Governor of Taraba State, Rev. Jolly Nyame, there were similar lamentations by Justices Rhodes-Vivour, Nweze, Akaahs and other Justices of the Supreme Court on the outright abuse of interlocutory appeal.²⁴

¹⁶ CO Okonkwo, *Okonkwo and Naish on Criminal Law in Nigeria* (2nd edn Spectrum Books 2012); AOObilade, *The Nigerian Legal System* (Spectrum Books 1990) 30.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ (1947)12 WACA 141.

²⁰ (1957)NRNLR.

²¹ Okonkwo (n 103) 5.

²² See the lead judgment Per Ngwuta, JSC in *Dariye v FRN* (2015) 10 NWLR (Pt 1467) 325.

²³ Ibid.

²⁴ *Nyame v FRN* (2010) 7 NWLR (Pt1193) 344.



From the foregoing challenging experiences and many more, the issue of reforming the administration of justice especially criminal justice in Nigeria engaged the attention of various stakeholders in the sector.²⁵

In 2003, the then Attorney-General of the Federation and Minister of Justice, Chief Akin Olujimi, SAN set up a Committee to make recommendations for a new criminal procedure system.²⁶ The Committee was named 'National Working Group on the Reform of the Administration of Criminal Justice in Nigeria' (hereinafter referred to as the National Working Group (NWG)). The NWG travelled round the country to elicit the views of Nigerians and within a year of establishment, the NWG completed its assignment and submitted its report to the Attorney-General of the Federation. The proposal was later submitted to the Federal Executive Council by Chief BayoOjo, SAN, who succeeded Chief Akin Olujimi, SAN as Attorney-General of the Federation.²⁷

It should be noted that the proposal developed by the NWG got stuck in the federal administrative bureaucracy.²⁸ On its part, Lagos State Government, then under Governor Bola Ahmed Tinubu with Prof Yemi Osinbajo, SAN as Attorney-General and Commissioner for Justice wasted no time in adopting the proposal for Lagos State. Thus, by 2007, Lagos State became the first State in the country to pass the Administration of Criminal Justice Law (ACJL). The Law was repealed and re-enacted in 2011 while at the Federal level, the draft ACJ reform proposal remained enmeshed in the thick of the Federal bureaucracy and the National Assembly.²⁹

In 2011, the then Attorney-General of the Federation and Minister of Justice, Mr Mohammed Bello Adoke, SAN CFR, also established a committee known as the Panel on Implementation of Justice Reform (PIJR) chaired by Hon Justice Ishaq U Bello of the FCT High Court. The panel was mandated to, inter alia, process the draft ACJ reform proposals for passage into law at the Federal level. Notable members of the panel included Prof Peter Akper, SAN, Prof Adedeji Adekunle, SAN and other highly placed legal practitioners.³⁰

The PIJR eventually submitted a report to the Attorney-General of the Federation. However, the Ministry of Justice did not sponsor the Bill as an

²⁵ Adekunle (n 7).

²⁶ Akinseye-George (n 8).

²⁷ Ibid.

²⁸ *ibid.*

²⁹ Ibid.

³⁰ Ibid.



Executive Bill to the National Assembly. A private member, Hon (Dr) Ali Ahmed, initiated the Administration of Criminal Justice Bill in the House of Representatives while Senator Dahiru Umar took it over to the Senate, and eventually 7th Senate passed the Bill just few weeks to the end of its term. President Goodluck Ebele Jonathan eventually made history when he signed the Administration of Criminal Justice Bill into law on 14th May, 2015 just a few days to the end of his administration.³¹

3.0 RULES OF INTERPRETATION

Under the common law, there are three main general rules of interpretation of statutes that may be employed by the Nigerian judiciary, namely the Literal Rule,³² the Golden Rule, and the Mischief Rule.³³ They are not rules, strictly speaking, but mere guiding principles which the courts may employ to arrive at the true import and meaning of a statute.³⁴ Other guiding aids include *ejusdem generis*,³⁵ “*lese non cogit ad impossibilia*”.³⁶ For the purpose of this paper, it suffices to look at the mischief rule as it has a direct bearing on this work.

3.1 Mischief Rule of Interpretation

According to the Mischief Rule, to interpret a statute properly, it is necessary to consider how the law stood when the statute to be construed was passed, what was the mischief for which the old law did not provide and the remedy provided by the statute to cure the mischief. The court is then to construe the statute in such a manner as to suppress the mischief and advance the remedy. This rule was first handed down in the old *Hyden's case*.³⁷

The principle of the mischief rule of interpretation of a statute is only applicable where the meaning of the provisions in a statute is clear and unambiguous. In the case of *Ifezue v Mbadugha*,³⁸ Anialogu, JSC observed:

³¹ Ibid.

³² According to the rule, statutes are to be interpreted literally, see *Adebenro v Akinto* (1962) 1 All NNL 465.

³³ According to the rule, where the words of a statute are ambiguously absurd, it is the duty of the court to interpret the words in such a manner as to avoid that absurdity. See Council of University of Ibadan v *Adamolekun* (1967) 1 All NLR 213.

³⁴ AO Obilade, *The Nigerian Legal System* (Spectrum Books 1990)

³⁵ It is expressed in Latin maxim “*Expressio unis est exclusion alterius*.” The maxim simply means that where a statute or other document expressly mentions certain thing but leaves out others, the court should presume that those things not mentioned in the statute are excluded from the operation of the statute.

³⁶ Literally, it means that the law does not compel the doing of impossibilities.

³⁷ (1584) 3 Co. Rep. 79; see also *Re Mayfair Property Co.* (1898) 2 Ch 28.

³⁸ (1984) 1 SCNL 427.



... That for the sure and the true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of common law) four things are to be discerned and considered: (1st) what was the common law before the making of the Act? (2nd). What was the mischief and defect for which the common law did not provide? (3rd) what remedy the Parliament hath resolved and appointed to cure the disease of the common law, and (4th) the true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro-private commodo, and to add force and life to the cure and remedy according to the true intent of the makers of the Act, pro bona publico.

The mischief rule of interpretation is now a settled part of our jurisprudence. Therefore, each case should be taken on its peculiarity and merit by the courts with the sole aim of doing substantial justice.³⁹

4.0 INTERPRETATION OF SOME SELECTED PROVISIONS OF ACJA

This segment of the paper focuses on the interpretations espoused by the courts on section 15(4) and 17(2) of the Act in the case of *FRN v Nnaji*⁴⁰; section 306 in the case of *OlisaMetuh v FRN*, section 396(2) in *Idakwo v FRN⁴¹ & Anor⁴²* and section 396(7) in the case of *Udeogu v. FRN & Ors.*⁴³

All the above judicial pronouncements shall be examined using the yardstick of whether or not the purpose of the Act has been met. The purpose of the Act includes, inter alia: to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interest of the suspect, defendant and the victim.⁴⁴ Similarly, the courts, law enforcement agencies and other authorities or persons involved in criminal justice administration shall ensure compliance with the provisions of the Act for the realization of its purposes.⁴⁵

³⁹ See the dictum of Fatai-Williams, CJN (as he then was) in the case of *Awolowo V. Shagari* (1966)1 All NLR 178.

⁴⁰ (2024) 10 NWLR (Pt 1947)443.

⁴¹ (2017) 11 NWLR (Pt 1575)157.

⁴² (2021) LPELR-53439 (CA).

⁴³ (2020) LPELR-57034 (SC).

⁴⁴ ACJA2015, s 1(1).



4.1 *FRN v. Nnaji*for⁴⁶

Facts:

It is an appeal that borders on non-compliance with the ACJA in recording of confessional statement. The appeal is a fall-out of the judgment of the Court of Appeal, Lagos Judicial Division, delivered on March 19, 2018 in Appeal No. CA/L/727C/2017.

The respondent and two other persons were arraigned before the trial Federal High Court, upon a two count charge of conspiracy and failure to declare the sum of One Hundred and Two Thousand Eight Hundred and Eighty-Five United States of America Dollars (\$102,885) to the officers and men of the Nigerian Customs Service as required under the provisions of Section 2(3) of the Money Laundering (Prohibition) Act 2011 (as amended by Act No. 1 of 2012).

The case progressed to trial. On May 20, 2016, the prosecution sought to tender the extra-judicial statement of the respondent vide the prosecution witness. Not unnaturally, the defence counsel vehemently objected, on the ground that the statement sought to be admitted was a confessional statement which was made by the respondent involuntarily and without compliance with Sections 15 (4) and 17 (2) of the Administration of Justice Act (ACJA) 2015.

The respondent's objection warranted the trial Court to order a trial-within-trial. At the end of the trial-within-trial proceeding, the trial Court delivered a ruling on November 8, 2016, overruling the respondent's objection and admitting the extra-judicial statement in evidence. Dissatisfied with the ruling of the trial Court, the respondent appealed to the Court of Appeal which heard and allowed the appeal and remitted the case to the Chief Judge of the Federal High Court for assignment to another Judge for hearing and determination, hence the appellant appealed to the Supreme Court.

Interpretation of Sections 15 (4) And 17 (2) of ACJA 2015

The Apex Court was radically bold, purposive, and revolutionary in its approach to the interpretation of the said sections. In interpreting the provisions of sections 15 (4) and 17 (2) of the Act, the Court upheld the decision of the Court of Appeal which affirmed the ruling of the Federal High Court per Anka, J who rejected the confessional statements as having been involuntarily made and in clear violation of sections 15 (4) and 17 (2). In doing so, the Court also looked at the mischief which the sections aimed to cure which includes the abuse of powers of the police or other law enforcement agencies in the process of obtaining confessional

⁴⁶ ACJA 2015, s 1(2).



statements from suspects by intimidating them or bullying them in the course of taking their statements. The Court observed thus:

The mischief sought to be curbed by the law includes such unsavoury situations as where an alleged confession is extracted by torture and duress imposed on a defendant which led to the confession, to avoid miscarriage of justice and to reduce to the barest minimum the incidents of retractions and time consumed by trial within trial proceedings.⁴⁷

So, the Court interpreted the term "may" as employed in Section 15 (4) and 17 (2) to mean shall. The Court posited that, to assert that the term "may" in the aforementioned provisions possesses a discretionary or permissive connotation would not mitigate the mischief that the provisions are designed to rectify, nor would it promote the remedy for it. It would also not augment the efficacy and vitality of the cure; rather, it would bolster the mischief. Given the intent of the provisions, to ascribe a permissive rule to the provisions would imply that the Legislature bestowed a remedy for the mischief with one hand while simultaneously withdrawing the remedy with the other hand. Such a scenario would render the provisions futile and undermine their objective.. The Court Per Ibrahim Mohammed Musa Saulawa, JSC noted:

In the instant case, as aptly found by the Court below, the provisions of Sections 15 (4) and 17 (2) of ACJA, 2015 (supra) have strictly provided for a particular procedure of recording the statement of the defendant. Thus, there is no gainsaying the fact that failure to perform the act in accordance with the dictates of those provisions of the law would be deemed to be a flagrant non-compliance with the law. In such a situation, the Court would be entitled to invoke its interpretative jurisdiction to hold that the non-compliance with the law is against the recalcitrant party. I agree entirely with the foregoing findings of the Court below on the issue. The findings are cogent, unassailable and quite in tandem with the current position of the law.⁴⁹

⁴⁷ *FRN v Nnaji* (n 40).

⁴⁸ *Ibid*, Per Helen Moronkeji Ogunwumiju, JSC, 28-34, paras. A-E.

⁴⁹ *Ibid*.



By this decision, it is the candid opinion of the writer that the decision represents the purpose of the Act, which includes the protection of the rights and interests of the suspect or defendant who might have been subjected to duress or intimidation in the process of obtaining his confessional statement. It also ensures speedy dispensation of justice, as there would not be the need for trial within trial if such procedure is complied with. Similarly, it accords with the minimum standards of Police investigation or interrogation that are obtained in other jurisdictions.⁵⁰

However, for this laudable provision of the law to be fully implemented seamlessly and effectively by the security agencies, there is a need for proper funding to provide for the state-of-the-art targets. Failure of which will constitute what Alubo terms “an impediment to the realization of the full potentials and intendment of the provision.”⁵¹

4.2 *Olisa Metuh v. FRN*⁵²

Facts

The appellant (Chief Olisa Metuh) and the 2nd respondent (Destra Investments Limited) were arraigned before the Federal High Court on a 7-count charge of money laundering and related offences, and they pleaded not guilty. After that, their trial commenced. In proof of its case, the prosecution called eight (8) witnesses all of who testified and were cross-examined by the defence. The prosecution closed its case and matter was adjourned for the appellant and the 2nd respondent to open their defence. The appellant made a 'no case submission' which the trial court dismissed. The appellant was aggrieved. He appealed to the Court of Appeal, which also dismissed his appeal on the no case submission.⁵³

Within seven (7) days of the date of judgment by the Court of Appeal, the appellant filed a notice of appeal to the Supreme Court. The record of appeal was thereafter compiled within fifteen (15) days, and the appellant's brief of argument was filed within ten(10) days as stipulated in the Supreme Court's Practice Directions. The respondent's brief was equally filed. The appellant then through

⁵⁰ Ibid, 18-20, paras. C-B.

⁵¹ This was also alluded to by my Lord Helen Moronkeji Ogunwumiju, JSC, 35-38, para. C-C, where she cited examples of jurisdictions like United Kingdom, under Section 76 of the Police and Criminal Evidence Act 1984, the PACE Code C, PACE Code E and PACE Code F, which make specific provisions on the Code of Practice for the detention, treatment and questioning of persons by police officers, audio recording of suspect interviews and virtual recording of suspect interviews respectively, and Australia, by virtue of Criminal Investigations Act 2006 (WA) s 118 (Austl.) and the Police Administration Act 1978 (NT) s 142 (Austl.) statutory requirements.

⁵² AO Alubo, *Criminal Procedure Law in Nigeria* (Innovative Communications 2012) 227.

⁵³ (n 41).



a motion ex parte applied to the Supreme Court for a date for hearing of the substantive appeal. And the Supreme Court adjourned the substantive appeal to 2nd November 2017.⁵⁴ Before the adjourned date, the appellant filed another application at the Supreme Court, where he sought an order of the Court staying further proceedings in Charge No. FHC/ABJ/CR/05/2015: *Federal Republic of Nigeria v. OlisaMetuh&Anor* pursuant to section 306 of the Administration of Criminal Justice Act 2015.

Interpretation of Section 306 of ACJA

Also guided by the purpose of the Act which is to ensure a system of administration of justice that will promote speedy dispensation of justice,⁵⁵ the court per Kekere-Ekun, JSC (as she then was) observed: “There is no doubt that the grant of an order for stay of proceedings in this case would result in undue delay in the determination of the pending charge before the trial court.”⁵⁶

In his contribution, Eko JSC said:

The trial under the Administration of Criminal Justice Act (ACJA), 2015, which requires the criminal proceedings to proceed on day-to-day basis, section 306 of the ACJA, prohibits the trial court staying proceedings in respect of a criminal matter before the court. It provides sternly that- “An application for stay of proceeding in respect of a criminal matter before the court shall not be entertained”.⁵⁷

The Court also upheld the constitutionality of section 306 of ACJA and held that the said provision agrees with section 36(4) and other sections of the Constitution of the Federal Republic of Nigeria 1999. Moreover, the appellant/applicant's motion for stay of proceedings is violently in conflict with the provisions of section 36(4) CFRN 1999 and section 306 ACJA 2015.

Even though the attitude of the trial court in refusing the application for a stay of proceedings under section 306, and the concurrence of both the Court of Appeal and the Supreme Court in upholding the same advances and promoted the purpose of the ACJA 2015, the author begs to disagree with the Supreme Court on the constitutionality of section 306 of ACJA 2015. There are instances where

⁵⁴ Ibid, 160.

⁵⁵ Ibid.

⁵⁶ ACJA 2015, s 1(1).

⁵⁷ (n 41) 182, paras.G-H.



such provision and section 396 (1) and (2) of ACJA will violently violate a defendant's constitutional right of presumption of innocence.⁵⁸ To fully comprehend our position, let us paint a hypothetical scenario where a defendant addresses a trial court on a 'no case submission' at the close of the prosecution's case, where all the prosecution witnesses were discredited under cross-examination, but the trial court overruled the submission of no case to answer, and ordered such defendant to enter his defence. Upon being dissatisfied, the defendant then approaches the appellate court to reconsider the 'no case submission'. The defendant's appeal eventually succeeds at the appellate court, but during the pendency of the appeal, the defendant has entered his defence because the law does not permit him to apply for stay of proceedings pending the outcome of his appeal, which is decided in his favour. In fairness to the Court of Appeal, similar concern was addressed in the case of *Idakwo v FRN & Anor* when section 396 (2) came up for judicial consideration on appeal. To fully comprehend the position of the court, let us look at the decision.

4.3 *Idakwo v FRN & Anor*

Fact:

It is an appeal against the decision of the High Court of the Federal Capital Territory, Abuja, in Charge No. FCT/HC/CR/9/2019, delivered on the 22nd June, 2020 and 24th September, 2020, Coram: D.Z. Senchi, J wherein the trial Court rejected the admission in evidence of the certified true copy of the ruling of the Magistrate's Court, Wuse II and also refused to consider, and determine the Appellant's Motion No. M/8687/2020 (Motion filed by the appellant to establish autrefois acquit.)

The charge against the appellant was dated the 16th October, 2019 and filed on the 17th October, 2019. After the five count charges under which the appellant together with his co-accused were arraigned were read to them, they entered not guilty pleas. Thereafter, the matter went into full trial. In the course of the trial, the 1st Respondent amended its charge from five counts to six counts. While cross-examining PW1, the learned counsel for the appellant and 2nd Respondent sought to tender a ruling of the Magistrate's Court wherein the appellant was discharged and acquitted by the said Court following a No Case Submission. Respondent's counsel objected to the admissibility of the said ruling, the same was upheld and the document was marked as rejected.

Dissatisfied with the Ruling of the trial Court, the appellant appealed to the Court of Appeal. The Court of Appeal determined the appeal on the issues couched by the appellant which is as follows:

⁵⁸ Ibid.



1. Whether the trial High Court was right when it refused to admit in evidence, the Certified True Copy of the ruling of the Magistrate's Court, delivered on the 21st February, 2020, merely on the ground that PW1, who was led to identify the document under cross-examination, was not the maker of the document?
2. Whether in view of the clear and unambiguous provisions of section 36(9) of the Constitution of the Federal Republic of Nigeria, 1999 and section 238 of the Administration of Criminal Justice Act 2015, the trial Court was right to have relied on section 396 (2) of the Administration of Criminal Justice Act 2015 to withhold ruling on Motion No. M/8989/2020?
3. Whether the continuation of trial in charge No. FCT/HC/CR/9/2019 by the trial High Court without delivering ruling on Motion No. M/8989/2020, which Motion is a plea of autrefois acquit by the appellant, does not amount to double jeopardy against the appellant, contrary to the provisions of section 36 (9) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), and sections 238 and 277 of the Administration of Criminal Justice Act 2015?"

Decision

On the whole, the appeal was allowed and the decisions of the trial court was therefore set aside.

Interpretation of Section 396 of ACJA

The Court of Appeal held that subsection 2 of section 396 allows any defendant before the Court on a criminal charge to raise any objection to the validity of the charge or information at any time before judgment with a proviso that the objection shall be considered along with the substantive issues at the end of the case.⁵⁹ The Court noted that the section was introduced by the law to cure and curb excesses of defendants and counsel who on any slight complaint about regularity or form of a charge lock down trial and take the matter through series of needless appeals and stall the prosecution of the offenders.⁶⁰

Similarly, the Court admonished that every trial Court must be cautious to differentiate which situation can be addressed under that law and which one should not be tied to the law. It all depends on the nature of objection raised. If the nature of objection raised is not tardily on the form or peripheral issues on the charge before the Court but skilfully attack the jurisdiction of the Court, the Court would have to use its discretion to timeously address it.⁶¹ The Court also

⁵⁹ CFRN 1999, s 36(5).

⁶⁰ See the lead judgment per Stephen Jonah Adah, JCA, 21-31, paras. B-C.



observed that the application placed before the lower Court in the instant case is geared towards enforcing or safeguarding the fundamental right of the appellant under section 36(9) of the Constitution of the Federal Republic of Nigeria 1999. Section 36(9) provides that no person who shows that he has been tried by any Court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior Court.⁶² The Court deprecated the attitude of the trial court in following words:

The Motion No: M/8687/2020, filed by the appellant and for which the lower Court heard, is meant to stop the appellant from going into another trial since he is showing that he had been tried for the same offence before. It is therefore unconscionable with due respect for the lower Court to reserve the ruling until the same appellant had gone through trial to be told whether he should be tried again or not. This does not fit into the mould of section 396 (2) of the Administration of Criminal Justice Act. The learned trial Judge in the circumstance of this case was not right to have relied on section 396(2) of ACJA to withhold the ruling on the Motion No: M/8989/2020. From the foregoing therefore, it is obvious that the continuation of trial of the appellant in this case without finding out whether the appellant has shown duly that he was tried before and acquitted on the same charge before the Court is offensive to section 36(9) of the Constitution. It is akin to ambushing the fundamental right of the appellant to fair hearing."

Before the judgment in the above case, the writer and other learned academics⁶³ have shared the sentiment that the section may infringe on the constitutional right of a defendant if strictly and rigidly interpreted as done by the trial court in the case under review. It is worthy of note to point out that the section was not struck down as attempted by the Appellant in the appeal in another relief. The Court observed that the provision of section 396(2) was not specifically clamped to section 36(9) of the Constitution or any of the provisions of the Constitution. The provision is a general provision which is meant to ensure speedy trial of the case by the lower Court. It is only to be noted that, that provision is not applicable to

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.



this present case based on its peculiar facts.

On the whole, we submit that the Supreme Court should not hesitate to affirm this judgment if brought before it for further adjudication. This will further solidify on the successes recorded.

4.4 *Udeogu v FRN & Ors*⁶⁴

Facts:

The appeal is against the decision of the Court of Appeal delivered on 24th April, 2019. It borders on the constitutional validity of section 396 (7) of the Administration of Criminal Justice Act 2015.

? On 31 October 2016, the appellant, the 2nd and 3rd respondents were arraigned before Idris, J. (as he then was), of the Federal High Court, Lagos. They were charged with several criminal offences. The appellant and the other defendants entered pleas of not guilty. Thereafter, trial commenced. The prosecution called nineteen witnesses and closed its case on 1 May 2018. The appellant made a no case submission and on 17 July 2018, the prosecution responded to the appellant's no case submission. On 20 June 2018, Idris J (as he then was) was appointed a Justice of the Court of Appeal, and on 22 June 2018 sworn in as a Justice of that Court. On 2 July 2018, the President of the Court of Appeal sent a letter to Idris, J.C.A., directing his lordship (by her Fiat) to go back to the Federal High Court and conclude the part-heard criminal matter, wherein the appellant was one of the defendants before September 2018. The Judge duly complied with the directive of the learned President of the Court of Appeal, Nigeria. Proceedings continued in the trial Court and on 31 July 2018, after hearing arguments on the appellant's no case submission, dismissed it. The appellant filed an appeal where he challenged the competence of Idris, JCA to continue sitting to hear the matter, after he had been elevated and sworn in as a Justice of the Court of Appeal. The Court of Appeal heard arguments in the appeal and on 24 April 2019, dismissed the appeal. Appellant, therefore, appealed to the Supreme Court and donated a lone issue for determination: whether the Court of Appeal was right when it held that section 396(7) of the Administration of Criminal Justice Act (ACJA) 2015 vests a Justice of the Court of Appeal with requisite power to sit and conclude part heard matter at the Federal High Court and that the said section is not contrary to sections 250 (2) and 253 of the

⁶⁴ UC Kanu, N Tijani and BH Fusho, 'Access to Justice in Nigeria under the Administration of Criminal Justice Act 2015: Can the Ruling on Preliminary Objection on Jurisdiction be Deferred until Delivery of Judgment on the Substantive Issues? Examining section 396 (2) of the Administration of Criminal Justice Act 2015' (2022) 8(6) International Journal of Law <<https://www.lawjournals.org/asset/archives/2022/vol8issue6/8-5-86-934.pdf>> accessed on 23rd June 2024



Constitution of the Federal Republic of Nigeria 1999 as.

Interpretation of Section 396 (7) ACJA 2015

The Supreme Court failed to employ the purposive interpretation of Section 396 (7) ACJA which would have required it to inquire as to the reason why the legislature came up with the provision in section 396 (7) ACJA 2015. Instead, the Court concerned itself with the supremacy of the Constitution.⁶⁵ It emphasised that, no matter how good a law may seem or no matter how good the intention of the makers of a law, the moment it runs contrary to the provisions of the Constitution, it becomes null and void. We, however, concur with the submission of Adebayo and Ayenakin who observed that:

A statutory provision should not be considered to conflict with the provision of the Constitution if when put into effect will not defeat the Constitutional provision or limit its application or efficacy. Can it therefore be said that section 396 (7) ACJA will interfere, limit or diminish the purport of any section of the Constitution of Nigeria 1999 (as amended)?⁶⁶

We respectfully answer the above poser put forward by the learned authors in the negative.

5.0 CONCLUSION AND RECOMMENDATIONS

The Apex Court and the Court of Appeal have made commendable strides in interpreting the ACJA to align with its reformist objectives. This can be gleaned in the cases of *FRN v Nnaji*,⁶⁷ *OlisaMetuh v FRN*,⁶⁸ and *Idakwo v FRN & Anor*.⁶⁹ However, in *Udeogu v FRN & Ors*,⁷⁰ the Supreme Court refused to be guided by the provision of 396 (7) of ACJA based on the fact it conflicts with the Constitution. In a nutshell, from the examined cases, the trial courts are more conservative towards interpreting the provisions of ACJA, hence the courts refused to be strictly guided by the purpose of the ACJA, 2015. While the

⁶⁴ (n 43).

⁶⁵ Per EjembiEko, JSC, 9-26, paras. A-A of the judgment termed it "...audacious insubordination to the Constitution."

⁶⁶ Adebayo and Ayenakin, 'The Supremacy of the Constitution: Ude Jones Udeogu v Federal Government of Nigeria & 2 Ors' IRLJ 3 (3) 2021 <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/inlrwolw3&div=77&id=&page=>> Accessed on 26th November 2024.

⁶⁷ (2024) 10 NWLR (Pt 1947) 443.

⁶⁸ (2017) 11 NWLR (Pt 1575) 157.

⁶⁹ (2021) LPELR-53439 (CA).

⁷⁰ (2020) LPELR-57034 (SC).



appellate courts (Court of Appeal and Supreme Court) refused to tread the part of the trial courts. Flowing from the above conclusion, the paper proposes the following recommendations:

- i. Judicial Officers manning courts, especially the lower bench should be regularly trained and retrained by the National Judicial Institute (NJI) regarding the interpretation of newly enacted Acts and laws to conform with the age long principles of law and the Constitution.
- ii. The National Judicial Council should design and come up with reward packages for Judicial Officers who have excelled in their constitutional role of interpreting the Constitution and statutes.
- iii. It is further recommended that the Supreme Court and Court of Appeal should drive the process of judicial activism by overturning decisions of lower courts that contradict the purpose of ACJA and the Constitution as done in some of the cases examined 8n this Paper.
- iv. In cases where the Supreme Court and the Court of Appeal refused to be radically bold in interpreting ACJA to conform with its purpose and the Constitution, and where the provision of ACJA 2015 such as section 396 (7)) conflicts with the grundnorm, the lawmakers should sponsor a bill for the amendment of the ACJA and the Constitution.
- v. It is equally recommended that the provisions of sections 306 and 396 (2), (7) of ACJA 2015 should be revisited by the Supreme Court and the parliament because there are scenarios in which the sections will impede the constitutional right of a defendant to fair hearing.