

Examining the Power of Lay Police Officers to Prosecute Offences Which Non-Lawyers Can Prosecute in Nigerian Courts

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Abstract

Before the Administration of Criminal Justice Act 2015 (ACJA) and Police Act 2020 came into force, lay police officers prosecuted criminal offences mostly in inferior courts in Nigeria, though their authority to prosecute in all courts was clear from both the repealed Police Act and judicial authorities. ACJA makes an unsuccessful attempt at excluding lay Police officers from prosecuting criminal offences in courts. The Police Act 2020, which comes closest to abrogating the prosecutorial powers of lay police officers, introduces a strange term tending to defeat that objective. This Paper critically examines the offences non-lawyers prosecute in courts, with a view to determining whether or not lay police officers have powers to prosecute offences in courts under the Police Act 2020 and other criminal procedure laws at Federal or State levels. Doctrinal research methodology is employed in gathering and critically analysing the relevant sections of ACJA, Administration of Criminal Justice Laws (ACJL) of select States, Police Act 2020, Constitution of the Federal Republic of Nigeria 1999, and judicial authorities. The Paper concludes that lay police officers do not have prosecutorial powers under our current law. It, therefore, recommends that section 66 (2) of the Police Act 2020 be repealed to cancel the confusion it has created.

Key words: Prosecutorial Powers, Lay Police Officers, Offences, Legal Practitioners, Non-lawyers, Courts.

1. Introduction

Prosecution of criminal cases in Nigerian Courts by lay police officers started a long time ago. It was largely due to insufficient number of legal practitioners available to prosecute criminal offences in the courts.¹ With

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¹ Y Ali, 'Liberalization of Legal Services: Perspective of Nigerian Legal Practitioners and Law Firms' (being a paper presented at the Annual General Conference of the Nigerian Bar Association held at Landmark Event Centre, Victoria Island, Lagos State between 21 and 25 August 2017), 2-

increase in the number of legal practitioners in both the State and Federal Ministries of Justice to prosecute offences in courts, there is need to withdraw lay police officers from prosecuting criminal offences in court. This would enable them concentrate on their core duties of preventing, detecting, investigating crimes, and appearing as witnesses for the State in courts; and protecting the lives and property of the citizens.² Prosecution of criminal offences by lay police officers is not good for the administration of criminal justice system.³ The lay police officers are not versed in law, and do not know the complex nature of criminal trials to match with legal practitioners in the defence team. This makes it very easy for criminals to escape justice. Again, the lay prosecutor could easily be influenced to compromise their cases.

2. Prosecutorial Powers of Lay Police Officers under the Repealed Police Act

Section 23 of the repealed Police Act⁴ expressly empowered police officers, whether lay or learned, to prosecute offences in any courts in Nigeria whether such information or complaint was laid in their names or not. It was based on that provision that the Court of Appeal of Nigeria confirmed the powers of the learned Police officers to prosecute offences in the High Court in the case of *Olusemo v Commissioner of Police*.⁵ Similarly, in *Federal Republic of Nigeria v Osahon & 7 Ors*⁶, the Supreme Court of Nigeria relied on section 23 of the repealed Police Act and sections 174 and 211 of the CFRN 1999 to hold that all police officers, both lay and learned, had power

4. <https://liberalization-legal-services-perspective-nigerian-legal-practitioners-law-firms.pdf>, accessed 3 May 2023.

² Police Act 2020, s 4.

³ LE Effiong, G Abdulsalam, and AO Oluwadayisi, 'A Critical Appraisal of the Prosecutorial Powers of the Police Under the Police Act 2020' [2022] 2(2) *International Journal of Criminal, Common, and Statutory Law* 80, 82-85. They authors hold the view that lay police officers have powers to prosecute criminal offences in Nigerian courts. They, therefore, recommend that section 66 of the Police Act be amended to clear the ambitious intention of the Act as to the jurisdiction and courts where the lay police officers can prosecute criminal cases. The present author holds the view that lay police officers cannot legally prosecute criminal offences under section 66 of the Police Act 2020. He, therefore, recommends the repeal of section 66(2) of the Police Act 2020.

⁴ Cap P19 Laws of the Federation of Nigeria 2004.

⁵ [1998] 11 NWLR (Pt 575) C.A. 547. The Court of Appeal decided in this case that lay police officers could prosecute offences in inferior courts.

⁶ [2006] 5 NWLR (Pt 973) 361.

to prosecute offences at superior courts, the Federal High Court of Nigeria in that case.

3. Prosecutorial Powers of Lay Police Officers under the ACJA, ACJL, and the Police Act 2020

Section 106 of ACJA, which provides for persons and authorities who have power to prosecute criminal cases in court expressly excludes lay police officers from prosecuting offences in courts. Even though the section does not specifically mention learned Police officers, the mention of legal practitioners would necessarily include police officers who are qualified to practice law in Nigeria. However, section 268 (2) of the Act provides for Police officers instituting criminal proceedings in the name of Commissioner of Police or Inspector General of Police as the case may be without specifying whether those police officers must be lawyers or not. The marginal note to this section is ‘general control of proceedings by the Attorney-General of the Federation.’ It should be noted, however, that the prosecutorial powers provided for under section 106 of the ACJA is only subject to the powers of the Attorney-General of the Federation. In section 381 of ACJA, which deals with filing of Information, a public officer acting in his official capacity is one of those who could file information in the court. The aggregate effect of these sections of ACJA is that it is very arguable whether lay police officers have been excluded from criminal prosecution under the ACJA.⁷

The ACJL Lagos and Kano States still accommodate lay police prosecutors in the Magistrates’ Courts of those States. Although the Kano Law is more explicit than that of Lagos, there is no controversy as to the extent of the prosecutorial powers of lay police officers in those States. They can prosecute offences in the Magistrates’ Courts; they cannot prosecute in the High Courts. In Ebonyi State, its ACJL forbids lay Police officers from prosecuting offences in any court at all, even though in practice, they still

⁷JA Agaba, *Practical Approach to Criminal Litigation in Nigeria* (4thedn, Renaissance Law Publishers Ltd 2022)420-434; Y Akinseye-George, ‘Some of the Innovative Provisions of the Administration of Criminal Justice Act (ACJA) 2015’ cited in Agaba, 430.

prosecute offences in Magistrates' Courts in Ebonyi State.⁸In the case of *Obijiaku v Obijiaku*⁹, the Supreme Court of Nigeria held, *obiter*, that a police officer who is not a legal practitioner cannot prosecute offences in any court in Nigeria. Respectfully, the Court, in the statement made by the way, did not consider the effect of subsection 2 of section 66 of the Police Act 2022 on the power of lay police officers to prosecute those offences which non-lawyers can prosecute in Nigerian courts. The Court relied heavily on section 66 (1) of the Police Act 2020 and section 106 of the ACJA 2015. To that extent, it may not be a good authority, in every respect, on the power of lay police officers to prosecute offences in Nigerian courts. The issue that fell for the determination of the Court in that case was whether a private person could lay a private complaint and prosecute the complaint by a private legal practitioner without the *fiat* of the Attorney-General of Anambra State under section 301 of the now repealed Administration of Criminal Justice Law of Anambra State 2010. The Supreme Court held that a private person could do so under that Law. However, section 157 (3) of the Administration of Criminal Justice Law 2022 of Anambra State has repealed section 301 of the 2010 Law; and legislatively reversed the decision of the Supreme Court in *Obijiaku v Obijiaku*.¹⁰

4. Offences that Non-Lawyers Prosecute in Courts

What are the offences which non-lawyers can prosecute in courts? A lawyer or a legal practitioner is a person who has been called to the Nigerian Bar by the Body of Benchers of Nigeria, and enrolled with the Supreme Court of Nigeria to practise as a barrister and solicitor of the Supreme Court of Nigeria.¹¹ Before he or she qualifies to be called to the Bar, they must have obtained a bachelor of laws degree from a university which programme of study is acceptable to the Council of Legal Education, a body responsible for the legal education and training of prospective lawyers in Nigeria.¹²In

⁸ ACJL of Ebonyi State 2019, s 181. Want of manpower may be responsible for the continuing prosecution of criminal cases by the lay police officers in Magistrates' Courts in Ebonyi State.

⁹[2022] 17 NWLR (Pt 1859) S.C.377, 400-401.

¹⁰ The legal implication of section 157(3) of ACJL 2022 of Anambra State is that the case is no longer a good authority on the power of a private person to lay a complaint in court and prosecute same by his counsel.

¹¹ Legal Practitioners Act, s 24.

¹² Legal Education (Consolidation, etc) Act 1976, s 2 (5).

addition to the law degree, the aspirant to the Bar must undertake a one year vocational training at the Nigerian Law School, and pass the Bar Qualifying Certificate Examination.¹³ There is no midway to becoming a lawyer or legal practitioner in Nigeria. Subsection 2 of section 66 of the Police Act 2020 empowers lay police prosecutors to prosecute those offences that non-lawyers can prosecute in Nigerian courts.

The question that necessarily follows is what offences do non-lawyers ordinarily prosecute in Nigerian courts? The next step is to identify offences that non-lawyers or lay prosecutors, not being lay Police officers, prosecute in Nigerian Courts. It should be emphasised that unlike the ACJL of some States which expressly confer prosecutorial powers on lay Police prosecutors in their Magistrates' Courts, the Police Act 2020 in section 66 (1) expressly excludes lay police officers from prosecuting offences in any courts, and makes that provision subject to the provisions of sections 174 and 211 of the CFRN 1999 and section 106 of the ACJA. The implication is that the lay police officers may not prosecute offences created by the Criminal Code, Penal Code, or any other Acts or Laws under that subsection because those offences are not ordinarily prosecuted by non-lawyers. It should also be stated that where statutes donate prosecutorial powers to private persons, such powers are exercised by private legal practitioners on behalf of nominal complainants.¹⁴ It is the right to defend oneself against criminal charges that can be exercised personally by a non-lawyer defendant or by a legal practitioner of one's choice¹⁵. What, then, are the offences, which lay police prosecutors can prosecute in courts?¹⁶ It is the knowledge of those offences that would enable one determine if there is any offence the lay police officers can prosecute under section 66 (2) of the Police Act 2020. There is a category of prosecutors loosely called special prosecutors in Nigeria, many of whom are not legal practitioners. Many substantive penal statutes creating some offences also provide for persons or authorities to prosecute those

¹³Ibid, s 2. Those who studied abroad do and pass examination on Bar Part 1 and remedial courses before being qualified into the Bar Final programme at the Nigerian Law School.

¹⁴ ACJL Lagos, s 254.

¹⁵ CFRN 1999, s 36 (6), (c).

¹⁶ Section 141 of the Police Act 2020 defines 'court' as any court established by any law in force in Nigeria.

offences, many of them in inferior courts. Special prosecutors such as Factory Inspectors, Sanitation Inspectors, Rating Authorities or Rate Collectors, EFCC prosecutors, etc, have powers under the enabling statutes to prosecute the offences created thereunder. Section 66 of the Factories Act vests the power of criminal prosecution in respect of the factory offences created therein on the Inspector of Factories.¹⁷

Can the non-lawyer police officers wrestle those cases from the special prosecutors? The present author answers the question in the negative. The reason is that the power of police officers to prosecute criminal offences even where it is expressly provided for does not extend to the power to institute criminal proceedings in respect of offences over which the power of prosecution has been donated to another person, agency, or authority. The power of police officers to prosecute offences does not also extend to taking over and continuing with prosecution of offences instituted by another person, agency, or authority. Such extensive power is only reserved for the Attorney-General of the Federation or that of the State.¹⁸In *Shema & Ors v FRN*¹⁹, the appellants challenged the powers of EFCC to initiate criminal proceedings against them in the name of the Federal Republic of Nigeria in respect of State offences. The Court held that the Attorney-General of Katsina State could donate powers to EFCC to prosecute State offences. The court further held that such powers have, overtime, been donated to different agencies such as the Police, NDLEA, FIRS, NCS, ICPC, etc.²⁰

To the extent that all the offences which non-lawyers prosecute in courts in Nigeria have persons, agencies, or authorities, other than police officers, saddled with the responsibility of prosecuting them, and given that the police officers do not have power to take over the prosecution of those offences, the provision of section 66 (2) of the Police Act 2020 is superfluous and impotent. It is, therefore, concluded that lay police officers do not have power to prosecute offences that non-lawyers prosecute under the Police Act

¹⁷See Custom and Excise Management Act, s 180(1),(2); NAFDAC Act, s 26; Local Government Law of Lagos State, s 175 which vest similar powers on the Custom, NAFDAC, and Local Government officers.

¹⁸CFRN 1999, ss 174, 211; *Sani v State*[2023] 2 NWLR (Pt 1867) S.C. 77.

¹⁹ (2018) LPELR-43723 (SC).

²⁰ The Court relied on *Nyamev FRN* [2010] 7 NWLR (Pt 1193) 334.

and under any other law unless such power is expressly donated to them. In other words, they cannot share the prosecutorial powers with the special prosecutors or any other authority unless the law expressly provides for that. Their duty would stop at arresting, or possibly investigating the suspects, and thereafter handing them over to the appropriate persons, agencies, or authorities for prosecution. It should equally be stated that apart from the Criminal Code and the Penal Code which are the most inclusive penal statutes in Nigeria, accommodating Police prosecution of offences created thereunder, all the more specific penal statutes create the persons, agencies, and authorities to administer them, including the power to prosecute offences created therein. It is equally correct to argue that even where the Criminal Code or Penal Code donates prosecutorial powers to the Police generally, lay police officers cannot prosecute those offences under section 66 (2) of the Police Act 2020 except where those offences are of the nature prosecuted by non-lawyers, and the Code has not named the non-lawyers to prosecute the offences. Again, the lay police officers can prosecute if the persons, agencies, or authorities vested with prosecutorial powers over the offences that non-lawyers can prosecute in courts willingly donate their powers to the lay police officers. This is very unlikely.

For emphasis, it should be noted that the Police do not have similar prosecutorial powers as the Attorney-General of the Federation to take over and continue with criminal proceedings instituted by any other person or authority. The Police Act 2020 is undoubtedly the primary, principal, and specific legislation on the Nigeria Police Force. Any statute on the functions or powers of the Police which provisions conflict with that of the Police Act will be null to the extent of its inconsistency. It covers the field. In that light, would it be said that the Administration of Criminal Justice Laws of States which permit lay police officers to prosecute criminal offences could be accommodated under section 66 (2) of the Police Act 2020? The answer is in the affirmative only if the offences are those that non-lawyers can prosecute.²¹ Unfortunately, most of the Criminal Code and Penal Code

²¹ Sections 78 and 123 of ACJL of Lagos and Kano respectively which, allow lay police officers to prosecute offences in Magistrates' Courts do not specify whether or not the offences are those that non-

offences, which the Police can prosecute are not the kind of offences that non-lawyers prosecute in courts. To that extent, any offence that is not amenable to prosecution by non-lawyers cannot be prosecuted by lay police officers but by learned police officers. In canvassing the above position, the present author is not unmindful of the provision of subsection 2 of section 66 of the Police Act 2020, which allows criminal procedure laws at the Federal or State level to provide for prosecution of criminal offences in courts by lay police officers.

However, the prosecutorial powers donated to the lay police prosecutors by the Police Act under those laws are qualified. It must be in respect of offences that non-lawyers can prosecute in courts. For the avoidance of doubt, the subsection provides that 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-lawyers can prosecute. It follows, therefore, that any criminal procedure law at the Federal or State level, which donates more prosecutorial powers to lay police officers than those envisaged by the Police Act 2020 runs contrary to the provision of the Police Act 2020, and must be null to the extent of its inconsistency.²²The provision of the Police Act under review is not subservient to the criminal procedure laws at the Federal or State level. Where the conflict is between two Acts of the National Assembly, the Constitution is used to resolve it.²³It is a specific and comprehensive legislation on the Nigeria Police Force. It covers the field. On the contrary, the Police Act gives life to those criminal procedure laws with respect to the powers of lay police officers to prosecute offences, which non-lawyers can prosecute in courts; the power that section 66(1) of the Police Act 2020 has completely taken away from lay police officers. Finally, it should be noted that whereas the power of learned police officers to prosecute offences in any court under section 66 (1) of the Police Act 2020 is made subject to the provisions of sections 174, 211 of the CFRN 1999 and section 106 of ACJA

lawyers can prosecute in courts. This makes it highly arguable whether or not lay police officers could legally prosecute cases in those courts by virtue of section 66(2) of the Police Act 2020.

²²CFRN, s 5(1), (2), (3), (5).

²³*FRNv Osahon&Ors*(2006) LPELR-3174 (SC), 1, 23.

2015, the power of lay police officers to prosecute the offences which non-lawyers can prosecute in courts under section 66 (2) of the Police Act is made subject to the provisions of any criminal procedure law in force at the Federal or State level. If those criminal procedure laws do not provide for or name the offences which non-lawyers can prosecute in courts, then, the lay police officers have no offences to prosecute in courts under those laws. Again, even if the offences are provided for or named in those laws but the laws appoint other persons, agencies, or authorities as prosecutors other than lay police officers, then, the lay police officers have no offences to prosecute in courts under those laws. For instance, a husband of a woman who commits adultery under sections 387 and 388 of the Penal Code Law is a special prosecutor in respect of that offence. Lay police officers cannot take over the prosecution of adultery from the husband of the adulterous wife²⁴. Subsections 1 and 2 of section 66 of the Police Act 2020 must be read and interpreted together to appreciate that in reality, no prosecutorial power is donated to lay police officers therein.

5. Conclusion

It is time lay police officers stopped prosecuting criminal offences in Nigerian Courts. It is inimical to good criminal justice administration as the lay police officers do not possess the requisite training and knowledge in law to match their opposing defence counsel. The attempt in section 66(2) of the Police Act 2020 at giving lay police officers power to prosecute offences in Nigerian courts is largely unsuccessful. It is submitted that they can only prosecute offences, which non-lawyers can prosecute in courts if the criminal procedure laws or the substantive penal statutes expressly vest them with such powers or where the persons, agencies, or authorities vested with such powers expressly donate the powers to them. The second option is very unlikely.

The Attorneys-General of both the Federation and States should take over cases from Police Commands that do not have adequate number of legal practitioner police officers to prosecute offences. Though, there may not be

²⁴ Note that adultery is not an offence under the Criminal Code Law operational in the southern parts of Nigeria. See *Aoko v Fagbemi*[1961] 1 All NLR 400; CFRN 1999, s 36 (12).

sufficient law officers in the Ministries of Justice and other Government Ministries, Departments, and Agencies for prosecution of criminal offences, *fiat* should be granted to private legal practitioners to prosecute those offences.

6. Recommendations

Section 66 (2) of the Police Act 2020 should be repealed to end the confusion created by it, and expressly exclude lay police officers from prosecuting criminal cases in courts. It is equally recommended that laws such as Factories Act, Customs and Excise Management Act²⁵, NAFDAC Act²⁶, Local Government Laws²⁷, Environmental Sanitation Laws, Penal Code Laws, etc, which empower lay special prosecutors to prosecute offences should be repealed. States should equally amend their ACJLs to exclude lay police officers from prosecuting criminal cases in courts. The Nigeria Police Service Commission should employ more legal practitioners into the Nigeria Police Force to accord with the provision of section 66(3) of the Police Act 2020, which provides that there shall be assigned to every Police Division at least one police officer who is qualified to practice as a legal practitioner in accordance with Legal Practitioners Act, and whose responsibility is to promote human rights compliance by officers of the Division. If these legal practitioners are employed, cases could be assigned to them to prosecute in courts in addition to advising officers of Police Divisions on human rights. All lawyers in the Ministry of Justice should engage in public prosecutions irrespective of their departments or units. Experience has shown that some law officers posted to Legal Drafting and Law Review Department, and the Department of Administration-General and Public Trustee are under-utilized.

²⁵*Custom & Excise v Senator Barau* [1982] 1 NCR 1.

²⁶NAFDAC Act, s 26.

²⁷ Local Government Law of Lagos State, s 175.