

THE NECESSITY OF JUDICIAL TEMPLATE IN THE TRIAL OF TERRORISTS IN NIGERIA: RE: AMINU SADIQ OGWUCHE - A CRITIQUE

BY

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Abstract

Against the backdrop of the various socio-political cum existential threats to Nigeria's recent democratic experiment on the present second model of Presidential Constitutional Democracy is the emergence of the offence of Terrorism (and other allied offences such as Banditry and Hostage-taking for Ransome) and Terrorists, the actual perpetrators of Terrorism. This legal conversation as captured in this extent paper examines and solicits for necessity of established template and clear legal Direction in the trial and or prosecution of the accused terrorist(s) in line with the Rule of law. The various nuances of legal impasse and procedural lock jam to which the rule of law is subjected by all the known and amorphous legislative sanctuaries churning out these inelegant statutes (and law enforcement agents) competing among themselves in the arrest, detention, investigation and prosecution of the offence(s) are herein critically downloaded with a view to proffering a lasting solution to the legal procedural monstrosities avalanching the entire spectrum of the criminal justice administration in the beleaguered liberal state.

Key Words: Prosecution, Offences, Terrorist, Terrorism, Boko Haram, Constitution Security Agencies, Rule of Law

1.0 Introduction

When there is an existing lacuna (omission or gap) in the corpus of various extant statutes regulating the prosecution and trial of suspected offenders under the same laws. Moreso, where there are so many security and regulatory agencies specifically created and empowered to deal with a particular offence or social malaise; when there is a shirking of responsibility by the central legal authority (The office of the Attorney-General of the Federation and Minister of Justice) created by law, in bold relief, to control the prosecution of such offence or sundry offences; and when the said security and regulatory agencies are ignorantly and unwittingly given chances and opportunities vide the lacunae, to jostle and scramble for the prosecution of the said offence or sundry offences, a lot of social and legal absurdities are thrown up in the system as expressed in terms of the following:

- (i) The suspected offender is set free,
- (ii) The philosophical jurisprudence behind the retributive and deterrent theories of criminal justice administration is defeated,
- (iii) The complainant turns into accused/defendant,
- (iv) The long arm of the law is amputated to short sleeve length,
- (v) The suspected or prospective offenders are emboldened to commit more offences with the seemingly tacit support of the law,
- (vi) The emulators of arch-offenders are rapidly bred in thousands, armed with courage of conviction that there is no effective check and balance in the legal system,
- (vii) Society reverses back to the Hobbessian Jungle State,
- (viii) The protagonists, mischief - makers and architects of corruption, fraud and greed, operating between and within the security and regulatory agencies, inter se, emerge to exploit the ugly situation to the detriment of society who are often victims of such offences.

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Thus, the resonance of the proverbial "native doctor who was consulted to drive away the evil spirit, and who turns up only to be pursued by the evil spirit".

1.1 The Case of Aminu Sadiq Ogwuche¹

The case of Aminu Sadiq Ogwuche (Supra) typifies and reminisces, in one fell swoop, all of the above legal and social monstrosities in its essence; facts, arrests, detention, investigation, extradition, prosecution and interim ruling.

1.2 Facts

The facts of this case are as follows:

On the 14th day of April, 2014, two deadly bomb blasts masterminded and detonated by the deadly Boko Haram operatives at Nyanya - a borderline town lying between Nassarawa State and Federal Capital Territory, Abuja, killed 75 people, and injured over 120 other people. The scene of the blasts was littered with pieces of human flesh and amputated limbs of the dead. The morgues at Abuja/, Nassarawa - and Nyanya were filled to the brim.

1.3 Investigations

As expected, the various security and regulatory agencies established in Nigeria for the investigation, arrest, detention and prosecution of the offence of terrorism and similar offences, such as the Police and the Directorate of State Services (DSS) went to work to unravel who and which group of terrorists were responsible for the attack. Few hours after the attack, apart from the fact that Boko Haram Terrorist sect² "claimed responsibility" for the attack, the two security agencies confirmed the claims of the terrorist sect and further, unequivocally, distilled the major mastermind of the deadly blasts in the person of Aminu Sadiq Ogwuche.

2.0 Extradition

Having obviously and successfully perpetrated the evil design, Aminu Sadiq Ogwuche³ bolted away and absconded to Sudan where he had sponsors and Godfathers who would shield and shelter him. With the help of Nigerian Police and DSS operatives and in addition to the services of INTERPOL, the terror suspect was extradited back to Nigeria from Sudan where he had gone to seek refuge.

2.1 Prosecution

On the first day of Ogwuche's appearance in court, the unremorseful and violent statements of the terror suspect provoked and drew the anger of the general public or society who had expected that Ogwuche's trial would act as a deterrent to others of his ilk. But the trial exposed some regrettable lacunae (legal omission) which could have jointed or strengthened the prosecution of the offence. It is this lacunae that gave room to the inter-agency squabble or conflict that marred or fatally plagued the prosecution or trial to a cul-de-sac. The Nigeria Police Act (Authority to reprint) 2020 gave the police power to arrest, investigate, detain and prosecute offenders and offences bordering on terrorism as contained in the Federal Criminal Code Law of Nigeria. Sometime ago, part of the police that deals with information management was carved out from the Nigeria police force and named the Directorate of State Services (DSS) and the same was charged with the duty of investigation (information management), arrests, detention and prosecution of the

¹ SUIT NO: FHC/ABJ/CS20/2014: INSPECTOR GENERAL OF POLICE VS AMINU SADIQ OGWUCHE (Unreported)

² BokoHaram Sect, an international Terrorist Organization founded in Nigeria in 2009 by Islamic Religious fundamentalist group led by Mohamed Yussuf. Affiliated to ISIS and marked and listed by FBI, USA as an international Terrorist Organization.

³ Amunu Sadiq, Ogwuche, the Defendant/Accused in the oppcit.

same offences of terrorism., *impari materia* with the offences codified under the Federal Criminal Code,⁴ and Terrorism (Prevention and Prohibition) Act 2022.

Although the office of the Federal Attorney General and Minister for Justice is meant to control the criminal prosecution of such offences of terrorism whenever such offences are committed within the federal jurisdiction, there is no controlling omnibus provision in the corpus of these extant statutes, establishing the security and prosecuting agencies, specifically mentioning the particular offences to be exclusively prosecuted by a particular agency in cases where the two or three agencies are involved in the investigation, arrests, detention and prosecution.⁵ Moreso, where the different laws establishing or creating the functions and duties of the government and security agencies equally empower both agencies to prosecute such offence, (The Police and DSS) there is no provision specifically directing each agency or agencies to seek the opinion or final and controlling directive, on the prosecution of such offences, from the Attorney General and Minister for Justices in cases of conflict or multiplicity or duplicity of functions of prosecution; between the agencies *inter se*. This is has always been the regrettable lacunae.

3.0 Inter-agency Squabble

As it turned out, inter-agency squabble set in to scuttle the prosecution. As a matter of fact and law, both agencies have the powers to investigate, detain, arrests (and extradite with help of Interpol) and prosecute; and both agencies saw themselves struggling and scrambling to prosecute one offence. Whenever there is a functional duplication between two different government agencies or bodies who are created to do the same thing, for the same society, there is a functions overlap; and the situation usually provides a fertile ground for men of corruption and mischief makers to rise to the occasion. Although the traditional functions of DSS borders on state security (information management) as opposed to ordinary police functions of keeping law and order and prosecution of all kinds of criminal and quasi criminal matters, the prosecution functions of both DSS and Police as in the instant state matters are covered by law; which action is arguably, reproachable.

An analogous line can be drawn and exemplified in the government agencies such as Independent Corrupt Practices Commission (ICPC) 2000, and Economic and Financial Crimes Commission (EFCC) Act; which are both empowered by the respective laws establishing them to investigate, arrest, detain and prosecute offences relating to fraud and similar offences of corruption. Sometimes we see both anti-graft bodies performing the same functions which the Nigeria Police Force are equally empowered to deal with. Almost invariably, an inter-agency squabble sets in and the same legal framework which created both the government agencies and the law will unwittingly rise up to set the accused/felon free. This is so because the law frowns against multiple prosecution or double jeopardy and non-diligent prosecution.⁶

When this dilemma arises on the part of the prosecuting agencies and their respective operatives, the result is that the accused is not only set free but also turns back to start prosecuting the erstwhile prosecutor. Thus the resonance of the proverbial "one goat who dies of hunger because it is owned by several people". Thus also is the resonance of the proverbial "native doctor who was consulted to chase away the evil spirit, and who turned up, only to be pursued by the evil spirit".

⁴ See Section 303-335 of the Federal Criminal Code Act, Cap 38 L.F.N 112, 1994. Compare offences and under the sections with offences listed under Terrorism (Prevention and Prohibition) Act 2023.

⁵ See Terrorism (prevention and prohibition) Act, 2022 which created Terrorism, special Branch of the Nigeria police force which competes with D.S.S operatives, in the arrest, detention and investigation of Terror suspect.

⁶ See Sec 351 (1) Administration of Criminal Justice Act 2015 (Laws of the federation of Nigeria) (Cap 1 2015)

4.0 Intervention of Corrupt and Fraudulent Elements

There is no doubt that in a situation such as obtained above, men of corruption and fraud will rise to the occasion. In the instant matter under consideration, Nigerian Society witnessed serious mud-slinging, horse-trading and intrigues which revolve on which agency should prosecute this offence as between the Police and the DSS. There is no doubt that the scramble and squabble to prosecute the offence and "lick the attendant pot", the money marked out for the prosecution of the offence, majorly contributes to the legal mess entangling both agencies. The worse is the "mum" and deafening silence exhibited by the office of the Federal Attorney General and Minister for Justice. It is palpably clear that it is the rush for money marked out for prosecution, coupled with the curious silence oozing out from the Federal Attorney Generals Office that scuttled the prosecution of such deadly offence which claimed several lives and wrought untold miseries to several families. There are several cases which both agencies are supposed to be handled at the same time and which case files are still covered with heavy dust mite, in the respective offices of those Government Security Agencies, but for lack of filthy lucre, these cases can never see the light of the day in terms of prosecution.

Why the struggle and scramble for the Ogwuche case? The present case under review has metamorphosed into many ugly monstrosities.

5.0 Legal and Social Implication of non-diligent Prosecution

The first legal and social implication of the shambolic prosecution of Ogwuche case is that the accused terrorist was set free immediately his matter was struck out. This is a disaster for the entire legal framework, the victims and their relations, society and the law who ought to reap from the long arm of the law which has been amputated.

The second legal implication is that the jurisprudential basis for retributive and deterrent theories of Criminal Justice Administration have been defeated.

The third socio-legal implication is that potential terrorists and emulators of men of violence are now emboldened by the same law, which are meant to curtail their warped criminal and violent propensities, to commit more offences of such nature, with impunity; armed with the courage of conviction that the law provides many doors and windows of escape. The fourth is that the situation provides a fertile and conducive atmosphere for breeding terrorists. This is one of the reasons why Boko Haram seems to be intractable, elusive and invincible. This ought not be so.

The fifth implication of this type of scenario is that the erstwhile accused turns to be the complainant. The Ogwuche case typifies this situation. On the 5th day of December, 2014, Aminu Sadiq Ogwuche, the main personage and figure involved in this matter, filed a case of Fundamental Human Rights asking the Federal High Court to compel the State Security Service (SSS) to pay him N100,000,000 (one hundred million naira) as compensation for his unlawful arrest and detention without trial. This action was filed against the backdrop of this case being struck out by the Federal High Court for non-diligent prosecution. Ogwuche's application was brought pursuant to Order 2, Rule (1), (2), (3) of the Fundamental Right Enforcement Procedure Rule and Sections 34, 35, 36, 37 and 42 of the 1999 constitution of the Federal Republic of Nigeria 1999⁷ seeking for the enforcement of his fundamental human rights. According to his lawyer, Ahmed Raji (SAN), the charge of terrorism was the foundation of the extradition order which led to the arrest of the applicant (his client). He further premised his application on the fact that the ex-parte order granted in favour of the SSS, (DSS) to detain the applicant for 90 days was a miscarriage of justice. The accused turns into a complainant. But a case struck out can be relisted. But was the case ever relisted?

⁷ See chapter 9 of the provisions for the enforcement of Fundamental Right under the 1999 Constitution of the Federal Republic of Nigeria.

6.0 Conclusion

We have seen the different ugly results of legally creating multiple agencies with powers to prosecuting the same offences or similar offences; under our laws. The consequences of legal lacunae or lack of controlling omnibus provisions or provisos to check-mating such anomaly in the event of overlapping as in our instant matter are enormous. The legal and social implications are clear and well appreciated. What then are the ways forward?

7.0 Recommendations

It is submitted that first and foremost, in serious cases such as terrorism and fraud, graft or corruption where the functions of the two or more security or prosecuting agencies overlap, a law should be made to specifically empower the office of the Attorney General to intervene and control the prosecution of such offence. Either the Federal Attorney General and Minister of Justice handles the prosecution directly from his office or he delegates the prosecution to any of the agencies he deems proper and better positioned to handle the matter through ministerial circular or directive.

Again, the enabling laws establishing the prosecuting agencies should be amended to add a controlling omnibus provisions specifically directing them to seek and obtain instruction from the office of the Attorney General and Minister of Justice on how and which agency should prosecute certain controversial offences.

Finally, there should be a synergy between the agencies inter se and each or all the agencies would be expected to perform their function in a manner complementary to one another. In cases of information management or intelligence gatherings, the issues of which department or agency to prosecute a particular offence should be left for the office of the Attorney General and Minister of Justice to decide.

In this way, the actions of mischief makers, corrupt officials and the emulation of offenders will be laid to rest. The lacunae would have been plugged or covered, vis-à-vis the Ogwuche case.

Again in novel situations or recondite cases, sweeping emergency legislations could be made to check-mate the situation such as was done in the following terrorist attacks in civilized climes:

- a) The kidnappings of western diplomats by Brazilian terrorist groups as exemplified in the case of the kidnap of Charles Elbrick, the US Ambassador to Brazil in 1969,
- b) The kidnap of Dr. Tiede Herema in 1975 by fanatical members of Irish Republic Army (IRA) terrorists - Eddie Gallagher and Marian Coyle; the kidnapping of James Cross, the British Trade Commissioner in Montreal, in October 1970, by "The Front de Liberation du Quebec" (F.L.Q.),*and the latest (2023) Israeli invasion of Gaza strip, Palestinian settled territory annexed by Israel.⁸

In these situations, sweeping emergence legislations were made by those countries to deal with the novel and controversial terrorist attacks. The federal and state legislators should be ever-ready and pro-active as the need arises, to pass emergency bills and laws to take care of the situation.

The Executive President of the country, being the Commander -in-Chief of the armed forces, and the Chief Security Officer of the liberal Democracy such as Nigeria can invoke or issue the Executive Presidential Fiat to control the recondite or novel situation. Such Executive Fiat is ubiquitous throughout the entire corpus of the Federal constitution which is the grundnorm in any liberal state.

⁸ Apart from the sweeping emergency laws passed by Israeli Knesset the Prime Minister, Benjamin Netanyahu issued an Executive fiat authorizing the Army, the Navy, the Airforce and specifically (IDF) to invade Gaza strip with a view to occupying and annexing the territory, despite the contrary opinions of the United Nations and U.S.A, Israeli, major Ally in the entire world.