CRIMINAL LITIGATION

JURISDICTION

Jurisdiction of a State Court to try an accused for an offence which occurred in another state 2009 No 5(ii); May 2011 No 2A (i)

A Court of a State has no jurisdiction to try an offence which occurred in another State even if the accused committed the offence and entered into the other State. **R v Shodipo; Ibori v FRN.**

But note: Where an offence was partly committed in one State and partly in another, both Courts have jurisdiction. **Queen v Osoba; Njovens v The State.**

Jurisdiction of a State High Court to try a foreigner for an offence committed in Nigeria. 2010 No 2 (i)

The fact that an accused person is a foreigner does not deprive a High Court of jurisdiction to try him for an offence allegedly committed by him.

Is it lawful for the Prosecution to arraign an accused in a Court that has no jurisdiction to try the substantive offence? August 2011 No 1A (i)

It is unlawful to arraign an accused person before a Court without jurisdiction. This will amount to holding charge which is unknown to Nigerian law.

Whether jurisdiction having not been raised at the trial cannot be raised as a sole ground of appeal. August 2011 No 1A (ii)

The issue of jurisdiction is fundamental and can be raised at any time and at any stage of the trial, and even on appeal. **State v Onagoruwa.**

Whether the Federal High Court has jurisdiction to try offences of conspiracy, forgery and altering of register August 2011 No 2(a)

The offences of conspiracy, forgery and altering of register are all within the jurisdiction of the State High Court and not matters on which jurisdiction is conferred on the Federal High Court by **Section 251 CFRN 1999**. Therefore a preliminary objection challenging the jurisdiction of the FHC to entertain the matters is valid.

Whether Magistrate Court has jurisdiction to try the offence of stealing, money laundering and unlawful possession of illicit drugs May 2012 5 (viii)

A Magistrate Court can try the offence of stealing (or theft if in the North). But it lacks jurisdiction to try the offence of money laundering

and unlawful possession of drugs. Those are matters within the exclusive jurisdiction of the Federal High Court.

Draft a notice of preliminary objection August 2011 No 2 (f)

Draft Notice of preliminary objection:

IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

Charge No.: .....

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT/RESPONDENTS

AND

DOTUN FAGUNWA

AYOADE OMIDIJI

BIOBAKUN ORIMOGUNJE.....ACCUSED/APPLICANTS

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that at the hearing of this charge, the accused persons intend to raise a preliminary objection based on the following:

1. That the court lacks jurisdiction to try the accused persons.
2. That the Attorney-General of the Federation lacks locus standi to institute criminal proceedings against the accused persons.

And further TAKE NOTICE the grounds upon which this objection is raised are as follows:

a. That by section 251 (2) & (3) Constitution of the Federal Republic of Nigeria, 1999, the Federal High Court lacks jurisdiction to try the accused persons for the alleged offences.

b. That by section 174 (1) Constitution of the Federal Republic of Nigeria, the Attorney-General of the Federation lacks locus standi to prosecute the accused persons for alleged offences which are offences created by the House of Assembly of the State.

Dated this……day of…….20….

……

Talkutu Chukwu (miss)

Counsel to Accused/ Applicants

(address)

FOR SERVICE ON:

The Attorney-General of the Federation,

Federal Ministry of Justice.

SEARCH

Search of a woman by a man. 2010 No 3 (i); May 2012 5 (iv)

The search of the body of a woman by a male Police officer is wrong. The body of a woman can only be search by another woman. **Section 6 CPA; Section 44(3) CPC**. And it should be done with strict regard to decency. **Section 82 CPC**.

Who can issue a search warrant? May 2011 No 3 (a)

A search warrant can be issued by a Judge or Magistrate and Justice of Peace. **Section 107 CPA; Section 74 CPC**. A Superior Police Officer above the rank of a Cadet ASP may also issue a search warrant in certain instances. **Section 28 Police Act**.

Is it correct for the person to be searched to request to first search the police officer? May 2012 5 (ii)

A person to be searched has the right to request to first search the Policeman before the Police can conduct a search of his property. So it would be wrong for a Policeman to refuse to be so searched.

The procedure for search of premises occupied by a woman in purdah May 2011 No 3 (b)

Where there is in occupation of a premises to be searched, a woman in purdah (not being the person to be arrested), she should be given adequate facilities to withdraw. **Section 79 CPC.**

Is it proper for a Police man to forcefully break into a premises to effect a search warrant? May 2012 5 (iii)

A Police officer executing a search warrant has the right to demand free access into the premises and where this is refused; he can lawfully break in and break out of the premises. Section 112 CPA.

Effect of evidence obtained from an illegally executed search warrant. May 2011 No 3 (c); May 2012 5 (v)

Illegally obtained evidence is admissible (as relevance determines admissibility), unless the Court considers that the desirability of admitting the evidence is outweighed by the undesirability of admitting the evidence. **Section 14 Evidence Act 2011**

ARREST

Who can issue a warrant of arrest? May 2011 No 3 (e); May 2012 5 (i)

The appropriate authorities to issue a warrant of arrest are a Judge, Magistrate or Justice of Peace. **Section 22(1) CPA; Section 56(1) CPC**

What is the procedure for effecting a warrant of arrest in one state to be issued in another state? May 2011 No 3 (f)

A warrant of arrest issued in State A for execution in State B must first be taken to the State B (where the suspect is) and endorsed by a Magistrate or Judge in State B if he satisfies himself that the alleged offence is known to law in the State of issue. The endorsement by the Judge or Magistrate is sufficient authority for the Police officer to arrest the suspect and bring him to the Judge or Magistrate who endorsed it. The Judge or Magistrate may then order that the suspect arrested be returned back to State A or admit such person to bail. **Section 482 CPA. State v Apampa**.

What are the contents of a warrant of arrest? May 2011 No 3 (d)

A warrant of arrest must contain the following:
It must be in writing
It must contain the date of issue
It must contain the particulars of the offence
It must state the name of the suspect
It must state the name of the officer to execute the warrant
It must contain the signature of the Judge; or Magistrate or Justice of Peace.

Section 56(1) & 58(1) CPC.

CHARGES

Draft charges No 1 every year compulsory

Draft Charges:

RULES OF DRAFTING CHARGES

Rules against ambiguity and duplicity 2009 No 2(b)

The objection to raise where a charge fails to specify the date, time or place where the alleged offence was committed is to raise the objection that the charge is in breach of the rule against ambiguity.

Another objection is to challenge the charge as being in breach of the rule against duplicity where two offences are contained in one count.

Rule against duplicity. 2009 No 6 (d)

The possible objection to raise where two offences are contained in one count is to challenge the charge as being in breach of the rule against duplicity.

Is the Court right to grant an amendment/substitution of a charge? August 2011 No 5 (2)

The Court is right to grant an amendment to a charge as a Court has powers to amend a charge by addition, deleting, alteration and even substitution of a defective charge with a new charge. Okwechime v Police; Uket v FRN; State v Olatunji.

Amendment of charges: What is the procedure after amendment of charges? May 2012 No 2 (i); May 2012 6 (b)

The procedure **after** amendment of a charge

1. The new charge is read and explained to the accused. **Youngman v COP**
2. The accused takes a fresh plea and gives fresh consent where applicable. **Okosun v State**
3. Endorsement of an amendment note. **COP v Alao**
4. The accused is asked if he is ready to proceed with the trial.
5. The accused or the prosecution may apply for adjournment if to proceed immediately will prejudice the accused. **Gokpa v IGP**

The prosecution has the right to apply to call or recall witnesses. ***Shoaga v R***
Section 163, 164 & 16 CPA

BAIL

Draft motion for bail (without affidavit) 2009 No 2(a); May 2012 4B (ii)

IN THE HIGH COURT OF PLATEAU STATE

IN THE JOS JUDICIAL DIVISION

HOLDEN AT JOS

Case No.: ……

BETWEEN:

OKERE ZAMFARA……ACCUSED/APPLICANT

AND

THE STATE……..COMPLAINANT/RESPONDENT

MOTION ON NOTICE BROUGHT PURSUANT TO SECTION 35 (4) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AND SECTION 341 OF THE CRIMINAL PROCEDURE CODE, LAWS OF PLATEAU STATE, AND THE INHERENT JURISDICTION OF THE HONOURABLE COURT

TAKE NOTICE that this Honourable Court will be moved on…….day of……20… at the hour of 9 O' clock in the forenoon or so soon thereafter as Counsel to the accused/applicant may be heard praying the court for the following reliefs:

1. *An order admitting the accused/applicant to bail pending the determination of the case.*
2. *Any other order or further order as this Honourable Court may deem fit to make in the circumstances of the case.*

Dated this…….day of ……2009

Signed ……

Peter Brown & Co.

Counsel to the Accused/Applicant

No. 1 Emir Road, Jos

ON NOTICE TO:

Attorney-General, Plateau State

Ministry of Justice, Jos

Draft motion for bail (with affidavit) 2009 No 6 (f)

IN THE HIGH COURT OF NIGER STATE

IN THE MINNA JUDICIAL DIVISION

HOLDEN AT MINNA

CASE NO.: ……

BETWEEN:

THE STATE……COMPLAINANT/RESPONDENT

AND

MATTHEW DODO……ACCUSED/APPLICANT

MOTION ON NOTICE BROUGHT PURSUANT TO SECTION 34 (5) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AND THE SECTION 314 (2) OF THE CRIMINAL PROCEDURE CODE, AND THE INHERENT JURISDICTION OF THE HONOURABLE COURT

TAKE NOTICE that this Honourable Court will be moved at the hour of 9 O' clock at the forenoon or so soon thereafter as Counsel to the Accused/Applicant may be heard praying the court for the following reliefs:

1. *An order admitting the Accused/Applicant to bail pending the determination of the case.*
2. *Any Order or further order as this Honourable Court may be deem fit to make in the circumstances of the case.*

Dated this…….day of…….20

Signed ……..

A B & CO.

Counsel to the Accused/Applicant

No. 1 Emir Road, Minna

ON NOTICE TO:

Attorney General of Niger State

Ministry of Justice, Minna

The Affidavit in support:

IN THE HIGH COURT OF NIGER STATE

IN THE MINNA JUDICIAL DIVISION

HOLDEN AT MINNA

Case No. :……

BETWEEN:

THE STATE…….....….COMPLAINANT/RESPONDENT

AND

MATTHEW
DODO……ACCUSED/APPLICANT

AFFIDAVIT IN SUPPORT OF MOTION FOR BAIL

I, Sunday Dodo, Male, Nigerian, Christian of No. 20 Old Minna Road, Minna-Abuja Road, Minna, Niger State do hereby make oath and state as follows:

1. *That I am a brother to Matthew Dodo, the accused in this case and I have the authority and consent of the Appellant to depose the affidavit.*

2. *That the accused person is standing trial before this Honourable Court for Culpable Homicide, Rape and Assault.*

3. *That the accused was arrested on 10th January 2009 and detained at the Minna Central Police Station.*

4. *That the accused person suddenly took ill and has been diagnosed with hypertension and diabetes. A copy of the medical report of the accused's state of health is attached herewith and marked as exhibit A.*

5. *That there is no adequate medical facilities in the prisons to cater for this sickness*

6. *That the accused needs to visit the hospital regularly to attend to his health.*

7. *That the accused person will attend to his trial if granted bail.*

8. *That the accused will provide reliable surety if granted bail.*

9. *That it is in the interest of justice to grant the accused bail.*

10. *That I swear to this affidavit in good faith.*

……

Deponent

SWORN TO AT THE HIGH COURT REGISTRY, MINNA

THIS …….DAY OF…….20……..

BEFORE ME

COMMISSIONER OF OATHS

Draft application for bail (without affidavit) May 2011 No 5 (h); August 2011 No 5 (3)

Draft counter affidavit in opposition to a bail application August 2011 No 6a (iv)

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

CASE NO.: ……..

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA…….……COMPLAINANT/RESPONDENT

AND

1. *GEORGE*
2. *DIBO……*
   ……ACCUSED/APPLICANTS

COUNTER AFFIDAVIT

I, Adame Ibe, Male, Muslim, Nigeria Citizen, Police Officer attached to Zone 4, Police Station at No. 20, Masalasi Street, Abuja, Federal Capital Territory do hereby make oath and state as follows:

1. *That I am the Investigating Police Officer in this case and by my position I am conversant with the fact of this case.*
2. *That I arrested the accused persons on the 6th day of June, 2011 at the Lokama Close, Zone 4, Abuja.*
3. *That the accused persons are notorious gangsters who had terrorised the Abuja Metropolis for about six months and wanted by the police.*
4. *That I have seen a copy of the motion for bail by the first accused person dated 14th June, 2012 and the supporting affidavit.*
5. *That the averments in paragraph 2 to 7 of the affidavit are untrue.*
6. *That the first accused person while in Police Custody offered me bribe in the sum of N5, 000.00 to enable me release him.*
7. *That if the accused person is admitted to bail there is strong likelihood that the accused person will jump bail.*
8. *That I make this counter affidavit bona fide believing same to be the truth and in accordance with the Oath Act.*

……

DEPONENT

Sworn to at the High Court Registry, Abuja

Dated this …….day of……2011

Re-draft counter affidavit in opposition to a bail application. ***May 2012 No 3 (b)***

Draft Summons for bail:

IN THE HIGH COURT OF OYO STATE

IN THE IBADAN JUDICIAL DIVISION

HOLDEN AT IBADAN

CHARGE NO.: .....

BETWEEN:

AHMED TOFA.....DEFENDANT/APPLICANT

AND

THE STATE.....COMPLAINANT/RESPONDENT

SUMMONS BROUGHT PURSUANT TO SECTION 123 OF THE CRIMINAL PROCEDURE LAW OF OYO STATE

LET ALL PARTIES CONCERNED attend this Honourable Court on..... the.....day of.....20.....on the hearing of an application on the part of counsel for the accused/applicant for an order admitting Ahmed Tofa to bail in respect of Charge No.: .....

And for such further order or orders as this Honourable Court may deem fit to make in the circumstances of this case.

DATED THIS.....DAY OF.....20.....

(SIGNED)

SOLICITOR TO THE ACCUSED/APPLICANT

(ADDRESS)

ON NOTICE:

THE ATTORNEY GENERAL

MINISTRY OF JUSTICE

OYO STATE

Procedure for bail by Court (whether can be oral). *2009 No 2(c); May 2012 No 2 (ii)*

Oral application for bail by a Court can be allowed especially in Magistrate Courts. It may also be allowed in the High Court.

Note: The Court (especially a High Court) may reject an oral application for bail and ask that it be put in writing so that materials are placed before the Court to enable it exercise the discretion.

Procedure for bail by Police *2009 No 5(vi)*

The procedure for application for bail in the Police Station is by a letter addressed to the Divisional Police Officer or other Officer in charge of the Police Station. Bail at the Police is free, it is wrong for a Police Officer to demand money before release of a person from custody. **Section 17, 18 & 19 CPA; Section 129 CPC; Section 17 ACJL.**

Whether prosecution can oppose bail without affidavit. *2009 No 2(d)*

A party is entitled to oppose an application without filing an affidavit ***if his opposition is on points of law.***

Factors to consider in granting bail *2009 No 2(e); May 2011 No 2A (iii); May 2012 4B (i)*

Whether the accused will appear to stand his trial -Dantata v COP; Dantata v State
Whether the grant of bail will not prejudice the investigation of the case **-Dantata v Police**
The nature of the offence; the severity of the punishment and the character of the evidence against the accused -**Anekwe v COP; Abacha v State; Bamaiyi v State**
That no ground exists that the accused will commit another offence if released on bail -**R v Jammal**
Whether the accused has a bad criminal record -**Eyu v State**
The prevalence of the offence -**Bamaiyi v State; Felix v State**
Detention for the protection of the accused -**Bamaiyi v State**
Health condition of the accused -**Fawehinmi v State; Abacha v State; Ani v. State**
Section 118 CPA; Section 341(2) & (3) CPC

Conditions/terms for bail. *2009 No 2(f)*

The conditions for grant of bail include:

1. Bail granted on recognizance;

2. Bail with bond for a fixed amount;

3. Deposit in lieu of bond.

***The conditions for bail should not be excessive or onerous as that amounts to a refusal of bail*. Section 349 CPC. Dogo v COP.**

Option available after ruling granting or refusing bail 2009 No 2(g)

For a ruling granting bail to an accused, both or either the Prosecutor and the accused can appeal against the ruling and apply for the variation of the bail conditions. But the Prosecutor should generally not appeal against the grant of bail as his duty is to prosecute and not to persecute. ***Rule 37(4) RPC.***

Two days after the arrest and detention of your client by the Police, your client has instructed you to take all available steps towards his release. What actions would you take? May 2012 5 (ix)

The appropriate action is to bring an application for the enforcement of his fundamental rights. After 48 hours, the detention of an accused person is unconstitutional and a breach of his right to personal liberty and right to be brought before a Court.

How to move motion for bail in five sentences 2009 No 2(i)

i. *"My lord, we have an application before this Honourable Court by way of Motion on Notice dated…..which has been duly served on the prosecution".*

ii. *"Our motion is brought pursuant to ……..and the inherent powers of this Honourable Court."*

iii. *"The Motion is praying for an order admitting the Accused/Applicant to bail and for any other order or orders as the court may deem fit to make in the circumstances."*

iv. *"The application/motion is supported by a ……paragraphs Affidavit sworn to by…… and the Accused/Applicant place reliance on all the paragraphs thereof and (any) exhibits thereto."*

v. *"We urged the Honourable Court to grant bail to the Accused/Applicant on liberal terms."*

What offences are bailable and which are not bailable? May 2011 No 4B (2)

By **Section 341(1) CPC**, the Court cannot grant bail in capital offences except if it appears to the Court that there are not reasonable grounds for believing that the accused has committed the offence, but there are sufficient grounds for further inquiries. **Section 341(3) CPC**. Under the CPA, the High Court can grant bail to a person charged with a capital offence. **Section 118(1) CPA.**

For felonies or serious offences (not punishable with death) the Courts may grant bail to a person charged with such offences. **Section 118 CPA; Section 341(2) CPC.**

For misdemeanours and simple offences, the Court shall grant bail to such persons except the Court sees reason to the contrary. **Section 118 CPA; Section 340(1) CPC.**

Whether Bail can be heard in the absence of the Prosecution. May 2011 No 5 (g)

Where the Prosecution is absent and the Court is satisfied that the Prosecution has been served with a bail application by the Defence, the Court can take the bail application in the absence of the Prosecution.

Is it appropriate for a Counsel to stand surety for his client? May 2012 No 2 (iii)

The duty of a defence counsel is to prosecute the case of his client by all fair or honourable means, but is not allowed to stand as surety for bail. ***Rule 37(1) RPC*** expressly forbids a lawyer from standing or offering to stand bail for a person he is defending or appearing for. Therefore it is inappropriate for a Defence Counsel to stand surety for an accused.

IDENTIFICATION PARADE

Comment generally on identification parade 2009 No 3 (a); May 2011 No 5 (a)(i)

In an identification parade, the suspect and other innocent persons of about the same height, age, complexion, facial expression, physical appearance and disposition with the suspect (at least eight in number) and dressed in the same manner, with nothing to distinguish the suspect from the other persons; and paraded together. The witness is then allowed; unfettered and unaided to identify the suspect he had earlier described to the Police.

Where should it be conducted? 2010 No 6 (c)

Identification parade should be conducted at the Police Station.

How many persons should be in a parade? 2010 No 6 (d); May 2011 No 5 (a)(i)

An identification parade shall consist of **eight persons** in addition to the suspect who shall so far as possible be of about the same height, age, complexion, facial expression, physical appearance and disposition with the suspect.

Note: only one suspect should be in a parade but where there are two suspects who are of roughly similar physical appearance, then they may be paraded together with at least **twelve other persons**, provided

always that in circumstance shall more than two persons be in the same identification parade.

Is identification parade mandatory in all cases? May 2011 No 5 (a)(ii)

It is not correct to contend that identification parade is necessary in all cases. It is only essential where the identity of the suspect is in doubt or in issue, or where the victim did not know the suspect but encountered the suspect for the first time and a brief period during the commission of the offence. **Imo v State; Ikemson v State; Wakada v State.**

VISIT TO LOCUS IN QUO

Is it proper for the Court to conduct a visit to the locus in quo without all the accused persons? August 2011 No 3 (a)

Where the Court orders the visit to a locus in quo, the accused person(s) must be present irrespective of the number. ***Section 207(2) CPA; Section 243 CPC; Section 205(2) ACJL; Section 127(2)(b). Adunfe v IGP***. It is wrong for a Court to conduct a visit to a locus in quo in the absence of the accused persons.

Why is it desirable that the accused persons shall be at the locus in quo? Give reasons August 2011 No 3 (b)

It is desirable for all the accused persons to be present at the locus in quo because a visit to locus in quo is part of the court proceedings irrespective of the procedure adopted. Being part of the trial proceeding, an accused person cannot be tried in absentia. They must all be present. ***Adeoye v State.***

What are the two procedures for the conduct of a visit to the locus in quo? August 2011 No 3 (c) and (d)

The first procedure for the conduct of a visit to the locus in quo is for the Court to adjourn to the locus criminis and continue proceedings there. Evidence will be taken examination and cross examinations of witnesses can take place at the locus. Olaopa v COP.

The second procedure is for the Court to adjourn and proceed to the locus to view or inspect the locus criminis and afterwards reconvene to the Court to take evidence of what transpired at the locus**. R v Dogbe.**

INSTITUTION OF PROCEEDINGS

Power of Police to institute proceedings in the High Court. May 2011 No 2A (iv); August 2011 No 1C (i)

A Police Officer can appear and prosecute criminal cases in all courts in Nigeria including the Superior Courts of Record. The only limitation is the powers of the Attorney General to take over or discontinue such criminal proceedings. **Olusemo v COP; FRN v Osahon**.

Whether the Attorney General of the Federation can institute an action in state offence August 2011 No 2 (a)

The authority of the Attorney General of the Federation or State to institute criminal proceedings is limited to Federal and State offences respectively. The Attorney General of the Federation cannot institute criminal proceedings over state offences except with the fiat of the Attorney General of the State and vice versa. ***Section 171 CFRN; Section 211 CFRN. Anyebe v State.***

Can the Attorney General decide who to prosecute and who not to prosecute? August 2011 No 5 (1)

The constitutional power of the Attorney General to institute proceedings is absolute, and so he has the absolute discretion to decide who to prosecute and what offences to prosecute. **Section 174(1) CFRN; Section 211 CFRN.**

APPLICATION FOR CONSENT

Procedure for application of consent and the documents that should accompany application for consent 2010 No 4 (i)

Application for consent is made to a Judge by way of ex parte application or by formal letter accompanied by the following documents:

- A copy of the proposed charged
- Affidavit in support of the application (where it is brought by any officer other than the Attorney General)
- Unedited statement of the accused person
- Summary or proof of evidence
- Whether a previous application has been made and the result of such application.

Whether leave granted to prefer a charge must bear the name of the Judge that granted it. 2010 No 4 (ii)

A High Court granting leave to file an information in the Court should write his name and sign his signature on the order. But where a Judge

signs his signature without his name, the Order is nevertheless valid as there would have been substantial compliance. ***Bature v State***.

What is the effect of lack of consent on a trial 2010 No 4 (iii)

Where the Court sustains the objection of a Defence that an information was filed without consent, the effect is to render the trial a nullity. Consent is a condition precedent for the filing of an information in a High Court and failure to seek consent is fatal to the proceedings. **AG Federation v Clement Isong; Fred Egbe v State.**

NOLLE PROSEQUI

Procedure for entry 2009 No 3 (b); 2010 No 2 (v); 2010 No 4(vi); May 2011 No 2A (v); May 2011 No 4B (3)

The Attorney General is required to personally come to Court and enter a nolle prosequi orally or may delegate the powers to any other officer in his department, but such delegation must be in writing. Thus apart from the Attorney General, no other person or authority can enter an oral nolle prosequi. ***State v Chukwura*****.**

Also where there is no incumbent Attorney in office, the power of nolle prosequi cannot be entered by the Solicitor General of any other officer as the powers are personal to the Attorney General. ***AG Kaduna v Hasan*****.**

Effect of nolle prosequi 2010 No 2 (v); 2010 No 4(vii) whether can ground a plea autre fois acquit May 2011 No 4B (4)

The effect of a nolle prosequi properly entered is a discharge and does not amount to an acquittal. **State v Ilori**. Therefore a **nolle prosequi does not ground a plea of autre fois acquit.**

What remedy is available to an aggrieved person after a nolle prosequi is entered? 2010 No 4 (viii)

A person aggrieved with the entry of a nolle prosequi may: bring a civil action by originating summons for a declaration that the AG acted in bad faith, ***AG Kaduna v Hassan***; or may petition the appointor of the Attorney General. However neither of these options can reverse the action of the Attorney General as the exercise of the power is absolute. ***State v Ilori***

NO CASE SUBMISSION

Conditions for a successful plea of no case to answer 2009 No 3(d); August 2011 No 1A (v); August 2011 No 6b (iv)

The conditions for a successful plea of a no case submission are:

That there is no evidence to establish the essential ingredients of the offence;

That the evidence put forward by the prosecution has been so discredited on cross examination; or

That the evidence of the prosecution is so manifestly unreliable that no reasonable tribunal can safely convict upon them Section ***Emedo v State; Ibeziako v COP; Ubanatu v COP;R v Coker.***

What is the effect of a no case submission rightly upheld? August 2011 No 6b (v)

The effect of a no case submission rightly upheld is that it amounts to the acquittal of the accused person. ***Nwali v IGP; Mohammed v State; IGP v Marke. Section 301 CPA. Section 191(5) CPC***.

Draft an address for a no case submission May 2012 No 1b (i)

Draft (address on no case submission)

How may a Judge rule on a no case submission (length of ruling)? 2009 No 3 (e); May 2012 No 1b (iii)

When a Judge overrules a no case submission, the ruling should be as brief as possible so as to avoid fettering his discretion. ***Ekanem v R; Mogaji v Odofin v Odofin Bello.*** However, the mere fact that a ruling is lengthy is not enough without more to vitiate the ruling if the Judge did not thereby fetter his discretion. **Atano v AG Bendel; Mogaji v Odofin Bello.**

BURDEN OF PROOF

Whether a Judge can convict on the testimony of a sole witness who is a relative of the victim 2009 No 3(f);

The relative of a victim is a competent witness for the prosecution. The evidence of the brother of a victim is admissible and does not require corroboration as a matter of law but the Courts are cautious to act on the sole evidence of such witness and may in practice ask for corroboration. **Oguenzee v The State**.

Whether the Court can convict on the uncorroborated evidence of a prosecutrix August 2011 No 1A (iii)

The evidence of a victim of a sexual offence requires corroboration. An accused person shall not be convicted solely upon the uncorroborated evidence of the prosecutrix.

ALIBI

***Meaning, significance and where necessary to be raised** 2009 No 4 (1); May 2011 No 1B (d)*

The significance of a statement made to the Police by an accused person that he was not at the scene of the crime at the time of the commission of the offence raise the defence of Alibi. It is raised when an accused person was not present at the scene and time of the crime and hence it could not have been humanly possible for him to have committed the offence.

***How to properly raise the defence** 2009 No 4 (9), 2010 No 6 (a); May 2012 4A (i)*

For the defence of alibi to succeed, it must be promptly and properly raised. In other words, the accused or his counsel must not just allege that the accused was not at the scene of the crime and hence could not have not committed the offence, they must also furnish the Police with particulars of his whereabouts to guide the Police in the conduct of an investigation into the alibi. **Yanor v State; Garba v State; Emenogor v State**.

***Duty of the Police/Prosecution where raised** 2009 No 4 (1), 2010 No 5 (b) 2010 No 6(b) May 2011 No 1B (e)*

The duty of the Police/Prosecution where the defence of alibi has been properly raised is to investigate and disprove the alibi. Failure to do this will cast doubts on the Prosecution's case.

***What is the effect of the Police not investigating alibi** May 2012 4A (ii)*

Failure to investigate an alibi properly raised by an accused person is detrimental to the case of the Prosecution as this will cast doubts on the Prosecution's case.

CONFESSIONAL STATEMENT

***Admissibility of confessional statement** 2009 No 5 (i); 2010 No 5 (c); May 2011 No 5 (b); August 2011 No 6a (iii)*

A confession to be admissible must be voluntary. In any proceeding where the prosecution proposes to give in evidence a confession made

by the defendant, and it is represented to the Court that the confession was obtained by oppression, or other circumstances as to render it unreliable, such confession will be inadmissible. **Section 29 Evidence Act 2011; R v Haske.**

Whether admissible against co-accused 2010 No 1(b) (ii); 2010 No 6 (e); May 2011 No 5 (c); August 2011 No 6a (iii)

A confession made by defendant is admissible against him only. Where more persons than one are charged jointly with an offence and one of them makes a confession, such confession shall not be admissible against the other co-accused person(s) even if made in his presence except he adopted the said confessional statement by words or conduct. **Section 29 (5)Evidence Act 2011; Mbang v The State; R v Bodman.**

What objection to make where confession was obtained by promise May 2011 No 1B (a)

A confession to be admissible must be voluntary. In any proceeding where the prosecution proposes to give in evidence a confession made by the defendant, and it is represented to the Court that the confession was obtained by oppression, or other circumstances such as inducement, threat or promise such confession will be inadmissible. **Section 29 Evidence Act 2011**.

Time to challenge admissibility of a confessional statement 2010 No 6 (g)

The proper time to challenge the admissibility if a confession is to do so at the time the evidence is sought to be tendered.

Duty of Court when challenged on grounds of voluntariness 2009 No 4 (3); 2010 No 6 (h); May 2011 No 1B (b)

Where the admissibility of a confession is challenged on the ground that it is involuntary, the duty of the Court is to order a trial within trial to ascertain the voluntariness or otherwise of the confessional statement. **R v Onabanjo; R v Kessi; Gbadamosi v State.**

Duty of Court when challenged on grounds of retraction May 2011 No 1B (c); August 2011 No 6a (ii)

Mere denial of a confessional statement does not affect the admissibility of a confessional statement. Where the admissibility of a confession is challenged on the ground that it was not made, that amounts to a retraction. The duty of the Court is to nevertheless admit the confessional statement and decide on what weight to attach to it at the end of the trial. **Salawu v State; Onyejekwe v State.**

Procedure for obtaining a confessional statement at Police Station 2010 No 3(ii)

The procedure for obtaining a confessional statement from a suspect is to allow him do so voluntarily. Any confessional statement made by the defendant in circumstances that shows that it was obtained by oppression, will render such confession inadmissible. **Section 29 Evidence Act 2011.**

CONSTITUTIONAL SAFEGUARDS TO ENSURE FAIR TRIAL

***Right to Interpreter: What should the Court do where an accused does not understand the language of the Court** 2009 No 4 (4); 2010 No 5 (d)*

Where an accused person does not understand the language of the Court, he should be provided with an interpreter by the Court, at no cost to him. **Section 36(6) (e) CFRN 1999. Ajayi v Zaria Native Authority.**

***Adequate time and facilities** May 2011 No 5 (e)*

Every person charged with an offence is entitled to adequate time and facilities for the preparation and conduct of his defence. An accused person for example should be granted an adjournment to enable him bring material witnesses for his case or to engage a lawyer to defend him. **Section 36(6)(b) CFRN 1999. Shemfe v The State, Gokpa v COP, Yanor v The State.**

ARRAIGNMENT

***What is the procedure for a valid arraignment?** August 2011 No 2 (e); August 2011 No 6b (iii)*

The procedure for a valid arraignment is to place the accused before the Court unfettered. The charge is then read and explained to the accused person in the language that he understands, to the satisfaction of the court. The accused is then called upon to plead instantly to the charge read. The plea is then recorded by the Judge. **Section 215 CPA; Section 187 CPC. Kajubo v The State; Ogunye v The State.**

***Whether an accused can take a plea on behalf of co-accused** 2009 No 4(5); 2010 No 5 (i)*

Each accused person is supposed to plead individually to the charge against him. An accused person is not allowed to take a plea on behalf of another accused person. ***Section 215 CPA, Section 187 CPC. Adamu v State.***

What court should do where an accused pleads guilty to a charge requiring scientific proof 2010 No 1 (b) (i); May 2011 No 4B (1); August 2011 No 1B

Where an accused person pleads guilty to the commission of a crime requiring scientific proof, he cannot be convicted on his plea of guilty without scientific evidence to prove that what he had in his custody was the alleged substance. ***Stevenson v Police, Essien v State*.**

What court should do where an accused pleads "guilty with reasons" 2010 No 2 (iv)

Where an accused person pleads "guilty with reasons" to the commission of an offence the Court enter a plea of not guilty for him. Plea of guilty should be unequivocal. **Section 218 CPA, Section 161(3) CPC; Onuoha v The State.**

What court should do when accused plea of guilty is inconsistent with other statements made 2010 No 3(v)

Where an accused plea of guilty is inconsistent with other statements made previously to the Court or to the Police, the Court should enter a plea of not guilty.

What court should do when an accused keeps mute 2010 No 3(vi)

Where an accused keeps mute during arraignment, the duty of the Court is to inquire into the cause of his muteness whether it is out of malice or visitation of the Gods. If the muteness is out of malice, the Court shall enter a plea of not guilty. ***Yesufu v State***. But if it is due to the visitation of the Gods, the Court should order that the accused person be detained at the pleasure of the Governor***. R v Ogor.***

What court should do when an accused refuses to plead 2010 No 4 (iv)

Where an accused refuses to plead during arraignment, the Court should enter a plea of not guilty for him and continue with the trial. **Gaji v State.**

PROCEDURE AT TRIAL

Can the Prosecution decide not to call all the witnesses listed in the proof of evidence? August 2011 No 5(4); May 2012 No 1b (ii)

The prosecution is not bound to call all the witnesses listed in the proof of evidence and there is no consequence for failure to call a witness, although named in the proof of evidence so long as the prosecution can

prove its case beyond reasonable doubt. Even one witness or piece of evidence will suffice. ***Adaje v State.***

What are the rights available to an accused when the prosecution has closed its case? May 2011 No 6 (a)

The rights available to an accused person when the prosecution has closed its case are:

1. To enter upon his defence;
2. He may make a no case submission; or
3. He may rest his case on that of the prosecution.

Where an accused enters into his defence, he has three options, either to:

1. make a statement from the dock in which case he will not be sworn and cannot be cross examined; or

2. He may move over to the witness box and testify, in which case he will be sworn and will be liable to be cross examined; or

3. He may well remain silent. ***Section 287 CPA*****.**

When accused makes statement from the dock, whether he can be crossed examined 2009 No 5 (iii); May 2012 No 2 (iv); May 2012 6 (d)

Where an accused enters into his defence and elects to make a statement from the dock in which case he will not be sworn and cannot be cross examined. It will wrong for the Court to allow an accused to be cross examined from the dock. **Section 287 CPA.**

EXAMINATION OF WITNESSES

Types of questions allowed 2009 No 6 (a),(b) and (c); May 2011 No 4 (1), (2), (3), (4) and (5); August 2011 No 4 (1) – (4); May 2012 No 3 (a) - (e)

Leading questions are not allowed in examination in chief and re-examination. Leading questions may however be permitted by the Court in relation to introductory matters, undisputed matters and matters sufficiently proved. **Section 221 Evidence Act 2011.**

Hearsay evidence is not admissible during examination of witnesses. A witness should only testify as to matters within his knowledge, except they relate to the known exceptions on the rule against hearsay.

Leading questions must relate to relevant facts. ***Section 215 Evidence Act 2011.***

State the main aim of an examination in chief. August 2011 No 4 (5)

The main aim of examination in chief is to elicit or obtain favourable testimony in support of the party who called the witness.

Is it correct to state that the sky is the limit in cross examinations? August 2011 No 4 (7)

It is not correct to state that the sky is the limit in cross examination. There are certain questions that are permitted to be asked during cross examination of witnesses:

1. Questions which test the accuracy, veracity and credibility of the witness;

2. Questions to discover who he is and his position in life and questions intended to shake his credit by injuring his character.

There are also questions which cannot be asked during cross examination e.g.

1. Questions irrelevant to the proceedings;
2. Indecent and scandalous questions;
3. Questions that are needlessly offensive;
4. Questions calculated to embarrass; and
5. Questions intended to insult or annoy.

What are the questions disallowed in cross examination August 2011 No 6b (ii)

Questions irrelevant to the proceedings, indecent and scandalous questions, questions that are needlessly offensive, questions calculated to embarrass and questions intended to insult or annoy. **Sections 224-228 Evidence Act 2011.**

Mention three purposes of a cross examination August 2011 No 4 (8); August 2011 No 6b (i)

- ≈ To test the accuracy, veracity and credibility of the witness;
- ≈ to discover who he is and his position in life;
- ≈ to shake his credit by injuring his character;

- ≈ to elicit favourable evidence for the opposing party;
- ≈ to put forward the opposing party's version of the case through the witness;
- ≈ to show why the evidence of the opposing party should be rejected.

Techniques in cross examination 2009 No 4 (f); 2010 No 5(g)

Probing, insinuation and confrontation

What is the condition for re-examination of a witness? August 2011 No 4 (10)

Re-examination is allowed to show the ambiguities arising from the evidence of the witness during cross examination.

Effect of testimony of witness who remains in Court during other witnesses' testimony May 2012 6 (c)

The effect of the testimony of a witness who stayed in Court when the other witnesses were testifying is that the testimony is still admissible however, the Court will attach little or no weight to the evidence of that witness.

FINAL ADDRESSES

Whether Court can convict an accused person without a final address May 2011 No 6 (c)

It is wrong for a Court to sentence an accused person without first listening to the address of Counsel. The right to final address is a Constitutional right and any denial of that right gives rise to an appeal when it can be proved that there is a miscarriage of justice. **Section 294(1) CFRN 1999.**

Procedure for final addresses: who addresses the Court first? 2009 No 5 (iv)

The Defence Counsel is entitled to address the Court first and not the Prosecution. **Section 192 CPC**. It is after the address of the Defence that the prosecution replies.

When does the Prosecution not have a right of reply May 2012 4A (iii)

The Prosecuting Counsel where he is a Law Officer is always entitled to a reply unless he waives such right. Where however the prosecutor is not a law officer, he is not entitled to a reply if the accused person does not testify or call evidence, except as to his character.

JUDGMENT AND SENTENCING

Can a Magistrate Court deliver an oral judgment? August 2011 No 3 (e)

A Magistrate in Lagos cannot deliver an oral judgment. ***Section 279 ACJL.*** An oral judgment delivered by a Magistrate in Lagos will be invalid.

Time for delivery of judgment: effect of non compliance 2009 No 5 (v); August 2011 No 5(5)

The Judgment of the Court should be delivered within 90 days of final address. **Section 294 (1) 1999 CFRN**. However where a judgment is delivered outside the 90 days period, it remains valid except the Court is satisfied that the non compliance has occasioned a miscarriage of justice. **Section 294 (5) 1999 CFRN**.

Whether Court can convict an accused person in his absence 2010 No 3 (viii)

The Court can only convict and sentence an accused person who is physically present in Court. Trial by absentia is invalid.

Where a Statute provides for mandatory punishment, whether Court can grant less 2010 No 4 (ix); May 2012 4A (iv)

Where a Statute has prescribed a mandatory punishment for an offence e.g. death sentence for the offence of murder, the Court has no discretion in the matter and must impose the mandatory sentence. Any sentence imposed by the Court which is less than the mandatory sentence would be improper. **Rabiu v State**.

What is the mode of execution of the death penalty in Nigeria 2010 No 3 (ix)

A sentence of death penalty executed by lethal chemical injection is invalid. The recognizable way of executing the death sentence is death by hanging. **Section 367 CPA; Section 305(2) CPC.**

Whether a woman can be the subject of a sentence of caning 2010 No 3 (x)

The sentence of caning is not applicable to women. The sentence of caning passed on a woman will be invalid.

What is the maximum sentence of caning a Court can impose 2009 No 5 (v); May 2011 No 6 (d)

The maximum sentence of caning a Court can impose is 12 strokes of the cane. Section 388 CPA.

PRESENCE OF ACCUSED AT TRIAL

Whether an accused can be tried in his absence 2010 No 3 (iv) and (viii)

The trial of an accused person in absentia is unknown to our law. An accused person must be present at his trial. **Adeoye v State**.

PRESENCE OF ACCUSED COUNSEL AT TRIAL

Whether the Court can try an accused for a capital offence without counsel; and duty of Court where an accused is unrepresented in a capital offence 2010 No 2 (iii)

The Court cannot try an accused for a capital offence without a Legal Representative. It is improper for the Court to continue with the trial of accused person who is unrepresented. Where an accused person is charged with a capital offence and he is unrepresented, the Court has a duty to secure legal aid and access to justice for the accused person. **Section 36(6) (c); Josiah v State; Udofia v State.**

PRESENCE OF PROSECUTION AT TRIAL

What Court should do in the absence of a Prosecution at the trial May 2011 No 5 (f)

Where the Prosecution is absent at the trial, the Court may dismiss the accused who is present, but where the prosecution gives excuse for his absence, and the Court is satisfied with the excuse, the Court may adjourn the hearing to some future date. **Section 280 CPA, Section 165CPC**.

PROCEDURE TO COMPEL PRESENCE OF MATERIAL WITNESS

How may a party compel the presence of a material witness to give oral evidence May 2011 No 5 (i)

Where a party seeks to compel the presence of a material witness to testify on his behalf, he makes use of a subpoena ad testificandum. The process compels the witness to come to Court and give evidence.

How may a party compel the presence of a material witness to tender a document May 2011 No 5 (j)

Where a party seeks to compel the presence of a material witness to tender a process, he employs the use of a subpoena duces tecum. The

process compels the witness to come to Court and provide some documents.

RIGHT OF ACCUSED AT POLICE STATION

***Right to dignity of human person: Torture** 2010 No 3 (ii); May 2012 5 (vi)*

It is unlawful to beat and handcuff suspects especially where there is no resistance. It is a breach of fundamental rights to dignity of human person. Evidence or confession that was obtained in the process is inadmissible.

***Right to personal liberty: Unlawful detention** 2010 No 3 (iii); May 2011 No 2A (ii); May 2011 No 5 (d); May 2012 5 (vii)*

The detention of the suspects/accused persons in a dark cell for over one month is a breach of their fundamental rights to personal liberty and the right to dignity of human person. Where suspects are arrested and detained by the Police, they should be taken before a court of competent jurisdiction within 24 or 48 hrs or be granted bail.

***Right to Counsel** May 2011 No 5 (d); May 2012 5 (vii);*

A person arrested by the Police is entitled to remain silent until after consultation with a Counsel of his choice. **Section 36(6) (c) Uzodinma v COP; Awolowo v Usman Saraki.**

RESTING CASE ON THAT OF THE PROSECUTION

***When is the defence a proper defence** 2010 No 4 (v)*

One of the rights available to an accused person in his defence is to rest its case on that of the prosecution. A Defence Counsel should however rest the defence case on that on the prosecution only where the prosecution's case is manifestly weak and no conviction can be secured on it. Where there is cogent and compelling evidence against the accused that require his explanation, resting the case on that of the prosecution will be a reckless defence.

DOCUMENTARY EVIDENCE

***What is the procedure for tendering documents in evidence** May 2011 No 4A (5); August 2011 No 1A (ii)*

- ≈ Ask the witness if he has seen the document before

- ≈ Ask the witness to identify the document
- ≈ State the means of identification that it was actually the document
- ≈ Seek to tender the document

What are the contents an affidavit August 2011 No 6a (v)

An affidavit must contain facts and not law

An affidavit must not contain extraneous matters by way of objection or prayer or legal argument or conclusion.

APPEAL

Draft grounds of appeal May 2011 No 6 (e)

GROUND ONE

The learned trial judge erred in law and denied the Accused/Appellant fair hearing when he concluded that the Accused/Appellant was guilty after hearing the prosecution witnesses without having heard from the defence.

PARTICULARS

i. *The court is bound to hear from both sides before judgment.*

ii. *The court prejudged the outcome of the case.*

iii. *An accused person is entitled to fair hearing.*

GOUND TWO

The trial court erred in law when it failed to grant an adjournment when defence counsel was bereaved and this occasioned a miscarriage of justice.

PARTICULARS

i. *The Accused person is entitled to adequate time and facilities to prepare his defence.*

ii. *The Accused informed the court that his lawyer was bereaved and that if his lawyer was present, he would know what to do.*

iii. *The refusal of adjournment was wrong exercise of discretion.*

GROUND THREE

The trial court erred in law when it treated the statement of the accused that he was innocent as his testimony.

PARTICULARS

i. *The court did not explain to the accused person the options available to him after the prosecution has closed his case.*

ii. *The accused person did not tell the court that his denial of the charge was his evidence.*

iii. *The statement of the accused person from the dock was not proper evidence in this case.*

GOUND FOUR

The learned trial judge erred in law when he proceeded to give judgment without final addresses and this occasioned a miscarriage of justice.

PARTICULARS

i. *The parties have constitutional right to address the court.*

ii. *The final addresses are part of the trial.*

iii. *Failure to take final address has occasioned a miscarriage of justice.*

GROUND FIVE

The learned trial judge erred in law when he imposed the maximum sentence and 26 strokes of the cane.

PARTICULARS

i. *The learned trial judge did not adduce any reason for imposing the maximum sentence.*

ii. *The sentence of caning was excessive and not according to law*

Draft notice of appeal May 2012 No 2 (v) (a)

Draft notice and grounds of appeal:

IN THE COURT OF APPEAL
IN THE LAGOS JUDICIAL DIVISION (not compulsory)
HOLDING AT LAGOS

SUIT NO: *ID/2009/26*
APPEAL NO.....

BETWEEN

MRS KAYUBA ADA.....
APPELLANT

AND

AGRICULTURAL BANK PLC……..…….
RESPONDENT

NOTICE OF APPEAL

BROUGHT PURSUANT TO ORDER 6 RULE 2 COURT OF APPEAL RULES 2007

TAKE NOTICE that the Appellant in this matter being dissatisfied with the ruling of the High Court of Lagos State sitting at Lagos State contained in the judgment of Hon. Justice. F. O. Alohan dated the 16th day of September, 2010 do hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the appellant further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

Part of decision of the lower court complained of: The whole ruling/judgment including the award of costs.

GROUNDS OF APPEAL:

The learned trial judge erred in law when he held that "he had jurisdiction to try the suit, basing its decision on the constitution (suspension and modification Decree 107 of 1993)."

PARTICULARS OF ERROR

1. The trial judge misdirected himself by assuming that the transaction in this case is that of an individual customer and a bank.
2. The trial judge erred in law occasioning miscarriage of justice by assuming jurisdiction on the matter without regard to the issue of limitation period.
3. The trial judge failed to consider when the cause of action had arisen as to make the action statute barred.

RELIEF(S) SOUGHT FROM THE COURT OF APPEAL

That the ruling of the Lagos State High Court dated 16th day of September 2010, by Hon. Justice. A. O. Alohan set aside and allowing the appeal.

PERSONS DIRECTLY AFFECTED BY THE APPEAL.

1. Mrs. Kayuba Ada, No. 8, Kayuba Close, Lagos.
2. Agricultural Bank Plc, No. 16, Commercial Avenue Street, Lagos.

DATED THIS 22nd day of September, 2010.

_____

Odudu Cyril

Esq.

Appellant

Counsel

2, Odudu

Layout,

Ikoyi - Lagos

FOR SERVICE ON RESPONDENT:
Kayuba Ada
No. 5 Kubwa Close,
Lagos.

Within how many days must a notice of appeal be filed? *May 2012 No 2 (v) (b)*

A notice of appeal from the Magistrate Court to the High Court must be filed within 30 days for sentence of imprisonment and 15 days for sentence of caning. **Section 284(1) CPC; Section 58 CPA; Section 69 MCL 2009.**

Mention three grounds of appeal *May 2012 No 2 (v) (c)*

Draft the omnibus ground of appeal. *May 2012 4B (iii)*

That the decision of the Court is unreasonable, unwarranted and cannot be supported by evidence.