Trial Within a Reasonable Time Under Nigerian Law: A Legal Myth or Reality?

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Abstract

Nigerian justice system is aimed at quick dispensation of justice. To this end, the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the Constitution), provides that the determination of cases should be done within a reasonable time and further that the delivery of judgment shall not be later than ninety (90) days after the conclusion of evidence and final addresses, among other such provisions. The main objective of the Administration of Criminal Justice Act, 2015 (ACJA) is to engender speedy trial. The ACJA further provides for electronic recording of confessional statements in section 15 (4), issuance of legal advice within fourteen days, among other provisions. The Criminal Procedure Act, 2004 (CPA) and Criminal Procedure Code, 2004 (CPC) provide for summary trial among other provisions. In spite of the above, justice delivery in Nigeria is marred with avoidable delays. In fact, in the very cases where the courts appeared to deprecate or chide protracted litigations, same cases lasted for five, seven or even up to fourteen years. This article is driven by the desire to find out why delay is still experienced in administration of justice despite the extant state of the law .In doing so, the article adopted the doctrinal method of research in which reliance was placed primarily on the Constitution, the CPA, CPC, the ACJA as well as judicial authorities. Reliance was also placed on secondary sources of information such as opinions of eminent scholars expressed in books and journals. It was found that trial within a reasonable time under Nigerian law is a legal myth due to the activities of all the players in the administration of justice, to wit: the parties to the cases, witnesses to parties, lawyers, the courts as the arbiter as well as the government. It was particularly found that there is delay arising from inadequate funding of the judiciary, incessant applications for adjournments, non-domestication of the ACJA by many states, et cetera. It is advocated that Government should ensure that the judiciary is adequately funded, and that courts should sparingly grant adjournments. It is further advocated that the ACJA should, as a matter of urgency, be domesticated by states yet to do so, among others.

Key words: delay, dispensation, justice, trial, reasonable time speedy

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Introduction

It is stating the obvious to opine that there is delay in the administration of justice in Nigeria.[1] In fact, in the very cases where the courts appeared to deprecate or chide protracted litigations, some of these cases lasted for five, seven or even up to fourteen years. In *Atejioye v Ayeni,*[2] for instance, the case lasted for fourteen (14) years. This length of delay has pernicious consequences on the body of evidence, the parties, the court's memory, *et cetera*. A six year delay is equally unconscionable.[3] The level of delay in the administration of justice in Nigeria is such that simple termination of contract and fundamental human rights cases last between three (3) to five (5) years or more in Nigerian courts.

It is regrettable that the delay holds sway in spite of the fact that Nigerian law has amply laid down requirements for trial within a reasonable time. The Constitution takes the lead by requiring that the trial of cases should be done within a reasonable time and that such trial must be before a court of competent jurisdiction.[4] The Constitution further provides a timeline for delivery of judgment to ensure that the entire trial process comes to an end within a reasonable time,[5] and so on. Statutes have equally laid down specific requirements as can be seen in the Administration of Criminal Justice Act,[6] Criminal Procedure Act[7] and the Criminal Procedure Code.[8] The ACJA, for instance, provides for the front loading of evidence at the time of filing the charge at the Magistrates' Court or Information at the High Court,[9] electronic recording of confessional statement,[10]

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1 Vearumun Vitalis Tarhule, *Corrections under Nigerian Law* (Innovative Communications, 2014), 203-218.

2 (1999) 6 NWLR (Pt552) 135 at 141. In, *Egbo v Agbara* (1997) 1 SCNQR 1, the case lasted for over 7 years.

3 *Effiom v The State* (1995) 1 SCNJ 1.

4 Constitution of the Federal Republic of Nigeria, 1999 (as amended) (The Constitution), s 36 (1) and (4) thereof.

5 Ibid, s 294 (1) thereof.

6 ACJA 2015.

7 CPA, Cap C41, Laws of the Federation of Nigeria (LFN), 2004.

8 CPC, Cap C42, LFN, 2004.

9 (n, 7), ss 376 (4) and 379 (1).

10 Ibid, s 15(4).

day to day adjournment and placement of ceilings on adjournments,[11] and so on.

The Rules of Civil Procedure of the various courts have entrenched a litany of requirements for speedy trial of cases. These include but not limited to the front-loading system, summary judgment procedure, use of written address, *et cetera.* Case law equally lays down requirements for trial within a reasonable time. Despite these elaborate provisions in the extant laws highlighted, there is still delay in the administration of justice in Nigeria. This article is aimed at discovering the reasons behind this ugly state of affairs. In doing so, the article examines the relevant provisions of the statutes highlighted which are aimed at speedy dispensation of justice as well as the conduct of all the parties involved in justice delivery in Nigeria.

Conceptual Clarifications

Trial

The word 'trial' is defined as 'a legal process in which someone who stands accused of a crime or misdemeanour is judged in a court of law'.[12] The Black's Law Dictionary[13] captures it as 'a formal judicial examination of evidence and determination of legal claims in an adversary proceeding'. The first definition limits its scope to criminal trials by adopting the words '… who stands accused of a crime or misdemeanour…' The second definition is wide enough to cover both civil and criminal trials and this article adopts it as apt.

It is pertinent to note that the second definition is in tandem with the judicial formulation in Nigeria. It was held in *University of Illorin v Oyalana*[14] that a trial is the conclusion by a competent tribunal of questions in issue in legal proceedings, whether civil or criminal. The word 'trial' embraces all the facts before the court, including the judgment.

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11 Ibid, s 396.

12 Mairi Robinson, *Chambers 21st Century Dictionary* (Allied Chambers (India) Ltd, 2007), 1503.

13 A Bryan Garner, *Black's Law Dictionary* (10th edn, Thomson Reuters, 2014), 1735.

14 (2001) FWLR (Pt. 83) P. 2193 at 2198.

It is gratifying to note that the body conducting the trial must be one established by law-courts and tribunals. It was held[15] that where an alleged misconduct of a student involved a crime against the state, it is no longer a matter for internal discipline but one for a court or tribunal seized of judicial power. Curiously, an investigation or inquiry in proceedings by an institution or organization on the conduct of its members is not contemplated at all when considering the meaning of trial.

The word 'trial' also means the examination of evidence by a court of competent jurisdiction so as to determine the legal claims of parties to a case. It connotes the gamut of processes involved in a case from the commencement to the point when judgment is finally given. Judgment is the final stage of a trial. Simply put, 'a trial is demonstration and testing before a court of the cases of the contending parties. The demonstration is by assertion of evidence and the testing is by cross-examination and argument'.[16] Certain vital issues emerge from the foregoing definition of 'trial' which enhance an understanding of the term itself. These include: assertion of evidence; testing of evidence; before a court; trial to be in public.

By assertion of evidence it is meant that the trial is a place where each of the contending parties whether the prosecution or defendant (in criminal matters) or plaintiff or defendant (in civil matters) makes assertions, that is, tries to place before the court the respective angle of his story or case. The parties do this by giving evidence either oral or documentary. They tell the court how they got into contact, what gave rise to the case and the role each party played. This giving or placing of evidence is called evidence-in-chief because it is the main evidence of the party giving it. The testing of evidence is done by cross-examination which simply means the asking of questions by the opposing party to test the veracity of the evidence placed before the court. Evidence could also be tested by argument where the party argues that logically or legally the evidence against him is unacceptable.

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15 *Garba v University of Maiduguri* (1986) NSCC 245

16 *Durinyav Commissioner of Police (COP)* (1962) NNLR 73.

It is distillable from the definition that the trial must be before a court, which should try to resolve all the issues of facts, law or mixed law and fact on the evidence before it. It was held in *Ikenyi v Ofene*[17] that it is the duty of the court to decide between the parties on the basis of what has been tested, demonstrated, canvassed and argued before it. In performing this role, the courts are not investigators and it is not for them to ask questions except to clear ambiguity.

The trial must also be in public as required by the Constitution[18]. A trial is regarded as fair only when it is done in public. A trial is said to be in public when members of the public have access to the tribunal though not a necessity that they be present and that it is only in exceptional situations that trials cannot be held in public. The issues raised and discussed are part and parcel of the concept of trial and, taken together, present a logical, concrete and holistic meaning or view of trial.

Reasonable Time

The pertinent question that may be asked is what is the meaning of the phraseology 'reasonable time' as used in the Constitution?[19] To ensure that fair hearing is accorded to every person whose civil rights and obligations are a matter for determination in any proceedings, the trial itself must be conducted within a reasonable time. Generally, no hard and fast rule can be laid down as to what reasonable time is in any given case. This depends upon the circumstances of each case such as the nature and complexity of the case, the time taken by the parties to introduce evidence, adjournments demanded by legal practitioners and the availability of competent courts, the congested nature of the calendar of the courts, *et cetera*.

This principle has been subjected to judicial interpretation. In *Yerima v Borno Native Authority,*[20] the court held that the trial of the defendant was not conducted within a reasonable time when the

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17 (1985) 2 NWLR (Pt 5) 126
18 (n, 4), s 36 (3) and (4).
19 Ibid, s 36 (1).
20 (1968) 1 All NLR 410, SC.

prosecution knew all the witnesses and the case against or to be brought against the defendant in a murder charge but kept the defendant in detention for a whole year before arraignment. The same decision was given in *Ariori v Elemo*[21] where an action was filed in October, 1960 but came up for trial in March, 1972 and the trial went up to October, 1975 when judgment was finally given or delivered. The trial judge took three (3) years, seven (7) months in writing judgment. The court held further that the expression 'reasonable time' used in the Constitution[22] must be taken to mean the period of time which in the sight of justice does not wear out the parties and their witnesses and which is required to ensure that justice is not only done but appears to a reasonable person to have been done.

The most crucial point to note is that what is to be considered as a reasonable time in any proceedings depends upon the circumstances and peculiarities of each case. The Supreme Court had cause or occasion to aptly capture the position when it held:

> There is a general saying that justice delayed is justice denied and s 33 (1) of the 1979 Constitution gives every person the right to have his civil rights and obligations determined by a court after a fair hearing and within a reasonable time… If, therefore, a party indulges in asking for incessant and unreasonable adjournments, a trial court should not allow him use the due process of law to defeat the ends of justice. That court, which is the trial court, ought to weigh the reasons given for the application for adjournment and the surrounding circumstances.[23]

It is to be noted that section 33 (1) of the 1979 Constitution cited in the *dictum* above is consonant with section 36 (1) of the extant Constitution.[24] The *dictum* is symptomatic of the fact that the

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21 (1983) SCNJ 24.

22 Constitution of the Federal Republic of Nigeria, 1963, s 22(2), *impari materia* with, s 36(1). CFRN 1999

23 *Salu v Egeigbon* (1994) 6 SCNJ (Pt. 2) 223 at 246

24 (n, 5).

requirement of trial within a reasonable time is necessarily subject to the facts and circumstances of each case in question. This explains why the court[25] held that the delivery of judgment fourteen (14) months after final addresses under section 258 (1) and (4) of the Constitution[26] did not violate the right of the appellant, since given the facts and circumstances of the case, there was no miscarriage of justice. The court went further to give the litmus test for determining whether delay amounts to miscarriage of justice thus: 'It must be shown that the facts were not properly remembered, summarised or perceived by the learned trial judge in that judgment'.

The Supreme Court had cause to define 'reasonable' in *Okeke v The State*[27] when it held thus:

> The word 'reasonable' in its ordinary meaning means moderate, tolerable or not excessive. What is reasonable in relation to the question whether an accused has a fair trial within a reasonable time depends on the circumstances of each particular case, including the place or country where the trial took place, the resources and infrastructures available to the appropriate organs in the country. It is, therefore, misleading to use the standard or situation of things in one or a particular country to determine the question whether trials of criminal cases in another country involve an unreasonable delay. A demand for a speedy trial which has no regard to the conditions and circumstances in this country will be unrealistic and be worse than unreasonable delay in trial itself.[28]

The court further adumbrated four factors to be considered when determining whether the trial of a defendant was held within a reasonable time: the length of delay, the reasons given by the prosecution for the delay, the responsibility of the defendant for

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25 *Walter v Skyll Nig. Ltd* (2000) FWLR (Pt. 13) 2244 at 2254-2255.
26 Constitution of the Federal Republic of Nigeria, 1979, now (n, 9), s 294(1) and (4).
27 (2003) 15 NWLR (Pt. 842) 25.
28 Ibid, 84-85.

asserting his rights and the prejudice to which the defendant may be exposed.[29]

The courts have held that in observing the constitutional provision on speedy trial or trial within a reasonable time, care should be taken to avoid undue haste and undue delay, noting that either constitutes an infraction of the Constitution. The apex court incisively intoned when it held that:

> What is reasonable time within the purview of the subsection is a matter to be determined on the circumstances of every case. I may venture to generalise, however, that undue delay and undue haste cannot by any standard be said to be reasonable and consequently either constitutes an infraction of the provisions of section 33(1) of the Constitution.[30]

The Court of Appeal was of the opinion that the phrase 'reasonable time' does not mean as long as a party to a case wishes but that 'reasonable time here means time that allows a party reasonable opportunity to present his case. Reasonable opportunity exists when a party has advance notice of what he is required to do in the proceedings within a particular time'.[31] This underscores the importance of expeditious trial. In the same spirit, it has been held that the fact that a lawyer holds the brief of another should not be used as a cloak to prevent speedy trial of cases.[32]

For the trial to be conducted within a reasonable time, implying that there is neither undue haste nor undue delay, there must be balancing of acts. This entails that a judge must balance the

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29 Ibid, 85.

30 *Unongo v Aku* (1983) 2 SCNLR 332 at 352. The s 33(1) of the Constitution of the Federal Republic of Nigeria, 1979 referred to in this case is *impari materia* with n5, s 36(1). A similar decision was reached by the Supreme Court in *Danladi v Dangiri* (2015) 2 NWLR (Pt. 1442) 124, (2015) All FWLR (Pt. 768) 815; *Ogli Oko Memorial Farms Ltd v NACB Ltd* (2008) All FWLR (Pt. 419) 400; *Abubakar v Yar'Adua* (2008) 1 SC (Pt. II) 77 at 108 and 109; *Uzodima v Izunaso (No. 2)* (2011) 17 NWLR (Pt. 1275) 30 and the Court of Appeal in *Tolani v Kwara State Judicial Service Commission* (2009) All FWLR (481) 880.

31 *Sylvester v Ohiakwu* (2014) 5 NWLR (1401) 467 at 509 CA; *Salu v Egeibon* (1994) 6 SCNJ (Pt. 2) 223 at 246.

32 *Mfa v Inongha* (2014) All FWLR (Pt. 727) 628 at 645 SC.

requirement of fair hearing with the requirement for hearing to be within a reasonable time.[33]

Taking the discussion to the corridors of the American legal system, it is abundantly clear that the position there is not any different from Nigeria's. Thus, the Supreme Court of America in *Barker v Wingo*[34] identified four factors (akin to those identified in *Okeke's* case above) in ascertaining whether a trial was held within a reasonable time. For better appreciation of the position of the law, the facts of the case are reproduced: the defendant's trial delayed for over five (5) years after his arrest while the government sought numerous continuances (adjournments). When Willie Barker was eventually brought to trial, he was convicted and given a life sentence. The defendant did not ask for a speedy trial and did not assert that his right to a speedy trial had been violated until three (3) years after his arrest. Based on an evaluation of these factors in relation to his case, the court held that Barker had not been deprived of his due process right to a speedy trial.

This case is vital because it rejects the method of measuring a speedy trial by the fixed time rule or the demand waiver rule. The fixed time rule demands that a defendant be offered a trial within a specific period of time while demand waiver rule restricts consideration of the issue to those cases in which the defendant has demanded a speedy trial.[35] It is to be noted that the United States Supreme Court instead took the approach that the speedy trial right can be determined by a test balancing the actions of the government and the defendant on a case-by-case basis.

From the foregoing, it is poignant that the concept or right to speedy trial is relative and necessarily depends upon the circumstances of each case. It requires the courts to balance the conflictual interests of the parties on the one hand, and the society on the other. It is the effectual balancing of these interests that is termed justice which is necessarily consonant with fair hearing. No doubt, it

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33 Sebastine Tar Hon, *S.T. Hon's Constitutional and Migration Law in Nigeria* (Pearl Publishers Ltd, 2016), 412 - 416.

34 (1972) 407 US 514.

35 J.S. Joseph, *Introduction to Criminal Justice*. (4th edn, West Publishing Co., 1897), 356-357.

is asserted that 'law serves the interest of the individual with the good of the society in view'[36] and that 'justice delayed is justice denied; on the other hand, a hasty trial without the due process of law is also justice denied'.[37]

Legal Framework for Trial within a Reasonable Time

The Constitution provides that in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.[38]In the same vein, it is provided that whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal.[39] Further, every court shall deliver its judgment in writing not later than ninety days after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within 7 days of the delivery thereof.[40]

The entire aim of the Administration of Criminal Justice Act, 2015 (ACJA) is to ensure quick delivery of justice.[41] In furtherance of this, the ACJA provides for electronic recording of confessional statement,[42]time line of 14 days for the issuance of legal advice,[43] day

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36 J.N. Samba, *Fundamental Concepts of Jurisprudence*. (Bookmakers Publishing Co., 2003), 80.

37 E. Malemi, *The Nigerian Constitutional Law* (Princeton Publishing Co., 2006), 228.

38 (n, 5), s 36 (1).

39 Ibid, s 36 (4).

40 (n, 1), s 294 (1); *Odi v Osafile* (1985) 1 NWLR (Pt 1) 17. It was held that the court cannot recall parties to address it after expiration of 90 days; James Atta Agaba, *Practical Approach to Criminal Litigation in Nigeria* (2nd edn, LawLords Publications, 2014) 810 and 812; D.I. Efevwerham, *Principles of Civil Procedure in Nigeria* (2nd edn, Snaap Press Ltd, 2013) 359; Bob Osamor, *Criminal Procedure Laws and Litigation Practices* (2nd edn, Dee-Sage Books + Prints, 2012) 449; Yusuf O. Ali, 'Delay in the Administration of Justice at the Magistrate Court: Factors Responsible and Solution.' Retrieved from www.yusufali.net.pdf. Accessed on 20-1-2018; Ernest Ojukwu and Chudi Nelson Ojukwu, 'Introduction to Civil Procedure' (3rd edn, Helen Roberts Ltd, 2009) 325.

41 ACJA, 2015, s 1 (1).

42 Ibid, s 15 (4).

43 Ibid, s 376 (2).

to day trial and placement of ceilings on adjournment,[44] consideration of preliminary objections along with trials and delivery of ruling at the time of judgment,[45] elimination of stay of proceedings[46], front loading of evidence at the Magistrate Court[47] and High Court,[48] and the permission of "a judge of the High Court who has been elevated to the Court of Appeal to continue to sit as a High Court judge only for the purpose of concluding any part-heard criminal matter pending before him at the time of his elevation and shall conclude the same within a reasonable time"[49] among other provisions.

However, the Supreme Court has declared as null and void the provisions of section 396(7) of the ACJA, 2015 in *Udeogu v FRN &2ors*[50] for being inconsistent with section 290(1) of the Constitution of the FRN, 1999. Giving judgment in the said case, Ejembi Eko JSC held that:

> The enactment of s.396(7) of ACJA, 2015 is an attempt by the National Assembly---to whittle down the operation of s.290(1) of the 1999 Constitution. *Ab initio* Section 396(7) of the ACJA, 2015 was set out to frontally contradict and challenge the letters, substance and spirit of s. 290(1) of the 1999 Constitution. To that extent section 396(7) of the ACJA, 2015 is inconsistent with the Constitution, particularly s. 290(1) thereof. Therefore, by operation of s. 1(3) of the Constitution, s. 396(7) of the ACJA, 2015 to the extent of its inconsistency with s. 290(1) of the Constitution, is void.

The Criminal Procedure Act (CPA)[51] and Criminal Procedure Code (CPC)[52] both provide for summary trial, among other provisions. In the same vein, the various rules of civil procedure

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44 Ibid, s 396 (3) and (4).
45 Ibid, s 396 (2).
46 Ibid, s 306.
47 Ibid, s 376 (4).
48 Ibid, s 379 (1) and (2).
49 Ibid, s.396(7).
50 SC.622c/2019 (Unreported). Delivered on 8th May,2020
51 2004, s 364 (2).
52 2004, s 157 (1).

provide for front loading of evidence,[53] summary judgment procedure,[54] pre-trial conference and scheduling,[55] among other provisions. All the provisions are aimed at fast tracking justice delivery.

Conduct of Parties Involved in Justice Delivery in Nigeria

There are many people or organisations involved in the administration of justice in Nigeria. These include the parties or litigants, police, lawyers, ministry of justice, courts as well as witnesses. The government is also a key player in the administration of justice. The role played by each of the players will be discussed hereunder.

Parties to Cases

The Prosecution/Plaintiff

It is discovered with dismay that it is the prosecution that most often moves for countless adjournments on grounds which are patently unreasonable ranging from his ineptitude to non-completion of investigation as a consequence of lack of facilities.[56] It has also been observed that investigation of cases by the police is hampered by paucity of forensic laboratories,[57] lack of stationeries, transportation, constant transfer of Investigating Police Officers (IPOs), pure laziness on the part of IPOs and or lack of supervision by the superior officers, corruption, deficiency in knowledge of the IPOs, delay in duplicating case diary, assembling of witnesses, carelessness or nonchalant attitude in the prosecution of criminal cases, to mention a few.[58]

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53 Benue State High Court (Civil Procedure) Rules, 2007 (hereinafter called the Benue Rules), Order 1 Rule 1 (2); Federal High Court (Civil Procedure) Rules, 2019 (hereinafter called the FHC Rules), O. 1 R. 4; Lagos State High Court (Civil Procedure) Rules, 2012 (hereinafter called The Lagos Rules), Preamble to the Rules thereof; National Industrial Court of Nigeria (Civil Procedure) Rules, 2017 (hereinafter called The NIC Rules), O. 1 R. 4 (1)

54 Ibid, O. 11 R. 1 (Benue Rules); O. 11 R. 1 (Lagos Rules); O. 16 R 1 (NIC Rules).

55 Ibid, O. 25 R. 1 (1) (Benue Rules); O. 25 R. 1 (1) (Lagos Rules); O. 12 (NIC Rules).

56 *Effiom* (n3).

57 At the moment there is only one forensic laboratory in Nigeria located in Oshodi and caters for all the needs of Government Departments and security agencies in the country.

58 Tarhule (n, 1) 204.

In addition, the prosecution most times opposes bail applications on the spurious ground that the accused, if released, will obstruct police investigation or tamper with witnesses. The arguments taken on such bail applications delay the speedy trial of cases. Inefficient prosecution by the police in the Magistrate's Court accounts for delay.[59] More so, the police are not schooled in investigation and detection of crime. As a result, they resort to torture so as to obtain "confessional statements" from suspects. For the court to determine the voluntariness or otherwise of such statements, it must conduct a trial within trial which wastes time.[60] It is regrettable that the police in Nigeria prosecute to investigate instead of investigating before embarking on prosecution.

The prosecution of criminal matters is also hampered by the delay in the release of legal advice in the Ministry of Justice through the office of the Director of Public Prosecution (DPP).[61] It is noteworthy that delay in the prosecution of criminal matters is equally caused by the lukewarm attitude of the Counsel in the office of the DPP towards the cases assigned to them.[62] The police might also decide or elect to call many witnesses even where the testimony of a single witness would suffice to secure a conviction.[63] At times, it is the inability of the prosecution to timeously produce witnesses that stalls criminal trials as it was the case in *Japhet v State.*[64]

Another device used by the prosecutor which stalls proceedings in criminal matters is the phenomenon of holding charge. The practice is that a suspect who is accused of a serious offence is arraigned before a Magistrate Court where such Magistrate Court lacks jurisdiction to try the offence. The Magistrate Court only delivers a fuzzy ruling and orders the defendant to be remanded in

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59 Yusuf O. Ali, 'Delay in the Administration of Justice at the Magistrate Court: Factors Responsible and Solution.' Retrieved from www.yusufali.net.pdf. Accessed on 20-1-2018, 22.

60 Tarhule Vitalis Vearumun, 'The Administration of Criminal Justice Act as an Instrument for Fast Tracking Criminal Justice Delivery in Nigeria' Nigerian Bar Association, Makurdi Branch Continuing Legal Education paper presented atRoyal Choice Inn on June 14, 2016, 4.

61 *Johnson v Lufadeju* (2002) 8 NWLR (Pt.768) 196; Tarhule, (n, 1) 205.

62 Tarhule, (n, 60).

63 *The State v Ajie* (2000) FWLR (Pt.16)2831 at 2837

64 (2012) All FWLR (Pt. 619) 1116 at 1143, CA.

prison custody without taking his plea or hearing an application for his bail. The defendant remains in prison custody and he is brought to the Magistrate Court from time to time only for his case to be adjourned on several occasions pending his arraignment before a court of competent jurisdiction.

No doubt, holding charge is uniquely police phraseology not known to the Nigerian criminal law and jurisprudence.[65] It is pertinent to note that lack of proper investigation by the police is a reason for the recourse to the holding charge method. That explains why the Court of Appeal was critical of the holding charge syndrome and deprecated same by stating that it is unknown to Nigerian law and that a defendant detained under it is entitled to be released within a reasonable time before trial, more so, in non-capital offences.[66] This exasperating attitude has been reprehended by the Court of Appeal in *Onagoruwa v State*[67], of thus:

> In a good number of cases, the police in this country rush to court on what they generally refer to as holding charge even before they conducted investigation. Where the investigation does not succeed in assembling the relevant evidence to prosecute the accused to conviction the best discretion is to abandon the matter and throw in the towel. On no account should the prosecution go out of its way in search of evidence to prosecute when it is not there.

It was also held in *Ogor v Kolawole*[68] as follows: Before the accused is brought before the court, it should be assumed that the case is ripe for hearing, not for further investigation. He must not be there on mere suspicion which cannot be regarded as reasonable suspicion under section 35 of the Constitution. If there can be no sensible and prima facie inference that can be drawn that an offence has been committed, then the accused cannot be deprived of his liberty even

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65 *Ozo v Commissioner of Police (COP)* (1996)3 NWLR (Pt. 103)320

66 *Enwere v COP* (1993)6 NWLR (Pt.299)333 at 335; *Ukatu v COP* (2001) FWLR (Pt.66) 758.

67 (1993) 1 NWLR (Pt 303) 107, CA; *Shagari and Others v COP* (2005) All FWLR (Pt 262) 450; *Jimoh v COP* (2005) All FWLR (Pt. 243) 648.

68 (1985)6 NCLR 535.

for a second. There cannot be a holding charge hanging like a sword of Damocles over an accused in court pending the completion of investigation into the case against him.

It is worthy of note that in spite of these deprecating comments against the menace of holding charge, there is some authority to support the ostensible permissibility of the courts to invoke it in appropriate circumstances. This could be gleaned from the provisions of section 236[69] and section 129(2) and (4)[70]. Both sections of the statute allow a Magistrate to remand a person who has been arrested for committing an offence pending trial. Under section 236 of the Criminal Procedure Act, the court can order the remand of the defendant when it becomes necessary that the court cannot proceed with the hearing of the case, but shall not normally exceed eight days. Whilst section 129(2) and (4) of the Criminal Procedure Code provides that such remand shall not exceed fifteen days and the court shall record its reasons for doing so, however, the court can further extend the period of remand on the application of the prosecution.

It seems that both sections of the statutes attempt to provide legislative sanctions for the practice of indefinite detention of the defendant until the case against him is being prepared. It usually creates an intermediate stage between arrest and institution of criminal proceedings. It is submitted that these sections of the law are inconsistent with the Constitution[71] and thus void.[72] A situation where the defendant is before a court without his plea taken, nor bail granted him, but remanded in prison custody cannot by any stretch of imagination be regarded as a remand proceeding, but a holding charge which is an offence against the personal liberty of the defendant as guaranteed by the constitution.[73]

In *Anaekwe v Cop,*[74] the appellant and nine others were charged for conspiracy and murder before the Chief Magistrate's Court Onitsha on 21/12/1994. The learned Chief Magistrate ordered

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69 CPA.
70 CPC
71 (n, 5), s 35 (4) and (5).
72 Ibid, s 1 (3).
73 Ibid, s 35.
74 (1996) 6 NWLR (Pt.299)320.

that the defendant be remanded in prison custody. An application for bail was filed before the High Court Onitsha. The learned Judge refused the application mainly on the grounds that the offence allegedly committed was murder. The applicant thereupon proceeded to the Court of Appeal, which granted the bail and ruled that:

> It is not the function of the prosecutor to rush a charge to the Magistrate Court, a court which has no jurisdiction to try a murder case and play for time while investigation is in progress. The unique police phraseology of holding charge is not known to the criminal law. It is either a charge or not.

The holding charge, therefore, has no legal basis. To that extent, it is an unlawful device utilised by the police for the purpose of depriving suspects of their constitutional right of presumption of innocence.[75] The fact that the holding charge phenomenon is manifestly unconstitutional has also been reiterated in *Shagari and Ors. v Cop,*[76]where it was held that:

> It is crystal clear that there is no formal charge against the appellants and also there is no proof of service. There is evidence however that the appellants were and are still being detained or remanded under the holding charge which going by the numerous pronouncements of our courts has no place in our constitutional system. It is in fact unknown in the Nigerian law. Persons detained under an illegal, unlawful and unconstitutional document tagged holding charge must unresistingly be released on bail… But by continuing to detain them on holding charge, that is not a judicious and judicial exercise of discretion.

It is pertinent to note that beyond the need for granting a defendant bail who is being detained on a holding charge, it has even been held that it is now trite law that once a court observes that it has

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75 (n, 5), s 36(5).

76 (2005)All FWLR (Pt.262)451 at 469, CA; *Jimoh v COP* (2005)All FWLR (Pt.243)646; *Oshinaya v COP Lagos State* (2004) 21 WRN 153.

no jurisdiction to entertain the matter, the proper order to make is to strike out the matter and not to remand the suspect because any subsequent proceeding or order made by the court is a nullity and consequently void.[77] The holding charge is a clear abuse of process as it may also be categorised into issuing a process for the mere purpose of annoying or irritating the victim of the vice. It is an act that interferes with the administration of criminal justice.[78] Commenting on this ugly state of affairs, Shima[79] advises that urgent steps be taken to stop this uncanny practice. He illuminatingly captures it thus:

> It is obvious at this juncture that the practice of detaining Nigerian citizens under a "holding charge" has been outlawed. Yet, Nigerian Courts behave as if nobody has spoken out against this practice. This writer had an unpleasant experience of moving and arguing an application for bail before a Chief Magistrate, cited these authorities and the Magistrate retorted that it was academic argument. Something is obviously rotten in the State of Denmark and drastic actions have to be taken to clear the rot.[80]

Taking the discussion to civil matters, it is discovered that the plaintiff is most at times responsible for delays in trials. Flimsy excuses are often given as to why he (the plaintiff) cannot attend court. It is in the light of this that it was held that although a litigant should not be deprived of an opportunity to be heard, where a litigant who by misjudgement or deliberate decision does not avail himself at the trial, he should not be heard to complain.[81]

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77 *Matari v Dangaladima* (1993)3 NWLR (Pt.381)265.

78 *Saraki v Kotoye*(1992)9 NWLR(Pt.264)156; *News Watch Communications Limited v Attah* (2000)2NWLR (Pt.646) 592, SC.

79 V.A. Shima, 'The Need for a Proper Application of the Law of Bail by Nigerian Courts to Decongest Prisons in Nigeria' [2012] (4) (2) *Kogi State University Bi-Annual Journal of Public Law,* 322.

80 *Ibid* at p.322

81 *Mohammed v Kpelai* (2001)FWLR (Pt.69)1404 at 1408.

The Defendant

In criminal matters, for instance, the defendant might feign ill-health as it was held in *Dariye v Federal Republic of Nigeria* [82] and or complain that time is not enough to assemble defence witnesses. This is achieved through numerous adjournments. In deprecating this practice, the court held in *Osayomi v State*[83]that an accused person should not hold the court to ransom by unreasonable adjournments. The court lucidly echoed the unhealthy practice of a defendant feigning ill health in the *Dariye's case*[84]when it held that:

> …There are cases where the accused develop some rare illness which acts up just before the date set for their trial. They jet out of the country to attend to their health and the case is adjourned. If the medical facilities are not available locally to meet their medical needs it is only because due to corruption in high places, the country cannot build proper medical facilities…

Where such a defendant pleads insanity, the trial cannot continue unless and until his sanity is established.[85] The processes take time and are annoying, especially where the plea of insanity is a deliberate calculation to waste the precious time of the prosecution and the court. The defendant in a civil matter who deliberately refuses to attend court causes delay. Such nonchalant attitude in the defence of cases is antithetical to the just, efficient and expeditious administration of justice in Nigeria.[86]

Counsel in the Case

It is observed that one potent cause of delay by lawyers is lack of industry. Most lawyers are lazy and hardly go to court. Tarhule[87] exquisitely captures this when he enthuses thus:

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82 (2015) 10 NWLR (Pt. 1467) 325, SC.
83 (2006) All FWLR (Pt. 342) 1577 at 1597, CA.
84 (n, 81).
85 CPC, ss 324 and 238.
86 *Mohammed v Kpelai*(2001)FWLR (Pt.69)1415 paras A-C
87 Tarhule (n, 1) 207.

> It is platitude that many lawyers are lazy and hardly go to court preferring instead to write for adjournments. When confronted with the simplest of application in court, they routinely ask for an adjournment to enable them respond to issues that ordinarily would not have called for adjournment if they had only kept abreast with the law. Lawyers in this category exploit the loopholes in the criminal procedures (and these are legion) to request for adjournments. It has been submitted that some legal practitioners employ dilatory tactics in court in order to delay and frustrate the smooth and speedy prosecution of cases. These crossly and brutally cross-examine witnesses for hours, most times on irrelevancies thus taking up the precious time of the court.

Some defence counsel deliberately delay trials by requesting for adjournments purposely to ensure the full payment of their professional fees prior to the conclusion of the trial. The impropriety of counsel pursuing a patently unmeritorious case (thus resorting to countless adjournments) must be condemned as it is unprofessional to pursue matters that are clearly without merit.[88] Ali[89] also posits that unwarranted applications for adjournment are responsible for delayed trials in Nigeria. Some defence counsel who are paid on the basis of the number of court appearances consciously delay criminal trials with a view to beefing up their fees.[90]

It is submitted that the structural organisation of the legal profession further contributes towards delay of matters. Most law firms are basically sole practice in outlook. Private legal practitioners with sole practice personally handle most of their cases. Such legal practitioners frequently experience conflict of dates in different courts. It has been held that 'if he (counsel) was unable for any good reason to attend court, his duty everybody knows was to see that

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88 Ibid, 8; Also, *Ibama v Shell Petroleum Development Co. Ltd* (2005) All FWLR (Pt 287) 832 at 849.

89 Ali (n, 59) 21.

90 Tarhule (n, 60) 5.

some other members of the Bar held his brief and was in a position to represent the accused person'.[91]

In *Ndu v The State,*[92] the case was bedevilled with several adjournments and at the instance of defence counsel, giving various reasons such as his fees not being paid, ill-health, trying to procure witnesses and having to travel out of jurisdiction, among other frivolous reasons. The defendant then appealed on the ground that he was not granted fair hearing. True to type, the Honourable Court did not hesitate to show its displeasure at the lackadaisical attitude of the defence counsel when it held:

> The attitude of the defence counsel from the time the prosecutor closed his case has been one showing an unwillingness to proceed with the defence. The frequency of applications for adjournment was sickening and unbecoming of counsel instructed to conduct the defence of an accused person charged with murder.
>
> Murder is a capital offence, once a trial of an accused person has opened, any defence counsel in the proceeding is not only bound to appear but also bound to perform his duty to his client, the failure of his client or inability of client to pay his fees notwithstanding.[93]

The role of the lawyers in the use of interlocutory application in the course of trial causes delay.[94] Many such applications are frivolous and untenable such that they should never have been filed in the first place.[95] The trend is that very soon, the burden or energy, time and money devoted to it will leave the courts with little or no

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91 *Yanor v The State* (1965)1 AllNLR 193

92 (1990)7 NWLR (Pt.164) 574.

93 Ibid.

94 Benny Daudu, 'Delays, Technicalities in Electoral Matters: The Role of the Legal Profession' A paper presented at the Nigerian Bar Association, Makurdi Branch Law Week on 6th June, 2014, pp 6 and 7.

95 Yemi Akinseye-George, 'The Administration of Criminal Justice Act, 2015: An Overview in Relation to Criminal Cases Adjudication in the Federal High Court.' Pages 1-21. Retrieved from www.censolegs.org/publications.pdf. Accessed on 20-7-2019, p 5.

time for the substantive matters.[96] The Supreme Court decried this uncanny practice when it held in *Godwin and Others v Okwey and Others*[97] that:

> It is however unfortunate that the action which was instituted in 1992 over the affairs of a church is still to be set down for hearing following a dispute over jurisdiction which could have been taken along with the substantive matter upon conclusion of hearing by the trial court if the need still arises. Unfortunately, that course of action was not followed resulting in the present delay. Learned counsel should always keep the best interest of the clients in view when conducting their cases so as to minimise costs.

In *Amadi v NNPC,*[98] a preliminary issue of jurisdiction took the case thirteen (13) years to decide as the case went up to the Supreme Court. The court in proffering a solution to this dilatory tactic of interlocutory appeal said that '…Surely, this could have been ended had it been that the point was taken in the course of the proceedings in the substantive claim to enable any aggrieved party to appeal on both the issue of jurisdiction and the judgment on merit in the proceedings as the case may be.'

In *Ekperokun v University of Lagos,*[99] it took the High Court 7 years to dispose of a case of wrongful termination of employment. In *Maja v Samouris,*[100] it took 9 years to final judgment at the Supreme Court while in *Obasohan v Omorodion,*[101] it took 16 years for the final judgment to be given. In *Ekpe v Oke,*[102] it took 17 years and 21 years in *Onagoruwa v Akinyemi.*[103] In *Nwadiagbu v Nnadozie,*[104] it took a very long duration of 23 years for the matter to

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96 *Ugba v Suswam* (2012) 6 SCNJ (Pt. 12) 432; *ANPP v Goni* (2012) 2 SCNJ (Pt. 2) 255, SC.
97 (2010) All FWLR (Pt. 536) 410 at 420 paras A-C, SC.
98 (2000) 10 NWLR (Pt. 76) 100, SC.
99 (1986) 4 NWLR 152.
100 (2000) 7 NWLR (Pt. 765) 78, SC.
101 (2001) 13 NWLR (Pt. 728) 298, SC.
102 (2001) 19 NWLR (Pt. 721) 341, SC.
103 (2001) 13 NWLR (Pt. 729) 38, SC.
104 (2002) 12 NWLR (Pt. 727) 315, SC.

be concluded. In *Deduwa v Okorodudu,*[105] the Supreme Court ordered a retrial in 1976 and as at 2005 the case was still pending at the trial court. It was 8 years in *Dariye v FRN.*[106] In *FRN v Borishade,*[107] the proceedings of the trial court were stalled for 7 years so as to await the outcome of the appeal against its ruling. The court, in strong terms, decried the use of interlocutory appeals to frustrate criminal trials especially those involving politically exposed or highly placed defendants.

Doma[108] presents the statistics of delayed trials in the Federal Capital Territory between 2009 and 2011. The statistics shows an amazingly increasing number of cases in the courts due largely to the menace of interlocutory appeals. The statistics is shown below:

> Generally, the backlog of undecided cases becomes an impasse for the even flow and orderly disposition of cases because the cases keep piling up and the time between filing of a lawsuit to ultimate disposition keeps increasing. A recent statistic presented by the Chief Judge of the Federal Capital Territory High Court indicated that in the close of the 2009/2010 legal year, it had 6, 109 ongoing cases while the 2010/2011 legal year recorded a total of 9, 083 cases pending (an increase of 30%). In the same 2010/2011 legal year, the court had a total of 17, 269 cases to deal with compared to 12, 269 in the previous year (5000 cases more). Other commercial cities like Lagos, Kano and Rivers have equally startling statistics. The Supreme Court and Court of Appeal are faced with the same backlog. **Due to the volume of appeals inundating the two courts, especially on interlocutory matters, the dockets of the courts are overflowing.** (Underlining for emphasis)

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105 (1976) 9 & 10 SC 331, SC.

106 (2015) 10 NWLR (Pt. 1467) 325, SC; *Nyame v FRN* (2010) 7 (Pt. 1193) 344.

107 (2015) All FWLR (785) 227, SC.

108 Halima Doma, 'Enhancing Justice Administration in Nigeria through Information and Communications Technology' [2016] (32) (2) *The John Marshall Journal of Information and Technology and Privacy Law,* 89-104. Retrieved from http://repository.jmls.edu/jitpl.pdf. Accessed on 21-7-2019.

It is conceded that unnecessary use of interlocutory applications and motions, preliminary objections, *et cetera* by lawyers is indicative of technicalities. The effect is delayed trials and the courts have a duty to ensure that technicalities do not stand in the way of substantial justice.[109]

The Courts as the Arbiter

One major cause of delay by the court is the absence of proper case flow management. Case flow management is the coordination of court processes and resources so that court cases progress in timely fashion from filing to disposition.[110] Okolo[111] traces delay in the administration of justice in Nigeria to poor case flow management, especially the time dedicated to court sittings. The author opines that the more sittings a court achieves over the year the more cases are handled and disposed. In the same vein, the author laments the numerous public holidays in Nigeria and submits that such account for undue delay. The author further posits:

> Out of 365 days in a year, Judges do not sit during weekends-104 days; public holidays-10 days; yearly court vacation-60 days; Christmas vacation-14 days; Easter vacation-14 days; conference week-7 days; and Fridays which are reserved for Judgments amounting to 52 days. Grand total: 261 days.[112]

It is submitted that albeit judges are hardworking, the pressure of work on them is much and that they work under very deplorable condition with meagre emolument, the 261 days taken by public holidays is much. With this, cases can hardly be determined expeditiously.

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109 *Jamin Systems Consultants Ltd v Braithwaite* (1996)5 NWLR (Pt. 449) 459 at 470, CA; *Yusuf v Adegoke* (2007)11 NWLR (Pt.1045)332 at 368-369, SC.

110 Patrick Ocheja Okolo, 'The Judiciary as a Vessel for the Advancement of the Economic, Social an Political Development of Nigeria' A paper presented at the opening ceremony of the Benue State Judiciary 2016/2017 Legal Year on September 17, 2016, 24.

111 Ibid, p 25.

112 Ibid, p 26.

Again, lack of front loading system in the Magistrate's Court also causes inordinate delay,[113] especially in States of the Federation yet to domesticate the Administration of Criminal Justice Act.[114] In the same vein, the inability of most judges to give on the spot ruling in simple applications and frequent transfer of Magistrates and Judges cause delay.[115] It has also been opined that most judges do not sit in time and most times rise early under the pretext of picking their children from school, taking of evidence in long hand as opposed to electronic gadgets and that some judicial personnel, especially the magisterial cadres, sit only three times a week.[116]

Each judge is expected to manage the cases filed before him or sent to him in order to avoid congestion in his court. But when cases come to him in rapid succession as does happen in some jurisdictions, congestion will build up and become unavoidable, especially where the judge fails to prioritise the business of the court. Priority here means that judges should start the day with *ex parte* applications and dispose of them quickly before considering highly contentious matters. It is pertinent to note that even in circumstances where cases pile up, one can easily discover a lazy judge from a hardworking judge. This is justified because some judges crawl in writing, others engage in unnecessary arguments with counsel during hearing, while others cannot sit for long at a stretch. This impedes speedy trial of cases. The dictum in *Japhet v State*[117] is very apt thus:

> It needs be respectfully stressed that it is the responsibility of every judge to manage his court by preventing it from becoming a dumping ground for comatose causes which cause court congestion thereby hampering the speedy dispensation of justice.

Some judges make it a policy to fix only one case for a day, if it is set down for hearing. This is unwise because where an

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113 A.U. Kalu, 'Speedy Dispensation of Justice through Effective Case Management in Nigeria.' 1-17. Retrieved from www.nigerianlawguru.com.pdf. Accessed on 20-7-2019, p 15.

114 2015.

115 Tarhule (n60) 5 and (n, 1) 214.

116 Ibid.

117 (2012) All FWLR (Pt. 619) 1116 at 1143, CA.

unforeseen impediment occurs, such as illness of counsel or inability to serve subpoenas; the result is that such a day is wasted. The effect is that such cases pile up and where for any inextricable reasons they are unable to write such judgments on schedule, they soon find themselves being caught in the web of contravention of the Constitution which mandates the courts to deliver judgment within 90 days after the adoption of final addresses by Counsel.[118]

Another social malaise that causes delay in the administration of justice is corruption by the judges.[119] Corruption underpins the act of doing something with intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or an official's use of a station or office to procure some benefit either personally or for someone else, contrary to the right of others.[120] Judicial corruption refers to any inappropriate financial or material gain and non-material gain, aimed at influencing the impartiality of the judicial process by any actor within the court system.[121]

A judge who is influenced does not have the interest of justice at heart and thus employs every possible means to delay the course of justice so as to manipulate the law. The duty of a judge is to see that everything is done to facilitate the hearing of an action pending before him. In so doing, he has to exercise his discretionary power which undoubtedly belongs to the trial judge. The exercise of this discretionary power to facilitate the hearing of the action pending before him may however be challenged on appeal. But it is settled principle that a Court of Appeal ought to be slow indeed to interfere with the discretion of a trial judge.[122]

A judge whose hands are soiled grants almost every frivolous application for adjournment with the concomitant effect that those trials that should have taken a year or less end up taking

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118 (n, 5), s 294.

119 Auwal Ibrahim, M.K. Adebayo and Kamal Da'ud, 'Review of Criminal Justice Policies: Options for Nigeria' in *Frontiers of Nigerian Law Journal* [2008] (Vol 2) (No. 2), 36.

120 Bryan, A. Garner, *Black's Law Dictionary* (9th edn, West Publishing Co., 2009), 397.

121 Agbo J. Madaki, 'Appointments and Judicial Corruption in Nigeria' A paper presented at the Nigeria Bar Association, Makurdi Branch Law Week hel at Royal Choise Inn, Makurdi, 17th-23rdApril, 2017, p 10.

122 *Jonason Triangles Ltd v Charles Moh and Partners* (2002)9-10 SC 163 at 164.

three or more years. This attitude is perturbing and unfortunately calamitous. No wonder, Ayinla cautioned that, judges should sparingly grant applications for adjournment.[123]

It is sacrosanct to pinpoint that the above discourse is not intended to unduly emphasise speed and deemphasise the ends of justice. Far from it and in deserving cases, courts must make haste slowly with a view to arriving at justice. It is the undue stalling of proceedings by judges that is decried and or censured, for such uncouth attitude amounts to judicial *coup d' etat* on the express provision of the Constitution.[124]

Witnesses to Parties in the Case.

Where witnesses deliberately stay away from the court when called to testify, the expeditious determination of the case will be thwarted or hamstrung. The law requires the prosecution in criminal matters to call up such witnesses reasonably necessary to prove the guilt of the defendant and not for the prosecution to waste the time of the court calling witnesses whose testimonies can conveniently be dispensed with.[125] One perturbing or irksome thing is that most at times the excuses by such witnesses are patently unreasonable. This could be sheer forgetfulness, inability to fuel his car especially where other means exist by which to come to court, *et cetera*.

It is sad to note that some witnesses do not attend court by reason of ignorance. They feel that their evidence is of no moment and that whether they testify or not it will not affect the decision in the case in any way. The courts keep granting applications for adjournment at the expense of the requirement that trials be conducted within a reasonable time. The matter is even worse where the witnesses are star or material witnesses whose evidence the court cannot reasonably dispense with should it reach a just decision.

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123 L.A. Ayinla, 'Fair Hearing: Is it a Magic Wand to Cure all Ills in all Milieu?' [2009] (3) (1) *Benue State University Law Journal, 98.*

124 (n, 5), 36(1).

125 *Ijiofor v State* (2001)FWLR (Pt.49)1457 at 1486.

The Role of Government

The first factor to be considered is delay arising from inadequate courtrooms, infrastructural facilities and poor working conditions as a consequence of poor funding of the judiciary. It has been posited that 'to say that the judiciary is underfunded is to say the obvious.[126] It has been further submitted that in some High Courts even in urban areas because of unavailability of stand by generators, often times, court sittings have to be adjourned when the court rooms become too hot and there are no air conditioners or fans to cool the court halls.[127] Kwahar particularly expresses the plight of the judiciary in the face of gross underfunding thus:

> I have analysed underfunding of the judiciary at a general level. I shall now beam my light on the state judiciaries. Funding constraints are even more pronounced in the states where judiciaries rely on their respective State Governments to fund their capital expenditure and supplement recurrent expenditure. In most state judiciaries, court libraries are totally non-existent and where they do exist, they contain archaic and out dated textbooks and law reports. Chief Executives in some states consider it a luxury and favour to give judges money as allowance for books. It seems some Chief Executives take delight in keeping Chief Judges for hours waiting for them in order for them to beg a Governor for the release of capital grant of sometimes a Hundred Million Naira. After several days and weeks of waiting on the queue to see a Governor at last His Excellency will lament of scarcity of funds and scarcely oblige His Lordship far less half the amount.[128]

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126 P.T. Kwahar, 'The Effects of the Procedure for the Appointment of Judicial Officers on Independence of the Judiciary' A paper presented at the 2017 Law Week of the Nigerian Bar Association, Makurdi Branch, held at Royal Choice Inn, Makurdi, 17th – 23rd April, 2017, 3.

127 Ibid.

128 Ibid, 3 and 4.

It is the responsibility of the executive to ensure that there are adequate court rooms, infrastructural facilities and better working conditions for the staff of the judiciary, police and the prisons.[129] In fact, it has been opined that the judiciary is the most underfunded in the present democratic dispensation.[130] The trial of defendants who are remanded in prison custody is often delayed due to either the lateness in the arrival or non-arrival of such defendants in courts on dates fixed for trial. The lack of readily available vehicles with which to convey defendants to courts during trials accounts for such lateness or non-arrival of such defendants in court.[131]

The courts, especially at the Magistrate level, lack adequate library facilities with which to promptly discharge their judicial functions. Consequently, cases suffer long adjournments during trials where there is need to write a well considered ruling. In the same vein, inappropriate appointment of judges by the executive has been identified as one of the causes of delay in trials, since some judges are appointed not on the basis of competence but on the basis of political connection.[132]

It is regrettable to note that in spite of the very crucial role played by the election petition tribunals, the tribunals do not have infrastructural facilities for efficiency. It is the already insufficient High Court rooms that are usurped and converted to election tribunals. The cases in such High Courts suffer inordinate delay until the final determination of the election petition cases. Again, it is the serving judges of the High Court that are appointed to man the tribunals. This trend is worrisome in that the cases handled by such judges suffer delay until they complete their assignment in the tribunals. For instance, after the 2019 elections, the Benue State High Court 5, 6, 7 and 8 were converted to tribunals. The Honourable judge of High Court 8 was appointed to serve as a judge of the tribunal in Akwa Ibom State. This has been the trend since the country's return to democracy in 1999. In the same vein, no

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129 Tarhule (n, 60) 6 and (n, 1) 198.

130 Auwal, Adebayo and Da'ud (n118) 36; Okolo (n109) 18; Aondover Kaka'an, 'Case Management and Quick Dispensation of Justice' [2008] (2) (2) *Frontiers of Nigerian Law Journal,* 348-353.

131 *Effiom* (n, 3).

132 Ali, (n, 59) 21.

permanent tribunal staff are employed. Rather, it is the High Court and Magistrate Court staff that are drafted to work as ad hoc staff in the tribunals. This practice robs the said courts of manpower, considerably slowing down the pace of adjudication of cases.

The poor condition of service of the judiciary staff equally deserves mention. This is because a judge needs a comfortable residential accommodation so as to function well. The absence of this is a serious disincentive to work. A comfortable Lower Court Judge is likely to achieve higher productivity than a Lower Court Judge who is uncomfortable. One of the important areas of providing comfort for a lower court judge is his/her residential accommodation. The truth of the matter in Nigeria today is that most of our lower court judges are not provided with residential accommodation. Where they are provided at all, they are not furnished. That does not assist the administration of justice in this country. In many jurisdictions, stationery and office supplies are not made available to the lower courts.[133]

It is regrettable to note that over two years after the enactment of the ACJA by the National Assembly, many states of the federation have not domesticated same. This ugly scenario is antithetical to the speedy administration of justice. By failing to amend the various criminal statutes or the procedure for their implementation, the legislature cannot be said to live up to its responsibility.[134] This is true because the Criminal Code[135] was first introduced into the country in 1904 and has remained in operation without any major amendment. Again, since the introduction in 1963 of the Penal Code[136] as well as the Criminal Procedure Code,[137] there have been only cosmetic changes as regard to the jurisdiction of Magistrates and no more.[138] One of the effects of the stagnancy of

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133 Kaka'an (n, 129), 353.

134 Ali, (n, 59) 22**;** Yemi, (n94) 5; Adelowo Stephen Asonibare and Halimat Tope Akaje, 'E-Path to Effective Justice Delivery: Nigerian Courts in Perspective.' 1-15. Retrieved from www.eprints.covenantuniversity.edu.ng.pdf. Accessed on 20-7-2019, 10.

135 Cap C38, Laws of the Federation of Nigeria (LFN), 2004.

136 Cap 89, LFN, 1963.

137 Cap C30, Laws of Northern Nigeria, 1963.

138 Tarhule (n, 1) 208.

the criminal statutes and procedures has been chronicled by Tarhule[139] thus:

> Archaic and complicated procedures still permeate Nigerian criminal statutes such as the practice in the North under the Criminal Procedure Code whereby even if an accused person admits to committing the offence, the Area Court judge even if he were also a Magistrate cannot convict without hearing evidence.[140]

In the case of *Harunami and Ors v Borno Native Authority,*[141] the appellant was convicted on his own admission of theft of cattle and sentenced to a three year imprisonment without the prosecutor being heard or witnesses being examined. It was held on appeal that the Native Court[142] cannot convict under section 157 of the CPC even if the accused says that he had no cause to show why he should not be convicted and admits the offence. It is submitted that this provision of the CPC patently defies logic. It is further contended that the provision is only capable of unnecessarily delaying the speedy completion of criminal trials, for there is no justifiable reason why an accused person in such a situation should not be convicted on his own admission.

Conclusion

This article has examined whether or not trial within a reasonable time under Nigerian justice system is a legal myth or reality. It is sad to discover that even in the wake of legal requirements for speedy trial, delay still holds sway. Trial within a reasonable time in Nigeria is, therefore, a legal myth. It has been found that:

1. Both the prosecution and the defence are partly responsible for delay in trials. Most IPOs are lazy. Again, there is indiscriminate transfer of IPOs and prosecutors. Added to this is delay in the issuance of legal advice from the office of the DPP which is

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139 Ibid.
140 CPC, s 157 (3).
141 (1967) NNLR 19.
142 Now Area Court.

often used to ask for endless adjournments. Most lawyers are not diligent in handling their clients' cases, while the grant of numerous adjournments by the courts stalls trial.

2 The government is equally culpable of delay in justice delivery. The frequent transfer of Judges and Magistrates leads to delay. Majority of members of the judiciary are not trained in Information and Communication Technology. Again, the judiciary is grossly underfunded and as such there is a serious dearth of infrastructural facilities. The election petition tribunals do not have separate court rooms but rather usurp the insufficient High Court rooms. The election tribunals do not also have permanent staff. It is the High Court and Magistrates' Court staff that work in the tribunals as ad hoc staff. More so, it is serving High Court judges that are appointed to man election tribunals**.** The prison authorities lack operational vehicles to convey accused persons to court while many states of the federation have not, up till now, deemed it fit to domesticate the ACJA.

From the above findings, the following recommendations are hereby made:

1. Serious efforts be made to have lawyers as prosecutors in both Magistrates and High courts. For the time being, the police authorities should avoid indiscriminate transfer of IPOs and prosecutors. They should be allowed to work in a particular division and court for a minimum period of five (5) years before being transferred. Equally, the police authorities should always ensure that prosecution witnesses are timeously brought to court to testify. The office of the Director of Public Prosecution should always ensure prompt release of legal advice to engender timely prosecution of accused persons. To achieve this, States of the federation yet to domesticate the ACJA should do so post-haste so as to benefit from section 376(2) of the ACJA which mandates the Attorney General of the Federation to issue and serve legal advice within 14 days upon the receipt of the case file. In addition to such benefit conferred by ACJA, the said section 376(2) of the ACJA should be amended to provide for

sanction in the event that the Attorney General of the Federation fails to issue legal advice within 14 days. It is suggested that in such a situation, the charge should be struck out for want of diligent prosecution and the accused person discharged. Counsel in the office of the Director of Public Prosecution should take their job seriously by diligently prosecuting cases assigned to them. The practice of holding charge should be completely discarded as same is inimical to the speedy dispensation of justice and also unconstitutional.

2 The plaintiff should always ensure that he regularly attends court to prosecute his matter. Interlocutory applications should be taken along with the substantive matter upon conclusion of hearing by the trial court so that the unsuccessful party can, at once, appeal against both the judgment in the substantive matter as well as the ruling of the court on the interlocutory application. Judges should take case flow management seriously so as to bring about timely completion of cases.

3 Lawyers should always exhibit diligence in the handling of their clients' cases as enjoined by Rule 14 of the Rules of Professional Conduct for Legal Practitioners.[143]

4 Courts should sparingly grant applications for adjournment.

The frequent transfer of Judges and Magistrates should be avoided. A Judge or Magistrate should be allowed to man a court for at least five (5) years before transferring him. Magistrates and judges should only intervene in cases where necessary and in the interest of justice. This entails avoiding unnecessary arguments with counsel in the course of trial. There should be training and re-training of members of the judiciary especially in Information and Communication Technology and as a corollary, government or administrative bodies of the judiciary should intensify the computerisation of all courts for efficient and speedy dispensation of justice. Government should take the bull by the horn to ensure that the welfare of the judiciary is taken seriously by releasing sufficient funds to cater for her needs. In the light of this, the executive arm of

[143] 2007.

government should religiously comply with the relevant constitutional provision which states that 'Any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the state shall be paid directly to the heads of the courts concerned.'[144]Separate court rooms should be built for the election tribunals. Permanent staff should be employed to work in the tribunals. Crucially too, retired High Court judges should be appointed as judges of the tribunals.

[144] (n, 5), s 121(3).