

OBSTACLES TO EFFECTIVE PROSECUTION OF CORRUPT PRACTICES AND FINANCIAL CRIME CASES IN NIGERIA

BEING A PAPER PRESENTED

BY

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PROTOCOL:

1. INTRODUCTION

I thank you, distinguished members, for the privilege of addressing this summit. It is indeed a great opportunity to be in your midst and to speak on the topic assigned. It is becoming very distressful to speak on issues of corruption and financial crimes. This is because for those of us who enforce the law, we are continually frustrated in several fronts, sometimes even from quarters that you expect the maximum support and cooperation. Nevertheless, we have never proceeded on the assumption that fighting crimes of these nature will be easy. Neither do we expect those involved in them to give up easily, particularly when they had operated unhindered in the past.

The assurance I can give the nation is that for we in the Economic and Financial Crimes Commission (EFCC), we approach our duties with the highest sense of responsibility and patriotism, determined to confront the perpetrators of these crimes headlong and to fish them out wherever they maybe, bring them to justice and confiscate all their ill-gotten wealth. We know the harm their crimes cause us as a nation and as a people. The Economic and Financial Crimes Commission (EFCC) therefore continue to pursue them and frustrate them from their illegal activities. The frustrations on our part fire us to

work even harder, rather than give up. No patriot gives up on corrupt criminals.

2. THE STATE OF CORRUPTION AND OTHER ECONOMIC CRIMES IN NIGERIA

It would appear that we are all agreed that corruption and other economic crimes are the bane of our development efforts. Corruption bestrides our lives. We do not need Transparency International to tell us so. Their judgment wrongly or rightly is a reflection of what we have given to the world – 419, money laundering, inflated contracts, scam mails, illegal oil bunkering, disappearance of ships, etc. All these crimes harm our economy in no small measure. Why have they continued unabated inspite of the present Government's laudable steps to address them? It is because many are those who want the old dispensation to continue. There are those whose lives thrive on corruption. There are yet others who even though are paid to check the activities of these ones are ever willing to share in the proceeds with the event that they themselves become culprits. In those circumstances corruption is made to look like a difficult monster to fight when it is not.

The Panacea to corruption is to reject it in its totality. Those who are saddled with the responsibility of fighting crimes will do well to reject to be compromised. If they do, corruption becomes a little monster to be crushed with ease. That is the success story so far at the Economic and Financial Crimes Commission (EFCC) which we hope to build upon in the coming years.

3. OBSTACLES TO EFFECT PROSECUTION OF CORRUPTION AND FINANCIAL CRIMES CASES IN NIGERIA

Prosecution is simply the process of trying to prove in a court of competent jurisdiction that somebody is guilty of a crime for which he/she has been duly charged. The success or otherwise of prosecution will depend on several factors amongst which are

- a. Cooperation from person/institutions who should furnish relevant information;
- b. The quality of evidence gathered at the investigation stage;
- c. The transparency of investigation of the case itself;
- d. The prosecutorial competences of the prosecuting counsel;
- e. The transparency and fairness of the presiding judge in the trial; and,
- f. Lacunas or gaps in the law guiding law guiding prosecution.

We shall proceed to take these one after the other.

4. COOPERATION FROM THOSE WHO SHOULD FURNISH RELEVANT INFORMATION

Corruption and financial crimes are non-violent and committed in most cases by those who, are in the first place, entrusted with the responsibility of taking care of funds or their collaborators. It being so, those who should have first hand information in these matters are those who are usually investigated. Under those circumstances, either the information/evidence is destroyed or watered down in such a manner that it will not be useful to law enforcement Agencies. It is often the case that whole files containing incriminating materials disappear or relevant parts of them.

The first obstacle therefore to successfully prosecute is to be able to obtain the cooperation from those persons who should provide the relevant evidence that will enable successful prosecution.

5. TRANSPARENCY OF INVESTIGATION

Even where the source(s) are available and ready to cooperate, is the investigator competent enough to handle the case assigned to him? Corruption and economic crimes cases are usually very complex and complicated. Some involve document or subjects that are very technical requiring a well-schooled investigator to unravel. As a corollary, is he honest and patriotic enough not to be compromised? This is because an otherwise competent investigator can sell his competence in order to weaken the evidence that will be eventually presented in court. If that happens, the case has failed even before it starts. It is not uncommon to find prosecutors filing charges that have no bearing whatsoever with the proofs of evidence. A judge in that case will not have any difficulty in striking out the charges against the accused.

6. COMPETENCE OF COUNSEL

Next is the quality of prosecuting counsel. An otherwise good case can be destroyed by the incompetence of a prosecuting counsel, who either is professionally incompetent or again, has compromised himself in order to defeat the trial. Criminal trials entail diligence quick wittedness and industry on the part of prosecuting counsel. The defense has a thousand tricks to frustrate the trail or to weaken the evidence presented to make it look manifestly unsupportable. A prosecuting counsel must know the law and the criminal procedure to be able to effectively counter those antics of defense counsel. He must not fall into their snare. He must call only relevant witnesses and lead evidence only on facts that are relevant to the prosecution. A prosecuting counsel who is devoid of these qualities has himself become an obstacle to the successful prosecution of his case. There is need therefore to properly remunerate and provide adequate resources for the continuing legal education of prosecuting counsel. They should also be availed the tools to do their work effectively. Their libraries must be stocked at all times with relevant research books, law reports and journals. This becomes even more important when you realize that prosecuting counsel in many

of these cases is confronting a defence team comprising several Senior Advocates who are well remunerated by the accused.

On the other hand, I continue to urge defense lawyers to appreciate the fact that their responsibility is to do justice and not to free criminals even when it is apparent that they are guilty. Crime dislocates the social fabric of our society and they share in the responsibility for the restoration of that disequilibrium. It does not matter that the culprit is a client. We all have a responsibility to fight crime, particularly corruption which affect our lives and those of generations unborn. The frustration of trials through incessant interlocutory appeals on the minutest issue which could conveniently be taken holistically on appeal remains a major obstacle to criminal prosecution. It is gratifying that the EFCC Act has addressed this problem by barring interlocutory appeals.

7. THE TRIAL JUDGE

The judge who holds the balance between the prosecution, defence and the accused really holds the ace to the success or otherwise of the prosecution. It is to him that the evidence is adduced. It is him who decides which of the arguments are more persuasive and whether the prosecution has discharged the burden of proof as prescribed by law.

The greatest tragedy to any prosecution is when a judge has even before taking and analyzing evidence has made up his mind that the accused is not guilty as charged. This sometimes occurs when the judge has compromised the case. In some cases, the judge may be ignorant of the law or he may deliberately misdirect himself on the facts and the law.

Corruption and financial crimes most often involve huge sums of money. Those who are beneficiaries of the crimes, are willing to share a little percentage of the proceeds with the judges. Once the judge takes the bait, the case fails abinitio. No

evidence presented will sway him to the side of the prosecution. The evidential burden of proof beyond reasonable doubt is stretched to read "proof beyond every shadow of doubt" contrary to the long line of decided cases by the apex court, the Supreme Court.

8. LACUNAS IN THE LAW

It is important to state here that the fundamental rights of citizens guaranteed by the Constitution are meant to protect those citizens who themselves are law abiding and have not infringed the provisions of the Constitution itself. It is indeed inequitable to violate the fundamental law and turn around to seek its protection of your own right without simultaneously atoning for your wrongs.

On the other hand, there are some provisions of the Constitution which seem to have over protected the accused against the state. Section 35(2) gives a right to any person arrested or detained to remain silent or avoid answering any question until after consultation with his/her lawyers. Section 36(11) also provides that any person tried for a criminal offence shall not be compelled to give evidence at the trial. When these rights are claimed, they, many a times, lead to over protection of the accused person while restricting the means of protecting the rest of the society in the sense of making it difficult to prove a case against them.

Again, it is almost impracticable to conclude investigations and charge arrested persons to court for economic and financial crimes committed often times in an organized manner straddling through several countries and financial institutions. No investigation can be thorough or any incriminating evidence to sustain a charge can be obtained within such a short time.

9. INADEQUACY OF EXISTING PROCEDURAL AND EVIDENCE LAWS

On the heels of the forgoing problems is the inadequacy of existing procedural and evidence laws for the prosecution of

offenders. Quite a number of economic and financial crimes these days are carried out through the use of computers, word processors, telex machines, fax machines, etc. The problem that has arisen from the use of the above stated gadgets is the evidential value and admissibility of the materials generated by them vis-à-vis the law of evidence and proof of the guilt of a culprit of economic or financial crime. The evidential status and admissibility of computer and other electronically generated statements of account or printout, e-mails, telegraphic transfers, telefaxes, etc, have been issues of controversy in the courts, law institutions, workshops, bar conferences and seminars.

As Professor Yemi Osibanjo (SAN) observed:

“One of the specific problems that have arisen from the use of electronic financial transactions is the manner and procedure for proving the forms of evidence generated by these means or simply proof of such transactions themselves”.¹

Our procedural laws particularly the Evidence Act that were enacted in the light of an agrarian and pedestrian society have become grossly inadequate to cover the present advancement in technology with the concomitant sophistication employed in the commission of economic and financial crimes.

The issue as to whether “entries in Books of account” as contemplated by Section 38² of the Evidence Act included computer generated statements or print-out came up in YESUFU V ACB (1976) 4 S.C 1. The Supreme Court only expressed by way of obiter dictum a willingness to interpret the section more liberally in view of contemporary business practice and methods when it noted inter alia:

“The law cannot be and is not ignorant of modern business methods and must not shut its eyes to the

¹ Law and Practices of Evidence in Nigeria – Afe Babalola (SAN) page 243.

² Previously Section 37 of the Evidence Act.

mysteries of computer. In modern times reproductions or inscriptions or ledgers or other documents by mechanical process are common place and Section 37 cannot therefore only apply to "books of account so bound and the pages not easily replaced".

In the absence of any positive judicial interpretation of this section, or amendment of some relevant sections of the Evidence Act relevant to the admissibility of electronically generated evidence, the well intended provisions of the EFCC Act, 2004 and the Money Laundering Act, 2004 vis – a – vis detection, investigation and proof of organized internet crimes may continue to be a mirage. This is why the concept of "*e-evidence, e-courts and e-judiciary*" is considered a far cry in Nigeria.

This is another challenge for our law makers and it is hoped that this problem will be addressed in this forum.

10. CONGESTION AND SLOW PACE OF COURT PROCEEDINGS

The congestion of cases in our courts and slow pace of court proceedings occasioned by insufficient number of courts/judges and the manual recording system take their share of blame in the problems associated with the enforcement of our laws particularly the prosecution of economic and financial crimes. This has hampered speedy and timely prosecution of cases.

We are yet to experience speed in the administration of justice in this country. Cases take too long to determine. Even when the law stipulates a time within which to conclude trials, that time is usually not adhered to due to the work load of the courts. On account of this, citizens are frustrated and the attainment of justice becomes a mirage.

Heartily enough, the Economic and Financial Crimes Commission Act of 2004, S. 19(2) (b) and (c) has enjoined the

courts to treat the matters brought before it by the Commission expeditiously. The Chief Judges of the Federal and State High Courts (including the High Court of the Federal Capital Territory) are also enjoined to designate courts and judges to hear matters emanating from the Commission. It is hoped that this will improve the situation for the better.

11. JURISDICTION PROBLEMS

Digital revolution has dissolved physical boundaries of countries around the world, making those with inadequate cyber crimes or internet related offences laws like Nigeria to be vulnerable for the commission of such crimes. Thus, legal experts always disagree on matters relating to the territorial jurisdiction for the trial of the aforesaid offences, a situation that makes the investigation and prosecution of cyber crime offences extremely difficult. I am aware that a Cyber Crime Bill is presently receiving attention of the Attorney General of the Federation. When eventually passed into law by the National Assembly, the situation will be hopefully addressed.

12. COST OF INVESTIGATION AND PROSECUTION

Investigation and prosecution of economic and financial crimes is indeed costly. This is informed by the nature and character of these crimes many of which are perpetrated by ingenious methods which are ever changing. Again, because of the delays associated with trials, prosecution expenses are ever increasing. Presently, it cost about five to ten million naira to prosecute a high profile case. We have over 100 cases in court and over 300 cases at various stages of investigation. Fortunately, President Olusegun Obasanjo has demonstrated strong political will to fight corruption and other economic and financial crimes in Nigeria and has given the Commission reasonable resources to fight these crimes.

13. EFCC: MANAGING ENFORCEMENT CHALLENGES

From the foregoing, the Commission has a lot of bottlenecks as regards investigation and prosecution of cases. However, despite all the odds, it has not been overwhelmed by these

limitations. With the support of the Judiciary, designated judges have been assigned in some Judicial Divisions to handle cases investigated by the Commission. This has brought some speed to the trial process. The Commission has also assigned special investigation teams to handle Bank Frauds, 419, stock exchange frauds, money laundering, etc. This has brought specialization to the investigation process.

14. CONCLUSION

I make bold to say that the Commission is determined to fight the menace of corruption, economic and financial crimes. We are not daunted by the problems some of which are monstrous.

In addition to my earlier exhortations I wish to state as follows:

- There is need to amend the Evidence Act, the Criminal Procedure Act and Criminal Procedure Code to accommodate the technological advancement and challenges of our contemporary times.
- Members of the National Assembly must be proactive in amending the laws mentioned above in order to rid our beloved country of economic and financial crimes.
- The 1999 Constitution needs to be amended to remove those constraints in the enforcement of economic and financial crimes. It must balance the right of the citizens against those of the state and victims

Honourable members, you are the hope of our democracy. Corruption is the antithesis of democracy. I urge you to stand up against it. Law makers in several countries have been in the vanguard of positive change of their societies. The Nigerian law makers should not be an exception. I challenge all of us to take the lead in changing our country. History will be harsh on us if we fail.

Thank you for listening.

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