Journal of Law, Policy and Globalization
ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online)
Vol.26, 2014

Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint

Dr. AGBONIKA John, Alewo Musa
Associate Professor, Faculty of Law,
Kogi State University, Anyigba, Nigeria.

Abstract
Delay in the dispensation of justice *perse* is perceived as inimical to the attainment of substantial justice. But the seemingly balance between delayed justice and hurried justice remains the cornerstone of any civilized legal system. The article therefore examined in *extensio* delay in the administration of criminal justice in Nigeria, taking into cognizance both its judicial and extra- judicial causes. Resort to secondary data emanating from books, case laws, articles in learned journals, conference papers, published legal and relevant internet materials have been utilized. The article equally sought to seek a balance between hurried justice and delayed justice in the face of the peculiarity of the Nigeria justice system. Whilst striking a moderate balance that would ultimately minimize delay in the annals of criminal justice in Nigeria. The article proffered necessary suggestions in the form of the utilization of information and communication technology, abolition of the holding charge syndrome and the provision of a witness protection programme, in line with what obtains in more advance countries as a vehicle to transform justice administration in Nigeria.
Keywords: Delay, Criminal Justice, Hurried Justice, Machinery, Balance, Buried Justice.

1. Introduction

On March 16th 2006, the then Nigerian president, Olusegun Obasanjo inaugurated a presidential commission on the reform of the Administration of Justice headed by Justice Akintole Ejiwunmi, amongst others, the commission proposed the following bills: the community service bill, the administration of justice bill, the victims of crime remedies bill, the prison act amendment bill and the national human rights commission amendment bill. The bills never saw the light of day.

Despite, many presidential commissions and committees recommending reforms, the recommendations have not been implemented. Instead, the government has set up new committees and commissions to study review and harmonize the previous recommendations.

It is against this backdrop that we assert that delay in the quick dispensation of criminal justice, arguably remains the most perturbing aspect of criminal justice administration. Faultless criminal rules are destined to become redundant unless adequate safeguards exist for substantial minimization of delays in the criminal justice system (Osipitan, Y.,1992:490). We shall therefore explore the causes cum types of delay and proffer solutions therein.

2. Conceptual Clarification

Delay is defined as a period of time when somebody/something has to await because of a problem that makes something slow or late or a situation in which something does not happen when it should: the act of delaying (Hornby,A.,2001:307). In *Justice Akpor & Ors v Ighorigo***,** 2SC,115 (1972), the Supreme Court set aside the judgement because there was a delay of two years and nine months between conclusion of trial and judgement. In *Ekiri v Kemiside & Ors***,** NWLR145 (1976) the Supreme Court set aside a judgement which was about 16 months late. In *Joseph Ozoma & Ors v M. Osanwuta UHC/30/679(1969)*, the judgement was given 17 years after the institution of the case. The Supreme Court ordered a retrial. In *Agiende Ayambi v The State*,6NCLR141 (1985) Olatawura, held that a criminal trial which lasted for over two years could not be said to have been conducted within a reasonable time.

3. Machinery of Criminal Justice

The machinery for criminal justice administration consists principally of rules of Criminal Law, Criminal Procedure and the law of evidence. Whilst criminal law lays down the basic rights and corresponding obligation within the society, criminal procedure and evidence seek to provide machinery for the enforcement of rights and duties as laid down by various rules of criminal law.

In spite of the various machineries for criminal justice administration, the problems of delays have rendered the quick dispensation of criminal justice more of a myth than a reality. Experience has revealed that delay is often encountered in the dispensation of criminal justice. Indeed, the trend of delay in the system runs through pre-trial, trial and post trial stages of the criminal justice system.

A preliminary point which must be borne in mind is the fact that some kind of delay is inevitable in the criminal justice system. Consequently, the distinction between avoidable and unavoidable delays must be borne in mind. Thus, while the Criminal Justice System disapproves unnecessary delays, it condones delays which are necessary and desirable. Against this backdrop, it has been held that even where the grant of request for adjournment will result in delayed trial, such request should at least in the interest of fair trial be granted. Mbanefo JSC (as he then was) admirably expressed this view thus it is necessary in dealing with matters of this kind to bear in mind the justifiable anxiety of the Magistrate to see that the cases are disposed of with minimum delay. It is in the

accuser's interest that this should be so. After six months and several adjournments, one can understand the Magistrate's desire to dispose of the case. But this should not be done at the expense of giving the accused person adequate opportunity of defending himself.

What emerges from the careful analysis of the views reflected above is that while justice must not be delayed, there is hardly any virtue in hurried justice. Accordingly, the Criminal Justice System must seek to strike an equilibrium between delayed and hurried justice (Osipitan,1992:491).

The unfortunate menace of delay in dispensation of justice in Nigeria has been decried and condemned by many commentators at different fora. A few of such instances are worthy of mention. Justice Niki Tobi had observed that one perennial problem in the administration of justice in any legal system is the question of delay. There is so much delay in the administration of justice in Nigeria that one wonders whether the parties get value justice at the end. A situation for instance where litigation at times takes some six years or more to be completed in the High Court is not good enough. Cases of delay must be addressed if the rule of law is to have any meaning (Tobi, N, 1995:135).

In a related development, former president of Nigeria, Olusegun Obasanjo decried the ugly trend of delay in our justice delivery system, when he remarked that my lords, the inexcusable delay in our justice delivery system is a great concern to me and it must be to your lordships. "Concern" is perhaps euphemistic description, can find for a most scandalously embarrassing situation where a simple case of breach of contract will endure for five or more years in the court of first instance, and, last for 15 years before the final determination in our Apex Court. The position is even worse and more pathetic in criminal cases, particularly when the accused person who enjoys the constitutional presumption of innocence until proved otherwise and who stands the chance of an acquittal in the end is in the meantime, kept in custody (Obasanjo,0.,2005:87).

A point which must also be borne in mind is that the bulk of the delays in the quick disposal of criminal cases are experienced at the Magistrate Court. It is trite that both the Supreme Court and the Court of Appeal are basically courts of appellate jurisdictions. They therefore lack original criminal jurisdiction. Majority of cases are dealt with at the Magistrate Courts level, by these Magistrate Courts in exercise of their summary jurisdiction.

We shall in this segment treat in some detail the exact causes of delay in the administration of criminal justice:

4. The Problem of Case flow Management

The overall objective of the court is a just and timely determination of every case that comes before the court. The court's process should be open, efficient, understandable and accessible. Case flow management processes are intended to contribute to the achievement of these objectives and in the process, to make a better day for those who work within the system and for the public they serve (Alabi,A,A,2004;57).

Each judge is expected to manage the cases filed before him of set to him in order to avoid congestion in his court. But when new cases come to him in rapid succession as does happen in some jurisdictions, congestion will build up and become unavoidable. However, even in such circumstances, one can easily discover a lazy judge from a hardworking judge. If a judge's output is low, the pending cases can build up which is not necessarily that many cases have been placed before him to handle. Some judges crawl in writing, others engage in unnecessary arguments with counsel during hearing, while still others cannot sit for long at a stretch.

All these and many more, bring their varied and variegated drawbacks to speedy criminal trials. For judges who prefer to have a call-over day, then, cases are fixed, sometimes with the judge's knowledge and sometimes without his knowledge. This is an area that will continue to create problems unless the judge can monitor the fixtures made by the Registrar. This is because some registrars can hardly turn down applications of lawyers who will prefer a particular date, which invariably will not be suitable for the court. Consequently, and with no intention to hamper the work of the court, more matters that cannot be dealt with in a day are fixed for that day (Olatawura, O, 1993:138).

Some of the problems bordering on case flow are caused by the judge, albeit, oftentimes unwittingly. For instance, 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 unforeseen impediment occurs, such as illness of counsel or inability to serve subpoenas; the result is that such a day is wasted. Some judges, due to pressure from counsel, neglect to endeavoaur to hear cases in accordance with their priority in time of filing; the result is that before they know it, cases that were filed about ten years ago are left pending. Eventually, the potential witnesses in the case become disenchanted and eventually stop attending the case, thus frustrating the justiceable decision that their evidence could have helped the court to achieve in the case.

At some other instances, judges, in their bid to pave way for witnesses who are elderly or who come from outside the jurisdiction of the court to testify, in order to avoid losing their testimony, many inadvertently fix many of such cases on a particular day. The unfortunate result is that on such a date, he would find out that by the time he has treated just one case, the better part of the day is gone. This eventually accounts for reasons why some courts have too many part-heard matters whilst other judges, pile-up judgements, which will expire within days of each other. And where for any inextricable reasons, they are unable to write such judgements on

schedule they soon find themselves being caught in the web of contravention of Section 294 (Constitution of the Federal Republic of Nigeria as Amended, 2011).

5. Delay Caused by Inadequate Courtrooms and Infrastructures Facilities and Poor working Conditions

The trials of accused persons, who are remanded in prison custody, are often adjourned due to either the lateness in the arrival or the non-arrival of such accused in court or dates fixed for trial. The lack of readily available vehicles with which to convey accused persons to court during trials account for such lateness or non-arrival of such accused persons in court.

There is also the problem of inadequacy of infrastructural facilities. The court especially at the Magistrate level lacks adequate library facilities with which to promptly discharge their judicial finding. Consequently, cases suffer long adjournments during trials; where there is need to write well considered rulings.

Some states lack adequate courtrooms, the facilities of such courtrooms are shared by more than one judicial officer. Some Magistrates may therefore find themselves sitting for only two hours, out of the expected six hours sitting period in a day. Suffice it to say that criminal cases suffer adjournment as a result of inadequacy of courtrooms facilities. The chairman of the Ondo state Branch of the Nigerian Bar Association hence attested to this aspect of delay thus a situation whereby some judges sit for a few hours in the morning only to give way for other judges in the afternoon does not augur well for quick dispensation of justice. It resulted in unnecessary adjournments of cases, which would have been disposed off in a matter of days

Closely interlinked with inadequate courtroom facilities, is the problem of failure to allocate judges and magistrates with staff quarters. Some of these judicial officers frequently, are not promptly allocated official staff quarters; the desire not to live in “rural areas” has prompted some of these judicial officers to abandon the official residence allocated to them. Such judicial officers therefore spend precious time in shuttling between their personal residence and their rural duty post. Surely, an arrangement whereby a judicial officer travels a distance of 200 kilometers daily can hardly ensure an efficient and maximum utilization of human resources.

Some states experience shortages of judicial personnel. Consequently, some magistrates sit in more than a court daily. Invariably such Magistrates shuttle from one court to the other resulting in the frequent adjournments of most cases on the cause lists.

A criminal day in the Magistrate Court reveals that they attend to variety of issues. Firstly, they attend to “overnight cases”, during which arrangements are proffered in support of and in opposition to the granting of bail to arraigned suspects. Quite a reasonable percentage of the sitting period is used in attending to “overnight cases”. Consequently, most cases apart from those which are partly-heard suffer adjournments.

Closely linked with inadequacy of infrastructural facilities is the negative attitude of some judicial officers to their judicial responsibilities. Principally, as a result of poor conditions of service, the judiciary has not been able to attract the good materials among those legal practitioners in private legal practice. To those private legal practitioners, the salaries and allowances of judicial officers are inadequate to ensure decent standard of living. Such private practitioners therefore shun judicial appointments either at the Magistrate or High Court levels.

Invariably, some lazy, incompetent and corrupt members of the profession get appointed to the bench. In some cases, some state counsels perceive judicial appointments as elevation within the civil service structure. Little wonder that the attitudes of some judicial officers to their responsibilities leave much to be desired. In some courts, the Magistrate would fail to commence court sitting until 11.00am; when sitting should have commenced at 9.00am. These same courts will rise by 1.00pm as against the official time of 3.00pm.

The organs of administration of criminal justice in Nigeria, notably the police, judiciary, prison, and other law enforcement agencies like the National Agency for Food, Drug, Administration and Control (NAFDAC) and National Drug Law Enforcement Agency (NDLEA), are replete with cases of inadequate infrastructural facilities and poor working conditions that impede the smooth administration of criminal justice. As regards the police, one serious problem in many police formations is lack of money to provide the necessary equipment to enhance police effectiveness. It is a regular defense, by the police to attribute their ineptitude to this particular factor. This manifests itself in lack of vehicles, lack of firearms and other gadgets (Alubo & Lar, 2008:281).

As regards the judiciary, Justice Sotuminu, a former Chief Justice of Lagos State once lamented that inadequate funding for provision of infrastructure is a recurring factor that keeps Chief Judicial officers continually pleading for funds from the executive. He posited a rhetorical question thus: Can a judiciary grabbling with poor working environment dispense justice effectively and expeditiously? We make bold to answer: not better than a poorly equipped dentist would extricate a worrisome tooth an improvised implement, a pair of pliers. Poor funding is at the root of the decay in the judiciary’s infrastructure and the slow pace at which the administration of justice grinds (Dakyen, 2006:350).

Adeloye, painted the deployable picture more lucidly when he uttered that “In State Judicial Divisions, any shelter goes for a High Court Local Government Council Halls, Old Community Assembly Halls” (Adeloye, S.F.,1994:88).

The poor conditions of service of Judges is depicted in the fact that: judges are quartered in hired houses and where no suitable accommodation can be secured, they commute between the court and their residential quarters,

usually in the state headquarters and at some distance of over one hundred kilometers. Transportation, whether for Judges or for departmental use is grouped under capital projects in the state budget (Adeloye, S., 1994:89).

In most States in Nigeria, provision of infrastructure has remained a mirage especially for the lower courts. Even the High Courts cannot be said to have fared better. Instances abound where, stormy winds had blown off parts of the roof, of the High Court buildings in some parts of the country, even when such matters are reported, no repairs of such are carried out.

The lower court, fare worst in this orgy of neglect as apparently some buildings built by the colonialists in about 1950s are still in use, with no renovations and construction of new ones. Make-shift compact rooms are still been used as offices today in some parts of Nigeria

Inadequate court facilities and modern working tools has become the lot of the Judiciary in Nigeria and Law Enforcement Agencies. In days of yore, it was understandable and tolerable to sit in a courtroom with very poor facilities. With the advancement made in science and technology, there is hardly any good reason for not making the courts more comfortable. The old and archaic equipments used in most courts have the affect of slowing down the work of the court. They contribute in no small way to the congestion of cases in court. They cause delay and incidentally delay leads to a denial of justice (Akanbi, M.M, 1996:51).

5.1 Delay by Legal Practitioners

Legal practitioners also cause delay in the administration of criminal justice. One major cause of delay on their part is lack of industry. Though it is a fact that most counsel have professional expertise, the problem is that some counsels do not sufficiently involve themselves in pre-trial preparations, and so, can hardly keep up with the tempo in court. Some defense 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. Some defense counsels who are paid on the basis of the number of court appearances, consciously delay criminal trials with a view to beefing up their fees. Aside the delay, due to non-payment of professional fees, the structural organization of the legal profession further contributes towards the delay of criminal trials. Most law firms are basically, sole practice in outlook. Private legal practitioners with sole practices, personally handle most of their cases. They either refuse to employ junior counsel or where they employ such juniors, they fail to entrust these juniors with the cases. Such legal practitioners frequently experience conflict of dates in different courts.

Where the conflict in the cases arise within the same Magistraterial or judicial division, such private legal practitioners subsequently ask for some of their cases to be stood down to enable them attend to other cases. Such requests are either granted or refused. It is significant that the practice of requesting for stand down or adjournment constitutes a major contributory factor in the delay of criminal trials. The practice thrives despite the appeal that if he (counsel) was unable for any good reason to attend court, his duty everybody knows was to see that some other members of the Bar held his brief and was in a position to represent the accused person.

One objectionable aspect of the above view is that a Counsel, who has either not been paid at all or fully paid his professional fees, can hardly be expected to arrange with another Counsel to hold his brief. This is in view of the fact, that a Counsel who is requested to hold a brief expects some forms of remuneration for his services.

In *Ndu v. The State 7 NWLR PT.164 (1990)*, the case was bedeviled with several adjournments and at the instance of defense 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 accused then appealed on the ground that he was not granted fair hearing. True to type, Honourable Justice Obaseki did not hesitate to show his displeasure at the lackadaisical attitude of the defense counsel when he said in his judgement that the attitude of the defense Counsel from the time the prosecutor closed his case has been one showing an unwillingness to proceed with the defense. The frequency of applications for adjournment was sickening and unbecoming of Counsel instructed to conduct the defense of an accused person charged with murder.

The learned Justice further stated that murder is a capital offence once a trial of an accused person has opened, any defense counsel in the proceedings 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.

Indeed, the attitude of the learned counsel is despicable and ought to be condemned in no uncertain terms. Lawyers are ministers in the temple of justice and must discharge their duties with utmost sense of responsibility. It is appreciated that adjournments are needful sometimes to ensure adequate preparation of cases but this must not be abused or be allowed to cause unnecessary delay.

5.2 Delay caused by the Judge

Some of the judicial personnel clearly show indifference and lack of commitment in the performance of their duties. Some judicial personnel sit late and rise early. Worst still some judicial personnel, particularly of the Magistrate cadre go to court only three times in a week (Imo,S,N.2007:323).

Another cause of delay on the part of the judge arises from lack of industry or inadequate legal knowledge. It is pertinent that other times, counsel may raise elementary part of law, which necessitates a ruling. But because the judge is not equally knowledgeable, he adjourns the matter for a ruling, instead of giving a bench-ruling. Related to this is the taking of long adjournments for a simple ruling which does not involve any complicated analysis of

the law. On some occasions, judges adjourn cases because a particular ruling or judgement is not ready. Some even adjourn cases arbitrarily to go and pick children from school.

5.3 Delay caused by Supporting Staff of Courts

Supporting staff represent an important arm of courts and they play very important roles in the administration of criminal justice. They perform the basic work that cramps the work of the court. Delay could arise from the attitude to work on the part of the supporting staff. This could be as a result of sheer laziness and nonchalant attitude towards work. For instance, some cases may be omitted in the cause list. Case files are misplaced sometimes. It has been found over the years that the delay in filing and completing the cases fixed for hearing are traceable to the bailiffs and some members of the staff of the registry. Affidavits of service are often omitted or misplaced in the case file. Oral testimonies of witnesses are not interpreted properly. Thus, where the judge does not speak nor understand the local language of a witness, he takes a long time to ensure that he is not misled by any misinterpretation of the court staff so as not to commit a miscarriage of justice. Some staff resumes work late and close from work earlier than the official time. These and other avoidable misdemeanors committed by the supporting staff also greatly hamper the smooth administration of criminal justice.

5.4 Delay caused by Prosecuting Counsel/Officer of the Director of Public Prosecution

In criminal justice process, it is the state that prosecutes on behalf of the complainant. Thus, whether a case would be disposed of timorously depends largely on the efforts of prosecuting counsel. Furthermore, under the Nigerian Criminal Justice System, an accused person is presumed innocent until proven guilty. Consequently, the burden of proving his guilt rests on the prosecutor and not the accused to prove his innocence. The police, after conclusion of investigation of a case, send the case file to the Director of Public Prosecution's office for advice. This is not usually because such case files sent are not usually treated with dispatch. When eventually the trial is commenced, the case may suffer incessant adjournments which prolong the case unduly, simply because sometimes, the Counsels are not ready with their evidence or that they lack required infrastructure or fund to prosecute the case (Craig,E.B,1988:11). Thus, the need for more manpower and modern gadgets to enable them prosecutes their cases diligently in court without undue delay.

6. Investigation and Detection of Crime

Substantial delays occur at the stage of investigation of crimes. A section of the police known as the Criminal Investigation Department (C.I.D) is usually in charge of investigation and detection of all crimes in Nigeria. Where investigation has been properly conducted, it contributes in no small measure to effective administration of criminal justice. The judiciary, one of the organs in criminal justice administration, can hardly function without the co-operation of efficient police officers. But often times, proper investigation of cases is hampered by a number of factors like:

(i) Paucity and Frequent Transfer of Officers

The Nigerian Police is a federal set up. This invariably means that all officers in the force are subject to transfer to any part of the federation at anytime.

Most times, especially in rural and semi urban areas, police officers serving in police stations or divisions are very few, and are transferred without any regard to the assignments which they have at hand. Invariably, they might be at different stages of investigations. If they had gone far with investigations the cases might be handed over to another officer, but if the investigations are already completed, this would mean that the officer would have to return to the particular court at his former serving post to which the case was charged for trial, to testify whenever he was required to do so. However, most of the time, it turns out that the prosecuting police officer would inform the court that he had sent Hearing Notice to the Investigation Police Officer (I.P.O) but was yet to get any reply, while at some other time, the IPO himself might send a reply to such hearing notice to the effect either that he was already billed to appear before another court of co-ordinate or higher jurisdiction or that he would not be available to give evidence because of other urgent matters assigned to him in his new station. These excuses whether genuine or not have always caused delay in the trial.

(ii) Sponsorship of Investigations

Police officers have always complained that expenses incurred during investigations such as traveling and night allowances are not refunded to them. Consequently, police officers invariably fall back on informants to sponsor the conduct of investigations and assembling of witnesses for the hearing of criminal cases. Thus, where informants are not able to meet their demands, police officers are not always keen on traveling far out of their stations to investigate any new facts or to cross check the old ones or to remind witnesses to appear in court on the day of hearing. The result is that many cases get adjourned from time to time to enable the police carry out further investigations or to assemble witnesses resulting in undue delay.

7. Deficient Prosecution of Criminal Cases in Court and Delay in giving Legal Advice

Delays are often caused in court because most police prosecutors have no basic legal training for prosecuting even simple offences. Sometimes they call a number of irrelevant witnesses and leave out the important ones. In most cases, they are advised to consult the Director of Police Prosecutors (DPP) for assistance.

Where a case that has been charged to court involves serious offences that require the advice of the Director of Public Prosecutor (DPP) such as murder or rape, the relevant case file is usually duplicated and sent to the DPP, so that the police would be in a position to answer queries from the DPP, not necessarily queries on misconduct; but usually pertains to police giving clarification on certain ambiguous or insufficient aspects of investigations. Very often, prosecutors have complained that the police have not been able to ask for the DPP's advice because of lack of funds to duplicate the case files.

Amongst the rank and file and officers of the police force, the decision of the Supreme Court in *FRN V. Osahon ALL FWLR PT.312 (2006),* must have come as a relief as lawyers in the police force can now prosecute criminal cases even in the High Courts. As laudable as the decision may be, it is not in doubt that the incessant delays ordinarily experienced at the lower courts may likely extend to the High Courts because of the command structure of the force as is today in Nigeria.

It is not uncommon for prosecuting police officer to ask for adjournment of cases, on the pretext that they had sought for the advice of the DPP and were awaiting his reply. The snag is that there is no means of ascertaining the truth or otherwise of such statements and invariably, the judge would have no choice but to adjourn the case. In some cases, it has been discovered that the DPP would have advised the police to discontinue prosecution against the accused person. But for some inexplicable reasons, the prosecuting officers would withhold the information from the court, with the result that such cases would continue to feature on the cause list thus, adding to already existing problem of decongestion.

There is equally the problem of assembling witnesses. Ordinarily, there are two categories of witnesses to wit: Special witnesses and ordinary witnesses, Special witnesses include doctors, handwriting experts and forensic experts. Whilst ordinary witnesses are witnesses other than the special ones for instance, eyewitnesses of the subject matter of the charge or witnesses, such as bank clerks who are merely called to tender documents. There are often several cases in which some special witnesses are called upon to testify as experts. Some of these witnesses often pose problems to the courts. In the case of Doctors, for instance, some Medical officers who perform autopsies on deceased persons or who are in charge of psychiatric patients might have left the state at the time they were required to give evidence. Others might have resigned their appointments, or left the state for greener pastures elsewhere. Similarly, in the case of forensic experts, there is only one forensic laboratory in Nigeria (Ola, C.S., 2001; 208). It is situated at Oshodi in Lagos city, and it caters for the needs of all Government Departments and Securities Agencies. This means that a request from the police would have to take its turn. Prosecutors have often, used this excuse to ask for adjournment on many occasions.

On the part of ordinary witnesses, when they might had been to court on some occasions probably three four or five times without being attended to, they lose interest in the case especially where they had to come to court from a distant place at their own expenses. It is a known fact that the police are no longer given special grant to enable them pay or offset the transport expenses of witnesses. Thus, in many cases in which the informants are unable to pay for the transport expenses of would-be witnesses, and the witnesses themselves are either unable, or refuse to bear the transport expenses for their attendance to court, such cases remain in court for a long time until they are eventually struck out for want of diligent prosecution.

Most offices of the Director of Public Prosecution (DPP) in the states of Nigeria are understaffed with legal officers such that the few legal officers available are assigned so many cases to give legal advice on, that it turns out to adversely affect the desired speed with which they ought to give legal advice in normal situations and while the ensuring delay persists, it is the accused persons, who are most of the time remanded, in prison custody awaiting legal advice in this cases that suffer the worst blunt.

8. Delay Caused by the System of Admitting an Accused to Bail

The first stage of the criminal process as it directly affects the suspect is the act of taking him into physical custody. Bail could be defined as surety taken by a person duly authorized for the appearance of an accused person at a certain day, and place to answer and be justified by law. It is not unusual for some interval of time to escape between the time of arrest of the accused person and the determination of the case against him. The reason for this may be the congestion in the court or the length of time the trial may take. In order to ensure the availability of the accused in court as and when due, it may be necessary to keep him in police custody. Bail device should ordinarily make it possible therefore for an accused person to be granted a temporary release, from police custody while his trial is pending or going on. This method requires an accused person to give an undertaking by recognizance that in return of being granted such a temporary release, he will appear in court at any specified time, his attendance or appearance may be required. This undertaking is usually guaranteed by a third party usually called the surety.

Bail could be granted to a suspect on temporary basis where the opinion of the police is that the suspected accused person should in the circumstances not be given total freedom. A trial court can also do this except in cases of murder where bail can only be granted by a High Court (Bwala, B., 2005:5).

Although the issues of bail can be said to be legal but the issue of professional touts as professional bonds-men are increasingly becoming worrisome in the administration of criminal justice. Ordinarily, therefore an order for

bail is as follows: The accused person is granted bail or admitted to bail in the sum of ₦50,000.00 and one surety in the like sum. By this order, the accused person will enter into a bond to appear at each and every adjournment of the case, or in default, to forfeit the sum of ₦50,000.00 to the Government. The surety will enter into similar bond. This simple system of ensuring that an accused person appears in court and stands his trial has unfortunately given rise to a lot of problems.

In many cases, it has been found that because of the difficulty which an accused person encounters in getting in touch with his relatives to come and enter into a bond to secure his bail, some persons who could actually be termed as professional torts who come to court daily, undertake, usually for a fee, to take out the accused on bail. It must stated that the accused is unknown to them, and apart from the fee which they collect, they have no interest whatsoever to serve nor could they trace the accused person if he fails to show up. Apart from this, there is no limit to the number of accused persons whom these professional bonds-men can take out on bail. They often derive their immoral earnings from the misery of their fellowmen. The disheartening aspect of it all is the fact that they often receive some gratifications under the guise that they were going to remit same to the Magistrate or Judge to facilitate the approval of the bail.

In some cases, clerks in the Registry, induced with some form of gratifications, would remove and destroy the case file including all bail papers. The effect of this is that if the accused person fails to appear in court, there is no means of tracing him or his sureties. In consequence, the criminal case against him cannot be prosecuted and the accused goes scot-free. This undermines the administration of criminal justice as delay lingers, mainly by the activities of these unscrupulous men. Equally worrisome is the fact that in practice, women are not allowed to stand as surety, when there is no known constitutional provision barring women from standing as such.

9. Delay Arising from Prison Authorities

Prison authorities also contribute to the problem of delay in the administration of criminal justice. This often arises in the area of pre-trial detention. In certain cases, accused persons are remanded in prison awaiting trail. There seems to be constant deviancy and criminality in the society as such the number of pre-trial detainees has become very large.

Many suspects remain in prison custody awaiting their trial. Most intriguing is the fact that armed robbery and culpable homicide cases top the list. The general excuse for their remand is that investigation into their cases is yet to be completed. Some of the accused persons have been in prison custody for more than five years without trial.

It is common to find trials being held up for days, weeks and even months because of the unavailability of accused persons in court to stand their trial. A number of reasons are responsible for this situation. First, is the lack of communication gap between the prison authorities, and prosecutors. Such a situation may occur when prosecutors do not give proper notice to prison authorities of the date of trial. Second, is the unavailability of vehicles to convey the accused persons to court. Third is, the poor medical facilities available to pre-trial detainees which result in their constant breaking down in health while awaiting trial. The result is that on the day of trial, an accused person is reported ill. Fourth, is the reluctance to work on the part of prison and police personnel to provide accused persons in court to face trial. This means that trials are delayed or protracted. This leaves the Magistrate or Judge with no option than the issuing of the usual bench instructions or orders which may not even be heeded to. Bearing in mind, the adjectival system of trial under the Nigerian Legal System, the trial court cannot proceed in the absence of the accused, the judicial process is slowed down and most of the time, to the detriment of the accused.

There have also been reported cases of prison officials colluding with awaiting trial inmates to escape from custody either while they are in transit *enroute* to the court of trial, or by leaving prison doors loosely open or improperly guarded and feigning jail break among the detainees to enable them escape. This usually frustrates the entire trial and prematurely throws the accused persons back into the society to commit more havoc.

10. Conclusion & Recommendations

The question that keeps begging for answer is whether there could be solution to the above delays. Simply put is delay in the criminal justice sectoring a necessary evil or an avoidable evil? Striking a balance between hurried justice and delayed justice becomes imperative.

Therefore, courts in Nigeria should be well equipped with latest technology like stenography and computerization. The work of judges and magistrates could be made easier by computerizing the courts and employing clerks for judges and magistrates. Clerks here are lawyers who are employed by judges or research assistants. In USA, a judge of the US is entitled to employ up to four clerks and they are paid by the states.

Beyond the need for granting bail to an accused person who is being detained on a holding charge, it has even been held that it is now trite law that once a court observed that it has 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. There remains no legal basis for it and its use as an application of the machinery of justice for a purpose for which it is not meant wholly amounts to be abuse of process. It should be noted that England from where we lifted our legal system has long abolished the holding

charge phenomenon such that all cases of indictable offence are investigated promptly and charged directly before the High Court for trial. Unless the holding charge syndrome is also abolished in Nigeria, the menace of prison congestion with awaiting trial inmates and subsequent delay in the administration of criminal justice will hardly be overcome in out legal system.

Laws must advance with the movement of the society to reflect current trends. Gigantic momentous changes are taking place around the globe; Nigeria must not be an exception. The Nigeria Government should realize the need of strengthening the criminal justice sector to meet the challenges of the 21st century. Laws at its substantive and procedural level, depends on its efficiency and effectiveness on the mandate of the lawmakers and the procedure of the law making and its relevance and acceptability of the people.

References

Adeloye S.F(1994) State High Courts and Judicial Control of Funding in All Nigeria Judges Conference (Lagos: Anatraco Ltd) at p.88

Akanbi M.M.(1996) The Many Obstacles to Justice According to Law; In: 1995 All Nigerian Judges Conference Papers (Lagos: Mij Professional Publishers Ltd.) at p.51.

Alabi A.A.(2004) "Case Flow Management in Lower Courts – Problems and Solutions" in: Conference of All Nigerian Judges of Lower Courts, 2002 (Lagos: My Professional Publishers.) at p.57.

Alabi A.A.(2004) Case Flow Management in the Lower Courts – Problems and Solutions. In Conference of All Nigeria Judges of the Lower Courts 2002 (Lagos: Mij Professional Publishers.) at Pp.56-57)

Alubo et al(2008) (eds) Contemporary Readings in Governance, Law & Society: Essays in Honour of (SIR) Mike Mbama Okiro (Ibadan: Constallation (Nig.) Publishers.) at p.281.

Alubo O. and Lar B,(2008) "An Appraisal of the Role of and Factors Militating against the police in Criminal Justice Administration in 21st Century Nigeria".

Bwala, .B.(2005) The Right to Bail (Jos: Midland Press Ltd) at p.5.

Craig E.B.(1988) "Administration of Criminal Justice: Dismissal of Criminal cases in the lower courts", being paper delivered at All Nigeria Judges Conference 4th to 11th September 1988 Abuja FCT at p.11

Dakyen, I.C.(2006) The Nigerian Judicial System Problems, Challenges and Prospects, In Judicial Integrity, Independence and Reforms. Essays in Honour of Hon. Justice M.L Uwais (GCON, CJN) (Enugu: Snaap Press Ltd) at Pp.350-352.

Dele P. (2005)Public Prosecution and the Concept of Restorative Justice In Nigeria, Fountain Quarterly Law Journal, May 2005, Vol.2 No.1 Publication of the Ekiti State Ministry of Justice Ado-Ekiti at p.83

Hornby, A.S (2001)Oxford Advanced Learners Dictionary, sixth edition (London: Oxford University Press Ltd.) at p.307.

Idoko A(1996) Case Flow management and the Role of Lawyers In: All Nigerian Judges Conference Papers, 1995 (Lagos JCJ Professional Publishers Ltd,) at p.92.

Ola C.S.(2001) Nigerian Criminal Law (Lagos: CSS Ltd) at p.208.

Olafawura O. "The Judiciary, the Legislature, the Nigerian Police and Justice Delivery": In All Nigeria Judges Conference, 2003 (Ibadan: Spectrum Books Ltd, 2005) at p.87.

Olatawura O(1993) "Organization of Characters – Fixing cases and Adjournment" in Induction Course lectures for Newly Apointed Judges and Kadis (Lagos: MCJ Professional Publishers Ltd.) at Pp.138-139.

Olusegun Obasanjo(2005) to the All Nigeria Judges Conference 2003 (Ibadan: Spectrum Books Ltd) at Pp.xxix – xxx.

Oyeyipo, T.A.(2007) et al (eds): Judiciary and Democracy in Nigeria – Essays in Honour of Hon Justice Salihu Modibu Alfa, Belgore CJN (Rtd) GCON (Enugu: Snaap Press Ltd.) at p.323.

Tobi N.,(1995) "Law, Judiciary and Nigerian Democracy" in Ayua I,A. (ed): Law Justice and the Nigerian Society – Essays in Honour of Hon Justice Mohammed Bellow (Lagos: Nigerian Institute of Advance Legal Studies.) at Pp.135-136.

Uwais M.L(2003) Address of the All Nigerian Judges Conference, 2003 at Pp.xxxii – xxxiii

Adejobi v State(2007) Vol. 22WRN

Agiende Ayambi v The State (1985) 6 NCLR 141

Christie v. Leachinsky (1947) 1 All ER 567 of 587, 1947 AC 573

COP V Emmanuel .(Unreported) Case No.CRN/31/2004.

Effiom v. The State (Supra)

Ekiri v Kemiside & Ors (1976) NMLR 145

First F Ltd v.NNPC (2007) Vol.4WRN134

FRN V. Osahon (2006) All FWLR (pt.312) at 1983

Gokpa v. C.G.P. (1961) All NLR 423 at 425

Ikhazuagbu v. Commissioer of Police(2005) ALL FWLR (PT.266) 323 at 1240

Joseph Ozoma & Ors v M. Osanwuta (Unreported) suit No UHC/30/697 1969

Justice Akpor & Or v Ighorigo (1972) 2 SC 115
Ndu v. The State (1990) 7 NWLR (pt.164) 5
Obaseki v. Police (1959) NRNLR 149.
Obioma v.FRN (2005)4FWLR (Pt.282) at p537-538
Olawoya v. Commissioner of Police (2006) All FWLR (pt.309) 1483
Olugbusi v. Police (1970) 2 All N.L.R 1
Onwughalu v. State(2007) Vol.46 WRN,191
Police v. Okafor (1964) 2 All NLR 166.
State v. Aigbangbe & Obasuyi (1988) 3 NWLR (pt.84) 548 at p.578
Uhembe v. Awar (2006)7NWLR(Pt.978)
Yanor v. The State (1965) 1 All NLR 193

The IISTE is a pioneer in the Open-Access hosting service and academic event management. The aim of the firm is Accelerating Global Knowledge Sharing.

More information about the firm can be found on the homepage:
http://www.iiste.org

CALL FOR JOURNAL PAPERS

There are more than 30 peer-reviewed academic journals hosted under the hosting platform.

Prospective authors of journals can find the submission instruction on the following page: http://www.iiste.org/journals/ All the journals articles are available online to the readers all over the world without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. Paper version of the journals is also available upon request of readers and authors.

MORE RESOURCES

Book publication information: http://www.iiste.org/book/

IISTE Knowledge Sharing Partners

EBSCO, Index Copernicus, Ulrich's Periodicals Directory, JournalTOCS, PKP Open Archives Harvester, Bielefeld Academic Search Engine, Elektronische Zeitschriftenbibliothek EZB, Open J-Gate, OCLC WorldCat, Universe Digtial Library , NewJour, Google Scholar