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Application of Presumption of Innocence in Nigeria: Bedrock of Justice or Refuge for Felons

Jacob Abiodun Dada, Ll.B (Hon); B.L; Ll.M; Ph.D.
Associate Professor Of Law & Ag. Head, Private Law, Faculty Of Law, University Of Calabar, Calabar

Eugene A. Opara, Ll.B (Hons), B.L., B.Sc. (Hons), M. Sc.
Managing Partner, Dada, Okey, Opara & Co, Liberation Chambers, 39 Barracks Road, Calabar

Abstract
This article examines the meaning, contents and legal framework of presumption of innocence which in our world of plurality, diversity and interdependence, is globally recognised and celebrated as a bedrock of justice. By this presumption an accused is to be presumed innocent of the offence for which he is standing trial, his notoriety, criminal antecedent and the gravity of the offence which he is accused of being irrelevant. This paper demonstrates that the application of this otherwise laudable presumption in Nigeria, especially in relation to Politically Exposed Persons, [PEPs], has been exploited and abused, such that it is now a shield for criminality and license for impunity. It argues and recommends that as part of the efforts to curb the cancerous plague, called corruption, the burden of proof should be placed on those accused of corruption.

> Justice is not a one way traffic. Justice is not even only a two-way traffic. It is really a three way traffic - justice for the appellant accused of a heinous crimes of murder, justice for the victim, the murdered man, the deceased, 'whose blood is crying to heaven for vengeance' and finally justice for the society at large - the society whose norms and values had been desecrated and broken by the Criminal Act complained of - Oputa JSC (as he then was).

Introduction

There are a number of constitutional[1] and statutory provisions[2] in Nigeria designed to guarantee fair trial[3] of any person accused of committing any crime. Section 36 of the Nigerian 1999 Constitution which guarantees the non-derogable right to fair hearing provides *inter alia* that, "Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty"

To bolster and energize this constitutional guarantee, sub-section 6 of the same section enumerates other rights which an accused person is entitled to as follows:

i) To be informed promptly in the language that he understands and in detail of the nature the offence.
ii) To be given adequate time and facilities for the preparation of his defence.
iii) To defend himself in person or by legal practitioners of his own choice.
iv) To examine in person, or by his legal practitioners the witness called by the persecution; and to field witnesses to testify on his behalf;
v) To have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

In further promotion and protection of the interest of an accused, section 36 (8) provides that;

> *"No person shall be held to be guilty of a criminal offence on account of any act or omission that did not at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed".*

Also, compulsion to give evidence is unambiguously prohibited.[4] Some of these rights are also restated in the

Dada, can be reached at odundada1@yahoo.com or Jacob.dada25@gmail.com
Eugene, can be reached at ahamgene@yahoo.com

[1] Notably, the provisions of section 36 are designed to guarantee fair trial by embodying the minimum standards of justice required in the criminal justice system.
[2] The Criminal Procedure Act and the Panel Code Act for instance make copious provisions on arrest, detention, bail, arraignment and trial aimed at protecting and accused person.
[3] Fair trial is used to connote fair hearing, a principle which encapsulates the dual maxim, *audi alteram partem* (hear both sides) and *nemo Judex in causa sua* (no one can be a judge in his own trial).
[4] Section 36 (11) 1999 Constitution of Nigeria (as amended).

two procedural penal statutes in Nigeria – the Criminal Procedure Act[1] and the Criminal Procedure Code.[2]

From the above, therefore, it is demonstrably clear that an accused person enjoys enormous rights, privileges and liberties in the determination of his culpability or otherwise, in respect of the offence for which he is charged.

Of all the constitutional and statutory rights which an accused person is guaranteed, the presumption of innocence is of profound importance because of its far reaching implications. In acknowledgement, endorsement and celebration of this presumption, it has been described as a "sacred principle"[3] the bedrock principle of criminal justice systems the world over for generations," [4] and "as one of the most important and familiar maxims in criminal law."[5] It has also been described as: "a basic component of a fair trial,[6] undoubted law, axiomatic and at the very foundation" of the criminal justice system.[7] To demonstrate the fundamental character of the presumption, it has also been said that it is not a mere formality but of the most important substance".[8] To justices Stewart, Breman, and Marshell; "No principle is more firmly established in our system of criminal justice than the presumption of innocence accorded to the defendant in every criminal trial"[9]

This salutary rule, inherited from the English common law has also been described as the "foundation of a fair trial",[10] "one golden thread that is always to be seen throughout the web of English criminal law"[11] and a cherished right" and fundamental principle"[12]

By this presumption, the burden of proof[13] is invariably on the prosecution; and fundamentally, until the accused person is convicted, his legal rights and privileges remain intact. Indeed, he does not suffer any form of legal disability.

From the above description, it becomes quite evident that this presumption, which is one of the ingrediential rights to fair hearing, has global appeal. Thus, it is guaranteed in major international human rights instruments and practiced in many judicial systems operating the accusatorial as distinct from inquisitorial criminal system of justice. Indeed, it has been said that the presumption is so important in modern democracies, constitutional monarchies, and republics that many have explicitly included it in their legal codes and constitutions.[14]

Notwithstanding, the global appeal and acceptance of this concept in our world of plurality and diversity, the practical application of this presumption in Nigeria, where criminality and impunity seem to have been enthroned, need critical examination.

It is, without doubt, the application of this presumption which has given rise to a situation where a large army of dubious characters populate the Nigerian political space. This scenario is almost peculiar to Nigeria because in this country, our politics and political systems are unarguably, devoid of morality, decency, civility, transparency and accountability. While what obtains in advanced technologies and democracies, reveals that a political or public office holder who is accused of committing a crime will either voluntarily resign or abort his political or carrier aspiration and justice is duly administered without regard for position or influence, in Nigeria, this is not the case. Rather, persons accused of grave crimes, like murder, embezzlement of public funds etc; practically suffer no serious legal disability or moral burden to truncate their social, economic or political aspirations. On political aspiration, they are eligible to contest elections and be nominated into any office. Indeed, it is a common knowledge that some politicians accused of serious crimes populate our political and public space, holding sensitive offices.[15] Without doubt, when such tainted characters enjoy all the privileges and rights guaranteed under the law without legal inhibition of any kind, they are further privileged to administer public

[1] See, e.g sections.-
[2] See, e.g sections.-
[3] Judge Reta Struthar, in *Flores v Oklahoma* 1995 Ok CR 31 (Okla Crim App 1995. See also, Cornell university Law School, legal information institute at www.law.cornell. Edu/wex/presumption of innocence).
[4] *Coffin v United States* 156 U.S 432, 453m (1895).
[5] Ibid.
[6] *Esteller v William* 425 US. 501 at 503 (1976)
[7] *Coffin v United States* 156 U.S432 at 453 (1895)
[8] www.road.uscourts.gov.... paH4cfo.htm
[9] *Keutucky v Wharton* 441 vs.786 at 790 (1979)
[10] C.O. Okonkwo, "The Nigerian Penal System in the Light of the African Charter of Human and Peoples' Rights", in A.U. Kalu and Y. Osinbajo (eds) *Perspectives on Human Rights*, Lagos: Federal Ministry of Justice Law Review Series, vol. 12 at 103.
[11] (1935) A.C. 462 at 481.
[12] Bob Baxt, "Why the Presumption of Innocence Must Be Retained At All Cost", www.lawchat.com.au/index.php/a. fundamental-principle of -english.
[13] The legal obligation to convince an adjudicating tribunal either on preponderance of evidence in civil trials or beyond reasonable doubt in criminal cases.
[14] Wikipedia, en.m.wikipedia.org/wiki/presumption-of-innoncence.
[15] Many of them are either in the National Assembly or are serving as ministers or governors.

funds and probably, perpetrate the same crime of embezzlement of public funds. This sad spectacle calls to question the desirability of the continued retention of this presumption in our penal system.

The primary burden of this paper, therefore, is a critical examination of this presumption. The question which will be carefully interrogated is: Whether, in view of the characteristic and seemingly irreversible delay in criminal justice administration in Nigeria, coupled with the problem of corruption, the continued retention of this presumption is desirable or expedient. In interrogating this issue, it is proposed, first, to examine the meaning of this presumption. In part II, our attention will be focused on the examination of the legal framework for this presumption. Part III will critically x-ray the application of this presumption in Nigeria while the concluding part will provide an agenda for reform.

PART 1

Presumption of innocence: Meaning and Contents.

Presumption of innocence has been defined as "a principle which requires the government to prove the guilt of a criminal defendant and relieves the defendant of any burden to prove his or her innocence."[1] According to Black's Law Dictionary[2], presumption of innocence is the fundamental criminal law principle that a person may not be convicted of a crime unless the government proves guilt beyond a reasonable doubt, without any burden placed on the accused to prove innocence."

An elaborate definition of this presumption was given in the old but highly celebrate case of *Coffin v U.S*[3] as follows:

> Presumption of innocence is a conclusion drawn by the law in favour of the citizen, by virtue whereof, when brought to trial upon a criminal charge, he must be acquitted, unless he is proven to be guilty. In other words, this presumption is an instrument of proof created by the law in favour of one accused, whereby his innocence is established until sufficient evidence is introduced to overcome the proof which the law has created. This presumption, on the one hand, supplemented by any other evidence he may adduce, and the evidence against him, on the other, constitute the elements, from which the legal element is drawn.

In explaining this presumption, Wills[4] observed that:

> In the investigation and estimate of criminatory evidence, there is an antecedent, *prima facie* presumption in favour of the innocence of the party accused, grounded in reason and justice not less than in humanity, and recognised in the judicial practice of all civilized nations, which presumption must prevail until it be destroyed by such an overpowering amount of legal evidence of guilt as is calculated to produce the opposite belief.

By this presumption therefore, no matter the gravity of the offence or notoriety of the accused, he is not to be presumed guilty. According to the U. S. Supreme Court in *Taylor R. Kentucky,*[5] the presumption of innocence of a criminal offender is best described as an assumption of innocence that is indulged in the absence of contrary evidence. However, it is not considered evidence of the defendant's innocence, and it does not require that a mandatory inference favourable to the defendant be drawn from any facts in evidence.[6]

While constructing this constitutional presumption, the Court of Appeal held *inter alia* that the presumption does not imply an exemption of an alleged wrongdoer from prosecution. *It only implies that in a criminal trial, the burden of disposing the fact that an accused is innocent is on the accuser.*

Two important components of this presumption are that:

i) an accused has the right to remain silent and not offer a word in rebuttal or refutation of criminal liability in respect of the allegation against him;[7] and

ii) the burden of proof is on the prosecution to establish, the culpability of the accused. This is expressed in the latin maxim, *Ei incumbit probation qui dicit, uon qui negat*.[8] Put differently, the

[1] Legal Dictionary the freedictionary.com/-/dict.aspx?rd=18word
[2] Black's law Dictionary
[3] 156 US 432 (1895)
[4] Wills on circumstantial Evidence.
[5] 130 S.Ct. 175 L.Ed. 2d 110 (2009)
[6] Ibi.
[7] See, M.T. Gwangndi & S.M. Tagi, The Right to Silence in Nigeria, Nasarawa State University Law Journal, vol. 4 (1) 2011 at 155-166.
[8] Ekwenugo v F.R.N. (2001)6 NWLR (pt 708)171.

presumption serves to emphasize that the prosecution has the obligation to prove each element of the *offence beyond* reasonable doubt".[1]

The presumption serves to emphasize that the prosecution has the obligation to prove each element of the offence beyond reasonable doubt.[2]

Consequently, if the burden of proof is wrongly placed on the accused, it would lead to the reversal of his conviction on appeal.[3]

The philosophy behind this presumption was brilliantly but succinctly captured by a learned author as follows:

> *No man can be called guilty before a judge has sentenced him, nor can society deprive him of public protection before it has been decided that he has in fact violated the conditions under which such protection has accorded him.*[4]

In other words, a person should not be presumed guilty on the "basis of mere accusation"[5].

Commenting on the importance of this presumption it has been succinctly stated that "it allows for an unbiased trial and prevents the punishment of people for crime they did not commit."[6]

To validate, energise, and give concrete expression to this presumption, our courts have established the following principles which may be spotlighted without amplification.

i) That every doubt must be resolved in favour of an accused person and that if at the close of the case of the prosecution, a *prima facie* case is not established against the accused, the court is under an obligation to discharge and acquit him;[7]

ii) That the mere fact that an accused is telling lies does not affect the duty of the prosecution to prove beyond reasonable doubt; the allegation against the accused;[8] and

iii) Suspicion, no matter how strong does not amount to proof beyond reasonable doubt and cannot ground a conviction.[9]

Indeed, a scholar, William Laufer unhesitatingly asserted that:

> The privilege against self-incrimination, the right to silence, the discovery rule, even the rights to counsel and to confront one's accusers all rest on, and are "reflections of, the presumption of innocence."[10]

PART II

The International and Domestic Legal Framework -

To demonstrate the global recognition and endorsement of this presumption, it is considered imperative to set out the relevant provisions which guarantee this right. The Universal Declaration of Human Rights blazed the trail when it provides in Article 11(1) as follows:

> *"Everyone charged with the penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for defence".*

In comparable words with the Universal Declaration of Human Rights, the rights to presumption of innocence is also guaranteed in Articles 14(2) of the International Covenant on Civil and Political Rights as follows:

> *"Everyone charged with a criminal offence shall have the right to be presumed innocence until proved guilty according to law*".

At the regional level, attention may be draw to the provision of Article of the African Charter on Human and Peoples' Rights which state that:

(a) Every individual shall have the right to have his case heard. This comprises:

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[1] C.B. Mueller & Laird C. Kirkpatrick, Evidence, 4th ed: Aspen Wolters kluwer, (2009)133-134.
[2] Becaria on Crimes and Punishments, translated by Henry Paolucci, (1963) New York, Chapter Xll at 30 cited by cited by Adeyemi.
[3] *R v Basil Ranger Lawrence* (1932)11 WLR 6 at 7.
[4] Becaria on Crimes and Punishments, translated by Henry Paulucci, (1963) New York, Chapter Xll at 30 cited by Adeyemi.
[5] A.A. Adeyemi, Criminal Justice Administration in Nigeria in the Context, of the African Charter on Human and Peoples' Rights, Kalu & Osinbajo, Op. cit. at 128.
[6] See, www.chacha.com/.../why-is.the
[7] Nwosu v State (1985)4 NWLR (Pt 35) 348; Jegede v State (2001) 7 S.C.N.J 135.
[8] *Nwosu v State*, Supra
[9] *Iko v The State* (2001)7 SCNJ 382 at 407
[10] William Laufer, The Rhetoric of Innocence, 70 WASH.L. REV; 329 at 333-34(1995).

(b) The right to be presumed innocent until proved guilty by a competent court or tribunal.[1]

Perhaps to demonstrate the importance and fundamental character of presumption of innocence, it is unequivocally guaranteed in many national constitutions as it is in many international human rights instruments:'

Focusing attention on Nigeria, the 1999 Constitution guarantees the right in the following words:

> *"Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. The proviso to the section relates that". Nothing in this section shall invalidate any law by reason only that the law imposes upon any such person, the burden of proving particular facts.*

Instructively, this provision is not novel in Nigerian constitutional history as similar provision was made in the Independence Constitution of 1960,[2] Republican Constitution of 1963[3] and Second Republic Constitution of 1979. [4]

The Evidence Act, in seeming amplification of this constitutional presumption, provided in section 132 that "the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side." Further, section 135(2) in firmly placing the burden of proof in criminal cases on the prosecution provides that;

> *"The burden of proving that any person has been guilty of a crime or wrongful act is, subject to section 139 of this Act, on the person who asserts it, whether the commission of such act is or is not directly in issue in the action."*[5]

Our courts and those of other jurisdictions have been unequivocal in their endorsement and application of this presumption. In *Laoye v The state,*[6] the Supreme Court, in giving concrete expression to this presumption held *inter alia*; that:

> *We operate a system which presumed a man innocent until he is proved guilty… to do otherwise will constitute an unwanted attack on our system of criminal justice.*

Further commenting on this presumption, the Supreme Court in the case of *Adeniji V State*[7] succinctly stated that "the object of the constitution is to safeguard the interest and fair trials of those arraigned before the court." Similarly, in *Ibeziako v Commissioner of Police*[8] it was observed while commenting on this presumption that;

> "The provision enshrines a principles which has always been observed in courts, and which is succinctly enunciated in *Woolington v the Director of Public Prosecution* (1935)" AC 62 at 481 where Lord Sankey said as follows; throughout the web of English law one golden thread is always to be seen, that is, the duty of the prosecution to prove the prisoner's guilt.

Courts outside Nigeria have also given concrete expression to this right. In *Condron v United Kingdom,*[9]while interpreting the provision of Article 6 of the European Convention on Human Rights, the European Court affirmed that the right to silence lay at the heart of the notion of a fair procedure and that particular caution was required before a domestic court invoked an accused's silence against him. It was, therefore, held that there was a violation of Article 6 when the trial judge gave a direction to the jury which might have left them at liberty to draw an adverse inference from the applicant's silence despite the plausibility of the applicant's explanation for his silence.

In *Milnilli v Switzerland,*[10] the provision of Article 6(2) of the European Convention on Human Right came up for consideration. In that case, a domestic court awarded cost against the applicant on the basis that had it not been for a limitation period barring action against him, a compliant would very probably have led to his conviction because a similar claim against another person had been sustained. The domestic court had satisfied itself of the applicant's guilt without the applicant receiving the benefit of the guarantee. Accordingly, it was

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[1] Article 6(2) of the European convention for the Protection of Human Rights and Fundamental Freedom and Article 8(2) of the American Convention on Human Rights also guarantee the right to presumption o f innocence.
[2] - Section 22(4)
[3] - Section 33[5]
[4] - Section 36 [5]
[5] *(Section 139 to which reference is made provides for exceptional instances where an accused has evidential burden of proof).*
[6] (1995) LNWLR (Pt 10) 832.
[7] *(2001) NWLR (pt730) 375*
[8] (1963) All NLR 61 at 63
[9] *(2001) 31 EHRRI*
[10] (1983) 5 EHRR 554

held that there has been a violation of this presumption. Also, in *Tassar Hussain v United Kingdom*[1] the domestic judge in refusing the applicant's application for cost after his acquittal as a result of the absence of the prosecution witness, observed that the applicant was guilty of the offence charged owing to the overwhelming evidence against him. The European Court held that this statement was a violation of the applicant's right to be presumed innocent until the contrary is proved.

Part III

A Critical Appraisal of the Application of the Presumption in Nigeria.

Without doubt, presumption of innocence is a well thought out legal concept and it is arguably, preferable to the middle age Germanic system which presumed guilt.[2] Unarguably, the global endorsement and application of presumption of innocence are eloquent testimonies of its popularity and more importantly, its value. It is undoubtedly, not only absurd but prejudicial and antithetical to the notion of justice to presume a man guilty either because of his criminal antecedent or the gravity of the offence for which he is standing trial. As succinctly declared by a learned author,[3]

> *"Obviously, a system which already presumed a mere suspect guilty, just on the basis of mere accusation, should not be tolerated. Consequently, the injustice of a presumption of* guilt, *leading to torture and premature punishment, cannot be acceptable in any decent society"*

Again, another author has insightfully advocated that

> *" No man can be called guilty before a judge has sentenced him, nor can society deprive him of public protection before it has been decided that he has in fact violated the conditions under which such protection has accorded him."*[4]

The merit of the above submissions cannot be doubted or sustainably strictured. Even in advanced technologies and democracies where forensic science is deployed in the administration of justice, it is now well recognised that forensic science still "grapples with several limitations and challenges."[5] As insightfully noted by Justice Scalia in *Melendez-Diaz v Massachusetts*[6] "forensic evidence is not uniquely immune from the risk of manipulation." The court reasoned that an official forensic analyst responding to a request from a law enforcement may feel pressure – or have an incentive – to alter the evidence in a manner favourable to the prosecution and that serious deficiencies have been found in the forensic evidence used at criminal trials." On this basis, therefore, the Supreme Court had no hesitation in rejecting the notion that forensic science is always neutral and based on solid evidence.

In Nigeria where criminal investigations are often hamstrung and compromised by a variety of factors including corruption, ineptitude, laziness and incompetence, it is very hard to contemplate or advocate the abolition of presumption of innocence. What is more, in this clime of unbridled political vendetta, where extra-legal intent often informs decisions of many in positions of authority, "a selective discreditation agenda"[7] may be adopted to abort the political aspirations of political opponents who will be hearded to courts on trump up charges. For instance, preparatory to the 2007 general elections, the Economic and Financial Crimes Commission, EFCC,[8] compiled a list of 130 persons who were considered unfit to hold public office over allegations and accusation of corrupt practices.[9] Many believed, perhaps rightly so, that the list was part of the malicious and invidious attempts by the administration of the erstwhile President, Olusegun Obasanjo, to deal

[1] (2006) EHRR 33,

[2] Under that system, an accused could prove his innocence by having, for example, twelve people to swear that he could not have done what he was accused of.

[3] A.A. Adeyemi, Criminal Justice Administration in Nigeria in the Context of the African Charter on Human and Peoples' Rights in Perspectives on Human Rights vol. 12 A.U. Kalu & Y. Osinbajo eds, Lagos: Federal Ministry of Justice, 1992 at 128.

[4] Becaria on Crimes and Punishments translated by Henry Paolucci (1963) New York: Chapter XII at 30, cited by Adeyemi, Op. Cit at 128 32.

[5] See, for instance, the limits of forensic science as brilliantly articulated by Dakas C.J. Dakas, "The Imperative and Limits of Forensic Science" in *Administration of Justice in Administration of Justice and Good Governance in Nigeria*, E. Azinge and A. Adekunle eds, Lagos: Nigerian Institute of Advanced Legal Studies, 2011 at 5-15.

[6] 129 Sct. 2527 (2009).

[7] W. Soyinka, The Open sore of A Continent, A Personal Narrative of the Nigerian Ife-Ife: Crisis, O.U. P, 1999 at 64.

[8] Established pursuant to the Economic and Financial Crimes Commission Act Cap LFN, 2004.

[9] See, This Day, Wednesday, and February, 71 2007 vol. 12 No. 4309 at 1 with the Caption, Corruption: Atiku, Kalu Top EFCC List.

with his "political enemies.[1] From the above analysis, it is, therefore, legitimate and justifiable to argue that presumption of innocence is not just a good but indefectible concept.

For good reasons, it is also plausible to argue that the gain of the presumption must not blind us to its pain. A critical appraisal of the administration of justice in Nigeria, hinged on this presumption and its consequence, must lead to the irresistible conclusion that it is high time we began to construct necessary legal tools to penetrate its seemingly impregnable walls. If we have regard to the length of time it takes before cases are decided, and the important fact that hiding under the thick umbrella of this presumption, many politicians who are standing criminal trials for corruption are still the managers of our public treasuries, then we may begin to appreciate the need for rethinking this presumption.

It is a notorious fact that the wheels of justice grind slowly. Perhaps, it is for this reason that it is now a trite aphorism that "justice and speed are strange bed-fellows" though it is also recognised that "justice delayed, is justice "denied."[2]

In Nigeria, however, the wheels of justice move" "agonizingly and damagingly"[3] slowly. It is, a notorious fact that the constitutional injunction that cases should be determined "within a reasonable time"[4] by our courts is observed more in breach than compliance. Thus, many cases last several years from arraignment to the final determination; and from final judgment by the trial court to the final judgment by the appellate court.

Unfortunately, it becomes an acceptable norm for cases to protract in our courts. Perhaps, this was why in *Egbo v Agbara*[5] like many others, it took seven years after commencement of taking evidence before delivery of judgment.[6] In *Ariori v Elemo,*[7] the case dragged for about 20 years before the determination of the appeal to the Supreme Court, which had to send the case back to the High Court for *de novo* trial!

Delay in criminal cases, especially those involving the Politically Exposed Persons; [PEPs) the politicians and public office holders, has gone beyond the alarming to the ridiculous, extremely absurd and fatal stage in Nigeria. These is because those who have been arraigned have never been meaningfully prosecuted. It is a notorious fact that because of the enormous amount of money at the disposal of these persons, they characteristically engage several Senior Advocates, most of whom employ all manner of subterfuge to canvass banal legal arguments to manipulate, undermine and frustrate expeditious determination of the cases.

It is sad to observe that none of the many Governors who were arraigned in 2007 for stealing monumental sums of money during the currency of their tenure as the Chief Executive of their States has had a meaningful day in court! How preposterous! While many of them have had their cases withdrawn under questionable circumstances, informed and predicated on invidious political settlement, those whose cases have not been withdrawn have frustrated meaningful commencement of trial through interlocutory skirmishes and frivolous appeals, all aimed at indefinitely prolonging their trial! Also, some cases have remained under seemingly perpetual investigation! So the prosecution of these persons has been inordinately delayed with the preposterous effect that many of them have returned to sensitive political offices!

The charade and circuit show called trial of these Governors was the subject of attack in 2011 by Chief Edwin Clark, who called for the speedy trial of 14 former Governors and the Ministers who were then standing trial for corruption. In a petition dated November, 2, 2011 to the then Chief Judge of the Federation, Dahiru Musdapher, he lamented that.[8]

> a situation whereby over 50 high profile cases of corruption leveled against some former governors, ministers, legislators and other high profile government functionaries have been pending in various Federal High courts and Court of Appeal for over four years due to corrupt practices both in the judiciary and at the Bar is most unacceptable because it is definitely responsible for placing Nigeria at the bottom index of corrupt countries in the world such as Somalia, Kenya, Bangladesh, Pakistan, among others".

[1] See, for instance, the reaction of Mallam Garba Shehu in *This Day*, Op. cit. at 6.
[2] See, *Unongo v Aku* (1983)2 SCNLR 332 at 352, Per Bello J.S.C; and *Salu v Egeibon* (1994)6 SCNJ (pt 11)223 at 246 where Ogundare J.S.C. (as he then was) tried to construct a balance between these principles.
[3] See, J. A. Dada, Nigeria: *The Challenges of Nationhood*, Calabar: University of Calabar Press, 2009 at 49. Who has identified a number of factors responsible for delay in justice delivery in Nigeria.
[4] Section 36(1)1999 Constitution.
[5] (1997)1 NWLR (Pt 481) 293
[6] (1997)1 NWLR (pt 481)293
[7] Although the Supreme Court adjudged the delay to be unreasonable the judgment of the trial court was not upturned, according to the Supreme Court "there being no miscarriages of Justice".
[8] See, Sun Newspaper, Thursday, November, 03, 2011 Also available at archieve 2 sunnewsonline.com/webpages/news/national/2011 last visited, Wednesday, July, 23; 2014. In the same letter, he condemned what he called "fraudulent the plea bargain" which made Chief Lucky Igbinedion to get a light sentence after admitted the corruption allegations against him.

He then demanded that the cases which were lying dormant in the various courts be resuscitated and given accelerated hearing.

Regrettably, this call has remained unaddressed three years after. Rather, the tardy and ineffective prosecution of corruption cases especially against the politically exposed persons have remained the order of the day with impunity seemingly irreversibly enthroned. Recently, the Coalition Against Corrupt Leaders also lamented that many of the high profile corruption cases have remained at the stage of plea since 2007.[1] The Coalition drew attention to some cases which we consider too irresistible to reproduce. These are the cases of:

i. Boni Haruna, former Governor of Adamawa State, who was arraigned in Abuja on a 28 count charge of embezzling 16 Million Naira in 2007;[2]
ii. Abdulahi Adamu, former Governor of Nassarawa State, who was arraigned on 3rd March, 2010 alongside 18 others, on a 149 count charge of fraud involving over 15 Billion Naira;
iii. Orji Uzor Kalu, the former Governor of Abia State, who was arraigned before Abuja High Court on 27th July, 2010, on a 107 count charge on money laundering, official corruption and criminal diversion of public funds in excess of 5 Billion Naira;
iv. Joshua Chibi Dariye of Plateau State, who was arraigned before an Abuja High Court, on a 23 count charge involving the sum of 700 Hundred Million Naira;
v. Rev. Jolly Nyame was docked on a 41 count charge in July 2007 allegedly for embezzling the sum of 1.3 Billion Naira;
vi. Saminu Turaki, former Governor of Jigawa State, was docked in July 2011 on a 32 count charge of embezzling 36 Million Naira;
vii. Dr. Chimaroke Nnamani, the former Governor of Enugu State was arraigned in Lagos on 105 count charge for allegedly stealing 5.3 Billion Naira;
viii. Another note-worthy case of corruption and impunity in Nigeria is that of T. A. Orji, the Governor of Abia State who was arrested and incarcerated for alleged embezzlement of several billions of Naira. Strangely, and in a fashion peculiarly Nigerian, he "won' election as Governor of Abia State and was moved from detention and sworn in as Governor!

The above and many more cases have not been effectively prosecuted with the result that the accused persons have remained not merely in circulation but visible political actors, holding sensitive political offices. Indeed, some of them have since been elected senators and Governors. That this is so, is informed by the operation of the presumption of innocence so that having not been convicted, they can exercise untrammeled liberty. The practical implication of the foregoing is that these men retain their opportunity and access to public funds. How preposterous! Some questions to ask, therefore, are:

What is the propriety of a concept which can be manipulated, frustrated and undermined to the extent that its utility is fundamentally eroded? If we must insist on this concept, is it not right to limit its operation in relation to some offences? Since the presumption is not predicated on any evidence but merely on the need to avoid infliction of pain on an accused until his culpability is established, must the liberty and interests of individuals override the overall public interest? Is the competing but evidently conflicting interests of the accused and the society not disproportionately balanced in favour of the accused person?

Is it just, reasonable and consistent with the notion of justice and the need to promote transparency and accountability to allow a man accused of stealing to continue to have unfettered access to public treasury?

Will the society loose so much and gain nothing if anyone who is accused of stealing public fund is prevented from holding public office until the case against him is determined? Will determination of cases not be accelerated if accused persons are denied the privilege of holding public office until their innocence is established. Is the present practice not sufficient encouragement to dubious characters to loot public treasuries?

A critical, reflective and objective examination of these inter-related questions will lead to the irresistible conclusion that there is no sustainable reason not to limit the scope and operation of this presumption in Nigeria. Otherwise, Nigeria's economy will be irredeemably destroyed and administration of justice exposed to ridicule on the altar of a discredited but otherwise salutory concept.

CONCLUSION

Much as the presumption of innocence is a noble and laudable concept, this should not blind us to its adverse effects as demonstrated in this work. Consequently, there is the urgent task to begin to re-think the concept. Indeed, it is absolutely imperative that legal intellectuals must consistently design and construct legal frameworks which can help in nation building. Our current travails with democracy and development demand that Nigerian intellectuals design legal and socio-political road-maps which can engender, promote and sustain

[1] See, Sahara Reporters, February, 13, 2013, sharereporters.com/2013/politicians-pending-corrupt.
[2] The former Governor has been repeatedly re-arraigned on different count charge, the last being in October, 2009.

meaningful growth, transparency and accountability. To do otherwise will amount to what Prof. Okon Uya[1] described as, "abandoning our historic patriotic responsibilities to our torturing but still vibrant nation". Indeed, Nigeria intellectuals must deploy their robust intellectual energies to uproot the ills of the Nigerian society-tribalism, corruption, blundering political leadership, institutional and infrastructural decay, egregious culture of impunity etc. It is in this light that it is recommended, without any equivocation, that in corruption cases, the inquisitorial system of justice should be adopted. This has become imperative in Nigeria in view of the gravity of the offence of corruption and its near impunity. Interestingly this patriotic call is not at all novel. According to Akinseye-George,[2]

> *"the inquisitorial system avoids the over-protection afforded accused persons under the accusatorial systems. Although there are many who dislike the inquisitorial system, it seems that the approach is regarded as desirable in corruption cases.*

Osipitan,[3] another learned scholar has also powerfully argued that:

> *"While the presumption of innocence may be ideal in developed countries, because of the existence of sophisticated methods of investigation and detection of crimes, it is submitted that, a strict adherence to the presumption will not achieve the desired result in Nigeria. Experience has equally shown that the investigative machinery of the law enforcement agents can hardly detect the highly sophisticated mode employed by offenders in committing and concealing these offences. Even where the offences are detected offenders succeeded in regaining their freedom via bribery and other corrupt practices.*

Continuing, the learned author insightfully declare that:

> *In the premise the presumption of innocent if strictly adhered to will undoubtedly confer undue protection on offenders and expose the administration of justice to ridicule in cases involving corruption and corrupt practices by public office holders and public officers. Furthermore, in order to deter other potential offenders and inculcate a sense of accountability in public office holders, it is necessary to shift the burden of proof in such criminal cases to the accused persons.*
>
> *Political and public office holders occupy positions of trust vis-à-vis, the management of the wealth of the nation. There is therefore, every reason to support a legislation that seeks to make them accountable as trustees in the management of the Nation's wealth. A nation plagued by corruption, abuse of office and white collar crimes, deserves a more result-oriented legislation which seeks to combat the commission of these offences and ensure the economic survival of the nation.*[4]

Giving its unequivocal support to, and endorsement of, the provisions of section 6[3] of Recovery of Public Property (Special Military Tribunals) Decree No. 3 of 1984 which placed the burden of proof on a person accused of corrupt practices, the learned author concluded that:

> *... the provision of Decree, No. 3 of 1984, which puts the burden of proving non-commission of offences on accused persons does not in any way negate the principles of administration of criminal justice. On the contrary, it should be seen as reflecting the socio-economic realities of the nation*[5].

In placing the onus of proof on the accused under the aforesaid Decree, Section 6(3) provided that:

> "The onus of proving at any trial that there was no enrichment contrary to the provisions of section 1 of this Decree shall lie upon the Public Officer or the person concerned".

It may be argued that provisions such as this are not desirable in a democratic society. However, an objective, reflective and proper appreciation of our criminal system will reveal that there is nothing absurd about

[1] O.E. Uya, Nigerian Intellectuals and the Challenge of Nation Building, University of Uyo Convocation Lecture, April, 24, 2009 at 26.
[2] Y. Akinseye-George, Legal System, Corruption and Governance in Nigeria, Lagos: New Century Law Publishers, 2000, at 58.
[3] T. Osipitan, Administration of Criminal Justice: Fair Trial, Presumption of Innocence and the Special Military Tribunals' in Omotota & Adigun eds, cited and Akinseye-George, Op. Cit. at 558-59.
[4] Ibid.
[5] Ibid.

this type of provision. For instance, section 139 of the Evidence Act places the evidential burden of proof on the accused persons in certain cases. In validating such provisions, the proviso to section 36(5) of the 1999 Constitution "which guarantees presumption of innocence, states that;

> …Nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

In other words, presumption of innocence is not guaranteed in absolute terms. If we are desirous of protecting the interests of the accused, the victim and the society and not confer undue preference and primacy on that of the accused, especially in corruption cases, then, we must re-think this presumption. This is especially so as the state has the imperative duty to abolish all corrupt practices and abuse of power.[1] If we insist on its retention, the accused should be made to suffer temporary disability of not being eligible to hold public office until his non-culpability is established. This should be a minimum and acceptable compromise.

Instructively, the above need was recognised and clearly documented in 1998 when the national Conference[2] organized by the Federal Ministry of Justice Recommended *inter alia* as follows:

i) That there is a need to review our criminal justice system so that the inquisitorial method of enquiry can be used for corruption and other economic crimes. Stiffer penalties should be prescribed for this category of offences, particularly when perpetrated by persons within the higher socio-economic strata of the society.

ii) That our legal and judicial systems should assume a tone of urgency in the disposal of cases.

iii) There should be periodic review and reform of the existing laws with a view of eliminating some procedural technicalities, as this is desirable; and greater emphasis should be placed on enforcement.

Consequently, our unhesitating advocacy is that the time to implement these recommendations is now in view of the gravity of the problem of corruption in Nigeria with its devastating consequences. This way, the polluted political climate in Nigeria can be sanitized aspire to attain global standards.

[1] Section 15[5] 1999 Constitution
[2] The Conference was organized in December, 1988. For G fuller recommendation, see, Akinseye-George, Op' Cit' at 69-70

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