SHOULD THE SUPREME COURT REVISIT ITS RULING IN METUH V. FRN & ANOR.?- A CASE REVIEW

By

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Preface

I wish to place on record my gratitude to the distinguished, erudite and seasoned leader at the Bar, advocate par excellence and a man of towering intellect, Mr. J.B Daudu, SAN, FCI Arb., FNIALS for the honour of being invited to participate in the first ever-J.B Daudu Annual Criminal Law Review Seminar. This Seminar is a powerful contribution to the search for a more robust system of criminal justice administration in the country. It is hoped that the Seminar will be sustained and institutionalized as a veritable platform for exchange of ideas towards the resolution of the myriad of challenges confronting the legal system of our great country and democracy.

Contents:

Part I: A review of the Ruling in Metuh v. FRN

Part II: Beginning of new era?

Part III: Some Pertinent Questions raised by J.B Daudu & Co. Seminar

Part IV: Facts and Excerpts from the Court of Appeal ruling in Olisa Metuh

Part V: Plethora of learned Comments on section 306 of ACJA 2015

Conclusion

Part I: A review of the Ruling in Metuh v. FRN

In **Metuh v. FRN** [2017] 11 NWLR (part 1575) 157, the Nigerian Supreme Court under the perceptive leadership of **Onnoghen JSC**, GCON Chief Justice of Nigeria, set in motion a peaceful revolution. The apex court reclaimed the voice and status of the judiciary as the indisputable **guardian** of the Nigerian Constitution and justice system. Prior to Metuh, the Nigerian criminal justice system had literally become a failed system principally on account of its painful and pathetic inability to conclude High Profile Criminal Cases, particularly those involving politically-exposed persons (PEPs). Such cases dragged on interminably in the justice system. A few examples:

- **EFCC v. Akingbola (2015) 14 NWLR (Pt. 1478)** was remitted back for trial after five years;
- **Nyame v. FRN** remains unresolved after several years;
- **Kalu v. FRN** lasted for about ten years;
- **Dariye v. FRN** is still in the system after over Decade;
- **FRN v. Borishade** lasted until the defendant's demise. We can go on and on. (For a detailed report on the damage done to the Nigerian criminal justice system by Stay of proceeding and Interlocutory Appeals, see SERAP/ Trust Africa, "Letting the Big Fish Swim" (2018).

All that the courts including the Supreme Court could do was to lament from time to time over the delay of justice inflicted by interlocutory criminal appeals. But no concrete action was taken to correct the abuse which had become an embarrassment not only to the justice system but

to the entire legal profession. Courts in other jurisdiction had taken judicial notice of the incapacity of Nigerian courts, especially appellate courts to deal with issues promptly and timeously. The English Court of Appeal once had cause to describe the Nigerian judicial system as **'bedeviled by 'catastrophic delays'**. (IPCO (Nigeria) Ltd.v. NNPC [2014] EWHC 576 (Comm). Happily however, with such perceptive decisions as in Olisa Metuh, such characterization no longer fits the Nigerian judicial system.

Part II: Beginning of a new era?

In Metuh, the Supreme Court took the Bull by the horn. The noble justices of the court unanimously upheld section 306 of the Administration of Criminal Justice Act, 2015. The panel which consisted of : **Musa Dattijo Muhammad (Presided), Clara Ogunbiyi, Kudirat Kekere-Ekun, Ejembi Eko and Sidi Dauda Bage, JJSC),** brought about a new dawn, (nay new era?) and terminated the rot which had afflicted the Nigerian criminal justice system through the monster called Stay of Proceedings and **Interlocutory Appeals.** In the leading Judgment, Ogunbiyi, JSC thundered,

> *'Contrary to the submission advanced by the applicant's counsel, the consequential effect is that,* ***the Supreme Court, like the two lower courts, also lacks the powers to stay proceedings*** *under section 22 Supreme Court Act or under its inherent powers.' (At p.177)*

Citing the jurisprudential concept of the *'grundnorm',* Ogunbiyi, JSC aptly noted that, section 36(4) of the Constitution also provides for dealing with criminal trials within a reasonable time. In concluding the judgment, his Lordship further stated:

> ***The appellant/applicant's motion for stay of proceedings is violently in conflict with the provisions of section 36 (4) CFRN 1999 (as amended), section 306 ACJA, 2015 and section 40 of the EFCC (Establishment) Act, 2004 as well as the plethora of case law authorities cited. The application is hereby refused and dismissed.***

Concurring opinions of other Supreme Court Justices on Section 306 of ACJA

Hon. Justice OGUNBIYI, JSC (now rtd.) was not a lone voice in the wilderness. His leading ruling drew support from his noble brethren who declared thus:

PER M. D. MUHAMMAD, JSC @ 180

> ***It is clearly not within the jurisdiction of the trial court to make the order of stay of proceedings which application, following its refusal by both courts below, is further agitated at this court.***

PER KEKERE-EKUN, JSC @ 181

I have had a preview of the ruling just delivered by my learned brother, Clara Bata Ogunbiyi, JSC. I am in **full agreement with the reasoning and conclusion reached.**

It is pertinent to observe that the new dispensation throughout the hierarchy of our courts, as evidenced by the recent Practice Directions issued by respective heads of court in relation to matters pertaining inter alia to corruption, economic and financial crimes, human trafficking, money laundering, rape, kidnapping and terrorism, is to fast track the hearing and

determination of such matters See: Federal High Court (Criminal Trials) Practice Directions, 2013, Court of Appeal Practice Directions 2013 and Supreme Court (Criminal Appeals) Practice Directions, 2013.

The 2013 Practice Directions of the Court of Appeal and Supreme Court respectively have the same objective. This is not only in keeping with the constitutional requirement of a fair hearing within a reasonable time guaranteed to any person charged with a criminal offence, **but also to forestall the frustration of criminal trials by <u>mischievous defendants.</u>** (Emphasis supplied).

Section 306 of the Administration of Criminal Justice Act (ACJA) 2015 provides:

> "An application for stay of proceedings in respect of a criminal matter before the court shall not be entertained."

…..

> ***The above provisions are geared towards eliminating delay and ensuring the expeditious determination of criminal matters pending before the trial courts.***

PER EKO, JSC @ 185

In Hart v. Hart L. R. 18 Ch. Div. 670, at pages 679 - 681, it was forthrightly stated that the Judicature Act did forbid an injunction to restrain a pending judicial proceeding. Section 306 of the ACJA, 2015, like section 24(5) of the Judicature Act 1873, does forbid an injunction to stay further proceedings in pending criminal proceeding or trial. In the Indian case APPU v. Raman I.L.R. 14 Mad. 425 the rationale of the object for the English enactment, which I think very true for the Nigerian Statute, was said to be "to do controlling proceedings in other courts". **Contemporary Nigerian history shows the widespread abuse of injunctive remedies to stall trials of high profile offenders in the country being crippled**

by corruption. That is the **mischief** that section 306 ACJA, 2015 is addressing.

Part III: Some Pertinent Questions raised by J.B Daudu & Co. Seminar

This seminar raises important questions for consideration:

3.1 Whether the introduction of section 306 of the ACJA, 2015 solved the problem of delayed trials in the administration of criminal justice in Nigeria.

The passage of the ACJA has been applauded as the most revolutionary intervention in the criminal justice system since Independence. The Act responds to the numerous causes of delay in the administration of criminal justice in Nigeria. Chief amongst these is the delay caused by the abuse of stay of proceedings and interlocutory appeals. Section 306 has reduced the spate of abuse of stay of proceedings and interlocutory appeals. The courts have enthusiastically embraced this provision particularly following the judicial imprimatur given to it by the Supreme Court in **Olisa Metuh v. FRN.**

But the problem of delay persists due to several other causes. In a recent report, the Justice Galadima-led Committee has identified the root causes of delay in criminal trials: Poor investigation, weak prosecution, lack of witnesses, poor funding and wrong attitude of defence lawyers, etc.

All these require to be addressed proactively just as the Supreme Court has frontally tackled the problem of delay caused by stay of proceedings in Metuh's case. Section 306 alone cannot tackle the plethora of

administrative, human, procedural and technical causes of delay of justice in criminal proceedings.

3.2 Is section 306 of the ACJA a one-size fits all to all interlocutory criminal appeals?

Section 306 is a pragmatic response to the embarrassing situation of interminable criminal trials foisted on the judiciary by a rapacious political class. Most of the cases of abuse of interlocutory criminal appeals arose from cases involving high profile defendants with deep pockets. They can afford to file as many interlocutory appeals as may be required to prevent the determination of the substance of the charges brought against them. The usual strategy is to couch the grounds of appeal as jurisdictional in nature with a view to forcing the trial court to give the appeal priority over the substantive matter before the court. This is an abuse of the principle that a jurisdictional matter shall be given priority over other causes as they go to the root of the competence of the court. Unfortunately there are no clear guidelines for determining which objections are jurisdictional in nature. Virtually all the interlocutory criminal appeals were always couched as jurisdictional in nature or formulated as issues of law. An appellant is always at liberty to characterize his grounds of appeal as issues of law or of mixed law and facts.

If section 306 were to be amended to permit stay of proceedings when interlocutory criminal appeals are filed in the course of criminal proceedings, one can predict that all such appeals will now be couched as jurisdictional or as issues of law. The ingenuity of Nigerian lawyers to couch such grounds is legendry. This baneful practice is made all too easy

by the fact that the case law on jurisdiction is unwieldy and open-ended. A defence counsel who is bent on delaying trial of the substantive matter can easily dress his objections as jurisdictional or as issues of law and you can be sure that there are many authorities to justify such an approach. To cite a few examples, in **Ehindero v. FRN** (2018), this appeal was fought to the Supreme Court over a period of about five years on the jurisdictional question; similarly, several of the high profile cases were fought to the Supreme Court on jurisdictional questions or other questions framed as issues of law.

This is the mischief that legislature intended to cure when it introduced section 306. That is to deal frontally with the problem of delay through the abuse of interlocutory appeals. If appeals founded on the so-called jurisdictional issues or issues of law were exempted from the purview of section 306, the section would lose its bite and the Nigerian criminal justice system will return to the dark days of impunity through the abuse of interlocutory appeals.

3.3 Circumstances when a blanket application of section 306 of the ACJA may occasion injustice on an Appellant's constitutional right to fair hearing under section 36(4) of the 1999 constitution

A possible circumstance may be in the case where the trial court overrules a no-case submission made by a defendant who is then called upon to enter his defence. This is precisely what happened in the case under review. The application for stay having been refused, the defendant appealed to the Court of Appeal which in turn refused to grant stay. He subsequently went upstairs. Although there was no grant of stay, the trial

court, in exercise of judicial self-restraint, 'tarried a while.' Aware that its ruling was being awaited by the trial court, the Supreme Court moved swiftly and gave its ruling; again declined the grant of stay. Since then, the brake on the trial had been let go and the trial had resumed. Let us assume however, that the trial court had convicted the defendant/appellant/applicant and he is sent to prison only for the Supreme Court to rule that the trial court lacks jurisdiction to try to the case and that the conviction must be quashed; that could be a real situation of injustice but not due to the application of section 306. The injustice in that case would be due to the failure of the appellate system to appreciate the need and to take proactive action to urgently dispose of interlocutory appeals especially when the trial appealed from is still pending in the trial court which has no power to grant stay.

The solution in such a case does not lie in tinkering with section 306; but in proactive administrative measures by the heads of court. Where for instance, a high profile appeal has been lodged and the trial court continues with the hearing of the substantive case, the appellate court in the overriding national interest, ought to set up a special panel of the Court of Appeal to abridge time and quickly determine the appeal. In such a case, it will be prudent that the trial court 'tarries a while' to enable the Appellate Court rule on the matter before proceeding especially if the appeal is founded on genuine jurisdictional or constitutional grounds. If such special panels can be constituted to hear urgent political matters as was done in the case which involved the governorship candidates of Ondo State PDP in 2016, there is

no reason why the same cannot be done to deal with urgent interlocutory criminal appeals which could delay trial proceedings.

Overhaul the Court of Appeal Rules to create room for Fast Track Interlocutory Criminal Appeals

Furthermore, a practical solution may be to introduce special rules or practice directions to govern interlocutory criminal appeals. Why could the rules not be amended to prioritize such appeals? This again is not a problem with the legislation but of management or leadership.

The Practice Direction of the Court of Appeal should be overhauled in order to deal with interlocutory criminal appeals from cases within the purview of section 306. Such may be called Fast Track Criminal Appeals.

3.4 Does the Supreme Court need to revisit its decision in Metuh v. FRN?

The answer to the above question is an emphatic 'NOT YET'. The decision was given only in 2017. It is too early in the day to revisit it. It took nearly two Decades for the judicial system and the proactive intervention of the noble jurists and justices to arrive at this progressive stage of the criminal justice system. It is therefore too soon in the day to consider reversing the powerful ruling.

But more importantly, the conditions under which the apex court may revisit the case are not ripe: the case was not decided per incuriam but on the basis of weighty statutory, judicial, common law and constitutional authorities including, notably the Judicature Act, section 36(4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); section

306 of ACJA and Section 40 of the EFCC Act. The judicial authorities rightly considered include: Olofa v. Itodo (2010) 18 NWLR (part 1225) SC (particularly on the decision of Onnoghen JSC (as he then was); A-G Anambra State v. Okeke (2002) 12 NWLR (part 782) 575, Jadesimi v. Okotie-Eboh (No.2) (1986) 1 NWLR (Part 16) 264.

Secondly, the Supreme Court was unanimous. The ruling of the apex court upholds the well-reasoned ruling delivered by the Court of Appeal in the same case of Olisa Metuh. That means a total of eight appellate justices of the two highest courts in the country have signified approval for the procedure adopted by the trial court. So in terms of quality and quantity of judicial support, the ruling in Metuh is well-founded.

Thirdly, there is no evidence that the decision is Olisa Metuh has fostered injustice. Indeed the decision has advanced the cause of justice by enabling the speedy trial of the substantive issues in the high profile case under review and others. If the stay of Proceedings badly sought by Metuh had been granted, the Supreme Court would have done a grave injustice to the larger cause of administration of criminal justice. Also, the defendant/ appellant/ applicant cannot be said to have suffered any injustice as he has had the benefit of powerful legal representations while enjoying his bail. In this respect, it should be noted that the right to fair hearing under the constitution does not extend to the right to stay of proceedings after a prima facie case has been made out against a defendant at the trial court and upheld by the Court of Appeal.

The decision in Metuh is in accord with Public Policy which finds expression in section 15(5) of the Constitution and affirmed by the Supreme Court in the *locus classicus,* **AG Ondo State v. AG of the Federation (2002) 27 WRN 1.** Here the Supreme Court insightfully pointed out that *'in foreign countries, Nigerians are regarded and treated as corrupt people. Unlike other Nationals, no bank would allow Nigerians to open a Bank account as of right.* ***The Nigerian Green passport is synonymous with corruption.*** *Consequently, at foreign airports, Nigerians with green passports are separated of other Nationals- Nigerians are subjected to degrading and inhuman treatment and treated as pariahs on the ground that they are Nigerians who hail from the most corrupt country of the world.'* Therefore the Supreme Court rightly held that the Federal Government could legislate for the entire federation in order to realize the objective of abolishing all corrupt practices and abuse of power'. It is our humble submission that the Ruling in Metuh is in tandem with the ground-breaking decision in AG Ondo v. AG Federation.(supra).

Finally on this point, the interpretation and application of section 36(4) in Metuh is consistent with the teleological canons of constitutional construction which the Supreme Court has consistently enunciated over the years. (See Nweze, JSC, Constitutional Adjudication for Democratic Consolidation in Nigeria: The Role of the Supreme Court. (Justice Idigbe Memorial Lecture, 2017, Faculty of Law, University of Benin).

Consequently, the answer to this question is negative.

Part IV: Facts and Excerpts from the Court of Appeal ruling in Olisa Metuh

In **Olisa Metuh v. FRN (2017) 4 NWLR (part 1554) 108 at 131** the EFCC filed a seven count charge against the appellant and his company Destra Investments Ltd for taking possession or control of N400,000,000 (four hundred million Naira) only from the office of the then National Security Adviser when they reasonably ought to have known were proceeds of an unlawful activity of Col. Mohammed Sambo Dasuki (Rtd.)- criminal breach of trust and corruption and thereby committed an offence contrary to the section 15(5)(d) of the Money Laundering (Prohibition) Act, 2011 as amended in 2012 and punishable under section 15(3) of the same Act. Following the arraignment of the suspect, the prosecution called eight witnesses and tendered 14 exhibits to prove its case. The appellant pleaded not guilty to all the seven counts and made a no-case submission. After the review of the submissions of the learned counsel for both parties the trial court upheld the arguments of the prosecution that a prima facie case has been made out against the defendants/appellants. He then called upon the defendants to enter their defence. Upholding the decision of the trial court that the appellants have a case to answer, Aboki , JCA surmised:

It is pertinent to note that at the stage when a no case submission is made by an accused person on trial, what the court is to consider is not whether the evidence adduced, by the prosecution against the accused is sufficient to justify conviction, but whether the prosecution has indeed made out a prima facie case requiring at least some explanation from the accused person as regard his conduct or otherwise.

In other words, a prima facie case means that the prosecution's case against an accused person has raised some serious question linking the accused person to the crime and so calling for some explanation from the accused person and which only the accused person from his personal knowledge can give. See the cases of:

Uzoagba v. COP (2014) 5 NWLR (Pt. 1401) pg. 441 at 461.
Ajidagba v. IGP (1985) SCNLR 60.
Ajukuchukwu v State (2014) 13 NWLR (Pt. 1425) pg. 641 at 675.

I have carefully perused all the counts charged against the appellant in the instant case, it was evident form the case made out against the appellant that the witness led by the 1st respondent testified on facts in respect of the ingredients of the offences the appellant was arraigned . The evidence led by the 1st respondent witnesses was not discredited in cross-examination. The trial remained on-going. It is my view that, there is need for the appellant to deny or offer an explanation. The trial Court was therefore right in holding that the evidence on record and the circumstances of this case raise a prima facie case issue that require explanation from the appellant and the Co-Accused on all the counts charged. (At page 131-132).

Part V: Plethora of learned Comments on section 306 of ACJA 2015

5.1 His Excellency Professor Yemi Osinbajo,GCON Vice President Federal Republic of Nigeria

The ACJA 2015 is an important platform for reform of criminal justice administration. Therefore we will ensure that law is given purposive application so that cases are adjudicated with the immediacy required for justice delivery as embedded in the spirit and letter of the law beyond the intent of the mischievous who may wish to take advantage of loopholes to frustrate the cause of justice and keep is transfixed in the past.

5.2. Professor Fidelis Oditah, QC, SAN,

Role of the Courts in fighting Corruption

The main instrument for the delay and stifling of criminal proceedings in Nigeria is the interlocutory appeal.

It is astonishing that virtually any issue can be taken literally all the way

to the Supreme Court provided the appellant can formulate grounds of appeal based upon error of law, regardless of whether the points being appealed involve any public interest.

It is all too easy to dress up factual questions as questions of law.

But even if the law were to allow spurious interlocutory appeals, why should the criminal proceedings be stayed merely because an interlocutory appeal is pending?

The result is that there is a substantial backlog of pending appeals both in the Court of Appeal and the Supreme Court.

In addition to the backlog, our appellate judges do not have the luxury of calm and considered reflection on the issues under appeal.

Excessive workload compromises the quality of the appellate judgments and the health of the appellate judges.

A recent example is the case of **Ikechukwu v Federal Republic of Nigeria & 2 Ors** (2015) 7 NWLR (Pt. 1457) 1. In that case (which was commenced in **2011**), the FCT High Court granted leave to the Independent Corrupt Practices and Other Related Crimes Commission (ICPC) to prefer charges against the appellant and the 2nd and 3rd respondents. On arraignment, the appellant raised a preliminary objection seeking an order of court to set aside the said leave and to quash the order and arraignment. The objection was based on the ground that the ICPC, being a delegate of prosecutorial powers from the Federal Government could not sub-delegate same to a private prosecutor. The trial

court heard and dismissed the application, prompting the appellants to file an appeal. The appellant's appeal was opposed by the first respondent on the ground that the notice of appeal was not personally signed by the appellant as required by the rules of court. This objection was upheld by the Court of Appeal. The appellants appealed to the Supreme Court. The Supreme Court was clearly unimpressed by the seeming ploy by appellant's counsel to stall proceedings. While delivering the lead Judgement at 14E-G, Nweze JSC noted thus:

> ***So, since 2011, that is for four whole years now, the appellant, through the disingenuous ploy of his counsel, has held up proceedings at the trial court relating to his alleged offences under the Corrupt Practices and Other Related Offences Act.***

This view was echoed by Aka'ahs JSC at 24E-B where His Lordship noted that:

> **It is to be noted that the trial of the appellant is yet to commence. It should become abundantly clear even to the layman that the sole aim of this appeal is to stall and eventually frustrate the actual trial of the appellant. It is in the interest of both appellant and the wider society that his innocence of guilt is established as public confidence in the administration of criminal justice is eroded where those with means or the powerful erect legal bumps in the judicial process to delay justice.**

Section 306 ACJA may solve this problem. It provides that:

> "An application for stay of proceedings in respect of a criminal matter before the court shall not be entertained."

By reason of section 306, applications for stay of proceedings shall no longer be heard until judgment. Further, such application can no longer operate to stall continuation of trial.

Section 306 has the potential to curb the misuse of interlocutory appeals to scuttle criminal trials.

5.3. HON. JUSTICE J. O. K. OYEWOLE, JCA

INTERLOCUTORY APPLICATIONS AND ISSUES UNDER THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015

Like a thief in the night, stay of proceedings crept into our criminal procedure thereby shattering the age long tradition of seamless conclusion of criminal trials as witnessed in the 70s and even 80s. The order for stay of proceedings has been described as an antithesis to the speedy hearing of the case. It was further described as a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case.

The judicial mandate with regards to criminal trials is as specified in Section 36 of the Constitution. The right created thereby is a public right and not a private right that could be waived by any party as held by the apex Court in *Ariori Vs. Elemo*. Hitherto in criminal matters the power to grant stay of proceedings pending interlocutory appeal is an inherent one whereas the duty to ensure speedy trial is a constitutional one. Before

examining the existing situation where stay of proceedings had been abolished by express statutory intervention, permit me to dwell briefly on the logicality of stay in a criminal trial.

It is my proposition that there is no basis under any circumstances to grant stay in criminal matters. An interlocutory appeal would usually arise where the trial court reaches a decision unfavorable to one of the parties in the course of the trial.

The loss of a battle does not mean that the war would be lost. The final outcome of the trial could render the interlocutory grievance irrelevant and even where the final outcome was unfavorable, the interlocutory issue could be appropriately taken along with the substantive appeal. In all cases, there would be nothing pending unresolved before the trial court.

The first statutory attempt to prohibit stay of proceedings was in section 40 of the Economic and Financial Crimes Commission Act, which provides as follows:

"Subject to the provisions of the Constitution of the Federal Republic of Nigeria 1999, an application for stay of proceedings in respect of any criminal matter brought by the Commission before the High Court shall not be entertained until judgment is delivered by the High Court"

Similar provision is contained in Section 273 of the Administration of Criminal Justice Law of Lagos State.

Section 306 of the ACJA following the earlier cited provisions on the issue provides that an application for stay of proceedings in respect of a criminal matter before the court shall not be entertained. The key word here is 'entertain', the statutory provision is not about factors to be considered but ensuring that the application is not entertained thereby empowering the smooth flow of criminal trials.

5.4. HON. JUSTICE (PROF.) M. A. OWOADE, JCA

ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 – SOME SALIENT PROVISIONS

The provision of S. 306 is **revolutionary and unprecedented** given the delays occasioned to the trial process by interlocutory applications to stay proceedings on preliminary matters. It states that 'An application for stay of proceedings in respect of a criminal matter before the court shall not be entertained'.

5.5 OLANREWAJU ONADEKO (SAN) & ESA ONOJA

AN APPRAISAL OF THE ATTITUDE OF COURTS TO THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015

Section 306 of the Act provides that an application for stay of proceedings in respect of a criminal matter before the Court shall not be entertained. This provision has the potential to minimize prolonged delay in criminal trials caused partly by stay of proceedings.

The ACJA is to a very large extent, a step in the right direction. Discounting the inelegance of the drafting of some of the provisions of the Act, it is a watershed in many respects.

The combined effect of sections 221 and 396(2) of the Act is that objections as to defect in a charge or information may not defeat the charge, and even at that, ruling of such objections shall be taken with the judgment at the conclusion of trial. When combined with sections 306 and 396 of the Act, the expectation is that fewer accused persons would be able to delay trials through preliminary objections and interlocutory appeals.

5.6. HON. JUSTICE ISHAQ USMAN BELLO, CJ, FCT

PRACTICE DIRECTION ON THE IMPLEMENTATION OF THE ADMININSTRATION OF CRIMINAL JUSTICE ACT 2015 IN THE COURTS OF THE FEDERAL CAPITAL TERRITORY

An application for a stay of proceedings in respect of a criminal case before the Court shall not be entertained.

5.7 KADUNA STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW, 2017 (S. 317)

An application for stay of proceedings in respect of a criminal matter before the Court shall not be entertained.

5.8 JUSTICE THEODORA WOOD (MRS)

INTERNATIONAL WORKSHOP ON THE ROLE OF JUDGES IN THE FIGHT AGAINST CORRUPTION ORGANISED BY PACAC

Given the centrality of appellants' argument that they are entitled to make full use of their constitutional right to justice, the proper judicial approach or response at each stage is to ensure effective case management procedures and processes that would lead to a speedy resolution of interlocutory appeals, especially where an order for stay of proceedings remain in force. **Indeed a purposive construction of the constitutional right to fair trial within a reasonable time should not only be limited to an accused person but should cover and protect the State as well.**

Staying proceedings truncates the hearing and could subsequently, bring the entire criminal proceedings to a complete end, with the prosecution being unable to resurrect the hearing even where the interlocutory appeal fails. Invariably, some accused persons facing corruption charges appeal and apply for stay of proceedings pending an interlocutory appeal in bad faith, purposely to frustrate the trial, and thwart the efforts of the court to conclude the hearing knowing fully well that the Judge or prosecutor may be due for transfer, elevation, or retirement or even take up a new job.

Another critical challenge relates to situations where the trial court proceeds with the substantive hearing, ending in the imposition of a custodial sentence, only for the interlocutory appeal to dispose of the

entire substantive criminal case or a substantial part thereof and effectively terminate same. I submit therefore that, the pragmatic solution to balancing the scales evenly between the two competing rights, so as to ensure that the trial does not defeat the outcome of the appeal or application for stay of proceedings or prejudice the right of any party, for **appellate courts to hear interlocutory appeals in a most timely manner.**

Specialised and well-resourced criminal courts and court registries, dedicated to the speedy hearing of corruption cases, and presided over by highly competent, well- trained and well-motivated trial and appellate judges and court staff of the right calibre and with the right judicial attitude and attributes, persons committed to the national cause to the collective fight against corruption, is one of the key solutions to the challenges discussed.

5.9 JUSTICE SAMUEL OSEJI

On the other hand, stay of proceedings in its simplest definition means the act of halting or suspension of the process of trial or hearing of a matter by a court at the instance or application of one of the parties in the matter and it is often times engendered by an interlocutory appeal. From my little experience, and observation, about 70% of appeals before the court of appeal are borne out of interlocutory decisions of the trial courts. While in my estimation a few could be termed genuine and justifiable, a greater percentage of such appeals do not deserve attention or consideration but for the sake of due adherence to the provisions of section 241 (1) (b) and 242(1) of the 1999 constitution as well as superior authorities wherein the courts have been admonished to hear and determine any matter brought before them no matter how incoherent, ignoble or ridiculous.

The emergence of the Administration of Criminal Justice Act 2015 has however turned the tide and for once raised the hope for a speedy and efficient system for administration of Criminal Justice for the benefit of not only the victim, but also the accused and the society at large. Section 306

of the said Act provides in a clear and final note that:- "*An Application for stay of proceedings in respect of criminal matter before the Court shall not be entertained*

The provision though sounds simplistic but constitutes a lethal weapon against the hitherto common practice of frustrating or slowing down trials in criminal cases through interlocutory appeals, most of which in my view are either frivolous or unnecessary. It is my sincere hope and wish that all the states of the federation shall adopt and apply this **revolutionary piece of legislation** in their respective jurisdiction. This will obviously add pep to the fight against corruption and make way for a speedy and unimpeded trial of corruption cases both at the federal and state level.

5.10 JUSTICE S. D. KAWU, CJ Kwara State

In the case of **NNPC and ANOR VS. Odidere Enterprises Nig. LTD Aboki JCA** held inter- alia that: *"stay of proceedings is a serious, grave and fundamental interruption on the right of a party to conduct his litigation towards the trial on the basis of the substantive merit of his case, and therefore the general practice of the courts is that a stay of proceedings should not be granted, unless the proceedings beyond all reasonable doubt ought not to be allowed to continue".*

Also in the bid to overcome delay in the trial of politically exposed persons in corruption cases, the Act, in Section 306 provides that: "An application for stay of proceedings in respect of a criminal matter before the court shall not be entertained".

5.11 ABUBAKAR MALAMI, SAN, HAGF

SECTION 306 & 396 OF THE ACJA

GOVERNMENT'S COMMITMENT TO FIGHT CORRUPTION

In fact, on this point I agree with the Supreme Courts' observation in the case of: FRN VS BORISADE NCC where it held: **"... the interlocutory appeal of the third accused person against the ruling of the trial court epitomizes the frustration of trials at first instance which our adversarial system of criminal justice, unwittingly, perpetuates. It actually speaks ill of our criminal jurisprudence. The trial accused persons, which commenced in 2008, had to abide in the lower court's determination of the said interlocutory appeal; a decision that promoted the appellant's appeal to this court. In effect, since 2008, that is seven years ago, proceedings at the trial court had been stalled to await the outcome of the appeal against its ruling....**

It is on this note I wish to commend the courage and political will that drove the process that eventually led to the passage of the Administration of a Criminal Justice Act, 2015 and most particularly the enactment of sections 306 and 396 which from all indications are products of a unique synergy and meeting of minds among the three arms of government in order to improve on justice delivery by ensuring that interlocutory applications which delay trials are minimised to the barest level.

5.12 PROF. YEMI AKINSEYE-GEORGE, SAN, FCIArb.

RESTORING THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM

A recent example is the case of Ikechukwu v Federal Republic of Nigeria & 2 Ors (2015) 7 NWLR (Pt. 1457) 1. In that case (which was commenced in 2011), the FCT High Court granted leave to the Independent Corrupt Practices and Other Related Crimes Commission (ICPC) to prefer charges against the appellant and the 2nd and 3rd respondents. On arraignment, the appellant raised a preliminary objection seeking an order of court to set aside the said leave and to quash the order and arraignment. The objection was based on the ground that the ICPC, being a delegate of prosecutorial powers from the Federal Government could not sub-delegate same to a private prosecutor. The trial court heard and dismissed the application,

prompting the appellants to file an appeal. The appellant's appeal was opposed by the first respondent on the ground that the notice of appeal was not personally signed by the appellant as required by the rules of court. This objection was upheld by the Court of Appeal. The appellants appealed to the Supreme Court. The Supreme Court was clearly unimpressed by the seeming ploy by appellant's counsel to stall proceedings. While delivering the lead Judgement at 14E-G, Nweze JSC noted thus:

> **"So, since 2011, that is for four whole years now, the appellant, through the disingenuous ploy of his counsel, has held up proceedings at the trial court relating to his alleged offences under the Corrupt Practices and Other Related Offences Act."**

This view was echoed by Aka'ahs JSC at 24E-B where His Lordship noted that:

> **"It is to be noted that the trial of the appellant is yet to commence. It should become abundantly clear even to the layman that the sole aim of this appeal is to stall and eventually frustrate the actual trial of the appellant. It is in the interest of both appellant and the wider society that his innocence of guilt is established as public confidence in the administration of criminal justice is eroded where those with means or the powerful erect legal bumps in the judicial process to delay justice."**

- **Section 306 ACJA** may solve this problem. It provides that:

"An application for stay of proceedings in respect of a criminal matter before the court shall not be entertained."

By reason of section 306, applications for stay of proceedings shall no longer be heard until judgment. Further, such application can longer operate to stall continuation of trial.

Section 306 has the potential to curb the misuse of interlocutory appeals to scuttle criminal trials.

5.13 PROF. YEMI AKINSEYE-GEORGE, SAN, FCIArb.

INORDINATE DELAY OF HIGH-PROFILE CRIMINAL CASES: RESPONSE OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015

The importance of this provision cannot be over-emphasised in these times of the dire need of reform in the criminal justice sector. It is a notorious fact that the appellate process and its concomitant procedure of stay of proceedings in our legal system have been brazenly abused by defence lawyers who at the slightest opportunity resort to using them to stall the trial of their clients.

While section 306 is intended as a legislative antidote to the interruption of the trial process, section 396 is intended to serve as a preventive measure to discourage the filing of interlocutory appeals by counsel.

The point must be established that sections 306 and 396 of the ACJA which encourage speedy trial of cases rather than being inconsistent with any provisions of the Constitution tend to actualize the philosophy of fair hearing within a reasonable time enshrined under section 36(4) of the Constitution. This is because the sections are obviously aimed at ensuring the conduct of the trial of a defendant timeously.

Rather than being contrary to the Constitution, both provisions possess great potentials that could help improve and sustain the constitutional

philosophies of justice, security and economic development which could be better achieved with a functional criminal justice system. This is what the National Assembly intends to achieve by enacting these provisions.

Section 306 is a legislative cognisance of the attitude of the courts over the years of the procedure of stay of proceedings. In the case of PDP v. Abubakar (2007) All FWLR (Pt. 386) page 697 at 705, the Court of Appeal observed as per Adekeye, JCA (As he then was):

> ***'All courts of record, either trial or appellate, appreciate the fact that an application for stay by its very nature delays speedy hearing of a case which has a negative effect of frustrating an anxious plaintiff whose case might turn out to be unjustifiably delayed. The courts are wary and jealously guard the exercise of their discretion and power in favour of granting an application which can be used by an unscrupulous applicant to delay trial. The court would not grant a stay of proceedings unless it is rest assured that a case ought not to go on.***

Similar pronouncements abound on the reluctance of the courts to granting a stay of proceedings.

The point must be made that section 306 of the ACJA does not hamper the right of appeal guaranteed under the Constitution. The right of appeal guaranteed under the constitution must be exercised in line with relevant statutes including the ACJA. Any party who wishes to appeal against the decision of any court could do so upon delivery of judgment by which time the substantive issues would have been determined and proceedings concluded.

It is noteworthy that human rights applicants enjoy the right to speedy trial under order 8 rule 4 of the Fundamental Rights Enforcement Rules as objections to their applications are heard along with the substantive application. The same benefit should not be denied the State in criminal

cases by allowing objections by defendants to stall trials indefinitely. It is akin to robbing Peter to pay Paul when the defendants who insist on staying their trials on the basis of interlocutory objections happily enjoy the ban on separate hearing of interlocutory objections by the State in human rights cases.

In effect, section 306 compliments section 396(2) because there can only be stay of proceedings when there is a valid appeal and there could be no appeal unless there is a decision.

Conclusion

The ruling of the Supreme Court in Metuh has restored the dignity, integrity and agility of the Nigerian criminal justice system. The apex court has rightly upheld section 306 of the ACJA as a veritable instrument for curbing the abuse of Stay of Proceedings and interlocutory criminal appeals. The ruling is well-founded in law and logic. It suppresses the notorious mischief of delay of criminal proceedings while advancing the objects of the ACJA 2015: to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim.