AN ANALYSIS OF THE PRACTICE OF *NOLLE PROSEQUI* IN CORRUPTION CASES IN NIGERIA

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Abstract

The Attorney General of the Federation and that of a state has the constitutional power to bring any criminal trial initiated by him or on is behalf to halt. Generally, this power is meant to be used for trial strategy and extreme public policy matters. Corruption cases are among such cases where this power may be exercised, especially by the Attorney-General of the Federation considering that most corruption cases nowadays are initiated by the federal government. The way and manner in which the power of nolle prosequi is utilized in these cases demonstrate the seriousness with which the government pursues its fight against corruption. Unfortunately, the extent of the power of nolle prosequi has been a subject of much polemics, resulting in an avalanche of judicial authorities and misconceptions. In today's Nigeria where corruption has eaten deep into every fabric of the society, there is need to ascertain the working modalities of the A. G. in exercise of the power of nolle prosequi in corruption cases in accordance with the constitutional expectation and in line with global best practices for effective criminal justice system in Nigeria that would curtail corruption in all its ramifications. Using doctrinal methodology, this article utilized both primary and secondary sources to examine and evaluate the application of nolle prosequi in the prosecution of corruption cases, and how this affects the war against corruption in Nigeria. The article finds (among others) that one of the constraints against effective utilization of the power of nolle prosequi in corruption cases by the Attorney General in Nigeria has to do with the political arm of his office; (minister or commissioner as the case may be) in addition to being the Attorney General. The article recommends (among others) that the office of the Attorney General and minister of justice be separated through constitutional amendment to wipe out corruption in the Nigerian criminal justice system.

Keywords: Attorney-General, *Nolle prosequi*, Corruption, Nigeria

1. Introduction

The office of the Attorney-General of the Federation and that of the state (hereinafter referred to as the "AG", and "AGS") in Nigeria is constitutionally provided for under sections 174 and 211, respectively. The AGF and AGS are the Chief Law Officers of the Federation and the states as the case may be.[1] Copious provisions have been made with regards to the powers of the AG under the Constitution. The AG has immense powers in the legal realm because of the provision of the sections that provided for them in the constitution of the country. An AG is usually a legal practitioner with not less than ten years' experience at the bar.[2] Thus, the office of the AG is significant in the Nigerian legal system because its establishment and functions are constitutionally provided. It follows therefore, that its operations must be in consonance with the spirits of the

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[1] Ugochuwku, K. A. (2016). *Attorney General of Nigeria: the powers of the attorney general in Nigeria,* Law BloginNigeria,,http://anikingsleyugochukwu.worldpress.com/2016/12/15/attorneygeneralofnigeria.Accessed 09/02/2026,at 2120 hours

[2] Ibid

Constitution. The AGF exercises his powers in cases of violation of federal laws. That is, laws covering matters in respect of which the National Assembly have authority to legislate over as contained in part one, second schedule to the Constitution of Nigeria.[3] The AGS exercise their powers in cases of violation of state laws. That is, laws governing matters in respect of which states Houses of Assembly have authority to legislate over as contained in part eleven, second schedule to the Constitution of Nigeria.[4]

It is necessary to emphasize that the Constitution,[5] makes separate but identical provisions conferring on the AG and AGS power over public prosecution. These include power to commence, continue and discontinue any criminal proceedings *(nolle prosequi).* In exercising these powers, the AG whether of state or federation can exercise his power either in person or by delegating it to any officer of his department.[6] The AG is free to delegate his power to any officer of his department and such delegation of power cannot be challenged so long as it is properly done. The AG's power to institute and undertake or to discontinue *(nolle prosequi}* public prosecution against any person in Nigeria is only tenable in the regular courts of law.[7] The power cannot be exercised in a Court Martial, which is a court that adjudicates upon military offences under the Armed Forces Act.[8] The AG can take over any criminal proceedings instituted by any other authority or person such as the Commissioner of Police.[9] Nevertheless, the AG can only exercise the power to discontinue criminal prosecution before judgment is given as it is arguable whether the AG can still exercise such power at the appellate level.

The power of the AG to enter a *nolle prosequi* (I.e. the right to discontinue criminal proceedings at any stage before judgment is delivered) is one of the preeminent prerogatives of the AG under English law that Nigeria as a former colony, at independence, inherited along with the English common law into its judicial process. The power is the most controversial of the powers of the AG in relation to criminal proceedings. The courts in Nigeria bestow the power with the common law immunity from judicial review of the prerogative powers. In the case of *State v Ilori*[10] the Supreme Court of Nigeria held that the AG is not subject to any control in so far as the exercise of his powers under the Constitution is concerned and except for public opinion and the reaction of his appointer, he is still, in so far as the exercise of his powers are concerned, a law unto himself. The only sanction against him where he abuses his discretion is the reaction of his appointer or adverse public opinion which may force him to resign.

1.1 Meaning Nature and Scope of Corruption

Corruption remains a pervasive challenge globally, significantly hindering socio-economic development and undermining public trust in governance. In Nigeria, this phenomenon is particularly entrenched, often described as systemic due to its deep integration into various institutions and societal structures.[11] Concurrently, the legal practice of *nolle prosequi*, a discretionary power vested in the Attorney General to discontinue criminal proceedings, has drawn considerable scrutiny, particularly concerning its application in high-profile corruption cases.[12]

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[3] Osamor, B. (2004), "*Fundamentals of Criminal procedure in Nigeria",* Dee-Sage Nigeria limited, Abuja p.111.
[4] Ibid.
[5] Section 174 & 211 Ibid.
[6] Section 174 (2) and 211(2) Ibid.
[7] S. 174 (1) (a) and 211 (1)(a) Ibid
[8] Armed Forces Act, Cap A20 LFN, 2004
[9] *Emeakayi vs C. O. P.* (2004) 4 NWLR pt. 862 p. 158
[10] (1983) 14 N. S. C. C. 69
[11] Chatham House, 'Corruption in Nigeria' (28 August 2025) https://www.chathamhouse.org/2025/08/corruption-nigeria accessed 15 June 2026.
[12] E.E. Nwankwo, 'The Impact of the Power of Nolle Prossequi on the Fight against Corruption in Nigeria' (2025) 9(7) International Journal of Research and Innovation in Social Science (IJRISS) 2315, 2316

This research aims to provide a comprehensive appraisal of the meaning, nature, and statistics of corruption in Nigeria, and critically examine its intricate relationship with the exercise of *nolle prosequi*. The Meaning and Nature of Corruption in Nigeria Corruption in Nigeria is broadly understood as the abuse of entrusted power for private gain.[13]The nature of corruption is multifaceted, manifesting in various forms across different sectors. Scholars and anti-corruption agencies frequently categorize Nigerian corruption into the following:
Corruption involves large scale embezzlement and illicit enrichment by political elites and high ranking public officials. Examples include massive contract fraud, diversion of public funds, and illicit dealings in critical sectors like oil and gas.[14] Such acts often involve complex networks and sophisticated financial schemes. Corruption refers to the everyday bribery and illicit payments demanded by public officials for routine services. Citizens frequently encounter petty corruption when interacting with law enforcement, healthcare providers, and public utility officers.[15] While individually smaller in scale, the cumulative impact of petty corruption is significant, eroding public trust and increasing the cost of living for ordinary citizens. This encompasses practices such as vote-buying, nepotism in appointments, and the manipulation of political processes for personal or partisan advantage. It undermines democratic principles and the integrity of electoral systems.[16]

The systemic nature of corruption in Nigeria is attributed to several factors, including weak institutional frameworks, a lack of political will to enforce anti-corruption laws, tribalism, nepotism, and a prevailing culture of impunity where corrupt individuals often escape justice.[17] Statistics of Corruption in Nigeria Recent data highlights the persistent challenge of corruption in Nigeria. According to the 2023 National Corruption Survey conducted by the National Bureau of Statistics (NBS) and the United Nations Office on Drugs and Crime (UNODC), approximately 27% of Nigerians who had at least one contact with a public official in the 12 months prior to the survey paid a bribe.[18] This figure represents a slight decrease from 29% in 2019, but the overall prevalence remains high. Encouragingly, the survey also indicated that 70% of Nigerians who were asked to pay a bribe in 2023 refused to do so on at least one occasion. This suggests a growing reluctance among citizens to engage in corrupt practices.[19]

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https://rsisinternational.org/journals/ijriss/articles/the-impact-of-the-power-of-nolle-prossequi-on-the-fight-against-corruption-in-nigeria/ accessed 15 June 2026.

[13] IIARD, 'Corruption in Nigeria: Causes, Effects and Probable Solutions' https://www.iiardjournals.org/get/JPSLR/VOL%201/Corruption%20in%20Nigeria%202.pdf accessed 15 June 2026.

[14] Carnegie Endowment, 'A New Taxonomy for Corruption in Nigeria' (17 July 2018) https://carnegieendowment.org/research/2018/07/a-new-taxonomy-for-corruption-in-nigeria accessed 15 June 2026.

[15] National Bureau of Statistics and UNODC, 'Corruption in Nigeria: Patterns and Trends - Third Survey on Corruption as Experienced by the Population' (July 2024) https://www.unodc.org/conig/uploads/documents/3rd_corruption_survey_exec_sum_2024_07_09_web.pdf accessed 15 June 2026.

[16] PeaceRep, 'Understanding Systemic Corruption: The Political Role' (2 April 2024) https://peacerep.org/publication/understanding-systemic-corruption/ accessed 15 June 2026.

[17] S. Williams-Elegbe, 'Systemic corruption and public procurement in developing countries: are there any solutions?' (2018) Journal of Public Procurement 131 https://www.emerald.com/jopp/article/18/2/131/238910 accessed 15 June 2026.

[18] National Bureau of Statistics and UNODC, 'Corruption in Nigeria: Patterns and Trends - Third Survey on Corruption as Experienced by the Population' (July 2024) https://www.unodc.org/conig/uploads/documents/3rd_corruption_survey_exec_sum_2024_07_09_web.pdf accessed 15 June 2026.

[19] National Bureau of Statistics and UNODC, 'Corruption in Nigeria: Patterns and Trends - Third Survey on Corruption as Experienced by the Population' (July 2024)

Transparency International's 2024 Corruption Perceptions Index (CPI) ranked Nigeria 140th out of 180 countries, with a score of 26 out of 100. This indicates a consistently low perception of public sector integrity.[20] In 2023, Nigeria was ranked 145th.[21] The sectors where Nigerians most frequently encountered bribery in 2023 were healthcare professionals (30%), public utilities officers (24%), and police officers (20%).[22] An estimated 87 million bribes were paid in Nigeria in 2023, translating to an average of 0.8 bribes per adult.[23]

2. Conceptual Clarifications and Theoretical Framework

2.1 *Nolle Prosequi*

Nolle prosequi has been defined by the Supreme Court in the case of *Prince Abubakar Audu v Attorney General of the Federation,*[24] as "do not wish to proceed." The AG under section 174(1) (C) and 211(1) (C) of the constitution has power to discontinue at any stage before judgment any criminal proceedings. The AG can issue a *nolle prosequi* with respect to a case, which authoritatively determines that, the state doesn't wish to prosecute the case, so preventing any person from doing so. This power is exercisable by the AG in person, upon informing the court of his intention to discontinue the proceedings or by an officer of his department, armed with the written authority of the AG.[25] However, where there is no incumbent AG, no officer of his department, not even the DPP or Solicitor General can validly exercise the power of *nolle prosequi.*[26]

The effect of entering *nolle prosequi* is not to act as a bar to a fresh indictment or to discharge absolutely the original offence. It only postpones "Sine die" the prosecution. Fresh proceedings leading to a new indictment may be commenced and the accused will be precluded from raising a plea of "autrefois acquit", [27] on the basis of the *nolle prosequi.*[28]In exercising the power of *nolle prosequi*, the AG may be influenced by whatever reason, however frivolous. It is also crucial to emphasize that the AG in entering *nolle prosequi,* is not bound to give reason(s) or that he has complied with the grounds stated in Section 174(3) and 211(3) of the constitution.[29] Thus, the High Court of Benue State's refusal of the State AG's *nolle prosequi* application on ground of non-compliance with section 191(3) of the C.F.N 1979 (equivalent of S. 211(3) CFRN 1999) was overruled on appeal.[30]

It should be stated that the AG cannot enter *nolle prosequi* in respect of a matter being prosecuted in a Court martial. A court martial is not a civil court or meant for the trial of civilians.[31] Also, a private legal practitioner cannot enter *nolle prosequi* on behalf of the AG as the power can only be

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https://www.unodc.org/conig/uploads/documents/3rd_corruption_survey_exec_sum_2024_07_09_web.pdf accessed 15 June 2026.

[20] National Bureau of Statistics and UNODC (supra)

[21] E.E. Nwankwo, 'The Impact of the Power of Nolle Prossequi on the Fight against Corruption in Nigeria'(supra)

[22] National Bureau of Statistics and UNODC, 'Corruption in Nigeria: Patterns and Trends - Third Survey on Corruption as Experienced by the Population' (July 2024) https://www.unodc.org/conig/uploads/documents/3rd_corruption_survey_exec_sum_2024_07_09_web.pdf accessed 15 June 2026.

[23] Ibid

[24] (2013) ALL FWLR PT 667, 607 AT 623 Para D-F

[25] *State vs Ilori* p.84

[26] *Attorney General Kaduna State vs Hassan* (1985) 2 NWLR pt. 8 p. 483

[27]A plea in bar of arraignment that the defendant has been acquitted of the offence.

[28] *State vs Ilori* (1981) s2 SCNJ, p.155

[29] The Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2011)

[30] *State vs Akor* (1980) 2 NCRL 89

[31] Section 174 (1) (a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2011)

delegated to officers in the AG's department. Furthermore, the A. G. cannot delegate the power to enter nolle *prosequi* to a law officer who is in the employment of a government, but not working in the ministry of Justice. It is also obvious that the AG can only enter *nolle prosequi,* at the state level in respect of an offence created by or under a state House of Assembly, at the Federal level in respect of a law under or created by the Federal legislature. Thus, the AGF cannot enter *nolle prosequi* in respect of a state law and vice versa.[32] Furthermore, the absence of criminal sanction against the AG for misuse of the power of *nolle prosequi* notwithstanding, he can still be accountable in other ways. Firstly, an abuse or misuse of the power of *nolle prosequi* by the AG is an abuse or misuse of office, and an abuse of the high confidence reposed in him. Secondly, as a minister or commissioner, he would have subscribed to the oath of office, hence, should he later on abuse his office and trample on the oath he had taken, his conscience will be the first judge. His conscience will condemn him. Thirdly, while the courts cannot impose penal sentence on an erring AG in the exercise of the power of *nolle prosequi*, adverse public opinion can at least shake him. Fourthly, the president or Governor as the case may be, may remove or reassign him to another ministry without reason.

2.2 The Requirements of Public Interest, Interest of Justice and the Need to Prevent Abuse of Legal Process in the Exercise of the Power of *Nolle Prosequi*

The exercise of the power of *nolle prosequi* by the AG under the Constitution,[33] is tied down to the requirements of public interest, interest of justice and the need to prevent abuse of legal process each of which is discussed below:

2.2.1 The Requirement of Public Interest

The notion of "public interest" is not a totally novel idea as our justice system is quite familiar with the concept of public policy. So, the idea of public interest is not different from the notion of public policy. However, no consensus has been achieved even judicially on the broad parameters of public policy. Yet, it seems logical enough to suppose that an AG who discontinues a criminal proceeding against his family member would surely not be acting in the public interest if the consideration for such action is the consanguineous connection between the two. However, the AG who discontinues a criminal proceeding against an ambassador of a friendly foreign nation may well be acting in the public interest. So, the public interest is wide enough to subsume other interests such as national security and national economic interest as in the exercise of the power of *nolle prosequi* entered by the AGF to stop the prosecution for treason of the leader of the movement for the Emancipation of the Niger Delta (MEND) whose violent militancy has led to a significant reduction in the country's oil production.[34] The difficult question therefore, has always been what exactly constitutes public policy, and who gets to decide that? [35]

2.2.2 The Requirement of Interest of Justice

The idea of justice is linked with the notion of fairness and that being the case, it is worthy of note that our jurisprudence is reasonably familiar with what would be conducive to fairness whenever

[32] *George v AGF* (2011) ALL FWLR pt. 587 664

[33] The Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2011)

[34] On July 13, 2009, then-AGF and Minister of Justice, Michael Aondoakaa (SAN), entered a nolle prosequi before the Federal High Court in Jos, Plateau State. See https://proshare.co/articles/fg-frees-okah-discontinuesprosecution#:~:text=Jul%2014%2C%202009%20%E2%80%A2%20by,militants%20in%20the%20Niger%20Delta. Accessed 06/03/2026.

[35] Stenning, Philip C. "Discretion, Politics, and the Public Interest in 'High-Profile' Criminal Investigations and Prosecutions." Canadian journal of law and society 24.3 (2009): 337–366. Web.

the question arises. What the "interest of justice" connotes will depend on the circumstance of the case, as this may be closely linked to the idea of "public interest". Furthermore, viewed from a wholly consequentialist perspective, the danger of vowing to prosecute all offenders in all circumstances should be contrasted with the likelihood of peaceful coexistence and harmony.[36] Given the established parameters of the idea of "justice" "fairness" or "fair hearing" known to our justice system, it should be expected that our courts can always come to a firm and acceptable determination of whether or not the AG has acted in the interest of justice while exercising his power of *nolle prosequi.* Interest of justice is synonymous with the rule of law, thus, should the courts require evidence, where appropriate, that the A. G. has had regard to the rule of law in reaching a prosecutorial decision? This may not be out of place, considering the constitution requires the AG to take this into consideration. What is difficult to conclude though is whether the courts can inquire into that. For now, the position is that the courts cannot inquire into the AG's motives. Borrowing from the provisions of the Rome statute of the ICJ though,[37] it may be argued that the AG be made to satisfy the court that his actions are in the public interest or in the interest of justice.[38] A similar provision in the Rome statute requires that a determination as to the interests of justice should be made "taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime."[39]

2.2.3 The Requirement of the Need to Prevent Abuse of Legal Process

What constitute abuse of legal process seems to have been settled. In *Onyeabuchi v INEC*,[40] the Supreme Court observed: "It is an abuse of the process of court for the Plaintiff to litigate again over an identical question which had already been decided against him, also, where proceedings which were viable when instituted have, by reason of subsequent events, become inescapably doomed to fail, they may be dismissed as being abuse of court process" The Court of Appeal in the case of *Chindo v Isah*[41] provides circumstances that constitute abuse of court process as follows:

a. Instituting multiplicity of actions on the same subject matter against the same parties on the same issue;
b. Instituting multiplicity of action on the same matter between same parties;
c. Instituting different actions between the same parties simultaneously in different courts even though on different grounds; or
d. Where two similar processes are used in respect of the exercise of same right such as a cross appeal and respondent notice.

3. Selected cases on the Exercise of the Power of *Nolle Prosequi*

The purposes of the selected cases here are to consider whether or not the AG has exercised his power of *nolle prosequi* in the public interest, public justice and prevention of abuse of legal process as follows:

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[36] Henry Lovat, Delineating the Interests of Justice, 35 Denv. J. Int'l L. & Pol'y 275 (2007).277.

[37] Rome Statute of the International Criminal Court art. 53(1), July 17, 1998, 2187 U.N.T.S. 90.

[38] Art. 53(2). See also Darryl Robinson, Serving the Interests of.Justice: Amnesties, Truth Commissions and the International Criminal Court, 14 EUR. J. INT'L L. 481,481-85, 504-5 (2003);

[39] . Rome Statute of the International Criminal Court art. 53(1), ibid.

[40] (2002)8 NWLR Pt. 769 P.417

[41] (2011) 4 NWLR Pt. 1236 P. 27 @ 29 paras F-H

3.1 *Federal Republic of Nigeria v Orji Uzo Kalu & 2 Or*[42]

The defendants, a former Governor of Abia state was charged at the Federal High Court, Abuja, along with two others, for Money Laundering, Official Corruption and Criminal diversion of public funds totaling over N5 Billion.[43] In the course of the proceedings, the defendants brought an application seeking the quashing of the amended charges preferred against them on the ground that the warrant of arrest issued by the Federal High Court at the instance of the EFCC was done during the subsistence of Ex-Parte order of Abia State High Court and as such the defendants' arrest and arraignment at the Federal High Court are a nullity. The Federal High Court dismissed the application. The defendants filed an appeal[44] against the ruling dismissing the application to quash the amended charges against them. In the lead judgment, the appeal was dismissed by the Court of Appeal for lack of substance and the ruling of the trial court except on issues otherwise stated, was affirmed. Unfortunately, the AGF took over the case from the EFCC through the Federal Director of Public Prosecution (DPP) based on a petition written to the then President by counsel to the accused persons on the ground that the Abia State High Court had ordered for stay of proceedings pending the determination of a Motion on Notice before it restraining the EFCC from arresting the defendants. The AGF thereafter entered *nolle prosequi* against the defendants even though the Court of Appeal had deliberated on the purported restraining order allegedly made by the Abia State High Court to the effect that courts of similar or concurrent jurisdiction are not bound to follow the decision of each other.[45]

3.2 *Federal Republic of Nigeria v Dr. Ransome Owan & 6 Others*

The accused person who was the chairman of the National Electricity Regulatory Commission (NERC) was arrested along with six others by the EFCC and arraigned before the FCT High Court on Criminal Conspiracy, Theft and Dishonest Conversion of Public Funds totaling ₦ 1. 5 billion belonging to NERC.[46] The accused persons allegedly avoided returning unspent fund to the treasury, bought 54 vehicles valued at N350 Million without due authorization and they also moved N500 Million meant for staff housing financing to a Mortgage Finance Bank without authorization. While the case was pending, the accused persons in turn filed a civil case at the Federal High Court Abuja against their unlawful removal from office wherein they claimed some damages in *Dr. Ransome Owan and 5 Ors v EFCC and 2 Ors.*[47] Later, another AGF applied personally to withdraw the case against the accused persons by entering *nolle prosequi* and the charge was thereafter struck out. The case against the EFCCC and the Federal Government was withdrawn and the accused persons were later paid their entitlements and other benefits for the loss of their jobs. The AGF publicly apologized to the accused persons saying that if he were the AGF at the time the accused persons were arrested, he would not have sued them to court let alone allowing them to lose their office.[48]

3.3 *Federal Republic of Nigeria v Ibori*

The accused was arraigned before the Federal High Court Kaduna where he and his aides Mr. Uduamake Okoronko and one Chiedu Ebie were charged with a long list of corrupt offences.[49] The accused was granted bail in the sum of ₦50 Million and three sureties in the like sum. On his

[42] (unreported) Suit No. HU/177/2007
[43] Ibid
[44] (Unreported) No. CA/A/224C/2009
[45] Olakanmi Jide, (2016)12 Anti-corruption Laws, Law lords, P. 11
[46] FCT/HC/CR/34/2009
[47] (Unreported) Suit No. FHC/ABJ/CS/225/09
[48]This day Newspaper, 22nd and 23rd February, 2011 Last visited 17/12/2s4 at 10:55pms
[49] *FRN v Ibori* (2009) 3NWLR PT.1127 P. 94S

second appearance before the court, the accused made an application for the transfer of the matter to the judicial division where the offences for which he was charged were committed, that is, Asaba. The accused contended that the EFCC's decision to take him to Kaduna suggested that the agency was looking for a favorable forum to prosecute him and that the court may be susceptible to bias during the trial. The trial court dismissed the application and consequently an appeal was filed at the Court of Appeal Kaduna. While the appeal was pending, another application was made at the trial court praying for an order releasing the accused's passport which was dismissed. A similar application was filed at the Court of Appeal which was granted. The Appeal succeeded and the Court of Appeal finally granted the application for the transfer of the case to Asaba. However, the Appeal filed at the Supreme Court by EFCC against the decision of the Court of Appeal on the movement of the venue of the trial from Kaduna to Asaba was discontinued by the AGF.

3.4 *Federal Republic of Nigeria v Henrich Stockhausen & 8 Ors*

The accused persons were charged before the FCT High Court with a 13-count charge of official corruption totaling US$180 Million.[50] The accused persons pleaded guilty to all the charges but the AGF applied to withdraw the case against them by entering *nolle prosequi*. The accused persons were in return made to sign a plea bargain where Julius Berger was fined US$29.5 Million. The case was accordingly struck out by the court. This informed the decision of the Anti-Corruption Network to petition for the rank of Senior Advocate to be withdrawn from the then AGF.

3.5 *Federal Republic of Nigeria v Siemens A. G.& 8 Ors*

The accused persons Siemens AG, Siemens Nig Ltd, Maigida Shuaibu, former Executive Director PHCN, Mahmood Sadiq Muhammad, Former Permanent Secretary Ministry of Power/Steel, Emmanuel C. Ossai, former GM Finance NITEL, Edwin Moore Momife, former M D MTEL and two others were charged for bribing officials in Nigeria and 2 other Countries (Libya and Russia) to seek lucrative telecommunications contracts. The bribery was said to have amounted to the tune of N77 Billion. The charge was filed by the office of the AGF. The AGF however filed an application for *nolle prosequi* in favour of the accused persons for them to return the sum of N7 Billion to Nigerian Government which is just 7.7% of the total sum the accused persons were alleged to have stolen. The application was granted and the charge was struck out.[51]

3.6 *Prince Abubakar Audu v Attorney General of the Federation & 1 Anor*

The accused person, a onetime Governor of Kogi State was arraigned in the High Court of Kogi State on an eight-count charge on offences under the Advance Fee Fraud and Embezzlement of public funds[52]. While the case was pending at the High Court of Kogi State, a *nolle prosequi* was entered in favour of the accused person by the AG of Kogi State in collaboration with the AGF, but the trial court refused to discharge the accused person on the ground that the *nolle* was not entered for public interest. The Supreme Court however decided that the trial court erred by not discharging the accused person and that the judge has no power to question the A. G. as to why he filed a *nolle prosequi.*

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[50] (Unreported) FCT/HC/CR/95/2010

[51] *Nigerian Tribune*, November 23, 2010 last visited 2nd February, 2014 at 2: 30pm

[52] (2013) ALL FWLR PT. 667 P. 607

4. Whether the AG Considered the Constitutional Requirements in the Above-Mentioned cases?

A careful consideration of the cases reviewed above reveals that the A. G. did not consider public interest, interest of justice and the need to prevent an abuse of legal process in exercising his power of *nolle prosequi* in the aforesaid cases under review.

4.1 Political, Administrative and Judicial Functions of the AG

The AG is, under the Constitution,[53] either a Minister of the Federal Government (in which case he is called Minister of Justice) or a Commissioner of a State Government (Commissioner for Justice) and as such, he is a member of the Executive Council. Under the Nigerian Constitution,[54] the AG is also a member of the Judicial Service Commission and the Commission shall have the power to advise the National Judicial Council in nominating persons for appointment to the Supreme Court, Court of Appeal and other Superior courts of record. The AG is also the head of the Bar and it is generally acknowledged that the Bench and the Bar constitute the legal profession. The AG has the responsibility for the Law School, Legal Aid Council, Nigerian Institute of International Affairs, Law Review Commission, etc. The responsibilities of the AG are manifold. Suffice it to say that the internal organization of the Ministry of Justice headed by the AG mirrors the responsibilities of his office. Thus, the powers and responsibilities of the AG under the 1999 Constitution are very wide. The reason for this obviously is to put him completely and effectively in control of criminal prosecution in Nigeria.

5. The Exercise of the Power of *Nolle Prosequi* in Selected Anglo-American Jurisdictions

The AG in most Common Law jurisdictions has power to enter *nolle prosequi*, though the extent to which the AG exercises this power varies between jurisdictions as can be seen below.

The Australian states each have separate AG's who are state minsters with similar responsibilities to the federal minister with respect to state law. In normal circumstances, the prosecutorial powers of the AG are exercised by the Director of Public prosecutions and staff of the ministry of justice. However, the AG has the power to issue a *nolle prosequi* with respect to a case, which authoritatively determines that the state does not wish to prosecute the case, so preventing any person from doing so.[55]

In England and Wales Jurisdiction, the AG for England and Wales have supervisory powers over the prosecution of criminal offences, but are not personally involved with prosecutions; however, some prosecutions (e.g. riot) cannot be commenced without their consent, and they have the power to halt prosecutions generally. Criminal prosecutions are the responsibility of the Crown Prosecution service, headed by the director of public Prosecutions. The AG may appeal cases to the higher courts where, although the particular case is settled, there may be a point of law of public importance in issue. The AG's deputy is the Solicitor General for England and Wales. Under the Government of Wales Act 2006, the Counsel General is the chief legal adviser to the Welsh Assembly Government.[56]

In Kenya, the AG is the principal Legal Adviser to the Government and *ex officio* Member of Parliament and Cabinet. His duties include the formulation of legal policy and ensuring proper administration of Kenya's legal system including professional legal education. Assisting the AG in the performance of his duties as Principal Legal Adviser to the government are: Solicitor

[53] Ibid

[54] Ibid

[55]Barzilai, B. (2016). Attorney General of Nigeria: the powers of the attorney general in Nigeria, Law Blog in Nigeria, http://anikingsleyugochukwu.worldpress.com/2016/12/15/attorneygeneralofnigeria.Accessed 09/02/2026.

[56] Ibid

General, Senior Deputy Solicitor General, Director of Public Prosecutions, Registrar General, Administrator General, Chairman of Advocates Complaints Commission, Chief Parliamentary Counsel, Chief State Counsel[57].

6. Judicial Attitude towards the Exercise of the Power of *Nolle Prosequi* by the AG in Nigeria

The Supreme Court held in *Ilori v State*[58] that the powers of the AG in Nigeria, including the power of *nolle prosequi* is unquestionable and subject to no control judicial or otherwise whatsoever. The Supreme Court in this case seems to transplant the Common Law position into Nigeria by their unanimous decision; with respect, in total disregard to the socio-economic and cultural background of the people of Nigeria.

The facts of the case, briefly, are the DPP Lagos State filed information in the high court of Lagos state against one Mr. Fred Egbe, a legal practitioner, for the offence of inducing delivery of money by false pretenses and for stealing. Mr. Fred Egbe brought an application to quash the information and this was quashed by the Court of Appeal from the decision of the high court of Lagos state. Mr. Fred Egbe bounced back and wrote a letter to the AG Lagos State requesting for the prosecution of the DPP who filed the information against him and the two police officers who investigated the case. The AG refused the request and Mr. Fred Egbe initiated a private prosecution against the DPP and the police officers. The AG filed a *nolle prosequi* and Mr. Fred Egbe's action was struck out.

Mr. Fred Egbe challenged the propriety of the AG's action on appeal to the Court of Appeal. His contention was that the powers conferred under section 191(3) of the 1979 constitution must be exercised by the AG in good faith (bona-fide) and the presumption that the AG acts in accordance with public interest is rebuttable. He concluded his argument that where the AG fails to be so guided by the section, the court can review his decision. While dismissing the appeal for lack of evidence, Kazeem JCA who delivered the lead judgment held as follows:

i. That at common law and under the 1960 and 1963 Constitutions of Nigeria, the power of the AG as officer of the crown is not subject to review by the court of Queen's Bench Division or another court. He cited the case of *R. v. Comptroller General of Custom (1819)1Q.B. P.909 at 914*. He also relied on section 104(3) of the 1963 constitution of Nigeria.
ii. That now in Nigeria section 191(3) of the 1979 constitution provides for additional safeguards which the AG should show regard to when exercising his powers under subsection 3 of section 191 of the 1979 Constitution. These are the public interest, the interest of justice and the need to prevent abuse of legal process.
iii. That whenever an aggrieved person complains of an infraction of his fundamental rights and that the AG has failed to have regard for those safeguards, in exercising his powers, and he can successfully prove it, the courts in this country in the exercise of their wide powers under section 6 (6) of the 1979 constitution, can inquire into such complaint and grant appropriate remedy.
iv. That the appellant did not prove his claims in this case. And until he does so, the appellant cannot ask the court to go behind the certificate of discontinuance filed by the AG under section 191(1) (c) of the 1979 constitution[59].

The Court of Appeal dismissed the appeal not because in its view it lacked authority to review the exercise of the powers of the AG, but because Mr. Fred Egbe, the Appellant could not prove his claim of bad faith against the AG of Lagos State. In view of this decision, while the AG is presumed

[57] Ibid
[58] (1981)2SC P.155
[59] *Ilori v State* (1983)1SCNLR 94, 110

to have regard to the public interest, interest of justice and the need to prevent abuse of legal process in the discharge of his duties, a person aggrieved by the exercise of his powers can challenge same and adduce evidence to prove his claim, under section 191 (3) of the 1979 Constitution.

On appeal to the Supreme Court, the appellant contended that the position of the AG under the common law has been altered by the constitution and the power to enter a *nolle prosequi* are now by virtue of the provision of section 191 (3) circumscribed by a pre-condition but the Supreme Court disagreed with the reasoning of Appellant and the Court of Appeal and held as follows:

i. That the position of the Court of Appeal on the provision of section 193 (3) was not in contemplation of the 1979 Constitution. And if anything at all, it does not accord with common sense. If the Court of Appeal was right, whenever the AG failed to have regard to the content of sub-section (3) of the 1979 Constitution, then the court must stop the prosecution of the person concerned and commence an inquiry into the complaint by the accused person. Surely, in view of the Supreme Court, this is not in contemplation of the 1979 Constitution and does not accord with common sense.
ii. That the pre-eminent and incontestable position of the AG under the common law, as a chief law officer of the state either generally as legal adviser or especially in a court proceeding to which the state is a party, has long been recognized by the courts. The AG, at Common Law, is a master unto himself, law unto himself and under no control whatsoever, judicial or otherwise, vis-à-vis his powers of instituting or discontinuing criminal proceedings. The AG's power is subject only to the ultimate control of his appointer who could remove him, and subject only to adverse public comment. This power of the AG is not confined to cases where the state is a party.
iii. That in stating that the AG shall have regard to "section 191 (3) of the 1979, the Constitution did not intend to delimit and has not delimited the powers of the AG either at Common Law or under the constitutions preceding the 1979, in so far as institution or discontinuing criminal proceedings in Nigeria is concerned.
iv. That the words "shall have regarded to" in subsection 3 of section 191 of the 1979 Constitution are words which are known in the interpretation of statutes as a permissive language; a language which imports discretion, but certainly not create a condition. They are words which are merely declaratory of what the AG takes into consideration in the exercise of his powers.
v. A person who suffers from the unjust exercise of power by an unscrupulous AG is not without a remedy; he can invoke other proceedings against the AG but certainly, his remedy is not to ask the court to question or review the exercise of powers of the AG whatever this remedy may be, it is certainly not to form part of the proceedings where the grievances occur. It has to be the subject of other proceedings.
vi. That the provisions of subsection (3) of section 191 of the 1979 Constitution applies to the whole section.[60]

Going through the above decision of the Supreme Court, it is right to conclude that the decision does not represent the intention of the legislature while framing the provisions of sections 160 (3) and 191 (3) of the 1979 Constitution.
It is trite rule of interpretation of statute that when a court is called upon to interpret the provisions of any law, the court is otherwise invited to have an imaginary picture of the minds of the legislature. It thus follows that although the constituent Assembly was not the Legislature, which

[60] Ibid, 111

enacted the 1979 Constitution, their recommendation under section 159 (2) (b) of the 1979 Draft constitution however, influenced the mind of the legislature to include for the first time, in Nigerian Constitutional history, subsection (3) of section 160 and 191 of the 1979 Constitution which has now been reenacted in section 174 (3) and 211(3) of the 1999 Constitution (as amended).

It seems that the Supreme Court was mainly swayed by the history of the powers of the AG under the common law rather than the historical development of the powers of the AG under the Nigerian Constitutions before the enactment of the 1979 Constitution. The history of powers at common law should not have influenced the decision of the Supreme Court if it had considered the relevant history under section 104 (6) of the 1963 Constitution. The section reads thus; "In the exercise of the powers conferred upon Attorney General (i.e. to institute and undertake, to take over and continue or discontinue criminal proceeding) he shall not be subject to the direction or control of any other person or authority."[61] This provision is significantly missing in both the 1979 and 1999 Constitutions which in contrast provide that in exercising the powers, the AG shall have regard to public interest, interest of justice and the need to prevent abuse of legal process[62].

What the Constituent Assembly to the 1979 Constitution had in mind was the possibility of turning the discretionary powers of the AG to serve parochial interests when it recommended section 159 (9) (b) of the draft to the 1979 Constitution which after several mutilation is left to read what is today 160 (3) and 191 (3) of the 1979 constitution. In the interpretation of statutes including the constitution, recent history and circumstances of the society where the statute applies are the most crucial factors of consideration other than colonial history. The case of *Dangana v Usman & ors*[63]is instructive. In that case, the Supreme Court per Nnamani JSC held as follows: "……It is my view that in these matters which are so interlined with criminal law, our interpretation of section 6 (6) (b) of the constitution must be approached with a true liberal spirit in the interest of society at large."[64]

The importance of this case rests not so much in the actual decision as in the authoritative pronouncements on the need to interpret public interest in the light of the socio-economic and cultural background of the people of this country, because it is against this background that the country's constitution was and should be fashioned. The express provision of section 6 (6) (a) and (b) of the 1999 Constitutions clearly forbids any notion of the immunity of the AG from legal process as the courts have in their inherent jurisdiction both in civil and in criminal matters power to ensure the court's process is used fairly and conveniently by both sides which is consistent with the requirement that the AG shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process. This position has been used in other jurisdictions to control prosecutorial powers in the manner rejected by the Supreme Court of Nigeria. In the case of *Barton v the Queen*[65] the High Court of Australia, relied on the common law to exclude the AG's statutory power to file an ex-officio indictment from judicial review. Nevertheless, the court held that once such an indictment is filed the court can intervene to prevent an abuse of process or patent unfairness. In the words of Justice Gibbs: "There is ample authority for the proposition that the courts possess all the necessary powers to prevent an abuse of process and to ensure a fair trial." Similarly, the courts in Kenya have departed from the established English common law position

[61] Section 104 (6) of the 1963 Constitution
[62] Section 191 (3) of the 1979 Constitution
[63] (2012) 4 S. C. M. P.55
[64] Ibid P. 855
[65] (1980)147 CLR 75

on the power of the AG to enter a *nolle prosequi*.[66] In the case of *Crispus Karanjavs Attorney General*[67] the court declared that: "On the present practice in our criminal justice system that a *nolle prosequi* cannot be challenged in court, we find such proposition to be untenable under the Kenyan constitution"[68]

Furthermore, a similar provision under the Rome Statute of the ICC,[69] categorically subjected the exercise of this power to the review of the court. It requires that the Prosecutor provide the court with the reasons for his decisions.[70] It also provides that any decision not to prosecute by the prosecutor will only be effective on confirmation by the pre-trial chamber of the ICC.[71] This shows the way forward on the need for accountability in exercising public powers.

7. Conclusion and Recommendations

The judicial review of the power of the AG to enter *nolle prosequi* in corruption cases is highly desirable and advantageous to Nigeria. Firstly, it would uphold the rule of law by ensuring the independence and impartiality of the AG in the exercise of their discretionary powers. Secondly, it would reduce to a considerable degree, the chances of arbitrary or capricious decision making by the AG in the conduct of public prosecution where the public rightly expects fairness and complete absence of political interference. The Supreme Court's position in ILORI that an errant AG "Could easily fall out of favour of his appointer or the National or State Assembly leading to a clamour for his removal" could not help matters because of the fact that the Nigerian political system is largely immune to public opinion.

Recent developments have shown that even the extreme possibility of removal cannot provide an adequate safeguard against unlawfulness, impropriety and irrationality in Nigeria. Instances include the misuse of his power of *nolle prosequi* in the prosecution of corruption cases which has been a stumbling block to the war against corruption in Nigeria. To prevent the misuse of the power of *nolle prosequi* in the prosecution of corruption cases which has been a stumbling block to the war against corruption in Nigeria, the following are recommended:

1. The office of the Attorney General of the Federation should be separated from the office of Minister of Justice to ensure independence of the office so that the office would be free from political influence and manipulation as is the practice in some developed climes. The Senate had attempted to establish the office of the AG of the Federation separate from the office of the Minister of Justice in 2017 to make the office independent and insulate the AG from partisanship.
2. Since the Supreme Court of Nigeria has jurisdiction to overrule itself when its decision was reached per in curium or is contrary to public policy, the decision made in ILORI should be overruled in favour of a more progressive interpretation in the light of the socio economic and cultural background of the people of this country so that horrendous exercise of power of *nolle prosequi* in corruption cases by the AG in Nigeria could be checked and political interference with their functions controlled.

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[66] Olowu, D. (2002), *NolleProsequi and the Law in Nigeria*, Demyaxs Law Publishers, Ibadan pp. 7-8.
[67] (2000) Crim APP No.39 p.1
[68] Ibid
[69] Rome Statute of the International Criminal Court art. 53(1), July 17, 1998, 2187 U.N.T.S. 90.
[70] .Ibid, at art. 53(l), 53(2).
[71] Ibid, at art. 53(3).

3. The Supreme Court should, as the guardian of the rule of law, move towards redefining the extent of the power of *nolle prosequi* in line with the current trend in other Common Law jurisdiction such as Canada[72] and Kenya[73]so that the government shall abolish all corrupt practices and abuse of power as enjoined by section 15 (5) of the constitution.

[72] R. Marc (2009), *The attorney general and Prosecutorial Function on the 21stCentury,* Queens University Law Journal, Vol. 43 (2) p 813

[73]Op. Cit.