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Honourable Attorney General of the Federation and
Minister of Justice



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Chapter Fifteen

Right of Private Person to Initiate and Prosecute Criminal Proceedings in Northern Nigeria: A Right with Statutory Flavour?

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Abdulsalam Lukman Oladele**

Introduction

Generally, in the legal profession, controversy involving issues that affect the interpretation and/or implementation of statutes and application of same are bound to arise among the stakeholders. So, the controversy will linger until some is resolved one way or the other either through judicial intervention.

This chapter seeks to examine the legal controversy on the validity or otherwise of a 'Direct Complaint' filed by private individual in the Magistrate Court in Northern Nigeria, Kwara State as a case study. The chapter also discusses the legal regime of the right of a private person to institute criminal proceedings in the Magistrate Court in Northern parts of Nigeria, the efficacy of such criminal proceedings, its legal effects on the parties in dispute and the correct interpretation of the relevant provisions of the Criminal Procedure Code applicable in Northern parts of Nigeria criminal proceedings.

In the course of writing this chapter, relevant stakeholders like judges, magistrates, legal practitioners, prison officers, police officers and members of the public were consulted for their respective views in order to improve the quality of this chapter.

Initiation of Criminal Proceeding before a Court in Northern Nigeria
Criminal proceedings can be initiated in the courts in any part of the Northern Nigeria based on the relevant provisions of the Criminal

Procedure Code'¹ (hereinafter referred to as 'the CPC'). The various ways by which criminal proceedings can be instituted as laid down by section 143 of the CPC are as follows:

Section 143:- subject to the provisions of chapters XIII and XIV and to any limitations on the powers of the court, a court may take cognizance of an offence:

- (a) When an arrested person is brought before it under section 40 or 41;
- (b) Upon receiving a First Information Report under section 118;
- (c) Upon receiving a complaint in writing from the Attorney General;
- (d) Upon receiving a complaint of facts which constitute the offence;
- (e) If from information received from any person other than a police officer it has reason to believe or suspect that an offence has been committed.

The above provision of the Law has laid down five distinct ways by which criminal proceedings may be initiated/instituted under the CPC which is applicable to all states in the Northern Nigeria.² The CPC has defined 'Court' to include any court of civil or criminal jurisdiction established by law or deemed to be so established.³

In Northern Nigeria the Courts that have jurisdiction criminal proceedings are: the Area Courts; Magistrate Courts; High Courts and/or the Federal High Courts. All the aforementioned courts fall within the meaning of the term 'Court' envisaged by the CPC.⁴

Therefore, criminal proceedings can be initiated in any of the courts listed above in Northern Nigeria through any of the procedure set out under section 143(a)–(d) of the CPC, but not otherwise.

1 Section 143, Criminal Procedure Code.

2 The preamble to the Criminal Procedure Code states that 'A Law to establish a Code of Criminal Procedure for Northern Nigeria.'

3 Part 1, Chapter 1, paragraph 1 of the CPC.

4 Ibid.

Right of Private Person to initiate Criminal Proceedings in Northern Nigeria

This chapter is of considered view that private persons are clothed with the requisite locus standi to initiate criminal proceedings in the courts of competent jurisdiction in any part of the Northern Nigeria based on the relevant provisions of the CPC, particularly, section 143(d) and (e) respectively. By virtue of the said section of the CPC, a private person can institute criminal proceedings against any person alleged to have committed an offence(s) affecting him by laying a complaint before the court.

At the risk of repetition but for the purpose of clarity, section 143 of the CPC states-

Subject to the provisions of chapter XIII and XIV and to any limitations on the powers of the court, a court may take cognizance of an offence-

- (a) (Not Applicable)
- (b) (Not Applicable)
- (c) (Not Applicable)
- (d) Upon receiving a complaint of facts which constitute the offence;
- (e) If from information received from any person other than a Police Officer, it has reason to believe or suspect that an offence has been committed (Underlining is supplied for emphasis).

Applying the literal rule of interpretation to the above provisions of the Law, it is obvious that the right of a private individual to initiate/institute criminal proceedings has been statutorily sanctioned. It is trite law that where the words of a statute are clear and unambiguous, their plain meaning should be given to them, because it is not the business of the court to make the law but just to interpret it as it is. In the case of *INEC v. PDP*,⁵ Coomassie, JCA held that:

5 (1999) 11 NWLR (pt 626) 174 at 175 paras B-C. See also *Kotoye v. Saraki* (1994) 7 NWLR (pt 357) 414 at 460-461, paras G-C (S/C); *Gafar v. Government of Kwara State* (2007) 4 NWLR (pt 1024) 375 at 408, paras B-C and *Adetayo v Ademola* (2010) 15 NWLR (pt. 1215) 169 at 198 paras B-D; 205 paras B-D; 190-191 paras G-A and 205 paras D-F; *C.B.N. V.* 191 paras G-A and *Maiwada* (2013) 5 NWLR (pt. 1348) 444 at 485 paras F-G.

it seems that section 152 of the Criminal Procedure Code Law only confers or empowers the lower court to hold enquiry into the offences alleged in the complaint or try them, in my view, it does not confer any power or right on a private person(s) to prosecute criminal proceedings before that court as done in the instant case'. (Emphasis Supplied).

Again, in suit no. kws/178m/2016 between Mr. Yinka Adebisi V. Mrs. Salmat Adebisi & Anor, his Lordship, Honourable Justice S.M. Akanbi of the Kwara State High Court of Justice, Ilorin in his considered ruling delivered on 31st May, 2017 has this to say:

My understanding of the sections under the Criminal Procedure Code, is to give powers to court to take proceeding or judicial notice of complaints by Police or A.G. *where a complaint is received by an individual, all that the court does, is to take cognizance simpliciter and nothing more, the power to investigate is given through the direction of the court to the police...* There is no gainsaying the fact that the proceedings conducted by Upper Area Court, Pake is a gross violation on rules of Natural Justice as section 143, 144 of the CPC only allow them to take cognizance after investigation by who?... (Underlining is supplied for emphasis).

Going by the decisions of the two High Courts of Kwara State, Ilorin Judicial Division stated above, there is no doubt that a private person has the requisite locus standi to initiate and/or institute criminal proceedings in courts in Kwara state in particular and in Northern Nigeria at large. But it appears that the two courts are of the opinion that the right confers on the private individual to institute or initiate criminal proceedings does not extend to prosecution of criminal proceedings in court. According to His Lordship E.B. Muhammed, J, a private person cannot prosecute any criminal proceedings in court without the authority, consent or fiat of the Attorney General of the state. His Lordship held in its judgment that allowing a private individual to initiate and prosecute criminal proceedings will amount to breach of the spirit and clear provisions of one of the twin pillars of the rule of natural justice, '*nemo judex in causa sua*', i.e. one cannot be a judge in his own cause.

With due respect to his Lordship, this chapter holds a contrary position to the position stated by his Lordship that Section 143 of the C.P.C. does not stipulate that a private person requires the authority, consent or fiat of the Attorney-General to institute and/or prosecute criminal proceedings in Northern Nigeria unlike in the Southern Nigeria where such private individual is required to obtain the consent or fiat of the Attorney-General of the state before he can do so.⁶ A correct interpretation of section 143 of the CPC or under any law in Northern Nigeria does not stipulate that before a private person can initiate or prosecute criminal proceedings in Northern Nigeria, he must obtain the authority, consent or fiat of the Attorney-General of the state.

Furthermore, the two High Courts of Kwara State, Ilorin Judicial Division stated in their considered ruling that allowing a private person to prosecute criminal proceedings will amount to a breach or violation of the rules natural justice, that is, *nemo judex in causa sua* meaning that a person cannot be a judge in his own cause. With due respect to my noble Lords, it appears in my humble view, that the principle of *nemo judex in causa sua* is inapplicable to the situation under consideration because of the following reasons:

- (a) The right of a private person to initiate criminal proceedings in Northern Nigeria does not extend to hearing and determination of the proceedings as a judge/magistrate by the said private person himself.
- (b) A private person who initiate proceedings under section 143(d) and (e) of the CPC has no right or power to pronounce any judgment in the case.
- (c) It is only the court who is an impartial umpire who has the requisite jurisdiction to hear, determine and to pronounce judgment in such a criminal proceedings and any other civil or criminal proceedings.

Therefore, the issue of *nemo judex in causa sua* does not arise at all as the private individual who has chosen to initiate and prosecute criminal proceedings

6 See, *Fawehinmi v. Akilu* (1987)11-12 SCNJ 151; *AG Anambra State v. Nwobodo* (1997)7 NWLR (PT.256); *Atake V. Afejuju* (1994)9 NWLR (PT.368) 879. See also section 213 the Criminal Procedure Act.

pursuant to section 143(d) & (e) of the CPC cannot prevent the suspect/accused person from putting forward his defence before the court and he has no right or power over the court on how, when and what the judgment of the court should be. Therefore, a private person who initiates and prosecutes criminal proceedings in Northern Nigeria cannot be said to have breached or violated the rules of natural justice viz-a-viz, *nemo judex in cause sua* or any rule or principle at all.

In addition, his Law Lord, S.M. Akanbi, J, held in his considered ruling that the court can only take cognizance of the criminal proceedings initiated by a private person and nothing more. However, in this paper, the term 'cognizance' has been defined to mean a Court's right and power to try and to determine cases.⁷ Since my Lord agreed that a Court can take cognizance of any criminal proceedings initiated by a private person, invariably, the court has the right and/or power to hear and determine the said criminal proceedings from the beginning to the end. This submission is in tandem with the decision of the Court of Appeal, Jos Judicial Division in the case of *ORJI V. AMARA*⁸ where the Court held that:

To prosecute means, in essence, to set in motion the law whereby an application is made to some person with judicial authority with regard to the matter in question...

The court further held that:

The case is brought under section 143(e) CPC, which allows a private person to institute direct criminal proceedings. Therefore, the initiating of the complaint before the Upper Area Court cannot be malicious having been done under the provisions of the law. The circumstances in which the appellants initiated the case before the Upper Area Courts are justifiable in law having due regard to the definition of 'prosecute' and 'malice' referred to hereinbefore in this judgment.⁹

7 See reference/foot note number 6.

8 (2016)14 NWLR (pt.1531)21 at 60 para F.

9 Ibid p. 61 paras C-D.

And, the Court stated further that:

The conclusion and the decision arrived at by the learned trial Judge of the Lower Court on page 202 of the record of appeal that the appellants acted maliciously in the institution of the case by private criminal prosecution cannot be sustained for the reasons adumbrated herein.¹⁰ See also the case of ADEMOLA BAKARE v. SEGUN OLADIPO.¹¹

Similarly, in the case of Mrs. Tolulope Oniyide vs. Mr. Taiye Ayotunde Oniyide,¹² the Court of Appeal, Ilorin held that:

It must not be forgotten, too, that clear aim of section 143 of Criminal Procedure Code Law of Kwara State in issue and similar provisions in the Criminal Procedure Code Laws of all the states constituting the old Northern Region of Nigeria is to make the initiation of criminal complaints simple so that any member of the general public who has any genuine criminal complaint can approach the courts directly to lay it. It is something suggestive of an all hands on deck on the fight against crimes approach. That laudable objective ought not to be, and should not be allowed to be defeated by dry technical objections like the instant one of the means by which a person chose to notify the court of his/her criminal complaint. Technical justice is an ill wind that blows no one any good and should be avoided like the plague.

The fear that some people may abuse the institution of criminal prosecution by way of criminal direct complaint does not take away the right to institute same. One of the learned authors has said:

Meanwhile, because a complaint can be instituted by private individuals, it has been subjected to various abuses. More often than not, it is maliciously instituted by certain individual requiring a criminal summons or a warrant to be

10 Ibid, p 62, para D.

11 Unreported, Suit No.CA/IL/C.59/2014 delivered on 7/7/2017.

12 (2018) LPELR-444240 (CA).

issued against his perceived enemy without any clear offence disclosed in the complaint. Therefore, Magistrates are advised to always avail themselves of sections 148 and 149 of the Criminal Procedure Code to send a complaint brought to their notice for an investigation by the police whenever they are doubtful as to whether the complaint discloses any offence.¹³

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) recognizes the right of a private person to initiate criminal proceedings. The Constitution provides that:

The Attorney-General of a state shall have power-

- (a) (Not applicable here)
- (b) To take over and continue any such criminal proceedings that may have been instituted by any other authority or person.¹⁴

From the above provision of the Constitution, it is logical to deduce that the Attorney-General of the state does not have exclusive right or power to initiate criminal proceedings. The Constitution recognizes the right of private individual to initiate and prosecute criminal proceedings as stated under section 143(d) & (e) of the Criminal Procedure Code.

Section 211 (1) (b) and (c) of the constitution states that:

‘...instituted by ANY OTHER AUTHORITY OR PERSON’. This provision, by implication, confess the right to initiate and prosecute criminal matters on any private person.

It is apparent that the authority referred to in S.211 (1) of the constitution includes but not limited to the Economic and Financial Crimes Commission (EFCC); Independent Corrupt Practices Commission (ICPC) Nigeria Civil Defence and Security Corpse (NSDSC) etc. as, the word ‘PERSON’ mentioned therein could mean individual person.¹⁵

13 O Celestine, ‘The Trial Procedure in Magistrates’ Courts under The Criminal Procedure Code’ (Siddwell International Limited, 2013) p 129.

14 Section 211 (1)(b), 1999 Constitution of the Federal Republic of Nigeria (As amended).

15 Magistrate A.M. Ibrahim; Suit No MCIA/360c/2017, 17/07/2017.

It is therefore reasonable to submit that a private individual has the right to initiate and prosecute criminal complaint/proceedings in the court of competent jurisdiction in Northern Nigeria.

This authority however appreciate that, upon arraignment, the court will have the power to refer the case to the police for investigation or further investigation as the case may be.¹⁶

Conclusion

In this chapter, various provisions of the law, particularly, the 1999 Constitution of the Federal Republic of Nigeria (as altered) and the Criminal Procedure Code have been examined as they affect the right of private person to initiate and prosecute criminal proceedings in Courts in Northern Nigeria.

This chapter concludes that the right of a private individual to initiate and prosecute criminal proceedings as analyzed in this chapter and as strengthened by judicial authorities does not affect the right and power of the Attorney-General of the state in criminal matters as clearly expressed in the Constitution. The Constitution States that:

The Attorney-General of a state shall have power

- (b) To take over and discontinue any such criminal proceedings that may have been instituted by any other authority or person;¹⁷ and
- (c) To discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other person.¹⁸

It appears to be a misconception of the law to suggest that, like in the Southern Nigeria, private Individual must obtain the consent or fiat of the Attorney-General to initiate or prosecute criminal proceedings in the Northern Nigeria. Although, the Attorney General is constitutionally vested with the power to take over or discontinue such criminal

16 Section 148, Criminal Procedure Code. See also *Olusewo VS. C.O.P.C* (1998) NWLR (pt.578) 547 at 563 and *FRN v Osahon* (2006)5 NWLR (pt.973)361 at 410-411, per Kutigi, JSC (as he then was).

17 *Ibid*, Section 211 (1) (b).

18 *Ibid*, Section 211 (1) (c).

case/proceedings that may be instituted by any private person based on the provisions of section 211 (1) (a) (b) and (c) of the constitution, but such power of the Attorney-General does not rob the private individual his right to institute/initiate criminal proceedings Section 143 (d) (e) of the CPC is an existing law by virtue of the relevant provision of the Constitution.¹⁹

Be that as it may, section 143 (d) (e) of the CPC remains a subsisting law until and unless it is amended or repealed. The section confers on the court the power and inherent jurisdiction to hear and determine criminal proceedings initiated by private individual.²⁰ It is the candid opinion of this paper that it is safer to allow individual person to initiate and prosecute criminal proceedings in the entire country without limiting the right to Northern Nigeria alone. This will go a long way to reducing the use and application of self-help in this country which has been the order of the day. The courts always emphasis on the need to do away from self-help because it is strange and unacceptable to any civilized society.²¹

19 Section 315, 1999 Constitution of the Federal Republic of Nigeria (as amended).

20 M M Kehinde, *Constitutional Law in Nigeria*, (Malthouse Press Limited, Lagos) p 180. It is trite in law that the inherent power of the court complements the jurisdiction conferred on a Court by the Constitution of a statute.

21 E Ese, *The Nigerian Constitutional Law*, (Princeton Publishing Company, Lagos, 2015) p 133. See also the case of *Nkpa v. Nkume* (2001) 6 NWLR (pt.710)543 at 560 paras F-H, and *Anigbogu v. Uchejigbo* (2002) 10 NWLR (pt.776) 472 at 487 paras A-H.