

**POWERS OF PROSECUTION BY LAY POLICE OFFICERS
UNDER THE POLICE ACT AND THE ADMINISTRATION OF
CRIMINAL JUSTICE ACT 2015: THE WAY OUT**

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Abstract

The power to prosecute criminal offences ultimately lies with the Attorney General of the Federation and States and the States respectively. However, such power can be exercised by other bodies as may be provided by statutes but subject to the overriding powers of the Attorney General. The Police is empowered to exercise such powers subject to the powers of the Attorney General but whether a lay police officer can exercise same before any Court in Nigeria is still laced with legal arguments requiring judicial expositions. The enactment of the Administration Criminal Justice Act and particularly the Police Act 2020 though regulates the power of the police to prosecute when they are legal practitioners also gave none-lawyer police the power to

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prosecute in cases where they usually prosecute. In Osahon v FRN, the Court mystified the position that a lay police officer can prosecute from inferior courts to the Supreme Court. These creates ambiguity resulting into different legal interpretations. The aim and objective of this paper is an attempt to create a balance opinion between the provision of the Police Act and the extant judicial authorities. This research adopts doctrinal methodology drawing on both primary and secondary sources for analysis. The paper ends with recommendations, one of which is that the Police Act has made a more robust, provision in witting down the powers of police officer who are none-lawyers before a superior Court and the judicial authorities made in conflict with this provision must be revisited by the Courts.

Keywords: Powers, Police, Prosecution, Attorney General, State, Agency, Statutes

1. Introduction

The power of prosecution of every criminal matter ultimately lies with the State. It is a well-established common law principle that any criminal offence is an offence against the state as such the state is the ultimate defender of the victim of crime and the prosecutor of the offender. This is because historically under the ancient English Common Law the Crown held the exclusive power to prosecute criminal offences and prosecution is a public function, exercised by the state on behalf of the community. The reasons are not far-fetched. Prosecution serves the public interest by maintaining law and order, the State is considered neutral, impartial and fair, the State has the resources to investigate and prosecute crimes. In

England, the power enjoys a statutory flavour and grants the power of public prosecution to the office of Crown Prosecution Service for England and Wales¹

In Nigeria, the power enjoys constitutional flavor². It lies ultimately with the Attorney General of the Federation in cases of Federal offences³ or the Attorney General of the States in cases of State offences.⁴ The power is fundamental, wide and sacrosanct that certain persons and specialized prosecutorial institutions can exercise some limited powers on behalf of the Attorney General but such powers are still subjected to him. One of such institutions is the Nigerian Police Force.

In Nigeria, crime rate is soaring, several reasons are responsible. Chief amongst them are political instability, terrorism, banditry, kidnapping and violence. Nigeria was included among the countries with the least peace in the world. According to the Global Peace Index (GPI), it was recorded as the Nineteenth (19th) less peaceful state⁵. Based on Global Terrorism Index (GTI) Nigeria is the eight (8th) country most affected by terrorism⁶. Another disturbing figure is that Nigeria is witnessing mass killings and it is considered as the fifth (5th) country in Africa with the highest risk of genocide and the twelfth (12th) in the world.⁷

¹ Prosecution of Offences Act, 1985, CAP 23.

² s 174 and 211 CFRN 1999.

³ Ibid.

⁴ s 221 CFRN 1999

⁵ Global peace index, *Crime in Nigeria, statistics and Facts Published by statistical research department on 2/09/24.* Available on <https://www.statistica.com/topics/7491/crime> Accessed on 24 October 2024

⁶ Ibid, Global Terrorism index

The need to address security challenges is enormous as there are different ways to fight it. There are also institutions, processes and procedure to addresses it in line with administration of criminal justice system. The process usually involves the apprehension of offenders, investigation and prosecution. Historically, the Police Act of 1943 was the earliest Act put together to regulate the Police and over time it went through certain changes inform of amendments and repeals due to time and circumstances and in view of the fact that the force is an essential component of administration of criminal justice system, Most recently we have Police Act 2020⁸ which provides that the primary function of the police force is to protect lives and properties, prevent and detect crime, maintain public safety, enforce laws and regulation etc. The role of the police in the administration of justice cannot be over-emphasized because their mandate is not just limited to arrest, investigation and apprehension of offenders. They also have a key role to play in the prosecution of offenders. The Police Act⁹ further provided that they can exercise the power of prosecution subject to the powers of the Attorney General.

2. Brief History of Police Legislation in Nigeria

Prior to the coming into force of the Administration of Criminal Justice Act 2015 (ACJA) and the Police Act 2020, police officers in Nigeria popularly known as “Police prosecutors” could prosecute criminal cases at all level of courts. This is also due to the fact that since the introduction of British legal system into Nigeria, there were no sufficient State Counsel in the respective Attorneys General’s offices to prosecute criminal cases at all the

⁸ s 4. Police Act 2020

⁹ s.66 Police Act.

inferior Courts and it was easier since investigation was usually done by the police. They actually do the bulk of the criminal prosecution at the lower courts particularly in Magistrate courts. This duty to prosecute was conferred on them by the Police Act.¹⁰

Generally, Police is a unit of the armed forces established for the maintenance of law and order. It is established as an independent department of the government responsible for the preservation of public order, peace and tranquility, enforcement of laws, promotion of public health, safety and morals, prevention, detention and prosecution of offenders.¹¹ Historically the Nigerian Police is closely related to the evolution of the Nigerian Army and the State itself. It can be traced back to 1861 shortly after the capture of Lagos through colonial military expedition by the British. The Nigerian Police started as a Consular Guard of 30 men in 1861 in Lagos.¹² For their security and effective administration, the British Colonial Authority established the Hausa Police, Constabulary for the Lagos Colony, the Niger Coast Constabulary for the Oil Rivers Protectorates in the South-East and the Royal Niger Constabulary in the Northern part of Nigeria. Even after the amalgamation of Northern and Southern Nigeria by Lord Lugard in 1914, the Northern and Southern Police Forces continued to operate separately until April 1st, 1930 when

¹⁰ L.E Effiong, G. Abdulsalam and A.O.Oluwadayisi 'A Critical Appraisal of the Prosecutorial Powers of the police under the Police Act 2020' IJCCSL (2022) 2(2): 80-85. available at <https://www.criminallawjournal.org> accessed on 8/10/24

¹¹ Black's Law Dictionary (1979) 5th ed. West Publishing Co. Minnesota, P. 1041

¹² 27 W.A Adebayo, "Nigerian Police: Structure, Powers and Functions" in T.F Yerima & B. Abegunde (Eds) Essays on Administrative Law in Nigeria, 2006, Petoa Educational Publishers, Ado-Ekiti, P.251

they were eventually merged to form a single body that is today known as The Nigerian Police²⁸ with headquarters in Lagos.¹³

In recent times, the prosecutorial powers of the police have been an issue of various legal actions and the court has made pronouncements to establish the power the police to prosecute regardless of not being a legal practitioner. However, with the enactment of the Administration of Justice Act 2015 (ACJA), only a legal practitioner in the police establishment is permitted to prosecute criminal cases. This is further included in the provisions of section 62 of the Police Act (PA), 2020 to the effect that only a police officer who is a Legal Practitioner shall have the power to prosecute¹⁴

It is worthy of note that under the Legal Practitioners Act¹⁵, only legal practitioners enjoy the rights to represent clients in court except if the client chooses not to be represented by a legal practitioner, this is applicable both in civil and criminal cases. However, in criminal cases, the state being the representative of the victim of client and having rested the power of prosecution on the Attorney General gives part of the powers to the police to exercise as such a policeman whether duly called to the Bar or not can prosecute criminal matters on behalf of the Attorney General, they are called Police Prosecutors. Under the old Police Act,¹⁶ any police officer may conduct prosecution in person before any court whether qualified as a legal practitioner or not. This section went contrary to an earlier decided

¹³ Idowu, A.A. (2003) "The Role of the Police in Elections: The Nigerian Situation" in *University of Ado-Ekiti Law Journal*, Vol 2, PP 97-98, Prof, Tekena Tamuno, *The Police in Modern Nigeria 1861-1965* (1970), University of Ibadan Press, Ibadan, Chapter 1.

¹⁵ S.3 LPA 1975

¹⁶ Police Act. 2004

case in 1998 by the Court of Appeal in *Olusemo v. C.O.P*¹⁷ that any police officer could prosecute in superior courts but that such police officer must have been called to the Nigerian Bar.

However in 2006. the Supreme Court held in *Federal Republic of Nigeria v Osahon*¹⁸ that all police officers, whether they were qualified as lawyers or not, were entitled to appear and prosecute cases in all courts in Nigeria. The court held: that a police officer can prosecute by virtue of Section 23 Police Act, Section 56 (1) Federal High Court Act, and Section 174 (1) of the Constitution of the Federal Republic of Nigeria ¹⁹

This judgment being the subsisting judgment of the highest court on this issue is in conflict with section 66 of the Police Act 2020. However, when the Administration of Criminal Justice Act (ACJA)²⁰ came into force, it provided that only a legal practitioner in the police establishment is entitled to prosecute criminal cases²¹. This provision agrees with the provisions of the Police Act, 2020 to the effect only a police officer who is a Legal Practitioner shall have the power to prosecute.²² However, the same section of the ACJA further provided also that the non-lawyer police can equally prosecute in cases where they usually prosecute. It is therefore not in doubt that this position under the Police Act contradicts the two decisions of the appellate courts mentioned above and to some extent the Administration of Criminal Justice Act 2015.

¹⁷ *Olusemo V. COP* (1998) 11 NWLR (PT 575) 547

¹⁸ *FRN v. Osahon* (2006) 5 NWLR (pt. 973) 361

¹⁹ *Tawakalitu v FRN* (2011) 9 WRN where the court reiterate on the power of the police to conduct all prosecution before any court of law in Nigeria. 51 Cap 80 Laws of Federation of Nigeria (LFN) 1990 now 2004.

²⁰ ACJA 2015

²¹ S.106 ACJA.

²² Section 66 of Police Act 2020

3. The Prosecutorial Powers of The Police in Nigeria

The powers of the Nigerian police force is as contained in the constitution and the Police Act. The Constitution²³ provided for the establishment and composition of the Nigerian Police force for the federation and further gives power to the National Assembly to make laws for its organization. The police Act²⁴ provides for the primary functions of the police as follows; The Police Force shall:

- a) prevent and detect crimes, and protect the rights and freedom of every person in Nigeria as provided in the Constitution, the African Charter on Human and Peoples Rights and any other law;*
- b) maintain public safety, law and order;*
- c) protect the lives and properly of all persons in Nigeria;*
- d) enforce all laws and regulations without any prejudice to the enabling Acts of other security agencies ;*
- e) discharge such duties within and outside Nigeria as maybe required of it under this Act or any other law ;*
- f) collaborate with other agencies to take any necessary action and provide the required assistance or support to persons in distress, including victims of road accidents, fire disasters, earthquakes and floods;*
- g) facilitate the free passage and movement on highways, roads and streets open to the public*
- h) adopt community partnership in the discharge of its responsibilities under this Act or under any other law ; and*
- i) Vet and approve the registration of private detective schools and private investigative outfits.*

²³ S. 214 CFRN 1999

²⁴ S. 4 Police Act 2020.

These functions are the general duties of the police as encapsulated under the Act, the duties are not exhaustive. The powers and functions of the Police basically includes serving the community, safeguarding lives and properties, protecting the innocent, keeping the peace and ensuring the rights of all to liberty, equality and justice; In the course of performance of their duties, they shall perform same impartially, without fear or favour, ill-will or affection and without regards to status, sex, race, religion, political belief or affection.²⁵

The Act²⁶ equally makes specific provisions on powers of the police to prosecute.

- 1) Subject to the provisions of section 174 and 211 of the Constitution and section 106 of the Administration of the Criminal Justice Act which relates to the powers of the Attorney-General of the Federation and of a State to institute, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria, a police officer who is a legal practitioner, may prosecute in person before any court whether or not the information or complaint is laid in his name.
- 2) A police officer may, subject to the provisions of the relevant criminal procedure laws in force at the Federal or State level, prosecute before the courts those offences which non-qualified legal practitioners can prosecute.

It is not in doubt that this is a novel provision under the new Police Act, it is a far cry from the old Police Act which gives powers of prosecution to

²⁵ A. Onibokun 'Police and conduct of the Nigerian police force' legalnaija (2013) Available at <https://legalnaija.com/powers-and-conduct-of-nigerian-police> accessed on 15/10/24

²⁶ S.66(1) Police Act 2020

any police officer to prosecute. It is also an attempt to bring in to form with a similar provision under the Administration of Criminal Justice Act 2015. Section 23 of the repealed Police Act is to the effect that subject to the powers of the Attorney General of the Federation and of the State to institute, undertake and take over and continue or discontinue any criminal proceedings, any police officer may conduct criminal proceedings. This provision ultimately gave the police the power of prosecution to prosecute in person in any criminal proceedings in Nigeria before any court. However, the new police Actⁱ clearly precludes a police officer who is not a qualified legal practitioner from prosecuting in any criminal proceeding in any court. This may also be interpreted to mean that every police division must ensure that it has a police officer who is a qualified legal practitioner in that division,

However, the same Act²⁷ provided that none-qualified legal practitioners or none-lawyer police can still prosecute criminal cases. In the first place, the language employed is misleading as there is nothing like offences prosecuted by none-qualified legal practitioners under our extant laws. Secondly it contradicts the provisions of the Legal Practitioners Act (1975) which affords every legal practitioner in Nigeria the right of audience in all the courts in Nigeria.

The Act provides²⁸

Subject to the provisions of the next following subsection and of any enactment in force in any part of Nigeria prohibiting or restricting the right of any person to be represented by a legal practitioner in

²⁷ S.66(2) Police Act 2020

²⁸ S.8 LPA 1975

proceedings before the Supreme Court or the Sharia Court of Appeal or any area or customary court, a legal practitioner shall have the right of audience in all courts of law sitting in Nigeria.

The section did not explain who is a legal Practitioner, however, the same Act²⁹ provided meaning of the term, “legal practitioner” as used in the Act to refer to any person who “is entitled in accordance with the provisions of the Act to practice as a barrister or as a barrister and solicitor, either generally or for the purposes of any particular office or proceedings.” A person is said to be entitled to practice as a Barrister and Solicitor in Nigeria if and only if, his name is on the Roll of legal practitioner in Nigeria, or he is permitted by warrant under the hand of the Chief Justice of Nigeria to practice law for the purpose of particular proceedings.³⁰

Besides, a person exercising the fun force actions of any of the offices of the Attorney-General, Solicitor General or Director of Public Prosecutions (of the Federation of Nigeria or of any State) or a Legal Officer in the Federal or State Civil Service shall be entitled to practice as a barrister and solicitor for the purposes of such office.³¹

It is therefore the intention of the Legal practitioners Act (LPA) that only a legal practitioner is qualified and entitled to practice Law in Nigeria. It therefore means that a police officer who is not qualified as legal practitioner, no matter his knowledge of the law and experience cannot

²⁹ S.24 LPA

³⁰ S. Udemezue, ‘Disengaging Lay Police Officers from Criminal Prosecution for a more Efficient Criminal Justice Administration in Nigeria’ (2019) Available at <https://www.researchgate.net/publication/352644755>, Accessed on 21/10/24

³¹ *ibid*

appear and prosecute cases before any court of law in Nigeria. The practice of lay police officers prosecuting criminal cases in Nigeria can be traced back to colonial period. This Nigerian Police Force have passed through several stages of development from colonial period, when Nigeria was governed by the British. In order to uphold peace and order in the colony of Lagos, the British government founded the first police force in Nigeria in 1861, known as the Lagos Police.³² The Lagos Police, which was in charge of maintaining law and order in the Lagos Colony, was primarily made up of British officers. As the British colonial rule expanded to other parts of Nigeria, the need for a more organized police force arose. In 1894, the Royal Niger Company established the Niger Coast Constabulary, which was later merged with the Lagos Police to form the Southern Nigeria Police in 1906. The Southern Nigeria Police was responsible for policing the southern region of Nigeria, which comprised the present-day states of Lagos, Ogun, Ondo, Edo, Delta, Bayelsa, Rivers, and Akwa Ibom. To preserve peace and order in the northern region of Nigeria, which included the modern-day states of Sokoto, Kebbi, Zamfara, Kaduna, Katsina, Kano, Jigawa, Bauchi, Yobe, and Borno, the British administration founded the Northern Nigeria Police in 1900.³³

The Nigerian Police Force underwent several significant changes in its structure, functions, and responsibilities. One of the key developments was the enactment of the Police Act of 1943, which established a unified police force for the entire country, bringing together the Southern Nigeria Police and the Northern Nigeria Police under a single command.³⁴

³² E.S Chukwuemeka , 'History of Nigerian police Force' accessed on 21st January 2025 at <https://bscholarly.com/history-of-nigerian-poliocce-force/>

³³ Ibid

³⁴ Alemika, E.E.O. ' Colonialism, state and policing in Nigeria'. CLS **20**, 187–219 (1993). <https://doi.org/10.1007/BF01308450>

The Police Act of 1943 also introduced reforms in the recruitment, training, and promotion of police officers. It emphasized the need for a professional and disciplined police force that could effectively maintain law and order, protect life and property, and uphold the rule of law. The Act also provided for the establishment of a Police Service Commission to oversee the recruitment, training, and promotion of police officers, as well as to ensure their impartiality and integrity.³⁵

It is therefore not a surprise that before the coming into force of the recent police Act 2020, the lay police officers have derived their powers and exercised them from before independence period to the 2004 when the Police Act³⁶ was amended penultimate the 2020 Police Act.

4. Judicial Interpretation of the Scope of Prosecutorial Powers of Lay Police Officers

4.1 Olusemo v. COP (1998) 11 NWLR (Pt 575) 547

The first locus classicus case that challenge the powers of police officers to prosecute criminal matters in a superior court of record is the case of Olusemo v. COP (1998) 11 NWLR (Pt 575) 547.

The appellant raised an objection before the High Court to the right of Mr. S.G. Ehindero, then a Police Commissioner to represent the State in the proceedings. The High Court after hearing the parties, ruled that the Police

³⁵ Ibid.

³⁶ S.23 Police Act 2004

Commissioner was entitled to represent the State in the High Court. On appeal to the Court of Appeal the court held pursuant to section 23 of the Police Act and section 98(1) of the High court of the Federal Capital Territory Act: at page 558 that ³⁷

“In the instance, the power to prosecute or undertake criminal prosecution is vested on the police officer under Section 23 of the Police Act subject to the exercise of the powers conferred on the Attorney-General by the provision of Section 160 of the Constitution. It is very clear and without any doubt that the Attorney-General of the Federation has not exercised his powers under Section 160 of the Constitution in the instant case. Therefore, the Police Officer’s powers to prosecute in the criminal proceedings in this case are not limited, restricted or controlled. Mr. Ehindero qua Police Officer is competent to prosecute in these proceedings in any Court in Nigeria including the High Court. A Police Officer is defined in Section 1 of the Police Act to mean any member of the Police Force”.

The Court in interpreting Sections 97 and 98 of the Federal Capital Territory High Court Act held that by Section 97, any Legal Practitioner duly enrolled to practice as a Legal Practitioner in the Supreme Court shall have right to practice in the High Court. Since Mr. Ehindero was a Legal Practitioner duly enrolled, he was entitled to appear and practice in the High Court.³⁸

It is also evident from the decision that that a police officer is entitle to prosecute in superior courts but that such police officer should have been a

³⁷ N. Tijany, ‘the power to prosecute by police officers in superior courts in Nigeria’ JJCLI 2010 Vol 2 page 64-83

³⁸ Ibid

legally qualified legal practitioner. Thus, while all police officers were entitled to prosecute cases before inferior courts in Nigeria, only those police officers duly called to the Nigerian Bar were permitted to prosecute in superior courts of record.³⁹

4.2 *FRN v George Osahon* [2006] 5 NWLR (Pt. 973) 36

This is another *locus classicus* case and an interlocutory appeal decided in 2006. Unlike *Olusemo V COP* that was only determined at the Court of Appeal, this case started from the Federal High court went up to the Supreme Court, presided over by seven justices of the Supreme Court, it borders on the interpretation of sections 174 and 211 of the CFRN 1999, section 23 of the Old Police Act and other statutory provisions.

The appellant maintained that only the Attorney-General of the Federation is empowered to institute and undertake criminal proceedings against the accused persons and that the powers conferred on the Attorney-General of the Federation under section 174(1)(a) of the 1999 Constitution can only be exercised by him in person or through officers of his department. He argued that the Prosecutor in these proceedings and/or other persons assisting him are Police Officers and his team are not officers of the Attorney-General of the Federation's office/department that it was believed the appropriate authority empowered to institute and undertake criminal proceedings against the respondents herein in respect of offences created under Miscellaneous Offences Act is the Attorney-General of the Federation or through officers in his Ministry. As the prosecutor and other police officers with him now prosecuting were not officers in the Attorney-General Department and they had no fiat of the Attorney-General to prosecute the matter, as such the charges should be quashed.

³⁹ Ibid

The Police filed a counter-affidavit and stated that the police did not need the fiat of the Attorney-General of the Federation to prosecute the offences are charged by virtue of section 23 of Police Act (Cap. 359 Laws of the Federation of Nigeria, 1990) and that though the Attorney-General and members of his department could prosecute, the police equally could prosecute under the Act. The trial court ruled in favour of the Police and further stated:

“in the case of a prosecution or on behalf of the Government of the Federation or by any public officer in his Official capacity, the Government of the Federation or that officer may be represented by a law officer, State Counsel, or by any legal practitioner duly authorized in that behalf by or on behalf of the Attorney-General of the Federation.”

It equally held that the law officers specified in the section are of two categories, to wit, the law officers in Ministry of Justice and law officers in other government departments. Officers who are legally qualified (in this case officers called to Nigerian Bar) can prosecute without the fiat of the Attorney-General and that there was no violation of section 174 of the Constitution of the Federal Republic of Nigeria, 1999.

The Respondents appealed to the Court of Appeal with a sole issue for determination which was as follows: - “under section 56 (1) of the Federal High Court Act, only a law officer, a State Counsel or legal practitioner duly authorized by the Attorney General of the Federation can represent the government in the Federal High Court. Can a Police Officer (irrespective of being called to the Nigerian Bar) represent the government of the Federation in the Federal High Court? The Court of Appeal held that the Federal High Court Act, deliberately excluded Police Officers from prosecution and thus allowed the appeal. The respondents at the Court of Appeal appealed to the Supreme Court. The Supreme Court allowed the appeal and set aside the appeal.

The main issue at the Supreme Court which is germane to our discussion is “Whether the Court of Appeal was right when interpreting section 56(1) of the Federal High Court Act, section 23 of the Police Act and section 174(1) of the 1999 Constitution came to the conclusion that the Police Officer prosecuting the respondents, lack the competence to initiate or conduct prosecution before the Federal High Court.” Section 174 of the CFRN 1999 which relates to powers of the Attorney General of federation and states in pari material with Section 211 of the same constitution.

The Supreme Court per Belgore JSC who delivered the leading judgment and relying on *Ezeadukwa v Maduka* [1997] 8 NWLR (Pt. 518) 635,657 held as follows:

Where two provisions, one each from an Act of National Assembly conflict in relation to the same subject-matter, as in this instance, question of right to prosecute criminal matter in Federal High Court, the conflict cannot be isolated to the two provisions only insofar as there are constitutional provisions on the same matter. In such a situation, the provisions of the Constitution shall govern the interpretation.

The court held;

“From the colonial period up to date, police officers of various ranks have taken up prosecution of criminal cases in Magistrates’ and other courts of inferior jurisdiction. They derive their powers under section 23 of the Police Act. But when it comes to superior courts of record, it is desirable, though not compulsory that the prosecuting Police Officer, ought to be legally qualified. This is not deleting from provisions of section 174(1) of the Constitution, rather it maintains age long practice of superior courts having Counsel rather than by persons in most cases prosecuting matters.

The confusion that this matter has caused is rather unfortunate for trial of criminal cases? it has caused a disturbingly long delay. Previous Constitutions before 1979 provided for the post of Director Public Prosecutions, an independent officer, with powers in a statute. The absence of this vital office from subsequent constitutions has created this dilemma. But the worrisome side of this case is the failure of the Attorney-General to take over the prosecution. Perhaps the witnesses in the substantive prosecution are still available. Justice seems to suffer some delay in this case.

For the foregoing reasons, I allow this appeal and hold that a Police Officer can prosecute by virtue of section 23 of the Police Act, section 56(1) of the Federal High Court Act and section 174(1) of the Constitution of the Federal Republic of Nigeria, 1999. I therefore set aside the decision of Court of Appeal and restore the ruling of Federal High Court” (Underlined is mine for emphasis)

It is evident from this decision that it is desirable that a police prosecutor should be a qualified legal practitioner but not compulsory. Also, the post of Director Public Prosecution was constitutional in the 1979 Constitution. This makes it statutory for the office to prosecute cases independently but its absence from the constitution has created dilemma. That in view of the circumstance of this case the Attorney General ought to have taken over as his failure amounted to justice delayed. Finally, that any police officer can prosecute in superior court by virtue of section 23 of the (Old) Police Act, section 56(1) of the Federal High Court Act and section 174 of the 1999 Constitution.

What follows therefore was that even though Section 56 of the Federal High Court Act was inconsistent with section 23 of the (Old) Police Act, both acts must be construed in the light of section 174 of the Constitution. .

Based on Rules of interpretation, the court reasoned that the provision of the Constitution supersedes any other law. Since section 174 of the Constitution aforementioned provides under Paragraph b and c that the Attorney General can continue or discontinue any criminal proceedings that may have been instituted by any other person.

Moreover, since the constitution was given a liberal interpretation in this case, that other person whom the Attorney General can discontinue or continue his proceedings can be a police officer whether a legal practitioner or not.⁴⁰

5. Challenges of Criminal Prosecution by Lay Police Officers.

It is not in doubt that that the challenges of criminal prosecution are numerous, the list is endless and the some of the challenges are

- i. **The ambiguity created in the Police Act 2020 as well as section Administration of Criminal Justice Act 2015 as well as the extant Administration of Criminal Justice Laws in various States.**

In examining the ambiguity in these statutes it is equally imperative we look as the sections of the respective statutes mentioned. Police Act 2020. provides;⁴¹

⁴⁰ Ibid

⁴¹ Section 66 Police Act 2020

{1) Subject to the provisions of section 1 74 and 211 of the Constitution and section 1 06 of the Administration of the Criminal Justice Act which relates to the powers of the Attorney-General of the Federation and of a State to institute, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria, a police officer who is a legal practitioner, may prosecute in person before any court whether or not the information or complaint is laid in his name.

(2) A police officer may, subject to the provisions of the relevant criminal procedure laws in force at the Federal or State level, prosecute before the courts those offences which non-qualified legal practitioners can prosecute.

{3) There shall be assigned to every Police Division at least one police officer- (a) who is qualified to practise as legal practitioner in accordance with the Legal Practitioners Act ; and (b)whose responsibility is to promote human rights compliance by officers of the Division.

Subsection 1 of this section is a beautiful provision which takes away the power of lay police officers as provided under the old Police Act to prosecute criminal cases in any court in Nigeria. Subsection 3 further reinforces that provision that making it mandatory to have a minimum of one police officer qualified as legal practitioner in every police division in Nigeria. However, subsection 2 gives police power to prosecute those offences which non-qualified legal practitioners can prosecute. This is

shielded in mystery as the Act is not even specific as to which offences the non-qualified legal practitioners can prosecute.

The point being made here is that the mention of “Police officers who a legal practitioner” and “Police officer” who are “non-qualified legal practitioners” in section 66(1) & (2) of the Police Act 2020 by implication includes all other police officer familiar with criminal prosecution prior to the enactment of both the ACJA 2015 and Police Act 2020. There is therefore no discrimination again between “Police officers who is a legal practitioner” that can prosecute under section 66(1) and “Police officer” who are “non-qualified legal practitioners” that can prosecute under section 66(2). It also means that, no offence or offences is particularly mentioned within the ambit of the two category of police officers; that is, “Police officers who is a legal practitioner” can or cannot prosecute under section 66 Police Act 2020. This therefore poses a great challenge in the powers of lay police prosecution in Nigeria as it is not only ambiguous but also confusing and contradictory to some extent in the light of other statutes.⁴²

Some writers are of the view that subsection 2 of section 66 is a failed attempt at giving power to police officers who are not Legal Practitioners to prosecute criminal charges as there are no offences which qualify as offences which non – qualified Legal Practitioners can prosecute and there is no such definition or classification of offences such as offences which non – qualified Legal Practitioners can prosecute in the classification of

⁴² Ibid No. 9

offences in our Laws. The classifications of offences are limited to felonies, misdemeanor and capital offence.⁴³

The Administration of Criminal Justice Act 2024.⁴⁴

Subject to the provisions of the Constitution, relating to the powers of prosecution by the Attorney-General of the Federation, prosecution of all offences in any court shall be undertaken by:

- (a) the Attorney-General of the Federation or a Law Officer in his Ministry or Department;*
- (b) a legal practitioner authorised by the Attorney-General of the Federation; or*
- (c) a legal practitioner authorized to prosecute by this Act or any other Act of the National Assembly.*

The provision of the ACJA is to the effect that all criminal proceedings shall be undertaken by the Attorney General as provided under the Constitution or State Counsels in his department, a legal practitioner who obtains fiat from the Attorney General and a legal practitioner authorized to prosecute under this Act or other Act of the National Assembly.

In view of this provision one can conveniently posit that ACJA is not particular about whether a lay police officer can prosecute or not but its particular about a legal practitioner authorized under an Act of the National Assembly. In this sense we can say the Police Act is the most appropriate

⁴³F.F Dodo, 'Illegality of Non-Lawyer Police Officers Prosecuting Cases before Magistrates Courts' <https://loyalnigerialawyer.co>, accessed on 15th Feb 2025

⁴⁴ Section 106 ACJA 2015

law to make provision on this yet its provision did not cure the mystery.⁴⁵ Other State ACJL have the same provisions as the ACJA.

However, under the Kano ACJL⁴⁶. It provided that a police officer is not prevented from prosecuting any offence triable by any magistrate court. Therefore, the ACJA Kano did not recognize criminal prosecution by lay police before superior court. The ACJL Lagos has similar provision with that of ACJA.

ii. Inadequate legally qualified manpower from the police as well as Ministries of Justice that will prosecute cases across all the criminal courts nationwide.

There is no gainsaying that inadequate professionally trained legal practitioners to prosecute Criminal offences in court poses a challenge to the administration of criminal justice system. The Police Act⁴⁷ even though provide that every police division should have a legal practitioner that will prosecute criminal cases, but there is no adequate legal practitioners both in the police and the office of the Attorney General to prosecute criminal cases across the 774 local Government Areas of 36 States. This is a major challenge especially in view of rising crime rate necessitated by rise in population and insecurity. The respective states Ministries of Justice do not have sufficient manpower and where they have the reward system is poor as remuneration is nothing to write home about. Due to poor remuneration in the said ministries as well as the Police force are leaving the work for greener

⁴⁶ Section 123(2) ACJL Kano

⁴⁷ Section 66 (3) police Act

pasture. Brain drain is on the increase and insufficient training and expertise of personnel too has marred the prosecution of criminal cases in Nigeria.

iii. Inability of the Supreme Court to interpret the extant Laws on the power of police prosecution in view of the new Police Act 2020 which replaced the old Act and the case of FRN V Osahon was decided under the old Police Act 2004.

The Act⁴⁸ was enacted to repeal the old Police Act thereby modernizing policing in Nigeria. However, the Act contains certain judicial provisions particularly on powers on police prosecution that are ambiguous. It will require judicial interpretation to clarify its scope and application. The Police Act empowers a police officer who is equally a qualified legal practitioner to prosecute in all courts. The same Act empowers police officers who are not qualified legal practitioner to prosecute criminal offences. This is a far cry from what a modern police force should be. The case of *Osahon v. FRN*⁴⁹ is also instrumental as it was decided base on section 23 of the old Police Act. These inconsistencies and ambiguities require judicial exposition in line with the new police Act as well as the ACJA 2015.

6. Conclusion and Recommendation

It is instructive from the above that the following facts are brought to fore

⁴⁸ Police Act 2020

⁴⁹ *FRN v. Osahon* (2006) 5 NWLR (pt. 973) 361

1. That section 106 of the ACJA did not envisage the role of lay police officers but only that of legally qualified legal practitioners.
2. The Police Act made in 2020 did not address the issue of lay police officer poor handling of criminal prosecution. it empowers them to also prosecute
3. The Police Act is in conflict with section 2 of legal Practitioners Act on who is legally qualified to prosecute offences in courts.
4. The decision in case of Osahon V FRN was made pursuant to section 23 of the old police Act which was repealed by Police act 2020. .

One worrisome features of the Act⁵⁰ is that despite repeated calls for positive changes in terms of the role of the Police in criminal justice system, lay police officers have found their way into prosecution of cases even though mostly at inferior courts despite their abuse of such power and poor handling of same.

In view of the forgoing, the following recommendations are hereby given.

- i. The Supreme Court is enjoined to interpret section 66 of the Police Act in line with section 106 ACJA and section 2 of the legal Practitioners Act. This is because the said sections in ACJA and LPA are true reflection of modern policing. Legal practitioners are qualified and legally empowered to prosecute criminal cases in any court in Nigeria. More so, the complex nature of criminal proceedings at the superior court of record is suggestive of the fact that a police officer who is not trained as a legal practitioner may not be able to prosecute offences at the superior courts effectively. The Administration of criminal

⁵⁰ Police Act.

justice Law of Edo State⁵¹ is a shining example. It expressly mentioned that only a police officer who is a qualified legal Practitioner is empowered to carry out public prosecution.

- ii. There should also be an amendment to section 174 and 221 of the 1999 Constitution regarding the exercise of power of prosecution by the Attorney General. This is because the case of FRN V. Osahon was decided in favour of lay police officer because section 56(1) of the Federal High Court Act was in conflict with the Constitution and the court held

*Where two provisions, one each from an Act of National Assembly conflict in relation to the same subject-matter, as in this instance, question of right to prosecute criminal matter in Federal High Court, the conflict cannot be isolated to the two provisions only insofar as there are constitutional provisions on the same matter. In such a situation, the provisions of the Constitution shall govern the interpretation*⁵²

This is a testimony to the fact that section 174 is sacrosanct and any law made that is in conflict with any provision of the constitution shall not see the light of the day.

- iii. Another vital recommendation is that the Chief Judges of the respective States that have a specific provision precluding

⁵¹ S. 106 (d) ACJL Edo state.

⁵² Ewulum Christopher, 'The Prosecutorial Powers of Police Officers in Nigeria in Light of Section 106 of Administration of Criminal Justice Act 2015: Contentious Issues, Responses and Solution' accessed at <https://barristemg.com> visited on 15th February 2024

None-lawyer police prosecutor under their ACJLs should make a policy or order to direct Magistrates and all other inferior Courts of record to decline entertaining matters brought by non-lawyer police Prosecutors. This is another way to check their powers. The Chief Judge of Niger State recently gave such directive and it is fully complied with.⁵³ The order was given to give effect to the provisions of section 166(1) Police Act 2020 and section 179(d) ACJL Niger State.

- iv. Another recommendation which has been on the front burner of many discussions is the need to separate the office of the Attorney General from that of Minister/ Commissioner of Justice both at the Federal and States level. This is because the fusion of the office as one has adulterated the office with political interests. Indeed, this will require a constitutional amendment of Section 174 and 211 of the Constitution of the Federal Republic of Nigeria. There is currently a Bill before the National Assembly to amend the relevant sections of the 1999 Constitution to that effect. This is necessary because the Office is professionally sacrosanct and need no political condiments. once it is separated, it will enable the Attorney General to focus on criminal prosecution by employing more legal practitioner as State Counsels and ensuring that the Director of public prosecution is only answerable to the Attorney general alone who is more of a professionally experienced legal practitioner than one who is more of a political tool,

⁵³ In March 2025, the Chief Judge of Niger State gave such order via a circular dated 14th march 2025 following the non compliance of section 179(d) ACJL Niger State since the law came into force in 2023.

