LIMITS TO DURATION OF CRIMINAL TRIALS IN NIGERIA: TIME FOR THE COURTS TO COALESCE RIGHT TO FAIR HEARING WITH RIGHT TO PERSONAL LIBERTY

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ABSTRACT

Criminal trials in Nigeria most times last for a long period of time. Nigerian Constitution has two provisions bothering on this issue. The first provision found in section 35 (4) on right to personal liberty seems to place a time duration on criminal trials in Nigeria. The other provision contained in section 36 (4) on right to fair hearing leaves the duration of criminal trials in Nigeria indefinite as long as it is concluded within a "reasonable time". Nigerian courts and lawyers have overwhelmingly leaned towards the latter provision while viewing the former provision as mainly concerned with bail applications. In this paper, we advocate that if the courts and lawyers coalesce its reading of section 35(4) which is part of the section on the right to personal liberty and sections 36 (4) and (5) on the right to fair hearing, they will find the constitutional stipulated duration for criminal trials in Nigeria to be two or three months.

Introduction

It is generally lamented that criminal trials, of whatever sort, in Nigeria last for an unnecessarily long time[1]. This has resulted in calls to reverse this trend[2]. Despite this the constitution and judicial interpretations appear not to favour any attempts to put a time limit on criminal trials in Nigeria. This unfavourable mien of the courts has found concrete expression in the "reasonable time" test often applied by the courts when faced with challenges on the unreasonableness of the duration of a criminal trial. The reasonable time test is often anchored by the courts on the constitutional provisions on right to fair hearing. For a person to impugn this, he will need to show the court that the

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1 Oziegbe Okoeki, "Lawmaker laments undue delay and manipulation of Corruption Trial" thenationonline.net/lawmaker-laments-undue-delay-manipulation-corruption-trials visited 30/3/2016 at 2pm, B. Ayorinde & Co.: "A Reformatory Approach to the Criminal Justice System in Nigeria" www.mondaq.com/x/293894/public+order/A+Reformatory+Approach+To+The+Criminal+Justice+System+In+Nigeria visited 30/3/2016 at 2.30 pm.

2 Huris Laws: "Legal/ Judicial Sector Reform www.hurislaw.org/programes/legaljudicial-sector-reform visited 30/3/2016 at 3pm

duration of the criminal trial was unreasonable because it occasioned injustice. A number of factors are usually considered by court in determining whether injustice was actually occasioned by the unreasonableness in the duration of the trial.

This approach, although it has been used by the courts for a reasonable period of time, has failed to resolve the problem of uncertainty in the duration of criminal trials in Nigeria. There is therefore the need to find a solution to this problem. Our discourse starts with an exploration of the meaning and dimensions of reasonable time doctrine as can be seen from the cases with its root in the constitutional provision of fair hearing. In doing this, we highlight pitfalls which have continued to make this doctrine unable to satiate the long standing hunger for brisk and just criminal trials in Nigeria. We consequently turn to what we think would be the antidote to the lingering problem of long drawn out criminal trials in Nigeria. The solution we proffer will for a fusion of constitutional provision on the right to personal liberty in section 35 (4) with that of right to fair hearing in section 36 (4) and 36 (5). We view that a libertarian interpretation of a fusion of these provisions suggests that there is an extant time limit to criminal trials in Nigeria. We are not unmindful of the fact that most courts tend to restrict the application of section 35 (4) to issue of granting bail to an accused person. Our view is that this is an unnecessarily restricted approach which, in our view, is not borne out by a combined reading of the provisions of these sections. We conclude by emphasizing on the factors which, if adequately deployed, would assist a smooth operation, in our view, of the extant but neglected constitutional limits to criminal trials in Nigeria.

Meaning and Dimensions of the Constitutional Provision on "Reasonable Time" in the Duration of Criminal Trials: Perspective of Nigerian Courts

Section 36 (4) of the 1999 Constitution of Nigeria[3] provides that,

> whenever a person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a **reasonable time**[4] by a court or tribunal

The term "reasonable time" used within the context of this section, is not defined in the Constitution. This provision of the Constitution has, however, elicited court decisions. For instance, in **Ozulonye & Ors. v. State**[5] one of the arguments proffered for the appellants was that their trial which lasted from 1st December 1976 to 28th April 1980[6] was a violation of the fundamental rights of their as enshrined in section 33 (4) of the 1979 Constitution[7]. The Court upheld this argument and view. Alfa Belgore JCA gave reason for this position as being that the Supreme Court frowns at such delays in civil

3 Same as section 22 (2) of the 1963 Constitution and section 33 (4) of the 1979 Constitution.

4 Emphasis supplied. Section 35 (4) of the Constitution also has phrase "reasonable time". This section provides that arrested or detained on suspicion of committing a criminal offence shall be brought before a court of law within a reasonable time.

5 (1983) 4 NCLR 204

6 About three and half years.

7 Same as section 36 (4) of the 1999 Constitution.

matters much more in criminal matters[8]. He then went on to cite Idigbe JSC's decision in **Akpor v. Iguoriguo**[9] as a litmus test for determining reasonable time. According to him,

> The real reason why there should be no inordinate or protraction in hearing a case and delivering judgment thereon is the possibility of the judge losing partially or even completely the impression of the demeanour of other witnesses who gave evidence in a variety of other case[10]

In **Asakitikpi v. State**[11] an issue that arose for determination at the Supreme Court was whether the appellant was denied a fair trial as a result of the inordinate delay in commencing the trial of his case? The appellant was arrested on suspicion of armed robbery in July 1981. He first "appeared" in court on 8th February 1982. On 10th March 1983, he was arraigned and charged before another judge. Judgment was eventually delivered on 31st March 1983. The judgment sentenced the accused to death. He further appealed to the Court of Appeal but the Court refused his appeal. He consequently appealed to the Supreme Court. In a unanimous decision, the Supreme Court held, among others, that the appellant was not denied fair trial in the circumstance. Uwais JSC, who read the leading judgment, reasoned that,

> It follows from the foregoing that although the appellant in the present case was taken to the High Court 19 times, his trial did not commence until the 10th day of March 1983 since the procedure under section 215 of the Criminal Procedure Law, Cap 49[12], did not previously take place. It follows also that for the provisions of section 33 subsection (4) of the constitution[13] to apply, it must be read in conjunction with the commencement of trial and in the present case in conjunction with the provisions of section 215 of the Criminal Procedure Law, Cap 49. I am therefore of the view that the delay from the 6th day of July 1981 to 10th day of March 1983, though most unfortunate and deprecatable, is not the delay in trial which section 33 subsection (4) of the constitution envisages...[14]

In **Edet Effiom v. State**[15], one of the issues before the Supreme Court for which they invited several *amicus curiae* is whether the trial of the appellant was conducted within a

8 (1983) 4 NCLR 204 at p. 209

9 1 LRN 36

10 (1983) 4 NCLR 204 at p. 209

11 (1993) 5 NWLR (Pt. 296) 641

12 This section provides that the person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has been duly served therewith

13 1979 Constitution.

14 (1993) 5 NWLR (Pt. 296) 641 at 652

15 (1995) 1 NWLR (Pt. 373) 507

reasonable time within the provision of section 33 (4) of the 1979 Constitution? In this case, the accused person was initially arraigned on 15th December 1986 for the murder of three persons on 25th March 1985 before a judge of the High Court of Cross Rivers State. On 25th January 1988 he was arraigned again before a different judge for the same murder of three persons on 25th March 1985. Actual trial commenced on the matter on 4th May 1988. Judgment was delivered in the case on 7th January 1991. The appellant was sentenced to death. He appealed to the Court of Appeal. The Court of Appeal in a judgment delivered on 16th February 1993 affirmed the decision of the High Court. The appellant now appealed to the Supreme Court. After listening to submissions of the appellant's counsel and respondent's counsel as well as the *amicus curiae* the Court dismissed the appeal. For Onu JSC who read the leading judgment,

> With regards to the period from arraignment to the conclusion of trial said to be too long, my short answer is that the several adjournments between arraignment on 4/5/88 and the conclusion of trial on 7/1/91, spanning altogether 2 years and 8 months, does not, in my view, amount to unfair hearing or inordinate delay. In the first place, the nature of the case, to wit: murder of three persons carried out in gory and mindless circumstances although the appellant was indicted for killing only one person, the confessional statement made by the appellant (Exhibit 2) for which there was a retraction which failed, and more importantly the absence of a miscarriage of justice and lack of merit in the complaint, which cumulatively go to render tenuous the appellant's grouse[16]

On his part and in answering the question, Wali JSC opined that,

> In considering whether there was unreasonable delay, the following factors must be taken into consideration,
>
> 1. Length of the delay;
> 2. Reasons for the delay;
> 3. The defendant's assertion of his right;
> 4. Prejudice to the defendant[17]

He then went further to define "reasonable time" as used in section 33 (4) of the 1979 Constitution. According to him,

> As the question of what is a "reasonable time" within which to conduct and complete hearing of a case (be it criminal or civil) is not provided in section 33 (1) and section 33 (4) of the 1979 Constitution, it is not practicable in construing 33 (1) and (4) supra to fix a time limit. None of the decisions in which the sub-section came for review fixed a time limit either. The view expressed in all the decisions both local and

[16] Ibid, p. 570

[17] Ibid, p. 582

> foreign agreed that a "reasonable time" would depend on the facts and circumstances of each case[18]

On his part Igu JSC elaborated further on the issue of "reasonable time' thus,

> I think it ought to be observed that it does not appear any length of time may per se be dismissed outright as too long to warrant a close scrutiny or examination for the purpose of determining whether there had been fair hearing within a reasonable time as prescribed by sections 33 (1) and 34 (4) of the 1979 Constitution. All the circumstance of each case must be considered very closely before a trial, reasonable and just conclusion can be arrived at. Indeed, four factors have been identified as necessary for consideration in the determination of whether a person has been denied his constitutional right to speedy trial. These four factors comprise of:
>
> (i) Length of delay
>
> (ii) The reason(s) for the delay
>
> (iii) T he defendant's assertion of his right to speedy trial, and
>
> (iv) Prejudice caused by the delay to the defendant[19]

In **Okeke v. State**[20] the appellant was arraigned for murder of one Kenneth Ojukwu on 25th September 1991 at the High Court of Anambra State on 26th March 1993. After the plea of the accused person on that day, the case was adjourned to 23rd June 1996. Judgment was eventually delivered in the case on 17th July 1998. The accused was sentenced to death as result of the judgment. The appellant appealed to the Court of Appeal following this judgment. However the Court of Appeal dismissed his appeal. He subsequently appealed to the Supreme Court. One of the issues canvassed before the Supreme Court was whether the appellant was accorded a fair hearing within a reasonable time? The Supreme Court, unanimously, dismissed the appeal. In response to this issue, Belgore JSC, who delivered the leading judgment, opined that,

> It is true that the case took quite some time to try and conclude…Learned counsel for the appellant conceded that peculiarities of a case and circumstances are most important considerations. "Reasonable time" depends on the nature of a case. How many witnesses testified and the number of exhibits involved and their effect on the possibility of trial judge losing track of the scenario of the case. Were the accused persons numerous that a possibility exists that what witnesses said on each accused is lost to the recollection of the trial judge? All these are weighed against the length of the trial…All the

[18] Ibid, p. 584

[19] Ibid, p. 636.

[20] (2003) 15 NWLR (Pt. 842) 25

> adjournments in this case were either at the instance of the appellant or the prosecution without any objection and there is no evidence to show that the trial judge lost track of any of the facts[21]

For Ogundare JSC,

> It is true that the trial of this case lasted 6 years. But the fact of the length of time alone is not sufficient to determine whether the trial has been within a reasonable time as enjoined by the Constitution. The question of delay in a trial was fully discussed by this court in *Effiom v. The State (supra)*[22] It is there held that a "reasonable time" would depend on the facts of each case[23]…On the facts of this case therefore I am not prepared to say that there has been a breach of the appellant's constitutional right to a fair trial within a reasonable time[24]

In his own response to the issue, Iguh JSC, had this to say,

> I have given close attention to the entire history of this case and I am satisfied that there is no question of the appellant or his counsel having asserted their right to speedy trial before the trial court. The non-production of the appellant in court on several adjourned dates is a Nigerian factor, which although unfortunate, must be taken into consideration on the issue of whether the appellant had a *fair hearing within a reasonable time*[25]. I finally ask myself the all important question whether the alleged delay in the appellant's trial occasioned any miscarriage of justice or prejudice to the appellant. My emphatic answer must be that having regard to the nature and peculiar circumstances of this case, the delay in the trial of the appellant did not in any way occasion miscarriage of justice. There is therefore no breach of the provisions of section 33 (4) of the 1979 Constitution[26]

Tobi JSC was more explicit,

> The expression "reasonable time" is not static as it will vary from case to case. The court will invoke the objective test and not the subjective test. In determining "reasonable time" within the subsection, an appellate court will consider amongst other things, the number of witnesses, their easy accessibility to the court, the length of evidence, the number of exhibits, and whether there was trial within a trial and the time taken in all that.

21 Ibid, pp. 61-62.
22 Footnote 13
23 (2003) 15 NWLR (Pt. 842) 25 at p. 84
24 (2003) 15 NWLR (Pt. 842) 25 at p. 86
25 Emphasis supplied
26 (2003) 15 NWLR (Pt. 842) 25 at p. 105

> Accordingly, what is tantamount to reasonable time in one case may not be so in another case, as the above situation may differ. Learned Senior Advocate submitted that in view of the fact that the trial took a period of six years and 56 hearings, the appellant's constitutional right under section 33 (4) of the 1979 Constitution was breached. Section 33 (4) cannot be taken in isolation of number of years a trial took but in relevant relationship with whether as a result of the long period, the learned trial Judge's memory of the evidence failed…I have thoroughly examined the evaluation of the evidence of the witnesses and do not see any failure on the part of the trial Judge. That issue also fails[27].

From the cases discussed in this section, it is clear the position of the Nigerian Courts is that "reasonable time" will depend entirely on the facts of a case and as such no specific duration can be assigned to it. So a "reasonable time" can be as long as six years[28] or a as "short" as nearly two years[29]. What is important to the Supreme Court in the issue of "reasonable time" is not the duration but whether justice was eventually done in the case. This litmus test of justice being done in the case being represented in a number of factors such Length of delay, the reason(s) for the delay, the defendant's assertion of his right to speedy trial, and prejudice caused by the delay to the defendant such as lapse memory on the part of the trial judge which may affect his evaluation of evidence and some other factors that bother on impugning of the Constitutional right to fair hearing of the accused persons. The Constitutional right to fair hearing thus has become basis for appreciating "reasonable time" in the context of duration of criminal trials in Nigeria.

Although the overwhelming position of Nigerian courts is that it is not possible for a time limit to be set to criminal trials in Nigeria and that the best we could do was to make sure that it was conducted within a "reasonable time" which should ensure fair hearing to the accused persons, our contention is that a time limit to criminal trials in Nigeria is already extant, embedded in the Constitution waiting to be "exploited".

Constitutional Right to Liberty and Time Limit to Criminal Trials:

Section 35 of the 1999 Constitution provides for a right to personal liberty. Specifically section 35(4) provides,

> Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if not tried within a period of:
>
> (a) t
>
> wo months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

[27] (2003) 15 NWLR (Pt. 842) 25 at pp. 109-110.

[28] As in **Okeke v. State** (supra)

[29] As in **Asakitikpi v. State** (supra)

> (b) three months from the date of his arrest or detention in the case of a person who has been released on bail,
>
> He shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

Nigerian courts have always interpreted this provision in relation to only bail applications[30]. The courts have had cause to interpret these provisions along this course in a number of cases. In **Onu Obekpa v. Commissioner of Police**[31] the applicant, was arrested and detained on August 30, 1980 by the police. Incidentally the arrest and detention was on a Saturday. The following Monday, September 1, 1980 he was, as required by law, taken to a Magistrates Court on an allegation of theft.

An oral application for bail was made on his behalf before the trial magistrate. In support of this application, the applicant gave evidence on oath that if released on bail he would cooperate with the police, would not commit any offence during the period and will provide surety for his bail. The application was opposed by the police prosecutor on the ground that there were other suspects at large and that if the applicant was released on bail it may be difficult to arrest those other suspects.

The trial magistrate agreed with the contention of police prosecutor and consequently remanded the applicant in prison custody until September 22, 1980 when he hoped to consider the issue of bail.

However before September 22, the applicant filed an application for bail at the High Court of Benue State. He argued before the Court that oral application for bail before the magistrate satisfied the conditions for grant of bail laid down in section 341(2) of the Criminal Procedure Code and also that the applicant was entitled to regain his personal liberty by virtue of section 32(4) of the 1979 Constitution[32] unless the prosecution showed good cause to the contrary, which he submitted, the prosecution had failed to do. In reply, the State Counsel, who opposed the application, argued that since the applicant had not stayed up to two months in detention, section 32 (4) of the 1979 Constitution was not applicable in the circumstance.

In reaction to these arguments, the trial judge, Honourable Justice Idoko, while admitting the applicant to bail noted,

> There is no doubt that section 32 of the 1979 Constitution enlarges and provides with more predictability the scope of the personal liberty guarantee…Presumably, through experience gained from the time of the 1963 Constitution to the time of making 1979 Constitution they decided to advance and build-in more constitutional safeguards in the area of personal liberty in the present Constitution…Therefore it appears to me that bail other than a capital offence is a basic right and undoubtedly the right to release before trial is much more basic if the

30 May be due to the fact that most parts of the section deal with issue of bail.

31 (1981) 2 N.C.L.R 420.

32 Same as section 35 (4) of the 1999 Constitution.

> trial is going to last more than two months for non-capital offences[33]

He then went on,

> As it appears the spirit behind the provisions in section 32 (4) (a) and (b) of the Constitution[34] is to keep an accused person out of incarceration until found guilty through the process of court trial. It is a conditional privilege which he is entitled to under the Constitution. The reason for such privilege is obvious. It allows those who might be wrongly accused to escape punishment which any period of imprisonment would inflict while awaiting trial: the stay out of prison guarantees easy accessibility to counsel and witnesses and ensures unhampered opportunity for preparation of the defence. *Of much further advantage in this regard is this fact that unless the right to bail or to freedom before conviction is preserved, protected and allowed the presumption of innocence constitutionally guaranteed to every individual accused of a criminal offence would loose its meaning and force*[35]

This latter part of Idoko J's reasoning in the decision forms the bedrock of our argument that the effect of section 35 (4) of the Constitution transcends merely releasing an accused person bail. There has been also other startling interpretations to the equivalent of section 35 (4) of the Constitution. For instance, in **Commissioner of Police v. Amalu**[36] **t**he applicant was arrested in April 1982 for the offence of having carnal knowledge of a 10 year old girl. The offence was made punishable with life imprisonment. His application for bail at the magistrate's court was refused in May 1982. He then filed another application before High Court seeking for his behalf that the applicant's continued incarceration was against spirit of section 32(4)(a) of the 1979 Constitution which enjoins release of a person is not tried within two months from the date of his arrest and detention. In response to the application Honourable Justice Achi-Kanu distinguished "suspects" from "accused" persons. According to him section 32 (4)(a) deals with "suspects" while the proviso to section 32(1) deals with "accused" persons. Based on this he felt that,

> The applicant here is not a mere suspect; since, incidentally his trial, in my opinion, began when he was charged on 14/4/82 before the Chief Magistrate Court, Onitsha. Therefore, the applicant cannot take advantage of the of the protection contained in the section 32 (4)(a) of the Constitution because of the Proviso to section 32 (1) which appears immediately after subsection 32(1)(f); but which Proviso is not exclusive to subsection

[33] *Ibid*, pp. 421- 422.

[34] 1979 Constitution.

[35] (1981) 2 N.C.L.R pp. 420 – 422 (Emphasis supplied)

[36] (1984) 5 N.C.L.R p. 443.

> 32(1)(f). Life imprisonment is maximum period of incarceration prescribed by law for the offence of which the applicant is accused; and his trial, no matter how protracted, will surely be concluded, in my opinion, before the end of the applicant's normal expectancy of life. This view depends on the correct interpretation of the said proviso. And on a close perusal and analysis, I am satisfied that the proviso is a general concluding portion of Sub- section 32(1) comprising 5 subordinate clauses (or parts) numbered (a)- (f). The proviso contemplates and regulates each of the concepts reflected in the said 5 part of sub- section (1); it is not confined or exclusive to clause (f) alone; and I so hold [37]

He then went on to give reasons for this position,

> I hold this view because the general wording of the relevant proviso strongly suggests that the makers of the Constitution must have intended a situation where an accused person, as in this case, may have to be detained or remanded in custody awaiting trial or during trial; and that is probably why the proviso enjoins that the person should not be kept in custody merely pending trial for a period exceeding the maximum time prescribed by law as punishment for the offence[38]

Having established this, he went on to deny the applicant bail while emphasizing that it was a faulty to notion to hold that before conviction an accused person was entitled to bail as of right by virtue of section 32 (4)(a) of the 1979 Constitution[39]. This decision has been criticized elsewhere[40].

However, our view is that section 35 (4) of the 1999 Constitution[41] is germane not just to application for bail in courts but also to setting duration to criminal trials in Nigeria. Alternative interpretations of this section which we put forward in support of the time limit to criminal trials in Nigeria may be conceptualized in the following terms. First is that a suspect[42] brought to court on a criminal charge must have his trial concluded within two month if he is in custody and is not entitled to bail[43]. Secondly is where the accused has been admitted to bail, then his trial is not to last more than three months[44]. Where there is a failure to comply with provisions of section 35 (4) (a) or section 35 (4) (b), the accused person will be discharged unconditionally or on condition that will enable him appear for trial at a later date[45]. This interpretation was apparently raised in the

37 *Ibid*, p. 446.

38 *Ibid*, pp. 446- 447.

39 *Ibid*, p. 447.

40 See for instance, Isabella Okagbue: **Bail Reform in Nigeria** ,Ibadan & Lagos, Caltop Publication (Nigeria) Limited and Nigerian Institute of Advanced Legal Studies, 1996, pp.25-26.

41 Same as section 32 (4) of the 1979 Constitution.

42 He becomes an "accused" as soon as he is charged to court.

43 Section 35 (4) (a) of the 1999 Constitution. In view of section 35 (7) (a) of the 1999 Constitution this applies arrested or detained upon reasonable suspicion of committing a capital offence.

44 Section 35 (4) (b) of the 1999 Constitution.

45 Proviso to section 35 (4) of the 1999 Constitution.

appellant's brief in **Bamiyi v. State & Ors**[46] but Oguntade JCA opined, rather on basis of sentiments, that,

> It seems to me that the purpose of section 35 (4) above is to ensure that once a person is arrested and put in custody and such person is not granted bail, he shall within a reasonable time be brought before a court and his trial commenced within a period of two months after taking him into custody. *To interpret it as meaning that the trial must be concluded in two months will create serious implementation problem as the country has not as yet the manpower and other allied facilities to ensure that trials of persons who because of the seriousness of the offences alleged against them cannot be granted bail are concluded in two months. It may lead to a situation where armed robbery suspects or other persons arrested for murder or other violent crimes whose trial cannot be concluded in two months are let loose on our streets* [47]

From the italicized portions of this portion of the judgment, it is obvious that Oguntade JCA was more bothered about the challenges of implementation of this interpretation rather than its unassailability. It also appears that another source of worry for Oguntade JCA in rejecting this interpretation is that, if the interpretation is accepted, it will lead to a situation where "*armed robbery suspects or other persons arrested for murder or other violent crimes whose trial cannot be concluded in two months are let loose on our streets"*. This view can be faulted on at least two grounds. First, the provision does not foreclose the possibility of charging the person afresh[48]. Also, the provisions do not foreclose a judge from imposing conditions[49] that will ensure the accused is well monitored during the time of his temporary[50] release. Sankey JCA view in **Akila & 2 Ors. v. Director- General, S.S.S & 3 Ors**[51] also supports our position. In this case the appellant were arrested by men of State Security Service at a house in Maiduguri on 30th July 2010 for being in possession of arms and ammunition and were subsequently "taken before" a magistrates court on 2nd August 2010 who ordered that they be remanded in prison custody. On 8th October 2010, while still in detention and having not been arraigned before any court of law for trial, the appellants filed for enforcement of their fundamental rights pursuant to sections 35 and 36 of the 1999 Constitution of Nigeria. On 15th December 2010, the trial court refused their prayers in the suit to enforce their

46 (2001) 2 NWLR (Pt. 698) 435 at 445

47 (2001) 2 NWLR (Pt. 698) 435 at 446 (Emphasis supplied). Similar sentiments were expressed by Adio JSC in **Effiom v. State (supra) at p. 622**. According to him, "A demand for speedy trial, which has no regard to the conditions and circumstances in this country, will be unrealistic and be worse than unreasonable delay in trial".

48 The use of the phrase "upon such conditions as are reasonably necessary to **ensure that he appears for trial at a later date**" lends credence to this position. Moreover if the person is released "unconditionally" the fact his case was not determined on the merit makes it a "discharge" and not an "acquittal" in which case he can still be tried again on the same charge.

49 Indeed, the courts are empowered to grant such conditions as are "reasonably necessary to ensure that he appears for trial at a later date"

50 Pending the time he charged to court again.

51 (2014) 2 NWLR (Pt. 1392) 443

fundamental rights as a result of which they appealed to the Court of Appeal. One of the issues that the Court had to determine was whether the detention of the appellants for more than two months in the custody of the 1st and 2nd respondents who did not inform the appellants of the facts and grounds of such detention and without trial before a court of competent jurisdiction did not infringe on the appellants' fundamental right to personal liberty and consequently entitled the appellants to be released from detention either unconditionally or upon such conditions as the court may deem fit to make in the circumstance? Sankey JCA, who delivered the leading judgment of the court, after reviewing the facts of the appellants' detention, concluded that,

> From the 31st July 2010 to the 26th October 2010 is undoubtedly more than two months. Consequently, in order to comply with section 35 (4) of the 1999 Constitution (as amended), the appellants should have properly been released on bail either unconditionally or upon such conditions as would guarantee that they appear to take their trial. In failing to do this, the lower court fell afoul of the relevant and mandatory constitutional provision which seeks to guarantee the fundamental rights to of its citizens to personal liberty. This is more so in the face of section 36 (1) & (5) of the same Constitution which guarantees a fair hearing within a reasonable time and presumes every person charged with a criminal offence innocent until proved guilty, no matter the gravity of the offence[52]

Sankey JCA's observation certainly reinforces our belief in the unassailability of our interpretation of the place of sections 35 (4) placing a duration to criminal trials in Nigeria. This much more when there is constitutional presumption that a person charged with a criminal offence has the right to be presumed innocent until proved guilty[53]. Consequently, the longer an accused trial lasts, the more his right to be presumed innocent until proven guilty is eroded and invariably his constitutional right to personal liberty questioned[54].

Conclusions and Recommendations:

In our quest to show that a time limit already exist within our laws specifically in the 1999 Constitution of Nigeria for criminal trials, we pointed out that our courts[55] have been preoccupied with in section 36 (5) of the 1999 Constitution of Nigeria[56] which is within the section dealing with the right to fair hearing. Section 36 (5) of the 1999 Constitution places a limit of "within a reasonable time" to the duration of criminal trials in Nigeria. However, the Constitution did not define the phrase "reasonable time" used

52 Ibid, p. 468

53 Section 36 (5) of the 1999 Constitution of Nigeria.

54 A person standing criminal trial is often subjected to all manner of restrictions which challenge his right to personal liberty. It therefore makes sense that the Constitution will want to limit these restrictions by placing a duration to criminal trials in Nigeria more so when the accused is deemed to be innocent by the same Constitution, pending the establishment of his guilt.

55 Particularly the apex court, the Supreme Court.

56 And its equivalent in earlier Constitution see footnote 3.

within that context[57]. This has lead to a situation where the courts have taken the latitude to consider varying duration as being "reasonable time" so long as justice[58], in their view, is not defeated. With this approach, from the courts, the problem of undue delay in criminal trials still remain with us and none of the key actors[59] show are marked enthusiasm to see criminal trials commenced and concluded within a remarkably short period[60].

One reason for the court not being able to find duration for criminal trials in Nigeria is the exclusive interpretation of section 36 (4) of the 1999 Constitution of Nigeria without reference to other helpful sections[61] of the same Constitution particularly on the meaning of "reasonable time". We strongly advocate that if the courts adopt a "community" interpretation of section 35 (4)[62], 36 (4) and section 36 (5) of the 1999 Constitution, they will find a duration to criminal trials in Nigeria. A "community" reading of sections 35 (4), 35 (4) will also show that the right of an accused person to be presumed innocent until proven guilty[63] is not limited only to fair hearing during criminal trials but also bothers on the right to personal liberty of the accused person not to be have his liberty restricted indefinitely[64] on suspicion of having committed a criminal offence. Indeed it is recognized that one form of interpreting the Constitution is to construe together constitutional provisions dealing with the same subject matter[65].

For this interpretation to be effective, then there must be a monumental shake- up in the wheel of Nigeria criminal justice administration. The overriding implications is that the prosecution, and also other persons and organs responsible for assisting the prosecution, on behalf of the State, also needs to be very diligent in their work so as to get material evidence ready for the criminal trial of the accused person within the specified period of two or three months. The judges may have to put in extra hours and the defence lawyers should be ready to eschew their time-buying tactics of appealing on every interlocutory decision of the judge that go against the accused person[66]. It is possible to find duration for criminal trials in Nigeria that will have a constitutional backing but for the courts to appreciate this they must be ready to anchor their search beyond the precincts of section 36 of the Constitution.

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57 It is interesting to note that in contrast to this section, "reasonable time" used in section 35 (4) is explained in section 35 (5)

58 Support by other meta- constitutional factors mainly bothering on the likelihood of the accused person's constitutional right to fair hearing

59 Judges and lawyers

60 In few months

61 Sections 35 (4) and 36 (5) of the Constitution.

62 Embedded in the section dealing with the right to personal liberty.

63 Section 36 (5) of the 1999 Constitution of Nigeria.

64 Criminal trials restrict the liberty of the accused person, even if he was granted bail, because of the requirement that he needs to attend every court session.

65 See Coca-Cola Nigeria Limited & 2 Ors. v. Akinsanya (2013) 18 NWLR (Pt.1386) 255 at 322 -323.

66 In this regard we suggest an amendment of relevant laws to completely eliminate the right to interlocutory appeals. It is our view that most issues that form the basis of interlocutory appeals can be included in the final appeal.