

**ACCESS TO JUSTICE IN THE LOWER
COURTS:-**

RE-EXAMINING THE CIVIL AND CRIMINAL JURISDICTION OF
MAGISTRATE COURT IN NIGERIA

By

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ACCESS TO JUSTICE IN THE LOWER COURTS:- RE-EXAMINING THE CIVIL AND CRIMINAL JURISDICTION OF MAGISTRATE COURTS IN NIGERIA

By Hon. Justice Marshall Umukoro
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INTRODUCTION:

Unencumbered access to justice in a law court is critical in any modern democracy. Hitherto, in primordial societies, man had no clear notion of justice; the only means of redressing a wrong was by sheer brute force and/or power, such that the indigent and powerless were constantly denied justice by more powerful aggressors.

However, in contemporary times, courts of law now exist as havens of refuge for those who are oppressed, victimized or wrongly deprived of their rights. In the same vein, the United Nations Development Programme (UNDP) has described access to justice as the ability of people from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining a remedy, through the justice system, for grievances in accordance with human rights principles and standards.

Accordingly, the right of a Nigerian to have unrestrained access to justice is recognised in Section 17(2) (e) of the Constitution of the Federal Republic of Nigeria, 1999 ('1999 Constitution'), which provides that:

“the independence, impartiality and integrity of courts of law and easy accessibility thereto shall be secured and maintained.”

The rationale here is that there should be no social or economic hindrance whatsoever restricting Nigerians from approaching the law courts in their quest for justice. However, in contemporary times, courts of law now exist as havens of refuge for those who are oppressed, victimized or wrongly deprived of their rights.

It follows, therefore, that all categories of judges ought to fulfil the vision of judgeship envisioned by Aristotle when he described the judge as “*living justice*” or “*animate justice*.”¹ No Court must shirk its responsibility to enforce the law for the benefit of

¹One God, One Law: Philo of Alexandria on the Mosaic and Greco-Roman Law – By John W. Martens, pg. 34

the rich and poor alike. It is salutary to note that the court has taken the progressive view that it was unfair to predicate a person's legal right on his financial ability or economic status.² The court ought to provide a remedy whenever there is a violation of a public or private right. This is summed up in the Latin maxim "*Ubi jus ibi remedium.*" As Karibi Whyte J.S.C. aptly observed:

*"I think it is erroneous to assume that the maxim 'ubi jus ibi remedium' is only an English common law principle. It is a principle of justice of universal validity couched in Latin and available to all legal systems involved in the impartial administration of justice."*³

In line with this rationale, it is my belief that lower courts (also called inferior courts), significantly the Magistrate Court, have been established to champion the cause of unrestricted access to justice. This position derives from a cursory comparison of the features of Magistrate Courts, such as its summary jurisdiction, less-formal manner of conducting proceedings, and cheaper filing fees vis-à-vis the obtainable practice in the State or Federal High Court. This comparison would reveal that the rules and practice of the Magistrate Courts have been fashioned in a manner that allows easier and less cumbersome access to the Magistrate Court. These special features of the Magistrate Court make it all the more imperative for Magistrate Courts to be accessible by all and sundry.

CRIMINAL JURISDICTION DEFINED:

Tersely put, "criminal jurisdiction" means the power conferred on a court by statute to try criminal cases. The question that arises therefore is what is a crime? Smith and Hogan in their book on Criminal Law⁴ posited that because of the difficulty of defining the criminal quality of an act, most writers and the courts focus on the nature of proceedings which may follow from the commission of a crime. And as Lord Atkin observed in **PROPRIETARY ARTICLES TRADE ASSN. V. A.G. FOR CANADA**⁵:

"The criminal quality of an act cannot be discerned by intuition, nor can it be discovered by reference to any standard but one: is the act prohibited with penal consequences?"

It suffices to state that crimes are wrongs which are sufficiently injurious to the public and include heinous crimes like murder, arson, rape, armed robbery, incest, as well as

² ACCESS TO JUSTICE AT THE GRASSROOTS: EXAMINING THE CRIMINAL JURISDICTION OF CUSTOMARY COURTS – by Hon. Justice P.O. Isibor, pg 2

³ STATE V. GWONTO & ORS (1983) 1 SCNLR.142 at p. 160" Per KARIBI-WHYTE, J.S.C (P. 70, paras. A-E).

⁴ Ormerod, David (2005). **Smith and Hogan: Criminal Law**. Oxford University Press. ISBN 0-406-97730-5.

⁵ (1931) AC 310 at 324

less serious offences like assault, traffic offences and other breaches of statutory duties. The definition proffered by Professor Adeyemi⁶ is quite apposite notwithstanding its prolixity. By his words:

“A crime is an act or omission which amounts on the part of the doer or ommitter, to a disregard of the fundamental values of a society thereby threatening and/or affecting the life, limb, reputation and property of another or other citizen(s), or the safety, security, cohesion and order (be this political, economic or social) of the community at any given time to the extent that it justifies society’s effective interference through and by means of its appropriate legal machinery.”

CONSTITUTIONAL SAFEGUARDS:

RIGHT TO FAIR HEARING: This cannot be compromised by any court hearing either a criminal or civil case. It is in fact a Constitutional requirement for adjudication. As regards criminal proceedings, Section 36 (4) of the 1999 Constitution of the Federal Republic of Nigeria provides as follows:

“Whenever any 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 by a court or tribunal.”

Fair Hearing is predicated on the rules of natural justice which dictate that no man should be condemned unheard and that every judge must be free from bias. Its very essence is to ensure fair play.

By Section 36(6) of the 1999 Constitution, an accused person is entitled to be informed promptly in the language that he understands and in detail of the nature of the offence. He can be tried only for an offence known to a subsisting law and must also be given adequate time and facilities for the preparation of his defence. The section further provides that an accused person may either defend himself in person or by legal practitioners of his own choice. Under the same section, an accused person is entitled to have without payment, the assistance of an interpreter if he cannot understand the language used at the trial. He also has a right to be silent when taking his plea. These are mandatory provisions, the breach of which would render the entire proceedings a nullity. Oputa J.S.C. in **JOSIAH V. STATE**⁷ emphasized the consequences of a breach of the fair hearing provisions in the 1979 Constitution as follows:

“Section 33 of our 1979 Constitution deals with fair hearing and then when it uses the expression ‘he had been tried’ this must necessitate, or imply that at the trial there was a fair hearing. Where, as in this case, there was no such fair hearing, the trial is vitiated or nullified”

⁶ A.A. Adeyemi *“The Criminal Process as a Selection Instrument for the Administration of Criminal Justice.”* in Nigerian Criminal Process ed. A. A. Adeyemi. University of Lagos Press, 1977

⁷ (1985) 1 N.W.L.R. (Pt.1) 125 at 141.

THE SOURCE OF MAGISTRATES COURTS:

Section 6(2) of the Constitution of the Federal Republic of Nigeria provides that:

“The judicial powers of the state shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a state.”

Sub section 4 provides inter alia as follows:

“Nothing in the foregoing provisions of this section shall be construed as precluding:

(a) the National Assembly or any House of Assembly from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of a High Court.”

Finally paragraph k of subsection 5 provides that:

“...(k) such other courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House Assembly may make laws.”

It is clear from the foregoing, that it is the Constitution that creates Magistrate courts by implication because if power was not given under section 6 of the Constitution, we would have had only the superior courts of record set out in section 6(5) of the said Constitution.

The various magistrate courts laws operating in all the states of the federation find their legitimacy in the above provisions of the constitution, read alongside with the provisions of section 315 of the same Constitution dealing with existing laws.

The establishment, constitution, jurisdiction, practice and procedure and grades of Magistrates courts are provided for under these state laws.

The importance of magistrate courts in the criminal justice system of Nigeria cannot be overemphasized. It is a matter of common knowledge that except for offences, that attract capital punishment, rape and a few other high offences, most of the offences created in our penal laws are attended to by the magistrate courts.

Offences like stealing or theft, house breaking or burglary, most offences that have to do with road traffic, most offences that deal with the administration of justice, are just a few of the matters that come before the magistrate courts. One can say from the above that more than 80% of criminal cases that get to court end up before the Magistrate courts. The above fact underscores the reason why we must all be concerned with any delay in the system.

It is axiomatic that justice delayed is justice denied, as it is also a truism that rushed justice may lead to injustice.

CRIMINAL JURISDICTION OVER CAPITAL OFFENCES IN MAGISTRATE COURTS – ORDER OF BAIL OR REMAND⁸:

The Magistrate Court is a court of summary jurisdiction created to deliver efficient and effective local justice and it represents the first level of criminal justice delivery involving the state, in the hierarchy of courts. The criminal jurisdiction of a Magistrate Court is the jurisdiction of the court to entertain a criminal proceeding involving a crime or an offence. An offence is an act or omission punishable by the state, as prescribed in a written law. An offence can either be a capital offence (felony), a misdemeanour or a simple offence.

All manner of offences are dealt with by the Magistrate Courts EXCEPT capital offences, which remain beyond its jurisdiction. In the Nigerian justice system, a Magistrate Court is an inferior court, and as such, it cannot entertain any capital offence. Capital offences are within the jurisdiction of the superior courts of record such as the High Court. This therefore means that when a matter involves a capital offence, the High Court being the court of competent jurisdiction, ought to be the court of first instance.

However, it is a common practice in Nigeria for the Nigerian police to file a charge against a person accused of committing a criminal offence before a Magistrate Court which has no jurisdiction to hear the matter. The reason for this common practice may not be far-fetched.

Some of the laid down principles of liberty are that a person who has been detained for any alleged offence must be brought to court within a reasonable time⁹. Although in legal parlance reasonable time has always been a relative concept, determinable by the facts of individual cases, the constitutional prescription as it affects civil liberty is one or two days as the case may be¹⁰.

The Nigerian Constitution in its section 35, provides that any person arrested, must be brought before a court of law within a reasonable time, and the expression “reasonable time” means a period of one day in the case of an arrest in a place where there is a court of competent jurisdiction within a radius of forty kilometres, or two days or longer, in any other case, as considered reasonable by the court.

⁸<http://www.nationalnetworkonline.com/vol10n22/criminaljurisdiction.html>

⁹ S. 35(4) of the 1999 Constitution (as amended)

¹⁰ **CRIME AND THE CRIMINAL JUSTICE SYSTEM IN NIGERIA** – Amadi Jerry, Esq.

The Police needs the protection of the court, in order to keep such an accused person in custody longer than the one day or two days stipulated by the Nigerian Constitution. Hence, when the accused person is charged to a Magistrate Court in a matter involving a capital offence, of which the Magistrate Court lacks jurisdiction, the counsel to the accused person is usually expected to file an application for bail, and this application can either be granted by the Magistrate Court or denied. When it is denied, the Magistrate court would order that the accused be remanded in police custody and refer the matter to the court of competent jurisdiction, which is the High Court.

What this means is that the Police would then obtain through the back door, what would have been hard to get through the front door of the law. That is to say, the Police would then have the power to detain the accused person for more than one or two days as provided in the Nigerian Constitution, and this would not amount to an act of unlawful detention because there is already a court order from the Magistrate Court authorizing the remand of the accused person, pending the transfer of the matter to the High Court by the state. In the case of **LUFADAJU VS JOHNSON**¹¹ the Supreme Court per Niki Tobi JSC of blessed memory held as follows:

"Once an accused person is brought under section 236(3), Criminal Procedure Law, Cap. 32 Vol. II Laws of Lagos State, 1994 for remand, the Magistrate orders his remand without arraignment. By the subsection, the Magistrate can do one of two things. He can remand the accused in prison. He can also grant bail pending arraignment".

Commenting on the case of **LUFADAJU VS JOHNSON**¹² Jerry Amadi, Esq. a learned Author and University lecturer laid down the following matters arising as follows:

"The debate is over. The scope of the jurisdiction of Magistrate courts has widened in a very material area. This expansion of jurisdiction is however not procured by judicial means, but by legislative prescriptions. In Lufadeju V. Johnson the Supreme Court interpreted the effect of section 236 (3) of the Lagos State CPL. It is the statute that conferred the jurisdiction and not their Lordship's decision. In effect, the decision will not apply to extend the jurisdiction of Magistrate Courts in other states nor coat them with power to remand where equivalent provisions have not been enacted in the laws of such States by the appropriate Houses of Assembly.

Consequently, it will be holding charge in any other state where the Magistrate in want of jurisdiction remands a suspect.

Jurisdiction is without doubt wanting where provisions equivalent to section 236 (3) CPL Lagos state is not contained in the statute book of any state. It is recommended that in order to draw from the policy – laden decision of the Supreme Court in the Lufadeju's case, the Houses of Assembly of the other states should incorporate the essence of

¹¹(2007) 3 SC (Pt. II) 134

¹²(Supra)

section 236 (3) of the Lagos state law into their statutes on criminal procedure”.

In Delta State, our Criminal Procedure Law Cap C22 Vol. 2 Laws of Delta State, particularly section 236 (3), (4) and (5) vests jurisdiction in Magistrates and Presidents of Area Customary Courts to remand accused persons when they have no jurisdiction to try, pending the arraignment of such persons in the appropriate court. Section 236(3) provides:

“Any magistrate or president of an area customary court shall have powers to remand any person brought before him on any charge in cases where such magistrate or president of an area customary court has no jurisdiction to try, pending the arraignment of such a person in the appropriate court.

Subsection (4) provides:

“The magistrate or president of an area customary court shall at the time of the remand order that a duplicate copy of the case file is placed before him by the police officer or prosecutor bringing such person before the court.”

Subsection (5) reads:

“The remanding magistrate or president of the court as the case may be shall order the registrar of the court to deliver the enrolment of order and duplicate case file on which his order of remand is based to the Honourable Attorney-General of the state within 7 days of the said order.”¹³

Such a remand however, could be for an unreasonably long period of time as the Order for the remand does not usually subject the state to a fixed period of time within which to effect the transfer of the matter to the High Court.

This is the subtle irony behind the frequent practice of taking an accused person before a Magistrate Court for a capital offence which the Magistrate Court has no jurisdiction to entertain.

Also, in some situations where bail is granted, the bail conditions may be so stringent and unachievable, that the accused person would not be able to fulfil the overwhelming bail condition and as a result, would have to remain in Police custody.

On the other hand, if the Magistrate Court decides to grant bail to such an accused person, and the accused person thereafter jumps bail and absconds, the Magistrate Court has the power to issue a bench warrant for the arrest and subsequent detention of the accused person, even though it lacks the jurisdiction to hear the substantive matter.

¹³See also: **section 237 of the Delta State Criminal Procedure Law Cap C22 Vol. 2** which empowers a magistrate to order for an accused person to be brought to court during remand.

Whether or not this practice of arraigning a person accused of committing a capital offence, before a Magistrate Court that lacks jurisdiction to entertain the matter for the sole purpose of obtaining a court order for his remand in Police custody, is in furtherance of the course of justice, is arguably not certain. The practice may be necessary where the Police needs adequate time to acquire evidence to build a viable case against the accused person, and as such, needs to have the accused person in custody while investigations are on-going. However, several cases abound where the Police has resorted to this practice and in the long run, the accused person was detained for much longer than reasonably necessary.

To this extent therefore, it may not be out of place to advocate for the enactment of a law to the effect that, all offences, including capital offences must be brought before the appropriate court of competent jurisdiction at first instance.¹⁴

ON JURISDICTION OF MAGISTRATE COURTS IN NIGERIA:

Jurisdiction is fundamental in every proceeding in court for if a court of law adjudicates over a matter in respect of which it has no jurisdiction, its effort is in vain as the proceedings are a nullity.

Jurisdiction is the authority which a court has to adjudicate over matters that are litigated before it. It is the basis upon which a court acts. Jurisdiction is a function of law. Accordingly, no litigant can confer jurisdiction on the court where the constitution or a statute or any provision of the common law says that a court does not have jurisdiction.¹⁵In other words, it is a question of law whether a court has jurisdiction in a matter. This jurisdiction could be substantive or procedural in nature.

Procedural jurisdiction involves issues like pre-action notice and other conditions precedent to the exercise of jurisdiction. It also involves composition and constitution of a court. A litigant may waive procedural jurisdiction. On the other hand, substantive jurisdiction is a matter of law. It covers the issue of subject (person) and subject matter before the court. This cannot be waived.

Further jurisdiction is fundamental and must be determined *ab initio* before the action is commenced. Jurisdiction may be by reference to the subject matter that the court may adjudicate upon or the financial limit in such subject matter.

Jurisdiction may be by reference to constitution or composition of the court. Jurisdiction may also be determined by reference to the geographical area of operation of the court.

¹⁴Criminal Jurisdiction Over Capital Offence In Magistrate Court...Order Of Bail Or Remand – By Lillian Akhigbe

¹⁵NDAYAKO V. DANKORO (2004) 13 NWLR (PT. 889) 187

Whatever is the case, it is the claim (statement of claim) of the plaintiff that determines jurisdiction. Thus, it is the claim before the court that has to be examined to ascertain whether a particular case is one within the jurisdiction conferred on the court.

A court may exercise civil or criminal jurisdiction. Civil jurisdiction is the power of the court to adjudicate over civil matters. Civil matters are disputes between individuals or between individuals and government or between governments, the result of which may be the award of damages, compensation, declaration of rights or prerogative or equitable remedies. Civil jurisdiction is determined by examining the territory state, amount, claim, subject-matter, parties, geographical area, among others.

Pursuant to section 6(4) of the 1999 Constitution, the Magistrate Court in a state is created by the state house of assembly in that state, while the Magistrate Court in the Federal Capital Territory is established by the National Assembly. The jurisdiction of every Magistrate Court in a state is delineated by the Magistrate Court law enacted by the state's legislature and the Magistrate Court rules made by the Chief Judge of the relevant state. Typically, the jurisdiction of Magistrate Courts, whether criminal or civil, are limited by provisions bordering on matters such as value of the damages/relief sought, the degree of seriousness of the offence, the subject matter of the action, territory etc., contained in the operative Magistrate Court law and rules.

Illustration: Pursuant to Section 11 of the Magistrate Court Law of Lagos State 2009, all Magistrate Courts in Lagos have uniform criminal and civil jurisdiction, capped at a financial limit of N10,000,000.00 (Ten Million Naira), and are not categorized vertically into grades, while in other states the Magistrate Courts are divided into grades i.e. Chief Magistrate I, Chief Magistrate II, Senior Magistrate I, Senior Magistrate II etc., with differing criminal and civil jurisdiction.

CIVIL JURISDICTION OF MAGISTRATES COURTS I N NIGERIA:

MAGISTRATES' COURTS AND DISTRICT COURTS: The magistrates court when it exercises its civil jurisdiction in the South is known as a Magistrates Court, but when it exercises its civil jurisdiction in the North, it is known as a District Court.

Although the establishment of Magistrate Courts is enabled by the Constitution, it is not a direct creation of the Constitution. Every state of the Federation has its own laws establishing and providing for Magistrate Courts. It is these laws that stipulate the civil jurisdiction of the courts. In Lagos State for example the Magistrate Courts Law No. 14 2009 of Lagos State and the Magistrate Court Civil Procedure Rules govern the Magistrate Court system.

Under the provisions of section 28 of the Magistrate Courts Law of Lagos State, the Magistrate shall have and exercise jurisdiction in the following causes:

- i. All personal actions whether arising from contract or from tort or from both where the debt or damages claimed is not more than N10, 000,000 (Ten Million naira);
- ii. Actions between landlords and tenants for possession of any land claimed under an agreement or refused to be delivered up where the annual rental value does not exceed N10, 000,000 (Ten Million naira) *(Note that Rent Tribunals under the Rent Control and Recovery of Residential Premises Edict of 1997 Lagos State appears to have taken over some of the jurisdiction. See section 1(1) and 7(1) but the Magistrate still sit as the Chairman of the Rent Tribunal on days marked out as tribunal days);*
- iii. Action for the recovery of any penalty, rates expenses, contribution or like demand if the amount does not exceed N10, 000,000 (Ten Million naira);
- iv. Appointment of Guardian Ad Litem, and;
- v. Power to grant injunctions or order to stay, waste or alienation or for the detention and preservation of any property or to restrain breaches of contract or tort in actions instituted in the courts.

The foregoing notwithstanding, by the provisions of the Magistrate Court Law under review, the Court cannot exercise jurisdiction in the following matters:

1. Issue of title to land or to any interest to land;
2. Issue as to the validity of device, bequest or limitations under any will or settlement;

In addition to their general jurisdiction, Magistrates are to observe and enforce the observance of every customary law, which is applicable and is not repugnant to natural justice equity and good conscience or incompatible with any law for the time being in force – See section 24, Magistrate Court Law, Lagos.

In addition to the two situations highlighted above, a magistrate court has no jurisdiction to entertain the following matters:

3. Matters relating to recovery of residential premises, except the rent is within N10, 000,000 (Ten Million naira);
4. Marriage (matrimonial causes);
5. Family status or guardianship of children; and
6. Inheritance and disposition of property on death.

On the other hand, as earlier stated, in the North, when Magistrate courts exercise civil jurisdiction, they are called District Courts. In the Federal Capital Territory, Abuja, the

District Court Laws are similar to the Magistrate Court Laws. Section 13 of the District Court Act provides for civil jurisdiction of District Courts.

Under that provision the senior district judge shall have and exercise jurisdiction in civil matters in the following cases:

- a. All personal suits arising from contracts, tort or both;
- b. All suits between landlord and tenant for possession of a land or house claimed under agreement or referred to be actually delivered up.
- c. Action for recovery of penalty, rate, expenses, contribution or other likely demand which is recoverable by virtue of written law for the time being in force.

For the financial limitations of the District Courts, see section 13 and 14 of the District Court Act of the FCT, Abuja:

Chief District Judge 1	-	250,000
Chief District Judge II	-	200,000
Senior District Judge I	-	150,000
Senior District Judge II	-	100,000
District Judge 1	-	75,000
District Judge II	-	50,000

Like the Magistrate's Court, the jurisdiction of District Courts is excluded in respect of the following:

1. Issue as to title to land or to any interest in land.
2. Issue as to the validity of any devices, bequest or devolution under any will or settlement; and
3. Matters that are subject to marriage, family status, guardianship of children, inheritance or disposition of property as death.

In Delta State it may be needful to state, the financial jurisdiction of the Chief Magistrates in civil cases does not exceed N1,000,000.00 (One million Naira). The financial limitations in the jurisdiction of Magistrate Courts clearly differ from one state to another. It may be necessary to consider reviewing the civil jurisdiction of Magistrate Courts with relatively low financial limits so as to boost their experience with more civil cases and minimize the number of cases coming into very busy high courts.

CRIMINAL JURISDICTION OF MAGISTRATE COURTS IN NIGERIA:

The Criminal Jurisdiction of a Magistrate Court is limited to the territory of its State and in some cases to a Magistrate District in the State. Subject to special provisions, contained in the Magistrate Court Law of each State, a Magistrate in a district shall be the presiding officer of the Court. He shall have and exercise all criminal jurisdiction and power conferred upon him by statute and his appointment. Territorial jurisdiction of a magistrate extends over any territorial water adjacent to the district in which for the time being he is exercising jurisdiction as well as over inland waters whether within or adjacent to such district.

A Magistrate either as presiding officer or otherwise shall not exercise any jurisdiction or power in respect of causes and matter outside his territory. In **REX V SHODIPO**¹⁶, the appellant was apprehended in Lagos for an offence committed at Ijoko in the Abeokuta Magisterial District. A preliminary inquiry was held and he was committed for trial in the Lagos Division of the then Supreme Court on a charge of fraudulent false accounting contrary to Section 6 of the criminal Code. He was convicted for the offence. On appeal it was submitted on behalf of the appellant that by reason of section 64 of the Criminal Procedure Ordinance, the preliminary inquiry should have been held by a Magistrate in the Abeokuta Magisterial District, the matter was outside the jurisdiction of the Lagos Magistrate, that the proceedings before him were therefore a nullity and that the subsequent trial in the Supreme Court was also a nullity. It was held by the West African Court of Appeal, that the Magistrate of Lagos had no jurisdiction to conduct the preliminary inquiry in this case and the proceedings before him including the committal for trial were a nullity. It was further held that the proceedings in the Lagos Division of the Supreme Court was a nullity. The conviction and sentence were therefore set aside and an order that the case be re-tried in a court of competent jurisdiction made.

In Delta State, section 39(1) of the Magistrate Courts Law¹⁷ the Chief Judge or Judge may at any time and at any stage of hearing before judgement, transfer any cause or matter before a Magistrate Court to any other Magistrate Court, and such cause may be transferred either entirely or in respect of any part thereof or procedure required to be taken therein.¹⁸ It may also be worth noting that section 40 of the Magistrate's Court Law¹⁹ makes such orders as provided for in section 39 not subject to appeal.

¹⁶12 WACA 374

¹⁷Magistrate's Court Law, CAP M1, Vol. 3 Laws of Delta State, 2006.

¹⁸See section 39 (1), (2), (3) & (4) of the Magistrate's Court Law, CAP M1, Vol. 3 Laws of Delta State, 2006.

¹⁹See section 40 (2) of the Magistrate's Court Law, CAP M1, Vol. 3 Laws of Delta State, 2006.

CRIMINAL JURISDICTION OVER PERSONS: In criminal cases, a Magistrate Court must possess the require jurisdiction try the offence and persons alleged to have committed the offence before it can invoke its judicial power. For instance, all foreign envoys have diplomatic immunity and this extends to law Courts in Nigeria. The immunity can however be waived. Therefore, if a foreign envoy or foreign consular officer waives his immunity and submits to the jurisdiction of a Nigerian Court, it is the Federal High Court that would have exclusive jurisdiction over the matter. In the case of **DIMITORY V MULTICHOICE (NIG) LTD**²⁰ it was held that it is important to note that the waiver of immunity does not make the foreign envoy or consular concerned an ordinary citizen of Nigeria whose matter could be entertained by any Court in Nigeria. The appropriate Court to try all matters involving a foreign envoy accredited to Nigeria and who for one reason or the other have waived the immunity conferred on him is the Federal High Court.

JURISDICTION ON CRIMINAL CAUSES AND MATTERS: Magistrate Court in each State of Nigeria has similar original jurisdiction in criminal causes and matters with slight differences in terms of imprisonment and fines that may be imposed by a Magistrate. For instance, in Ogun State, Section 21 of the Magistrate Court Law of Ogun State 2005²¹ provides:

“Subject to the provision of this and any other Law or Act, a Chief Magistrate shall have full jurisdiction in criminal causes and power as hereinafter see forth:

1. For the summary trial and determination of criminal causes as follows:-

(a) Where any person is charged with committing an offence or with doing any act or with omitting to do any act required by law, the commission or omission of which is in any case punishable either by fine not exceeding fifty thousand naira or by imprisonment not exceeding seven years or by both; power to impose the punishment specified by law;

(b) (i) Where any person is charged with committing an offence or with doing any act or with omitting to do any act required by law, the commission or omission of which is stated by the enactment declaring such to be both an offence and to be one punishable or tribal or liable to be dealt with on summary conviction or summary or in a summary manner; power toward the maximum fine or penalty or forfeiture provide by such enactment or both such imprisonment and such fine or penalty or forfeiture where by law both may be imposed;

(c) Where any enactment provides that an order for the payment of money may be made on summary conviction or summarily or in a summary manner in respect of any act or omission; power to order

²⁰(2005) 13 NWLR (Pt. 943) 575

²¹ See also S.21 Magistrates' Court Law Osun State 2002

the payment of the sum which may be ordered according to the provisions of the enactment providing for the making of the order;

(d) Where any person is charged with committing an offence or with doing any act or with omitting to do any act required by law, the commission or omission of which is an offence, not stated to be triable on summary conviction or summarily or in a summary manner, and stated by the enactment declaring such to be an offence that is punishable either by a fine exceeding fifty thousand naira or by imprisonment exceeding seven years or both, but taking into account the circumstances of the particular offence with which such person is charged and the character and antecedents of the accused himself the court is of the opinion that the charge then before the court appears to be one of such a nature that, if proved, it should be adequately punished by any of the following punishments.

(i) Imprisonment for the more than seven years;

(ii) A fine not exceeding fifty thousand naira, such fine to be enforced in default of payment by distress or by imprisonment for not more than seven years;

(iii) In each of the above cases with or without caning and any additional or alternative punishment in respect of offences for which such punishment may legally be inflicted.

(iv) Any lesser penalty or order which a magistrate in the exercise of his summary jurisdiction may impose or make, power to impose such punishment.

Provided that the person so charged, if the magistrate decides to proceed in accordance with subsection (1) (c), shall be informed by the magistrate before any evidence is taken of his right to be tried in the High Court and such person consents to be tried by the magistrate.

Provided further that if the magistrate shall not so inform the person charged, the trial shall be null and void ab-initio the person charged consents at any time before being called upon to make his defence, to being tried by the magistrate, in which case the trial shall proceed as if the person charged had consented to being tried by the magistrate before the magistrate proceeded to hear evidence in the case.

(2) To receive and inquire into all charged of indictable offences, and to make such orders in respect thereof as may be required by the provisions of any Act or Law for the time being in force in relation to procedure in respect of indictable offences.

(3) Generally to do all such acts and things as may, by any Act or Law, which is not or may hereafter be in force, lawfully appertain to the office of a magistrate."

Section 22 of the same Law provides as follows:

"Subject to the provision of this and of any other Law or Act the jurisdiction and powers of Senior Magistrate and Magistrates in criminal causes shall be as follows:

(a) Senior Magistrate: All those set out in Section 21, save that the maximum fine not exceeding fifty thousand Naira and the maximum

period of imprisonment of not exceeding seven years mentioned in that section shall be replaced by a sum of not exceeding thirty thousand Naira and a period of not exceeding five years in the case of a Senior Magistrate, Grade 1, and twenty thousand Naira and a period of not exceeding three years in the case of a Senior Magistrate Grade, II, and such limitation shall extend to any cause or matter whether or not the offence be one declared to be punishable or triable or liable to be dealt with on summary conviction or summarily or in a summary manner;

(b) Magistrate: All those set out in subsection (a) herein save that the maximum fine and the maximum period of imprisonment shall in no cause exceed a sum of ten thousand Naira or a period of two years 9 imprisonment in the case of a Magistrate, Grade I, and five thousand Naira or a period of one year in the case of a Temporary Magistrate.”

By the Magistrate Court Law of Lagos State 2003 as amended by 2007 Law, (now repealed by the 2009 Law) the fine which a Magistrate may impose in respect of any offence does not exceed:

(a) In the case of a Chief Magistrate, Fifty Thousand Naira; (N50,000.00);

(b) In the case of a Senior Magistrate Grade, Forty Thousand Naira; (N40,000.00);

(c) In the case of a Magistrate Grade 1, Thirty Thousand Naira (N30,000.00);

(d) In the case of a Magistrate Grade 2, Twenty Five Thousand Naira (N25,000.00) but shall not exceed in any case the maximum fine prescribed by the appropriate law for that offence.

And the term of imprisonment which a magistrate may impose in respect of any offence shall not exceed:

(a) In the case of a Chief Magistrate seven (7) years;

(b) In the case of a Senior Magistrate, five (5) years;

(c) In the case of Magistrate Grade 1, three (3) years;

(d) In the case of Magistrate Grade 2, two (2) years.

The term of imprisonment a Magistrate in Lagos State used to impose does not exceed the maximum term of imprisonment prescribed by Law for that offence. Provided always, any Magistrate shall have the power to make an order for Community Service in lieu of any punishment.

However, with the reforming going on in Lagos State, jurisdiction of Magistrate Courts in Lagos was reviewed in 2009 with substantial and significant difference from that of

other States. Section 29 of the Magistrate's Court Law of Lagos State 2009 provides as follows:

- (1) Subject to any restriction or conditions prescribed by the Constitution or by any other law, Magistrate shall have jurisdiction and powers in respect of summary trial and determination of criminal cases as set out in this section.*
- (2) A Magistrate shall have jurisdiction for the summary trial of offences other than indictable offences, and, on the conviction of any person accused of any offence, may, subject to the other provision of this section, imposed the punishment provided by law for that offence.*
- (3) The fine which a Magistrate may impose in respect of any offence shall not exceed of imprisonment which a Magistrate may impose in respect of any offence, shall not exceed the maximum term of imprisonment provided for than offence under the Law.*

Under section 11 of the same Law of 2009, each Magistrate shall have general jurisdiction throughout Lagos State. The Magistrates shall have in all respect equal power, authority and jurisdiction under the law.

In the Northern States, Magistrate Courts were originally established by section 6 (1) of the Criminal Procedure Code. Four grades of Magistrate Courts are listed under the code, namely:

1. Chief Magistrate Court Grade;
2. Magistrate Court Grade I;
3. Magistrate Country Grade II;
4. Magistrate Court Grade III.

The jurisdiction of each grade of Magistrate Court in respect of offences triable by it is specified in Appendix A of the Penal Code. By virtue of the 6th Column, such offences are also triable by Magistrates of higher grades or by the High Courts.²²

Magistrate of different grades may also have jurisdiction to try offences contained in Laws outside the Penal Code provided jurisdiction is conferred expressible on such grade of Magistrate Court. Where the relevant law is silent on jurisdiction over such offences, Magistrate Courts can try such offences in accordance with the limit of their jurisdiction stated hereunder:

1. Chief Magistrate Court 10 years imprisonment or N1,000.00 fine
2. Magistrate Court Grade 15 years imprisonment N600.00 fine
3. Magistrate Court Grade II 2 years imprisonment N400.00 fine

²²See S. 121) CPC, S. 16(1) of the Magistrate Court Edict 1987.

4. Magistrate Court Grade II 3 months imprisonment N200.00 fine

In Enugu, criminal jurisdiction of Chief Magistrate Grade 1 and 2 is a fine not exceeding N100,000.00 (One Hundred Thousand Naira) or 14 years imprisonment or both. Then for senior magistrates grade 1 and 2, the jurisdiction is a fine not exceeding 20,000.00 (Twenty Thousand Naira) or 12 years imprisonment or both.

Some of the States in Northern Nigeria now have their respective Magistrate Court Law has since been amended with the result that the provisions dealing with the number of grades of Magistrate Courts and Punishment to be imposed has been reviewed. Currently, in Kano State, as well as some other Northern States, seven grades of Magistrate Courts.²³

By virtue of section 16 of the Magistrate Court Law of Kano State the grade of Magistrate Courts as well as their jurisdiction to punish is as follows:

1. Chief Magistrate Court Grade I 14years imprisonment N30,000.00 fine;
2. Chief Magistrate Court Grade II 12years imprisonment N25,000.00 fine;
3. Senior Magistrate Court Grade I 10years imprisonment N20,000.00 fine;
4. Senior Magistrate Court Grade II 7years imprisonment N15,000.00 fine;
5. Magistrate Court Grade I 5years imprisonment N10,000.00 fine;
6. Magistrate Court Grade I 3years imprisonment N5,000.00 fine;
7. Magistrate Court Grade III 1year imprisonment N2,500.00 fine.

What is constant in all the States is that no magistrate has jurisdiction to sentence a person to a prison term of more than fourteen (14) years or to try an offence which penalty exceed fourteen (14) years. Also no magistrate has jurisdiction to try capital offence such as murder; armed robbery and treasonable felony. In **UNEZE & ORS V THE STATE**,²⁴ the appellants were brought to Uyo Magistrate Court for an offences or murder of one Inyangdim and on the committal order of the Magistrate they were subsequently tried in the High Court of the South Eastern State which sentences all of them to death. On appeal against the conviction and sentence, the issue of jurisdiction of the Uyo Magistrate Court to entertain murder case was raised and that the subsequent trial in the High Court of Ikot Ekpene Judicial Division of the State was also a nullity as Section 70(1) of CPA could not have validated the proceedings before the Magistrate Court. It was held by the Supreme Court that the committal proceedings in this case were vitiated by a defect in jurisdiction. The appeal was consequently allowed.

ADDITIONAL CRIMINAL JURISDICTION:

²³See section 4(1) Kano State Magistrate Court Edict 1986. See also, section 4(1) Kano State Magistrate Court Edict 1986.

²⁴ (1973) 6 SC 221

The National Assembly may, by an Act, confer additional criminal jurisdiction in the Magistrate Court in Nigeria to try federal offences. For instance, Section 5 (3) of the Passport (Miscellaneous Provisions) Act Cap P.1 14 Laws of the Federation of Nigeria 2004 confers jurisdiction in Magistrate Courts to try offences under the Act. Thus in **ABSS V C.O.P**²⁵ it was held that:

“By virtue of section 5(3) of the Passport (Miscellaneous Provisions) Act of 1985, Cap. 343, Laws of the Federation of Nigeria, 1990, an offence under the Act shall be triable in a Magistrate’s Court. Thus, in the instant case, the Magistrate Court had jurisdiction to try the case and the appellant High Court was therefore right in refusing to grant an order of prohibition on the proceeding before the trial Court”

The House of Assembly of a State can equally make laws to confer additional criminal jurisdiction in the Magistrate Court in State. Thus by section 28(5) and 29(6) of the Magistrate Court Law of Lagos State 2009, the court was conferred with additional jurisdiction in respect of offences created in by many of the State Laws.

RESTRAINTS TO ACCESS TO JUSTICE:

It is no gainsaying that Magistrate Courts in Nigeria are fast losing their character as courts of summary trial due to factors such as:

- a. Awareness of Legal Remedy:-** A good number of aggrieved people are unaware of the regulating laws and reliefs available to them in a dispute scenario; even when aware, they are lost at sea on how to identify and engage a competent lawyer for the prosecution of their claim. This ignorance, which can be largely attributed to little or no formal education, drastically inhibits the average Nigerian’s access to justice because a functional judicial system would be of no benefit to Nigerians if they are ignorant on how to exploit the judicial system in the pursuit of justice. The apathy, whether actual or constructive, to approach courts for resolution of disputes is a major restraint to the accessibility of justice by one and all.
- b. High Cost of Litigation, Adjournments and Court Formalities:-** To a large extent, it is believed that the cost of litigation, that is, costs for filing a claim, hiring a lawyer, and all ancillary expenses, are expensive and unaffordable by the ordinary Nigerian. This sentiment also plays a role in limiting access to justice, as a good number of people who cannot ‘afford’ justice would, at best, rather condone infringements on their rights, and at worst, make recourse to self-help.

²⁵ (1998) 12 NWLR (Pt. 577) 308 at 317

Also, contrary to the purpose of its creation, cases instituted in Magistrate Courts are now as long-drawn as those commenced in High Courts; thus, a key incentive of the Magistrate Court has been eroded over the years, further dampening the willingness of individuals to approach the Magistrate Court, in recent times. Adjournments, undue delay (from the Magistrate, court registrars and counsel, alike), amongst others have combined in making the proposition of approaching the Magistrate Courts, an unattractive proposition for litigants.

- c. Poverty:-**The pervasive poverty suffered by Nigerians contributes in making it difficult for common citizens to enforce their rights as provided for in section 46 of the 1999 Constitution. Poverty and low standards of living in the Nigerian society, alongside other militating factors, makes the judiciary less attractive and patronized by the majority of the population. Thus, making justice limited only to the few who can afford it. It is unlikely that the poor who can barely afford a meal a day would opt to spend whatever money they have on legal fees. Therefore, most of them resign to their fate and suffer in silence. As a result they are the most likely class in society to constantly have their rights infringed upon with no way to access justice.
- d. Corruption:-**Matthew Burkaa Esq. refers to the judiciary as the “last hope of the common man,”²⁶ meaning that it is up to the judiciary to ensure that the rights of citizens are adequately protected with judgments delivered fairly and judiciously. Magistrates are expected to observe the Code of Conduct for Public Officers which is set out under Part I of the Fifth schedule to the 1999 Constitution.²⁷ As such, Magistrates are not allowed to let their personal ideas or opinions influence their duty as unbiased umpires in the temple of justice. In plain truth and harsh realities, ill-financing, among others, has caused institutional corruption in the Magistrate Courts. It is even believed by some, that this corruption is prevalent at inferior courts due to the informal manner in which proceedings are conducted therein, as well as, the quality of persons appointed as Magistrates. While, I do not anchor with these propositions, it is unfortunate that corruption in the judicial system is a reality, which cannot be merely wished away. News of corrupt practices in the judiciary have aided in dampening public belief in the judiciary, especially amongst those with little or no education; further limiting the willingness of the hoi polloi to approach the courts, including the Magistrate Courts, in search of justice. Without an honest justice system free of corruption,

²⁶ Matthew Burka Esq, *The Role Of The Judiciary In Combatting Corruption In Nigeria*, 2012, Page 2

²⁷ Yusuf O. Ali, SAN, *Delay In The Administration Of Justice At The Magistrate Court – Factors Responsible And Solution*, Page 18

the wealthy, especially the corrupt can manipulate the justice system to the disadvantage of the less wealthy.

e. Insufficient Number of Judicial Personnel and Courts:-It is largely the case that the number of Magistrates and Magistrate Courts available within each jurisdiction is usually not proportionate to the population within jurisdiction which the courts are supposed to cater to. A notable fallout of the deficiency in courts and Magistrates, is the overburdening of Magistrates with lots of cases, which invariably impedes their ability to quickly dispense justice, as time must be evenly allotted among the numerous pending cases. This causes long-drawn litigation and slow resolution of disputes.

f. Poorly Trained Law Enforcement Agents:-One sour area of our administration of justice is the inefficient and corrupt prone law enforcement agencies. There is apparent lack of the will power to do that which is right in most cases by these agents. Poor investigative techniques or the abuse of investigative discretion can lead to results that undermine the integrity of the criminal justice system, from harassment to conviction of the innocent.²⁸ Matters that ought not to be the subject of criminal investigations are pursued and pushed to the magistrate courts. It takes undue long time for case files to be duplicated and when it is done, it is another battle sending same to the Director of Public Prosecution for advice. Sometime, when the advice is sent, it may be suppressed if it does not accord with the pre-determined expectation of the agency. Many a time, these agencies are used to settle personal scores and in the process, the magistrate courts are inundated with frivolous charges.

We must advert to the issue of lack of the wherewithal with which the agencies are to conduct investigations even in deserving cases. Most complainants will attest to the fact that, if these agents have to travel in the course of an investigation, the complainant will have to provide means of transportation.

When you interact with these agencies, you will appreciate that many of the investigators need comprehensive training on investigation. The many unresolved serious criminal cases that are in the news, attest to this lack of proper investigative ability. The situation is not helped by the apathy of the citizens borne out of fear or nonchalance.

g. Disregard and Disrespect by Lawyers to Magistrates and other Inferior Courts:- The duties of a lawyer to every court can be contextualized thus:

²⁸ ABA Criminal Justice Section, Ad Hoc Innocence Comm., Achieving Justice: Freeing the Innocent, Convicting the Guilty at 13-14 (Paul Giannelli & Myra Raeder, eds., 2006)

- (A) to use tactics that are legal, honest and respectful to courts and tribunals;
- (B) to act with integrity and professionalism while maintaining his or her all-embracing responsibility to ensure civil conduct; and
- (C) to educate clients about the court processes in the interest of promoting the public's confidence in the administration of justice.²⁹

This however is now fading into a state of archaism by an increasing number of younger lawyers today and if left unattended will surely lead to an eventual decay of the entire judicial system.

- h. Unwillingness of Magistrates to Verify Jurisdiction before Taking on Matters:-** Jurisdiction, as discussed earlier is the bedrock of every judicial proceeding the lack of which renders every action taken as a futile waste of time and resources. This is particularly obvious in Magistrate Courts where the ranges of Criminal jurisdiction often vary from one grade to another. It is necessary for a Magistrate to properly read the statute or law under which an accused person is charged so as to acknowledge whether he has the jurisdiction try such a matter. Section 27(5) of the Firearms Act for example, which is a Federal Statute and confers powers on Magistrates to have and exercise jurisdiction for the summary trial of any person charged with an offence under the provisions of subsection (1) (a), (b) or (c) of the section and impose the penalties prescribed therein notwithstanding anything to the contrary contained in any other enactment.

RECOMMENDATIONS:

I believe that the implementation of the suggestions below would encourage access to justice at the Magistrates courts, and other courts of first instance:

- a. **MORE COURTS AND MAGISTRATES:** -Appointing more Magistrates and erecting more Magistrate Courts in heavily congested areas would go a long way in reducing the workload of the Magistrates and decongesting the Magistrate Courts.
- b. **EQUAL CRIMINAL JURISDICTION:**-All Magistrates should be made to have the same criminal jurisdiction in respect of trial of offences, amount of fines and terms of imprisonment. Though there is the risk of inexperienced Magistrates and the likelihood of greater problems in resolving such cases, I believe in the long run that this intervention will eliminate delays in criminal trials caused by unending transfer of cases from one Magistrate to another as a result of lack of appropriate jurisdiction to entertain a particular charge or to impose appropriate

²⁹A LAWYER'S DUTY TO THE COURT – By Robert Bell and Caroline Abela

punishment for the offence. Lagos State has already adopted this reform in its Magistrate Court Law of 2009. It is advised that other States in the Federation follow the lead of the Lagos State judiciary but also take time to properly train the less experienced on the intricacies of their criminal jurisdiction.

- c. **INCREASE IN MAGISTRATE'S REMUNERATION:-**There should be an increase in the budgetary allocation of the state judiciary, and by extension the remuneration of Magistrates, to effectively curb the temptation for corruption which is a major hindrance to access to justice. This would aid the strides made by the Nigerian Judiciary Committee in making the judiciary less susceptible to compromise for financial gains. To this extent the various state House of Assemblies could be made to give legislative approval by way of incorporation, the salaries and allowances of Magistrates so as to protect such remuneration from executive interference.

- d. **ESTABLISHMENT OF LEGAL CLINICS:-**Legal clinics should be established and made a necessary requirement before litigation to narrow the flow of claims into the court and filter out trivial claims, which in reality are only a waste of the court's time and resources.

- e. **APPOINTMENT OF COMPETENT LAWYERS AS MAGISTRATES:-**Currently, unlike appointment of judges, there is no clear-cut requirement for appointment of a Magistrate apart from being a legal practitioner. It is therefore suggested that only legal practitioners with a minimum of five (5) or seven (7) years post call with relevant quantum of experience in litigation, and verified integrity should be eligible for appointment as a Magistrate. This will go a long way in positively affecting the quality of Magistrates and decisions made in the exercise of their jurisdiction. Lagos State has adopted this reform in its Magistrate Court Law 2009. It is submitted that other States should follow suit. It has even been suggested that candidates take exams and oral interviews before being appointed to allow for assessment of the applicants comprehension of the office applied for.

- f. **WELFARE OF THE MAGISTRATES:-**A work force that is not properly motivated cannot give its best. The provisions of good official cars, furnished accommodation, adequate security and conducive environments, for magistrates are not out of place. The hazardous nature of the job with the attendant risk to lives and property are compelling enough to make the government to make

adequate arrangement for the wellbeing and welfare of the magistrates. To this extent a more coordinated system of court sharing can be employed in areas where none exist (morning and afternoon courts for example). The inclusion of adequate libraries, conveniences and furniture should be prerequisites to the basic structure of a Magistrates chamber. Again the provision of adequate remuneration for magistrates is worthy of reemphasis. One advantage of paying the magistrates well is the fact that it will remove the temptation of corruption and unwholesome practices, apart from promoting prompt and efficient delivery of justice.³⁰

g. LAW REFORM:-The various states governments should urgently embark on the reform of all laws and rules that deal with the magistrate courts. The introduction of suspended sentence and its full implementation is long overdue. There should be other methods of penal punishment other than imprisonment. It is not out of place, to create large farm settlements, where convicts can be sentenced to, to do forced labour for specified periods. Each convict will be paid a percentage of the money realized from the harvest of whatever he sows on the farms.³¹ Recently the Administration of Criminal Justice Act, 2015 had been introduced into Abuja. It has open several doors to previously unfamiliar modes of criminal administration that have the potential of making options more flexible both for the prosecution and the accused person. It is recommended that the Administration of Criminal Justice Act be domesticated or used as a template by various states in Nigeria to modify or amend their respective purposes.

h. EFFICIENT PROSECUTION:-It is strongly canvassed that prosecution in the magistrates courts should be undertaken by only legally trained persons. From available statistics, we now have enough lawyers in the country to make this a success, if implemented. This will not only promote better delivery of justice, the unwholesome practices associated with non-lawyer prosecutors will be eradicated because a lawyer will be well aware that the profession will discipline him for unethical practices.

This is an appropriate point to appeal to lawyers to see themselves as true officers of the court and not as partisans. The unnecessary delays caused by asking for frivolous adjournments especially in criminal matters has done more harm to the negative perception of the law and justice by the common man. We

³⁰DELAY IN THE ADMINISTRATION OF JUSTICE AT THE MAGISTRATE COURT- FACTORS RESPONSIBLE AND SOLUTION –
by Yusuf O. Ali, SAN – pg. 25

³¹*Ibid* – pg. 26

all have the duty and responsibility to make law serve the society in order to sustain an environment that continues to respect not only the law but our profession.³²

- i. **PRACTICE DIRECTIONS:**-Practice directions from Chief Judges of various states could be made to regulate needless adjournments, practices and delays. For example, in Delta State there is an existing practice direction made in 2016 which directs magistrates in the state not to adjourn cases for more than five days in criminal cases. This circular/practice direction was issued by the Chief Judge of Delta State so as to cut down on unnecessary adjournments. Similar Practice Directions can be put in place to address particular restraints in the effective running of Magistrate Courts across Nigeria.

- j. **THOROUGH POLICE INVESTIGATIONS:**-Without any prejudice to what has been mentioned in paragraph (h) above, there is dire need for the creation and implementation of a codified set working standards for the investigative roles of Police officers and Prosecutors in the course of their criminal investigations. Such standards should be designed in such a manner to allow for speedy criminal investigations, easy and unrestricted interactions between prosecutors and investigating police officers and should also be intended as a guide to conduct for a prosecutor actively engaged in a criminal investigation or performing a legally mandated investigative responsibility.³³

- k. **MORE INVOLVEMENT OF THE LEGAL AID COUNCIL:** The Legal Aid Council (LAC) was established pursuant to the promulgation of the Legal Aid Decree No. 56 of 1976 later amended by the Legal Aid Act Cap L9, Laws of the Federation, 2004 and now repealed by the Legal Aid Act 2011 to enhance the Rule of Law through the provision of free Legal assistance and advice to the needy.³⁴ The LAC can thus be put to very good use by providing a network of integrated systems whereby accused persons who lack resources to handle their cases can be represented and ultimately further minimise the prevalent in-access and/or delays to justice cited in this paper.

- I. **THE MEDIA:**-The media has a big role to play by properly informing the people of the happenings in the hallowed chambers of the courts. Selective and sensational reporting of serious court matters, especially criminal cases, is a

³²*Ibid* – pg. 26

³³See generally **American Bar Association Criminal Justice Standards Committee , Standards for Criminal Justice Third Edition – Prosecutorial Investigations** ISBN: 978-1-62722-611-0

³⁴http://www.legalaidcouncil.gov.ng/index.php?option=com_content&view=article&id=57&Itemid=61

disservice to the cause of justice. Media trial of suspects is against the norms of the rule of law. Law is a technical field and only those that have knowledge of the field should report on it. A person who does not know the *ratio decidendi* of a case, will not likely report accurately the decision of the court. Anyone who wants to cover the activities of the court for the media, must be very familiar with the nuances of law and procedure.³⁵

m. THE PUBLIC:-Members of the public either as complainant or witness or bystander should appreciate the essence of justice and fair play. Unfounded and unsubstantiated allegations of bias and corruption should not be made against a Magistrate. We should always remember that Magistrates can only be seen, they cannot be heard. We should appreciate that in any legal duel, one party will win and the other lose. All the parties to a litigation cannot win in the same cause. We should appreciate that adjudication is an imperfect human attempt at attaining justice.³⁶

n. USE OF ALTERNATIVE DISPUTE RESOLUTION:- Finally, more emphasis should be placed on alternative dispute resolution mechanisms for settling court claims to reduce the burden on the courts. To enable parties amicably settle cases of common assaults or other offences not amounting to a felony and not aggravated in degree, on terms of payment of compensation or other terms approved by the Magistrate.

o. INCREASE IN CIVIL JURISDICTION:-As mentioned previously, it may be necessary to consider reviewing the civil jurisdiction of Magistrate Courts with relatively low financial limits so as to boost their experience with more civil cases and minimize the number of cases coming into very busy high courts.

³⁵ Ibid – pg. 27

³⁶ Ibid – pg. 27

CONCLUSION

In this paper, we have attempted to call attention to the peculiarities and differences of magistrate courts across Nigeria and have tried to establish various benefits which many of the differences provide in respective jurisdictions; benefits that have direct bearing and relevance to the easy and prompt access to justice in magistrate courts. The sheer volume of the number of cases that get decided in the Magistrates courts, makes it imperative that those who sit as magistrates in the courts should imbibe the identified qualities expected their revered positions.

We also endeavoured to analyse few factors that constitute delay in the administration of justice in the Magistrates courts. Inadequate funding, dilapidated infrastructure, lack of proper welfare for Magistrates, corruption, attitude of lawyers and complainants, poor quality of prosecution and a host of other factors were identified.

We attempted to proffer solutions to the identified factors that promote delay in the magistrates' courts and have proposed adequate funding, the welfare of the Magistrates, change of attitude by lawyers, the need for only legally trained persons to serve as prosecutors in the magistrates courts and the need for the media to assist in the work of the court.

Legal Practitioners are also to be encouraged to advise parties on the process of ADR that may be used to resolve disputes. This will go a long way in reducing congestion in the Magistrate Courts.

Albeit far from exhaustive, the consideration, adoption and/or implementation of the above recommendations will in my humble view go a long way in redefining access to justice and the jurisdiction of Magistrate Courts in Nigeria. It is hoped that the various stakeholders present here today would come together to implement the suggested remedies to enable access to justice affordable by all and sundry.

I appreciate your patience and hope this paper was worth your time.

Thank you.

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