CONVICTION AND SENTENCE N THE MAGISTRATE COURTS: GUIDING PRINCIPLES

BY

HON. JUSTICE A.M. ABUBAKAR (*Fcjei*)*

INTRODUCTION

First, we should bear in mind that the topic above is obviously very wide and all encompassing as far as sentencing is concerned. Therefore for purposes of clarity, this paper would have to be treated as brief as possible.

I will first address:

Finding of guilt and conviction;

And then; Sentencing.

However, as we all know in criminal trials, conviction and sentence comes at the end of the entire exercise.

It is in respect of criminal trails that we pass sentences after finding of guilt and conviction.

I will only consider the points that bother you, as my brief is simply "conviction and sentence: Principles and guidelines", so I cannot even attempt to cover the trial in criminal proceedings, as I believe much has been said to you by more qualified and distinguish jurist in their respective presentations before you.

It is pertinent to mention the various type of sentences. They are provided for in the criminal procedure Act[1] and the Criminal Procedure Code[2]. The Criminal Code[3] makes adequate provisions for the offences created under each section of the code and similarly the Penal Code[4] makes adequate provision.

---

*Fellow of the Commonwealth Judicial Education Institute

1. *Laws of the federation of Nigeria (2004) Cap. C41*
2. *Criminal Procedure Code in the Northern Nigeria 2nd Edition 1978*
3. *Laws of the Federation of Nigeria (2004) Cap. C38*
4. *Note on the Penal Code Law Cap. 89 Law of Northern Nigeria, Forth Edition (1987).*

You can only pass the sentence after the person standing trial before you has been found guilty.

It is obvious therefore, that for this paper to be meaningful, the presentation on judgment writing must he understood. It is only after the trial magistrate's effort in resolving the issues canvassed at the end of the criminal trial that conviction and sentence will follow.

At the conclusion of any judgment in criminal trial, a pronouncement of an acquittal or a conviction must follow. Soon thereafter sentence will be read out after allocutus, where conviction is pronounced.

DEFINITION OF CONVICTION

It may appear too elementary to start defining the word "conviction" But it will not be out of context if we pause to consider what convictions entail.

Blacks law Dictionary 8Edition defines conviction thus: "the act or process of judicially finding, someone guilty of a crime".

Also the *new international Webster comprehensive Dictionary Encyclopedic Edition*, defines conviction thus: "To find guilty after a judicial trial".

The Court of Appeal in OGBI U. OGBEH[5] further defines conviction thus:

"The primary meaning of the word conviction denotes the judicial determination of a case. It is a judgment which involves two matters, a finding of guilt or the acceptance of a plea of guilty followed by the sentence".

---

5. (2003) 15 N. W.L.R. (Pt. 844) 493 at 532, Paras G-H

Having defined the word conviction we shall how proceed to consider some principles guiding conviction in criminal trials.

ALLOCUTUS

Before a magistrate pronounce the sentence on a person convicted, the law in criminal trials requires the judge/magistrate to request the convict, or if represented by a counsel, to enter a plea as to why the court should consider mitigation while imposing the punishment that would be handed down to the convict.

It is normally based on request by the judge/magistrate for the accused to say anything, if he has.

Section 197(1) of the Criminal Procedure Code, provides:

"If the finding is guilty the accused shall, if he has not previously called any witness to character, be asked whether he wishes to call any such witness and after such witnesses, if any, have been heard he shall be asked whether he desires to make any statement in mitigation of punishment."

Similarly section 247 of the Criminal Procedure Act, provides as follows:-

"If the court convicts the accused person or if he pleads guilty, it shall be the duty of the registrar to ask the accused whether he has anything to say why sentence should not be passed on him according to law, but the omission of the registrar so to ask him or his being so asked by the judge or magistrate instead of the registrar shall have no effect on the validity of the proceedings".

Taking into consideration the above provisions, we could see that there appears slight variation from the two codes.

While the criminal procedure code of the Northern Nigeria provides for the convict to call witness to character, if he has any, however the section is silent on the issue of

who request the convict to enter plea for mitigation, as against the provision under section 247 of the CPA.

Of significant concern in this regard is the right of the convict once pronounced guilty before being sentenced to be allowed to say anything in mitigation.

However, failure to so comply with the provision will not negate the conviction.

On the issue of character evidence circumstance may arise where the prosecution may wish to call evidence of previous conviction before the convict in sentenced. Under such situation, it is required that a certificate of conviction containing the substance of the conviction be produced before the court. The Court of Appeal in AKANNI V. OLANIYAN[6] held:

"By virtue of section 225(1) of the evidence Act, where it is necessary to prove a conviction for a criminal offence, the same may be proved by production of a certificate of conviction. That section, however, does not preclude a person from proving a previous conviction, otherwise than by the production of a certificate of conviction. In other words, the provision leaves it open to a person who wishes to prove a previous conviction to make resort to any other mode of proof". However, if the person alleged to be the person referred to in the certificate denies that he is such a person, the certificate shall not be put in evidence unless the court is satisfied by the evidence that the individual in question and the person named therein are the same.

6. (2006) 8 N.W.L.R (Pt. 983) 531 at 550 Paras F-H

The Court of Appeal in AGBI V. OGBE[7] (supra) held as follows:-

"Section 225(5) of the Evidence Act is in mandatory terms. It lays down the conditions which must be satisfied before a certificate of conviction can be put in Evidence where the conviction is denied by the person alleged to have been convicted. Neither counsel for the parties nor the court has authority to waive the condition".

It should be noted that the foregoing provision of the evidence Act i.e. Section 225 referred to is now section 248(1) and (2) of the Evidence Act, CAP. E-14 of 2011.

As soon as the issue of allocutus and or evidence of previous conviction is settled, the court proceeds with the most important and vital aspect of the trial which no doubt sums up the entire trial exercise. That is the pronouncement of the verdict or punishment simply referred as "*Sentence*". We shall now proceed to consider the definition of the word "Sentence".

Canadian sentencing commission 1987, Page 115, provides that sentencing can be defined as "*the judicial determination of a legal sanction to be imposed on a person found guilty of an offence"*.

Another definition can be found in ICHI V. STATE[8] where it was held:

"A Sentence" is the judgment formally pronounced by the court or judge upon an accused person after his conviction in a criminal prosecution, imposing the punishment to be inflicted. It is the judgment formally declaring to the accused person the legal consequences of the guilt which he has confessed or of which he has been convicted".

7. (2003) 15 N.W.L.R (PT. 844) 493 at 529 Paras C-D
8. (1996) 9 N.W.L.R (Pt. 470) 83 at 89 at Paras, E.-F.

Section 248 of the Criminal Procedure Act provides that if the court finds the accused guilty, the court shall pass sentence on the accused or make an order or reserve judgment and adjourn the case to some future day.

The Supreme Court in Mohammad V. Olawunmi[9] held as follows:-
"Once a court of competent jurisdiction makes a finding of guilt in a criminal of quasi criminal matter, a conviction has been made, regardless of deferment of sentence consequent upon it. The sentence – whether of imprisonment or of payment of fine or binding over – emanates from the discretion of the judge, after the finding of guilt, and flows logically from the conviction which is the finding on the evidence. Thus, for anyone to hold that there is no conviction simply because a finding of guilt alone was returned and sentence was deferred has no backing on Nigerian statute law."

In a related development section 269 (2) of the Criminal Procedure Code, provides that if the judgment is a judgment of conviction it shall specify the offence of which and the section of the Penal Code or other law under which the accused is convicted and the punishment to which he is sentenced.

Subsection 3 of Section 269 of the CPC further provides that if the judgment is a judgment of acquital it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

---

9. (1993) 4 W..L.R (Pt. 288) 348 at 401 Paras. H-A

The corresponding section under the CPA is section 246 which provides thus:

"If the court finds the accused not guilty, the accused shall forthwith be discharged and an order of acquittal recorded".

PURPOSE AND PRINCIPLES OF SENTENCING

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives to respect for the law and maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objective:-

a) To denounce unlawful conduct.
b) To deter the offender and other persons from committing offences;
c) To separate offenders from society where necessary;
d) To assist in rehabilitating offenders;
e) To provide reparations for harm done to victims or to the community; and
f) To promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

PRINCIPLES OF SENTENCE

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In this regard therefore a court that imposes a sentence shall also take into consideration of the following:-

a) A sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

b) A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

c) Where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.

In this regard, it was held in GARBA V.C.O.P.[11] that where the counts in a charge relate to one act or set of acts, sentences should not be ordered to run consecutively.

Where there are several counts on the same information, separate verdicts must be delivered in respect of the several counts. In other words, the trial court must pronounce its sentences separately on all the courts of offences in a case otherwise the entire proceedings is liable to be set aside on appeal.

Section 380 of Criminal Procedure Act, further Provides Thus:

"Where a sentence of imprisonment is passed on any person by a court, the court may order that the sentence shall commence at the expiration of any other term of imprisonment to which that person has been previously sentenced by any competent tribunal in Nigeria, so however that where two or more sentences passed by a magistrate's court are ordered to run consecutively, the aggregate term of imprisonment shall not exceed four years or the limit of jurisdiction of the adjudicating magistrate, whichever is the greater".

d) An offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

---

11. (2007) 16 N.W.L.R (Pt. 1060) 378 at 407-408, Paras G-B

e) All available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of young and vulnerable offenders.

SENTENCING PROCESS

It should be noted that as of recent, the general public perception over sentencing disparity is becoming alarming. Going by statistical reports and media coverage of sentencing indices indicates that there is a widespread belief among the elites and non-elites that unwarranted disparity in sentencing exits, nowadays, as handed down by the Courts.

However, some sentencing disparity may be related to differences in approach as to the appropriate purposes of principles which ought to govern the sentencing process.

Thus judges who think deterrence is the over-riding consideration in a particular case seems more likely to hand down a harsher sentence than judges who believe the interests of the offender ought to predominate.

This uncertainty concerning basic purpose and principles of sentencing, when combined with the broad sentencing discretion given to judges within the maximum allowable penalty for a given offence, has implications for bringing the desired goal as envisaged by the legislation.

Since imposing a sentence over and above the minimum provided by law is discretionary, such discretion must therefore, be exercised judicially and judiciously, hence the sentencing power of the judge has limits too.

Thus in ESSIEN V. C.O.P[12], the Court of Appeal held that a Court has no jurisdiction to give a sentence which is in excess of the minimum sentence. It has jurisdiction to give the minimum sentence, or give less if the wordings of the enabling section permits.

In this regard therefore, where an enabling statute provides for the minimum sentence in clear terms, the judge has no option than to give the statutory minimum.

Both the Criminal Code and the Penal Code as well as other offence creating statutes specify the quantum of sentences whilst their nature and type are specified by the Criminal Procedure Act under Section 225-274 and the Criminal Procedure Code under Sections 21-25, Sections 270-273, 327 and Sections 365-367.

The quantum of the sentence is specified in the offence – creating laws, with or without judicial discretion. For instance, certain sentences can be made mandatory by law, leaving no discretion to the courts, while certain sentences are provided for with specification of a range in such instance of a minimum term and a maximum term of imprisonment.

Whilst others simply either specify a statutory minimum punishment, or a statutory maximum punishment.

Also there are some sentences, particularly fines, the quantum of which are not specific; the approach is that the sentences in each case is unlimited but that it shall not exceed the jurisdiction of the court imposing it and it shall not be excessive.

---

12. (1996) 5. N.W.L.R (Pt. 449) 489 at 503, Paras D-F

Section 72 of the Penal Code, which provides as follows, readily comes to mind:

"Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited but shall not exceed the jurisdiction of the court imposing it and shall not be excessive".

POWER TO IMPOSE FINE IN LIEU OF IMPRISONMENT AND LESSER PUNISHMENT

While considering the principles guiding sentencing, one cannot over look the powers vested in the court to, in certain cases, impose a fine in lieu of imprisonment. However, this power is to be rarely used in cases of serious felonies.

Section 382 (1) – (5) of the Criminal Procedure Act provides thus:

SS1 *"Subject to the other provisions of this section, where a court has authority under any written law to impose imprisonment for any offence and has not specific authority, to impose a fine for that offence, the court may, in its discretion, impose a fine in lieu of imprisonment*".

Subsection 3 Provides:-

"In the case of a conviction in a Magistrate's Court:-

a) The amount of the fine shall be in the discretion of the court but shall not exceed the maximum fine authorized to be imposed by the magistrate by or under the law by virtue of which he was appointed a magistrate; and

b) No term of imprisonment imposed in default of payment of the fine shall exceed the maximum fixed in relation to the amount of the fine by the scale specified in subsection (2) of section 390 of this Act.

SS.4 *"In no case shall any term of imprisonment imposed in default of payment of fine which has been imposed by virtue of the power in that behalf contained in subsection (1) of this section exceeds the maximum term authorized as a punishment for the offence by the written law"*.

SS.5 "*The provision of this section shall not apply in any case where a written laws provides a minimum period of imprisonment to be imposed for the commission of an offence*".

As it may appear that a wide discretionary power is provided by the foregoing section of the CPA, we must however, take keen interest in the provision of section 390(1),(2) and (3)of the criminal procedure Act, which provided for the specific amount to be imposed whenever the provision of Section 382 of CPA is invoked.

Section 23(1)-(5) of the Criminal Procedure Code in the Northern States of Nigeria is in pari-materia with S.382 of CPA.

In Thomas V. State[13] the Supreme Court held that under section 382 (1) of the Criminal Procedure Code, where a court has authority under any written law to impose imprisonment for any offence and has not specific authority to impose a fine for that offence, the court may in its discretion, impose a fine in lieu of imprisonment. See also the case of Isang V. State[14].

The Court of Appeal in Okechukwu V. State[15] emphasized the need for compliance with the provision of subsection 5 of section 282 of CPA and subsection 5 of section 23 of CPC, where the court held:-

---

13. (1994) 4 N.W.L.R. (Pt. 337) 129 at 138-139, Paras. H-B
14. (1996) 9 N.W.L.R. (Pt. 473) 458 at 472, Paras. B-D
15. (1993) 9 N.W.L.R. (Pt. 315) 78 at 95 Paras B. Charged

"*Since Section 19 of the Traditional Rulers Law 1981applicable to Anambra State stipulates a sentence of imprisonment for 2years without option of fine. The court has no discretion in the matter as it is barred from imposing a fine in lieu of imprisonment*".

CONVICTION FOR LESSER OFFENCE

It may be noted that while section 382(1) of the Criminal Procedure Act allows the court to exercise discretion in imposing fine in place of imprisonment, in cases where provision of fine is not made, a further discretion in sentencing after conviction is found under section 218(1) and (2) of the Criminal Procedure Code as well as under sections 169-179 of the Criminal Procedure Act.

Thus, it is clear that the courts can award lesser sentence other than the stipulated sentence provided for in the Penal Law with which the accused is charged.

In Ezeja V. State[16] The Supreme Court held that by virtue of Section 218 of the Criminal Procedure Code, when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete lesser offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the lesser offence though he was not charged with it.

Furthermore, when a person is charged with an offence and facts are proved which reduce it to a lesser offence, he may be convicted of the lesser offence although he was not charged with it.

---

16. (2008) 10 N.W.L.R (Pt. 1096) 513 at 526, Paras. A-E

In Kada V. State[17] the Supreme Court held that where there is talk of conviction for a lesser offence, the evidence to be relied upon for such a conviction must relate to and be cogent enough to warrant a conviction for the lesser offence.

However, for an accused to be convicted for a lesser offence, the following conditions must be fulfilled:-

a) The elements/ingredients in the lesser offence for which the accused is conviction must be the same.
b) The evidence adduced and the facts found must be insufficient for conviction in respect of the offence charged, but at the same time support the lesser offence in respect of which the accused was convicted.
c) The lesser offence in respect of which the accused was convicted is usually not charged. This is clearly envisaged by the expression "although he was not charged with it" contained in Section 179(1) of the C.P.A, which is waiving the requirement of a formal charge.
d) The accused must be tried on the more serious offence.

In this presentation, it would amount to "***killing the snake without severing the head***" if no attempt is made to consider one fundamental issue that often present itself in the course of arraignment, trial and conviction in Criminal trials. This is where the trial and conviction involves one or more accused person.

With regard to conviction or discharge of one or more accused person.

The Supreme Court in Ebri V. State[18] held:

---

17. (1991)8 N.W.L.R (Pt. 208)134 at 157, Paras. C.

18. (2004)11 N.W.L.R. (Pt. 885) 589 at 604 – 606 Paras. C-A.

"Where two or more persons are charged with the commission of an offence, and the evidence against all the accused persons is the same or similar to the extent that the evidence is inextricably woven around all the accused persons, the discharge of one must as a matter of law, affect the discharge of the others. This is because if one or more of the accused persons is discharged for want of convincing evidence, that must automatically affect all the others in the light of the fact that the evidence against all the accused persons is tied together".

However, this does not mean that in every situation where more than one accused are tried, discharge of one must as a matter of course result in the discharge of the other(S).

Where two or more person are charged with commission of an offence, but the evidence points irresistibly against one or more but favors or fail to link another accused, the discharge of the one whom the prosecution failed to prove the charge against him beyond reasonable doubt cannot therefore warrant the discharge of those who were found to have committed the offence.

THE PURPOSE OF THE CRIMINAL SANCTION

The litany of purpose of the criminal sanction is familiar to anyone seriously involved with the criminal justice system. The over-arching purpose of the criminal sanction is sometimes said to be the "*protection of the public*". This purpose is one which is shared with other components of the criminal justice system such as the police forces or the correctional system.

(i) *Retribution*

The most important *purpose* of the criminal sanction in the eyes of most members of the public and those of many jurists, and certainly a most important *effect* of the criminal sanction from the perspective of most offenders, is punishment or retribution. Retribution is the commonplace notion justifying the imposition of the criminal sanction whereby it is said that the person who chooses to break the law *deserves* to be punished. Retribution, of course differs from vengeance in that it is a measured social response to the harm done to society by the offender (*the "eye for the eye"* but no more) and is not the mere infliction of the limitless pain on a wrongdoer.

(ii) *Deterrence*

The deterrence rationale for punishment has been prominent in western penological thought since the eighteenth century, and is now understood to include what are termed "*general*" and "*particular*" deterrence. An effective general deterrent is said to be that degree of punishment which will inhibit members of the general public from committing the offence in question, while particular deterrence is that thought sufficient to prevent the accused in question from re-offending. These amounts, of course, may differ. Conventional wisdom is that general deterrence has differential thresholds of success in relation to three categories of people: (a) those for whom the mere existence of the law or the threat of a sanction is sufficient to ensure compliance; (b) those determined individuals for whom no level of threatened sanction will curb behavior; and (c) that group of rational would be criminals who will weigh the degree of severity of the sanction against the benefit to be derived from the commission of the crime. For the first category, general deterrence amounts to social control through a "*denunciation*" of the conduct declared by the state to be criminal and seem effective for a large but indeterminate group of people. For the second category, deterrence is of no value. For the third category, deterrence might work in principle, but the theory of deterrence assumes a uniformity and rationality of crime causation which is not supported by scientific evidence. Social science evidence on the effectiveness of deterrence is inconclusive to say the least. Given the haphazard way in which the news media report criminal sanctions to the general public, there is little reason to think that raising the level of sentence in any particular case will act as an effective general deterrent.

(iii) *Incapacitation*

The other weapon in the fight against crime is incapacitation. This strategy relies primarily on the sanction of incarceration, and is premised on the common sense proportion that jailed offenders are by definition not capable of committing crimes affecting society at large (although they may commit crimes in prison). This purpose for the criminal sanction rests on the notion that the offender not being sentenced would commit further crimes in the community. The difficulty in its use is that it relies upon the assumption that it is possible to predict dangerousness or the certainty that an individual offender will recidivate. While many are quite sanguine about the system's

capacity to do this, the most prevalent view is that in most cases we simply do not have the capacity to predict the future behavior of individuals and the concomitant need for incapacitation in most situations.

(iv) *Rehabilitation*

Rehabilitation is a purpose for the criminal sanction which has emerged from a recent, but merciful brief eclipse. Depending upon one's strategy this purpose is also known as reform or treatment. Prisons were revealed not to improve prisoners, but to be schools for crime.

Correctional officials excised the language of "*rehabilitation*" and "*treatment*" from their vocabularies, and strove instead to incarceration through proving "*opportunities for self-improvement*" to willing offenders. However, the goal of rehabilitation has demonstrated that, while many rehabilitative programmes have failed in the past because they were poorly thought out or inadequately implemented, rehabilitation and treatment can work. Certain strategies for carefully selected offenders when properly carried out yield significantly positive results, based on recent survey of the rehabilitated prisoners. Rehabilitation or treatment as purposes for the criminal sanction ought to be given serious attention in Nigeria.

Unfortunately, the unacceptability of ex-prisoners by the generality of the public into their social circle tends to ostracise them and condemn them to a life of crime. This creates in them an awareness of the harsh realities of life outside the prison walls. The desire to go back to the prison becomes irresistible and drives them back to crime which is the key to the prison gates.

(v) *Compensation and victim/offender reconciliation*

A final purpose for the criminal sanction, which in the minds of many is linked to rehabilitation, has emerged from the margins of criminal law doctrine to a prominent place much closer of the centre. This is the matter of compensation and restitution to victims of crime. The renewed place of the victim in the criminal code is assured through improved mechanisms for compensation as provided in our laws.

Let's pause to consider some of these laws: Section 365(1) of Criminal Procedure Code provides:

"Whenever under any law in force for the time being a criminal court imposes a fine, the court may, when passing judgment, order that in addition to a fine a convicted person shall pay a sum:

a) In defraying expenses properly incurred in the prosecution;
b) In compensation in whole or in part for the injury caused by the offence committed, where substantial compensation is in the opinion of the court recoverable by civil suit;
c) In compensation an innocent purchaser of any property in respect of which the offence was committed who has been compelled to give it up;
d) In defraying expenses incurred in medical treatment of any person injured by the accused in connection with the offence.

(2) If the fine referred to in subsection (1) is imposed in a case which is subject to appeal, no such payment additional to the fine shall be made before the period allowed for presenting the appeal has elapsed or, if an appeal is presented, before the decision on the appeal.

A corresponding section can be found under Section 255 (1) of Criminal Procedure Act, which provides:

"A court may, order any person convicted before it of an offence to pay to the prosecutor in addition to any penalty imposed such reasonable costs as the court may deem fit".

Furthermore, the Penal Code, under section 78 provides as follows:
"Any person who is convicted of an offence under this Penal Code may be adjudged to make compensation to any person injured by his offence and such compensation may be either in addition to or in substitution for any other punishment".

Though largely restricted to non-violent offences, these programmes are designed not only to meet the needs of the victim, but to ensure that the offender comes to terms with his or her responsibility for anti-social conduct as a crucial step in a rehabilitative strategy.

Purposes of the sanction and sentencing principles are closely related, but not identical, as the next section will attempt to demonstrate.

PRINCIPLES FOR DETERMINING SEVERITY OF A SENTENCE

(i) *Proportionality, Equality and Restraint*

Justice requires that proportionality, restraint and equality be the primary determinants of the severity of a sentence. The principle of proportionality, from which the corollary principles of restraint and equality are derived, has usefully been stated thus:

"*The paramount principle governing the determination of a sentence is that the sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender for the offence".*

The principle requires the court to consider aggravating and mitigating circumstances relating to the seriousness of the crime, and the accused's degree of culpability. The principle of restraint is variously described as requiring that *"a sentence should be the least onerous sanction appropriate in the circumstances"*, "*the maximum penalty prescribed for an offence should be imposed only in the most serious circumstances*", and that *"the nature and combined duration of the sentence and any other sentence imposed upon the offender should not be excessive"*. The principle of equality must be asserted in determining severity of sentence in order to minimize disparity flowing from the sentencing process. A sentence must "*be consistent with sentences imposed on other offenders for similar offences committed in similar circumstances*".

The Court has repeatedly invoked the principle of proportionality. This approach by the Court seems rooted in its apparent acceptance of the fact that "punishment" is an inevitable aspect of our criminal law. Moreover, it is consistent with public views of the purpose of the criminal sanction.

It would not be out of content to propose that within the confines of sentencing options determined by proportionality, restraint and equality, the court may give consideration to any one or more of the following:

a) Denouncing blameworthy behavior;
b) Deterring the offender and other persons from committing offences;

c) Separating offenders from society, where necessary;
d) Providing for readdress for the harm done to individual victims or to the community;
e) Promoting a sense of responsibility on the part of offenders and providing for opportunities to assist in the rehabilitation as productive and law-abiding members of society.

CONCLUSION

The essential guiding principles of sentencing are determined by statute and hardly pose any problems to experienced judges/magistrates. But the time honoured goal of not only doing justice, but also showing it to have been done, necessitates appropriately handing down fair and just sentencing.

I wish to quote from the wisdom of his lordship Hon. Justice Belgore CJ[19], where he said:

"A judge must remember that the purpose of sentencing is to protect the society as a whole from dangerous action of the prisoner, to assist as far as possible the victim of the crime, to reform the offender and prevent other people from being criminal. In applying any of these principles, the judge must be humane, not imposing a draconian punishment or an inhuman one. Concurrent and not consecutive sentences should be given. If it is a fine, it must not be excessive or out of proportion to the gravity of the total offence".

19.In his paper titled "judge and judging", Induction Course for Newly Appointed Judges and Kadis, 1999

The above encapsulates the entire guiding principles and policy on sentencing.
I have taken your time deliberately because of the importance of this topic in your career on the bench, as magistrates. I cannot easily think of any office that carries with it grave responsibilities like the office of a judge/magistrate. It is therefore, a prerequisite to the administration of justice that those appointed to be magistrates must be competent, incorruptible, courageous and faithful to the Oath of Office they subscribed to.

In all your actions and conduct, both in and outside the courts, you must not compromise your integrity. Litigants and counsel will sometimes disagree with you, but let it be that you remain above board.

Odinary the job of a judge/magistrate is not an easy one. He has to do on a daily basis what many men seek to avoid, to wit: take decisions in circumstances where there are, He has to do that in public according to certain rules, principles and precedents and before an audience which generally does not understand the modus operandi or the rational of his decisions.

He has to do that in public according to certain rules, principles and precedents and before an audience which generally does not understand the modus operandi or the rational of his decisions.

"I look forward in no distant future to see you on the high bench".