Protocol

I feel delighted and indeed, honoured to be invited as a resource person at this convocation of learned minds. My sincere thanks goes to the indefatigable, elegant and visionary Administrator of the National Judicial Institute, Hon. Justice R.P.I. Bozimo OFR, her management team and staff who have ensured that the standard of training offered by this Institute is maintained, in conformity with current trends in the legal profession and in the administration of justice in Nigeria.

My thanks is also extended to my Chief Judge, Hon. Justice Iorhemen Hwande OFR who has graciously released me to function at this programme.

Introduction

The topic of my paper is **'Consideration of Application for Bail and No Case Submission in the Magistrates' Court.'**

Without doubt, the topic has a ring of familiarity in the daily discharge of your magisterial duties at your various jurisdictions. Since it is a familiar topic, my job is made easier as I expect us to interact freely in discussing the topic and share your experiences in your various courts.

As you can see, the topic addresses two different subjects in criminal law, namely: "Application for Bail" and "No Case Submission." In this discourse I will address both

subjects one after the other as they relate to practice and procedure in the Magistrates' Court.

The Meaning of "Bail"

The word "Bail" according to Blacks Law Dictionary Eighth Edition is:

> "A security such as cash or bond, especially required by a court for the release of a prisoner who must appear at a future time." (p. 150)

The main purpose of bail therefore is to secure the presence of the accused person for his trial. It connotes the act of setting at liberty a person arrested or detained in custody on security for his production on a certain date and time by his surety, to enable him appear before the court to answer to an allegation or charge brought against him. If the surety defaults in his production, he becomes liable to forfeit the sums (bond) entered into with the court. See **Ekwenugo v. FRN [2001] 6 NWLR (pt. 708) 171 at 187, FRN v. Dankama [1999] FHCLR 254 at 261.**

The Concept of Bail in the Magistrates' Court

The concept of bail in the Magistrates' court is derived from the Constitution of the Federal Republic of Nigeria 1999 (as amended). By section 35(1) of the Constitution, every person is entitled to his personal liberty which he cannot be deprived of except for the purposes permitted by law. These purposes include among others the execution of a sentence or order of a court in respect of a criminal

offence of which he has been found guilty, to compel him to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law. It also includes bringing him before a court upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.

In the case of a person under the age of eighteen years, personal liberty may be deprived for his education or welfare. For persons suffering from contagious or infectious diseases, persons of unsound mind, persons addicted to drugs, etc. for their treatment or protection of the community and finally for purposes of preventing unlawful entry and removal of persons from Nigeria.

The purpose of application for bail is therefore to ensure that a person charged with an offence or kept in lawful custody awaiting trial is not kept in detention longer than the maximum period of imprisonment prescribed for the offence.

In the case of **Chukwebuka v. FRN [2014] LPELR 22525 (CA) Augie, JCA** quoting **Niki Tobi, JCA** in the case of **Suleiman v. C.O.P. [2008] 8 NWLR (pt. 1089) 298** said the main criterion of bail is for production of the accused for his trial. According to his Lordship:

> "This criterion is the cynosure of all criteria. It is the center piece and is regarded as not only the omnibus ground for granting or refusing but the most important... It is a proper and useful test whether bail should be granted or

> refused, to consider the probability that the accused will appear to take his trial."

See also **Dokubo Asari v. FRN [2007] 12 NWLR (pt. 1048) 320 LPELR 958 (CA), State v. Ibrahim [2014] LPELR 23468 (CA)**

For that reason, section 35 sub-section (4) provides that a person arrested and detained for the purpose of bringing him before a Court (Magistrate) on reasonable suspicion of his having committed an offence under sub-section 35(1)(c) must be arraigned in court within reasonable time. In this case, "reasonable time" is construed to mean-

(a) Two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail

(b) Three months from the date of arrest and detention in the case of a person who has been released on bail.

In the second category, such a person shall without prejudice to any further proceeding that may be brought against him be released on bail either conditionally or unconditionally or upon such conditions as are necessary to ensure that he appears for trial at a later date. See the case of **Ali v. State [2012] 10 NWLR (pt. 1309) p. 589.** Here the Constitution imposes a duty on the prosecution to produce a suspect accused of an offence before the court within 24 hours or 48 hours depending on the proximity of the Magistrate court to the place of his detention.

Discretionary Powers of a Magistrate in an Application for Bail

In all applications for bail in the Magistrates' court, the decision whether to grant or refuse bail depends on the discretion of the Magistrate. As a public functionary, discretion to a Magistrate means a power or right conferred upon him by law of acting in certain circumstances according to the dictate of his judgment and conscience, uncontrolled by the judgment or conscience of others. In court, his discretion means the secret power inherent in him to decide cases one way or the other. It is the armour which he should employ judicially and judiciously to arrive at a just decision. This armour should not be left to the whims and caprices of the person appearing before him nor is it a licence which empowers him to do what he likes because he is minded to do so. At all times, in the exercise of his discretion, the Magistrate is expected to act in the overall interest of justice.

In an application for bail therefore, the discretion of the Magistrate is said to be exercised judicially and judiciously when applied on sound principles of law based on sufficient facts and the consideration of each particular case as no two cases are the same. He must always make an equitable and sound decision of what is right, just and fair under the circumstances of the application placed before him. At all times, his duty is to give effect to the will of the law and not to his sentiment, whims or caprices. See

the case of **Amodu v. Commissioner of Police Lagos State & Another [2014] LPELR 23087 (CA).**

Conditions for Bail pending Trial

In the exercise of this discretion for bail pending trial, many conditions or factors are considered by the Magistrate. These factors include the nature of the offence or the charge, the gravity of the punishment prescribed by law, the previous record of the accused person, the probability that the accused may or may not present himself for trial, the likelihood of the accused interfering with the investigation, the likelihood of the accused committing other offence or offences, whether there is a high prevalence of the offence within the community, whether the accused has reasonable sureties to take him on bail, the health of the accused and so on. In practice, these factors are not exhaustive but provide some guidelines which will help him in the exercise of his discretion.

In the case of **Bamaiyi v. State [2001] FWLR (pt. 16) 956 at 965,** Uwaifo, JSC said concerning exercise of discretion in bail matters that:

> "The bailability of an accused depends largely upon the weight a Judge attached to one or several of the criteria open to him in any given case. The determination of the criteria is very important because the liberty of the individual stands and falls by the decisions of a Judge. In performing the function a Judge weilds discretionary powers which like other discretionary powers must be exercised judiciously and judicially. In exercising the

> discretion, a Judge is bound to examine the evidence before him without considering extraneous matters."

Application for Bail in Non-Capital Offences

By virtue of section 35(1) of the 1999 Constitution, every person arraigned before a magistrate in Nigeria for a non-capital offence not punishable with death is entitled to bail depending on the nature or severity of the offence. The only reason why bail may be refused would be where the prosecution has furnished the court with facts tending to show that the justice of the case will be jeopardized if the accused is granted bail.

In most jurisdictions in the South, once the offence is within the jurisdiction of the Magistrate, bail can be granted on oral or written application from the counsel representing the accused, especially where the prosecution has no objection to the application. Where however the court has no jurisdiction to try the offence for instance in Delta State, the accused is remanded in prison custody under section 236(3) of the CPL Cap. 22 vol. 1 Laws of Delta State 2006 pending his application to the High Court. This procedure in most jurisdictions is referred to as "holding charge."

In Lagos State, where the defendant (accused) is charged with any felony other than a felony punishable with death, he may be granted bail under section 115(2) of the Administration of Criminal Justice Law of Lagos State. Bail however becomes mandatory under sub-section (3) where the offence is not punishable with death and is not a felony punishable with death.

In the North, bail is considered automatic and may be applied for orally under section 340 of the Criminal Procedure Code especially for offences considered ordinarily bailable and for which punishment does not exceed three years imprisonment if the court considers-

(a) that proper investigation of the offence would not be prejudiced

(b) that there is no risk of the accused escaping from justice

(c) that there are no grounds for believing that the accused if released would commit an offence.

Once satisfied that these conditions exist, the court is at liberty to exercise its discretion in favour of the accused. However, in the case of **Dantata v. IGP of Police [1958] NWLR p. 3,** the accused was refused bail by the court for offering bribe to the police as an inducement to enable him retrieve incriminating evidence against him while he was in police custody. This act was considered interference with investigation.

However some current reforms have been introduced in the Administration of Criminal Justice Act, (ACJA) 2015 applicable in the Federal Capital Territory which is yet to be domesticated by most States of the Federation. This Law in many ways is similar to the Administration of Criminal Justice Law of Lagos State 2011 where the reforms actually started. By section 162 of ACJA 2015, a defendant charged with an offence punishable with imprisonment for a term exceeding three years shall on application to the court be

released on bail except in any of the following circumstances:

(a) where there is a reasonable ground to believe that the defendant will, where released on bail, commit another offence;
(b) attempt to evade his trial;
(c) attempt to influence, interfere with intimidation witnesses and interfere in the investigation of the case;
(d) attempt to conceal or destroy evidence;
(e) prejudice the proper investigation of the offence; or
(f) jeopardize the process or the purpose or functioning of the criminal justice administration including the bail system.

In other cases except capital offences under section 161 of the Act, the defendant shall be entitled to bail unless the court sees reasons to the contrary.

It is interesting to note that by the reforms in these Administration of Justice Laws (of Lagos State 2011 and its Federal counterpart of 2015 referred to above) the word "accused" has been replaced with "defendant" for a person standing trial for a criminal offence as if the case were civil in nature. The import of this development in my humble opinion is to mellow down on the gravity of the English criminal justice system hitherto practiced in Nigeria. This also promotes the constitutional right of presumption of innocence and fair hearing of the defendant who until proved guilty is entitled to the protection of his rights and interests as stipulated in section 1 of the 2015 Act.

Application for Bail in Capital Offences

By section 161(1) of the Administration of Criminal Justice Act (ACJA) 2015, a suspect arrested, detained or charged with an offence punishable with death shall only be admitted to bail by a judge of the High Court, except under exceptional circumstances. These exceptional circumstances have been listed under sub-section (2). This sub-section out rightly removes from the Magistrate the jurisdiction to grant bail in capital offences.

However, in States where the Act has not been domesticated, by section 118(1) of the CPA and section 341(1) of the CPC bail shall not be granted to a person accused of a capital offence punishable with death. In the South, the power to grant bail is reserved in the High Court. Here the Magistrate may only remand the accused on a "holding charge" pending trial.

In the North however, by section 341(3) of the CPC it is provided that:

> "notwithstanding anything contained in subsection (1) and (2), if it appears to the court that there are no reasonable grounds for believing that a person has committed the offence, but that there are sufficient grounds for further inquiry, such person may, pending such inquiry be released on bail."

The implication of this provision of the law is that even though a Magistrate may not have jurisdiction to try a capital offence, which power is reserved for the High Court, the fact that a First Information Report (FIR) alleging a

capital offence against the accused is before him, he may look at the FIR and see:

(i) whether there are no reasonable grounds for believing that the person has committed the offence;

(ii) but there are sufficient grounds for further inquiry

(iii) such person may, pending such inquiry be admitted to bail.

According to Eko, J. (as he then was) in the Benue State case of **Kenneth Ahom v. COP (unreported MHC/25m/2002** delivered on 4th March, 2002-

> "Subsection (1) of section 341 that denies bail to persons accused of an offence punishable with death makes no distinction between the courts taking cognisance only of the offence and the court trying the offence".

As his Lordship rightly observed, this provision of the CPC

> "only speaks of 'accused of an offence punishable with death' there is no total ban or inhibition placed on the courts taking cognizance of any offence from granting bail to any person accused of such offence even though they have no jurisdiction or power to inquire into or try the offence. The issue is so fundamental that no judicial activism can be employed to fill the gap."

What is required of the accused is to place before the court facts that will convince the court that he did not commit the offence and that there is room for further inquiry.

In the case of **Morgan Oketa Ogwu v. State [1981-82] BSLR 31 at page 35,** Alhassan Idoko, J. of the Benue State High Court (as he then) had said, that in an application for bail under section 341(3) of the CPC,

> "When an FIR alleging an offence of a capital nature or a charge under section 221 of the Penal Code is lodged in court, there is a *pima facie* evidence of an allegation of a capital offence and therefore evidential burden is on the accused to demonstrate that the proof to sustain the offence against him is not evident nor is the presumption great against him. Such an allegation or charge, unless it can be shown to be groundless or that no reasonable grounds for believing that the accused has committed the offence and that as a result there are sufficient grounds for further inquiry, is conclusive against allowance for bail."

In another case of **Echekwu Adaode v. COP (unreported) suit No. MHC/61m/91** delivered by the same Alhassan Idoko, J. (as he then was) on 19th July, 1991, he said,

> "An application calling for the need for further inquiry must show some concrete facts that will expose the porousness of investigation or the feebleness of the case that is being made against the applicant. The applicant must in such a case be in possession of some facts that directly reveal the non involvement of him in the alleged crime, the falsity of the allegation as far as he is concerned or such evidence that point to his non participation or non presence at the scene of crime."

In all cases of bail under section 341(3) of the CPC, the application must be by way of motion supported by an affidavit, and must state convincingly why court should call for further inquiry.

It must be noted that in the exercise of discretion against the grant of an application for bail, the mere fact that the respondent/prosecution did not file a counter

affidavit is irrelevant. The primary consideration is that the applicant has put before the court sufficient materials to persuade the court to exercise his discretion in his favour. See **Ali v. State [2012] 10 NWLR (pt. 1309) p. 589, Olatunji v. FRN [2003] 3 NWLR (pt. 807) p. 406.**

The Role of the Prosecution in an Application for Bail

As already discussed, bail pending trial in the Magistrates' Court is a constitutional right. However, depending on the nature of the offence, the prosecution may oppose the grant of the application. In that case, the onus is on the prosecutor or any opposing party for that matter to provide concrete proof to show that if granted bail, the accused is not likely to present himself for his trial or that he is likely to commit the same or a similar offence. See **Ahmed v. COP [2012] 9 NWLR (pt. 1304) p. 104, Abacha v. State [2002] 5 NWLR (pt. 761) p. 638.**

The duty placed on the prosecution by law is to challenge or controvert the claim of an applicant seeking for bail. Where the prosecution fails to produce a strong reason, the Magistrate would have no reason to refuse bail. It becomes an act of judicial indiscretion for a Magistrate to refuse an application for bail on extraneous reasons or some unsubstantiated assumption. See **Ahmed v. COP (supra), Bankole v. State [2006] 1 NWLR (pt. 962) p. 507.** Where there is evidence before the court that the liberty of the

accused should be curtailed for some concrete reason, it will amount to indiscretion to grant bail to the accused inspite of those reasons. For example, where there is likelihood of the accused interfering with investigation or that he may likely escape from justice. In the case of **Bamaiyi v. State (supra)** Uwaifo, JSC said at p. 967 observed that:

> "Nigerian criminal justice system has its stipulations and safeguards for the prosecutor, the accused and the victim. In an application for bail pending trail, if there is good reason to believe or strongly suspect that the accused will jump bail, thereby making himself unavailable to stand trial and or will interfere with witnesses, thereby constituting an obstacle in the way of justice, the court will be acting within its undoubted discretion to refuse bail."

While it is the duty of the court to ensure that accused persons are brought to justice, in practice, where the Magistrate has no jurisdiction to try an offence and the accused persons are ordered to be remanded in prison custody awaiting trial, the burden of prosecuting such accused persons is transferred to the Office of the Attorney-General of the Federation or of the State under section 174(1) and 211(1) of the 1999 Constitution. By section 105 of the ACJA 2015 the Attorney-General of the Federation may issue legal advice or such other directive to the police or any other law enforcement agency in respect of an offence created by an Act of the National Assembly. The law did not however state how long it should take the Attorney-General to issue legal advice even though the law is aimed at promoting speedy trial for the interest of the society, the

suspect, the defendant and the victim. Regrettably, the practice in Nigeria is that once these accused persons are remanded, and the court is "holding charge", 70% of these accuseds, are kept in custody almost indefinitely without bail for as long as the prosecution may wish on grounds that investigation is not yet completed, the Legal Advice is still being awaited or information is yet to be filed at the court of competent jurisdiction.

These phenomenon of "holding charge", "awaiting legal advice" and so on completely offend the constitutional right to fair hearing and personal liberty of the accused. Although I do not subscribe to undue rush in investigation nor to bail being granted unduly in capital offences or in non capital but grievous offences, the constitutional right of every accused person to a presumption of innocence and trial within reasonable time must be upheld. I believe experience in your various courts has shown that the police who conduct investigations, sometimes misplace case diaries of accused persons, destroy or misplace exhibits etc. For these reasons, investigations are never conducted in record time. When the files are eventually sent to the Ministry of Justice, depending on individual State Counsel, those case files are treated with levity such that expected Legal Advice are never issued in good time. It must be noted that by section 211(3) of the Constitution it is provided that:

> "In exercising his powers under this section, the Attorney-General of a State shall have regard to the public interest, the interest of

> justice and the need to prevent abuse of legal process."

In my humble opinion, considering that the power of the Magistrate is limited in some cases as far as grant of bail is concerned, "public interest", "the interest of justice" and "prevention of abuse of the legal process" will mean that prosecution of such offences is given serious attention by the agents of the Atorney-General in order to decongest the courts and quickly dispense justice. In the case of **William Igyor & 1 Other v. Attorney-General Benue State [1989] 1 CLRN p. 338 at 340,** Hon. Justice Adam Onum said that:

> "The Attorney-General is a responsible officer in the temple of justice...the magnitude of responsibility, i.e. prosecuting is enormous.... In prosecuting any case, the prosecutor must be guided in his conscience. ...An Attorney-General must have some reasonable ground to prosecute a person for a criminal offence. He cannot toy with the liberty of a citizen accused of a criminal offence on his whims and caprices."

See also **Michael Chika Ode v. Reuben Obu [1989] BSLR p. 17 at 24** per Idoko, J.

It is therefore important that in cases where the Magistrate cannot grant bail, since he is in control of his court, he should continually remind the prosecution of the need to ensure that the accused persons are not kept in custody for longer than necessary.

In some extreme cases and in some jurisdictions where Magistrates had struck out such cases, reports have shown that such Magistrates were called upon to produce the accused persons when the information was filed and the

accused was not before the court for trial. At other instances Magistrates were blackmailed by the prosecution (police) for encouraging the commission of crime within their jurisdiction. In my humble opinion these incidences should not deter your worships from insisting that the prosecution live up to its expectation.

Application for bail pending Appeal

The moment an accused person is convicted, he looses his constitutional right to bail under section 35(4) and (5) of the 1999 Constitution. In that case bail pending appeal ceases to be as of right but depends solely on the discretion of the Magistrate where the convicted applicant shows special circumstances. See **Adamu Muri v. IGP [1957] NNLR p. 5**. By section 283(4) of the CPC, an appellant who is in custody may be granted bail at the discretion and order of Magistrate on complying with the provision of the section as to security for prosecuting the appeal these may include entering a bond, furnishing the court with a sureties or depositing the sum required as bond.

It is important to note that the principles for the grant of bail pending the determination of appeal were laid down in the case of **R v. Tunwashe 2 WACA 236** and have since been expanded depending on the exceptional circumstance of each application. Generally, bail may be granted pending appeal if:

(a) The hearing of the appeal is likely to be unduly delayed and applicant would have served the whole sentence or

a consideration portion of the sentenced imposed. See **Duro Ajayi v. State [1978] NCAR**

(b) The health of the applicant see **Fawehinmi v. State [1990] 1 NWLR (pt. 127) 486**

(c) The appellant is of good character

(d) Where appeal is likely to succeed.

Generally, a previous conviction of the appellant will act against grant of bail. See **R v. Starkie 24 CR App. 2**

By section 58(2) of the Magistrates' Court Law, Laws of Lagos State 1994, three categories of persons may not be admitted to bail after conviction except on courts discretion namely:

(a) an appellant who has previously served a sentence of not less than six months imprisonment and if released may

(b) likely commit some other offence

(c) likely evade or attempt to evade justice by absconding.

In all applications for bail pending appeal, the appellant must come by motion supported with an affidavit. Similarly, bail will not be granted pending appeal except upon proof of special circumstances.

Suretyship for Bail Application in the Magistrates' Court

In an application for bail in a Magistrates' court, the accused may be granted bail on his self recognisance upon

entering a bond of a fixed amount of money which he may forfeit if he fails to turn up on a given date. See section 164 to 167 of the ACJA 2015.

It is generally the duty of the accused to secure a surety for his bail. The court should always be satisfied that the applicant accused on self recognisance is resident within jurisdiction and is easily assessable within that jurisdiction.

Experience has shown that certain qualifications are required of surety who must be interviewed in the presence of the court Registrar, the Clerk of the Court and Counsel and the terms of the bail explained to them. Sometimes the surety may withdraw his bond after the interview once the implication of the bond entered with the court is explained. These qualifications include:

(i) The financial resources of the surety

(ii) His proximity to the accused. That is the surety's kinship, residential address etc. must be clearly defined. (Addresses such as "xyz area council" "xyz village", are not acceptable.)

(iii) The social status of the surety in his community – his place of work, business, etc. must be stated

(iv) He also must be a man of integrity.

It is pertinent to also note that by section 167(3) of the ACJA 2015 which appears to be lifted from section 118(3) of the Lagos State Law of 2011, which is indeed a welcome reform in the criminal justice administration in Nigeria, emphasis is placed on the constitutional right of every

Nigerian not to be discriminated against. It is therein provide that,

> "no person shall be denied or prevented or restricted from entering into recognizance or standing as surety or providing any security on the grounds that the person is a woman."

However, by section 166 of the ACJA a child shall not execute a recognizance for himself but a parent, legal guardian or other fit person may do so with or without sureties once the child abides by the orders of the court in respect of the reason for which he is before the court. This provision in my humble view is aimed at protecting the child from the obligation imposed on a surety who takes a defendant on bail.

Procedure for Forfeiture of Bail Bond

The procedure for forfeiture of bail bond must be strictly followed when accused person jumped bail.

(a) The surety must be asked to show what steps he took to bring the accused to court;

(b) The bail bond must be exhibited. See **Tea v. COP [1963] NNLR 77; COP v. John & Anor. [1981] NLR 139**

(c) The surety is called upon to pay the penalty or show cause why bail bond should not be forfeited. Where no satisfactory reason is given, the court shall recover the

bond. If the surety is dead, the bond shall be recovered from his estate. See s. 131 of the Lagos State Criminal Justice Law 2011.

By sections 180 of the ACJA 2015, 133 of the Administration of Criminal Justice Law of Lagos State and 138 of the CPL of Delta State 2006, a Magistrate may cancel or mitigate forfeiture of bail bond.

By section 181 of the ACJA 2015, where a defendant required by a court to find sureties fails to do so, the court shall unless it is just and proper in the circumstances, make some other order in the case of the defendant-

(a) charged with an offence and released on bail, an order committing him to prison until he is brought to trial, discharged or finds sufficient sureties, or meets such other conditions as the court may direct in the circumstances, or

(b) ordered to give security for good behaviour, or an order committing him to prison for the remainder of the period for which he was originally ordered to give security or until he finds sufficient sureties.

In considering an application for bail, it is important that as Magistrates you continuously advise your subordinate staff so that they do not frustrate the administration of justice or unduly deprive the accused of bail. You must ensure that bail is free and that bail forms are not being sold in your courts. Prosecutors and staff

must not exploit the sureties and accused persons and female sureties are not denied the right to take their spouses and family members on bail. At all times, your discretion should be called to bear and with eagles' eyes you ensure that justice is done to all manner of persons without fear or favour according to your judicial and official oaths.

Application of "No Case Submission" in the Magistrates' Court

A "submission of No Case to answer" means there is no evidence on which a court could convict even if the court believed the evidence given by the prosecution.

The term derives its source from section 191(3) of the CPC and 286 of the CPA. By section 191(3) it is elaborately provided that:

> "Notwithstanding the provisions of subsection 2, the court may, after hearing the evidence of the prosecution if it considers that the evidence against the accused or any of several accused is not sufficient to justify the continuation of trial, record a finding of not guilty in respect of such accused without calling upon him or them to enter upon the defence and such accused shall thereupon be discharged and the court shall then call upon the remaining accused, if any to enter upon the defence."

When the Submission may be Made

The submission that there is no case to answer may be made in an address by counsel to the accused even though the court may act *suo motu* under the provisions of sections 302 of the ACJA 2015, 191(3)(5) of CPC and 286 of CPA. This procedure also applies under section 239(1)(2) and (3)

of the Administration of Criminal Justice Law of Lagos State 2011.

Generally, a submission of no case to answer can be properly upheld in the following circumstances outlined in the cases of **R v. Coker & Ors. 20 NLR 62** and **Ibeziako v. COP [1963] SCNLR 99:**

(a) when there has been no evidence to prove an essential element of the offence charged;

(b) when the evidence adduced by the prosecution has been discredited as a result of cross examination or

(c) the evidence is so manifestly unreliable that no reasonable tribunal (court) could safely convict upon it.

By section 303(1) of the ACJA 2015 after the close of the prosecution's case where the defendant or his legal practitioner make a no case submission, the prosecutor is called upon by the court to reply. The defendant or his legal practitioner has a right to reply on any new point of law raised by the prosecutor, after which the court shall give its ruling. In exercising its discretion under this procedure, the court shall consider the following:

(a) whether an essential element of the offence has been proved

(b) whether there is evidence linking the defendant with the commission of the offence for which he is charged

(c) whether the evidence so far led is such that no reasonable court or tribunal would convict on it

(d) any other ground on which the court may find that a *prima facie* case has not been made up against the defendant for him to be called upon to answer.

These four conditions may have been expanded, but do not differ much from the principle in **Ibeziako's case**.

Outside these situations, a Magistrate Court should not be called upon to enter a decision to convict or acquit the accused person until all the evidence by the prosecution and defence are put before the court. See **Ibeziako v. State (supra)**; **Adeyemi v. State [1991] 6 NWLR (pt. 195) p. 1 at 35.**

The test is not whether the court will convict or acquit the accused but whether the evidence adduced before the court is such that a reasonable court might convict. Once there is evidence connecting the accused with the offence upon which a reasonable court might convict then there is a case to answer. The Magistrate is then expected to overrule the no case submission because there is a reason for proceeding.

In **Ajiboye v. State [1995] 8 NWLR (pt. 414) p. 408 at 414** Iguh, JSC said:

> "What has to be considered in a no case submission is not whether the evidence against the accused is sufficient to justify conviction but whether the prosecution has made a *prima facie* case requiring at least some explanation from the accused."

In the case of **Ubanatu v. COP [2000] 1 SC 31 at 38-39,** the Supreme Court held that when a Judge or Magistrate overrules a No Case Submission, he must be

satisfied that a *prima facie* case has been made out against the accused. And a *prima facie* case is said to be made out where there is ground for proceeding with the case and there is ground for proceeding when the evidence before the court is such that if uncontradicted and if believed will be sufficient to prove the case against the accused.

When the Submission of a No Case to Answer is overruled

It is pertinent to note that when a Magistrate rejects the submission of counsel and is of the view that there is case to answer, the under listed principles may guide the court in his ruling:

1. The ruling must be brief and confined to the submission by counsel so as not to fetter the court's discretion at the end of the case. See **Odofin Bello v. State [1967] NWLR.**

In **Odofin's** case, the trial court in a very lengthy ruling overruled the submission of no case to answer made by defence counsel. Later, the accused was convicted and appealed against the decision. Commenting on the trial court's ruling on the no case submission, Ademola, CJN said:

> "We would like to warn against any ruling of in ordinate length in a submission of no case to answer… It is wise to be brief."

In yet another case of **Atano v. A-G Bendel State [1988] 2 NWLR pt. 75 p. 205** Oputa, JSC recommended that an

ideal ruling in a submission of no case to answer should read:

> "I overrule the submission and will give my reasons in my judgment."

See also **Bello v. the State [1996] 1 AWLR p. 227.**

2. The credibility of the witnesses and the weight of their evidence should not be discussed even if they are accomplices.

3. The observation of the court on the evidence should be limited to the ruling in the sense that a reasonable tribunal might convict on the evidence before the court.

4. Observation on the facts and conclusions should be avoided since the evidence of the accused has not been heard. See **State v. Ajiboye (supra); State v. Emedo [2001] 12 NWLR pt. 726 Pp 150-157 para. H-G.**

When the submission is overruled, the accused person may call evidence in his defence or rest his case on the evidence led by the prosecution.

When the Submission is Upheld

Where the Magistrate is satisfied with counsel's address and the submission of no case to answer is upheld, it means that the three conditions laid down in **Ibeziako's** case have been satisfied. See **Aituma v. State [2007] 5 NWLR (pt. 1028) 466 at 479** In that case, the court cannot shy away from writing a fairly lengthy ruling. The court is at

liberty to evaluate the evidence, law and facts and reach a conclusion that the accused person is discharged. Here the effect of a discharge of an accused when the submission is upheld is an acquittal and a discharge on the merits. See **Adeyemi v. State [1991] 6 NWLR pt. 195 p. 1.**

Reversal of a Verdict of No Case entered by a Magistrate

Where a High Court reverses a verdict of "no case to answer" entered by a Magistrate court which had wrongly discharged the accused person, the only option open to the High Court is to remit the case back to the Magistrate to call upon the accused to enter his defence. See **COP v. Ossai & Others [1962] 1 All NLR 189 SC, Olayiyan v. State [1987] 1 NWLR p. 48 p. 160.** However, the recent trend introduced by the Court of Appeal, Lagos Division in the case of **Onaguruwa v. State [1993] 7 NWLR (pt. 303) p. 65** is that an accused person can appeal because at this interlocutory stage of the proceeding, the final judgment has not yet been delivered. This argument stems from the fact that the Ruling complained of is a decision within the meaning of section 233 of the 1999 Constitution.

Conclusion

In concluding this paper, having served as a Magistrate for many years before my elevation to the High

Court bench, I wish to appreciate Your Worships and also encourage you to be steadfast in this noble calling as priests in the temple of justice. The challenges we all face is enormous but let us not forget the oath we took to ensure that justice is done. Whether in considering bail or taking evidence in the cases that come before us, we need wisdom and courage to exercise our discretion judiciously and judicially too. Let me at this point leave you with the comments of Hon. Justice Adewuyi in the Nigeria Herald of Friday February 16th 1979 when he told Safi Jimba in defence of Magistrates that,

> "As a Magistrate you are a judge in your own right. You are by law permitted to make mistake and pass apparently ridiculous and unreasonable judgments. Once you have acted in good faith, the Appeal Court is there for anybody who is dissatisfied with your judgments or orders."

The key word there is that you must exercise your discretion in good faith. According to Ejembi Eko, JCA in his Book The Law of Bail, we all need to develop judicial courage in the performance of our duties. The courage to say no when our conscience tells us so and the courage to say yes when our conscience tells us so. The courage to read and interprete the law to the best of our ability, but then we can never develop this courage unless we all abide strictly by our oath of office, 'to support and uphold the Constitution as by law established', and our judicial oath of allegiance to the country first and foremost, the oath to well and truly exercise our judicial functions, to do right to all manner of

people in accordance with the laws and usages of the Federal Republic of Nigeria without fear or favour affection or ill-will, to listen to every side of a dispute, and the oath to perform judicial duties diligently and efficiently. When we have developed this courage, (based on the fear of God), we can then safely say at the end of every decision, "**Ruat Coelum justia fiat**" meaning, "let the heavens fall justice must be done" (1st Edition page 44).

Once again, thank you for listening.