



## LOCATING CRIMINAL PERSECUTION IN NIGERIA: THE LAWYER AND THE CITIZEN

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**ABSTRACT:** *The asymmetric relationship between a lawyer and a citizen is sometimes disturbing. Left to chance, the oppression of the citizen by the lawyer can be cited in Nigeria with relative ease. In the rural Emu in Delta State incidences of trials tilting toward persecution had been fingered. The citizen was at the mercy of the lawyer who frequently resorted to his unique position to trigger legal process against the citizen because of pre-existing misunderstanding. This study adopted the content analysis of court processes involving the parties. It found that due to relative social inequality the citizen was often at the receiving end of the legal rod which the Counsel deployed to stigmatize the citizen as an ex-convict. The principle that motive had no role to play in criminal justice was drawn to a snapping limit and the principle of reasonable cause of action constantly resonated to cloak the subterranean ill will against the citizen due to personal animosity. Immunity against prosecution inured to Judges like Pilates while the citizen suffered from the ill-will of Counsel. It was recommended that motive should in appropriate cases be taken into consideration in criminal prosecutions or in review on appeal.*

**KEYWORDS:** Iguatu system; Emu Delta State; Lawyer; Citizen; The bench and bar in Nigeria; Criminal persecution.



## INTRODUCTION

Chief Frank Enyabegu was from Emu-Uno in Ndokwa West Local Government Area, Delta State. He was characterized as a 'retired headmaster on merit Grade Level 14 Step 11' by his lawyer, Agbaje Esq of 75 Allen Close Victoria Island, Lagos in a letter addressed to the Nigeria Police Force, Area Command Headquarters, Ozoro. The letter dated 9<sup>th</sup> January, 2020 also had a characteristic caption: 'A clarion call for save our soul over a defamatory act, impending inimical conduct likely to breakdown the peace, persistent threat to life with the intent to compound felony and usurpation of duty, an inimical act capable of causing chaos and mayhem against Chiefs Patrick Enuademu, Ashiwe Chukwudi, Mr. Omor Onyeka, Chief Ebo Kingsley, Mr. Joan Opute, Chief Opute Michael, Mr. Sunday Obah, Mr. Emmanuel Onutor, Chief Godwin Ozoro and others'. The mayhem being cited by the Lagos lawyer was the determination of the suspects in his letter to 'strip Enyabegu naked and dance him round the entire community over a pending matter which is before a court of competent jurisdiction.'

The 'Eguatu system' which is a cultural and traditional methodology of shaming an offender under Ukwuani customary criminal justice system is notorious. The victim is not bordered to be brought before the Police or a court of criminal justice. As soon as he is apprehended and it is extant that he was caught in the act of stealing, he is whisked off to a designated juju shrine where he is summarily tried by ordeal and made to drink concocted waters from the pots of the deity after being made to take some banal oaths of allegiance to the community never to engage in theft and related criminal conducts. Thereafter, the victim is striped stark naked and adorned with regalia of raffia palms and worn with a human skull or that of a buffalo or any such beast. The victim is further compelled to outstretch his arms which are then tied to a stick of approximate or proportionate length of the outstretch arms. He is dabbed with the native chalks of the deity or shrine and finally wiped with stripes all over his body. Before being led into the community from the shrine grounds, the victim is sprinkled with the herb that causes intense scratching and is perforce made to dance round the community in a nude state. Woe betides the victim if it is a market day as he must be made to appear before the market place in full swing. The procedure has no ordered mechanisms and no one has the power to call the shots which method is applicable as the victim may be taken to the Police after the communal parade.

In the case under review, Agbaje Esq. informed the Police that 'the conspirators are hell-bent, spitting fire, heading to cause mayhem and terrible breakdown of law and order by insisting that, after being arraigned before the court, Enyabegu should be stripped naked and danced round the entire community.' Accordingly, a swift action was taken and on 17<sup>th</sup> January, 2017 a four count charge was framed against the 'conspirators' in MK/6c/2019 Commissioner of Police v. Onyeka Vincent & 8 Ors for having intention to defraud or obtain fraudulently the sum of N15,000.00 from Enyabegu; stealing his sheep valued N15,000.00; criminal defamation; incitement of public hatred and ridicule of Enyabegu for stealing a sheep; and conduct likely to cause a breach of public peace. The charge from the Area Commander was filed before Chief Magistrate Awala (Mrs.) at Kwale.

However, before the Area Commander took over the case file, the parties and the exhibit being a sheep, the Divisional Police Officer, Abbi had made good his promised to also arraign Enyabegu and his Cousin, Okpomo, from the neighbouring Owelogbo community, before Magistrate Edema (Mrs.) at Abbi. Because of the hierarchy in the Police Force, the charge at Abbi was left dormant while the one at Kwale gained traction. Upon testifying half way into the prosecution of the 'conspirators' HRM Ulu, the Ezemu of Emu Kingdom, intervened as all



the parties were his subjects and prevailed on them to withdraw the two charges (Mk/6c/2019 and MAB/3c/2019) from court. Enyabegu did but as shall be demonstrated in this study the Counsel on the other hand, Onyenaju Esq, reneged the accord of the Palace and pressed on which the charge of stealing sheep against Chiefs Enyabegu and Okomo.

The Constitution provides the general principles of separation of powers in Nigeria. Prosecution is at the instance of the Police and the Attorney General domiciled within the remit of the Executive arm of government. There is a 'huge' discretion placed on them as the 'reps of the realm' to prosecute or to enter a nolle prosequi. It would thusly be irregular for a Presiding Judicial Officer such as a Judge, a Magistrate and or a Private Legal Practitioner to proceed against a citizen without their prior consent. Except in fringe cases of contempt in the face of the court, proceedings against a citizen must come through the propulsion of the State or the holder of its fiat. Two instances shall be captured in this study in which Enyabegu was proceeded against in breach of these notorious principles. In the two instances, the principles of checks and balance that accompany the doctrine of separation of powers took flight and Enyabegu was put on trial and jailed in the first instance by the Magistrate Court, Abbi and in the second instance, at the order of a Judge of the High Court of Justice, kwale he narrowly escaped being jailed; he was discharged and acquitted.

In both instances Enyabegu was put on trial irregularly by the same private Counsel, Onyenajua Esq. who acted without the fiat of the Attorney General and without the lead of the Police and in a long chain of circumstances that shall be demonstrated as one transaction running over the years and basically actuated by the animosities between the citizen and the Counsel. That the prosecutions were driven by animosities outside the facts that were ventilated before the trial and appellate courts in the various instances inform this study which is determined to demonstrate that what played out in the trials and appeals were more or less a mortal struggle between a citizen and a private Counsel coming from the same nativity using stakeholders as pawns in a chess game that they inherently understood to be their personal animosities but which the Judicial Officers saw as veiled, inscrutable struggles in which the lawyer and the citizen knew the motives but decided to put the administration of criminal justice and its drivers and stakeholders on trial. It was the courts and their Presiding Officers that went on trial at the instances of the citizen and the learned Counsel.

### **Statement of Problem**

In a keynote address at the occasion of the celebration of the founding of Ebologwu Grammar School, Utagba Uno, a renowned scholar of the Department of History and International Relations, Delta State University, Abraka, and General Secretary, Ndokwa Neku Union, the apex socio-cultural and nationality organization of Ukwuani People in Delta State, Professor Ojeh, propounded the revisionist theory of the re-visitation to the olden way of African criminal justice system of 'Eguatu or Iwu-ekolo'. He stated before a mammoth gathering of the old boys of the College in a public lecture that went viral on the internet that the rampant stealing of school and college properties across Delta State could best be stemmed by the 'eguatu' mechanism which was a pre-colonial method amongst his Ukwuani people in which a thief was caught and paraded in stark nudity through the streets of the entire community. The post-colonial era has seriously frowned upon the mechanism and it was actually considered barbaric by the colonial masters but the erudite Professor argued that a shift from the mechanism was the result of rampancy in stealing in public spaces across Nigeria and therefore the mechanism must be restored in order to bring sanity and integrity to the polity and give a



huge teeth to the fight against corruption and public sleaze. In fact it was the 1979 and the 1999 Constitutions of the Federation that have given the deepest bite against the sub-cultural mechanism stating that all citizens have freedom from inhuman and degrading treatment and that they are further entitled to fair hearing before a competent court of law and shall not be punished except in accordance with a procedure known to law. The procedure known to law as envisaged by the Constitutions is as enshrined under the Administration of Criminal Justice Act, 2015. That is, the English Criminal Justice mechanism. The ‘egwatu’ scheme, as can be stated perfunctorily, is contrary to and unknown to the civilized English law and could be characterized as contrary to natural justice, equity and good conscience. Now, assuming without conceding that the Emu native vigilante group had succeeded in apprehending Enyabegu and paraded him and his uncle in nudity before the entire community and were later proceeded against by Onyenajua Esq representing the ‘conspirators’ before the trial court and were later discharged and acquitted as happened on 18<sup>th</sup> December, 2023 what could have been the persecution index of such a trial by ordeal of Enyabegu?

## CONCEPTUAL CLARIFICATION

### Criminal persecution

Criminal persecution is difficult to conceptualize except in relationship with such other variables like religion, race, gender etc. Persecution is ill-treatment; a trial that is patently abhorrent to the law of the civilized nations. A criminal persecution can be cited in the Supreme Court judgment in the case of Usman Kaza v. The State delivered on 15<sup>th</sup> February, 2008 where the deceased (Abdullahi Alhaji Umaru of Randali village) was slaughtered like a goat because he was alleged to have insulted the Holy Prophet Mohammed (SAW). The insult was never stated and the appellant was never at the scene of the crime where the insult was uttered. The defence of provocation failed to avail the appellant. Another notorious instance in which religion influenced persecution was when Boko Haram extremists stoned Deborah Samuel to death at Shehu Shagari College of Education in Sokoto State claiming that they were appalled by a post-credited to her on a 200 level Home Economics class Whats-App Platform denigrating Holy Prophet Mohammed (SAW). By what operates at Emu, the native vigilante group has upped its game with the backing of learned counsel to the level of having to demand for the naked parade of Enyabegu from the Nigeria Police for an offence of stealing a sheep for which Chief Magistrate Okonta Esq was later on 18<sup>th</sup> December, 2023 to discharge and acquit him. As demonstrated by Aladekomo (2020) the list of professional misconduct is growing and innumerable.

### Theoretical Framework

#### Theory of Ethical standards

The legal profession is one of the few that ethical standard is demanded from the members. In recent practice however, it has been observed more in breach. One of such standards is that a legal practitioner shall not use his office for the purpose of the oppression of the citizen. A Counsel is thusly required to disclose any interest he has against a citizen which may be prejudicial to the hearing of the case and or impartial dispensation of justice in the case. Learned Counsel is thusly to disqualify himself from participating in the trial of a case if his personal interest may conflict with the judicious and judicial determination of the case. It may



be better for such a Counsel to come into the prosecution as a witness instead of being the prosecuting Counsel. This is because a certain level of independence of the mind or impartiality or neutrality, is required of the prosecutor so as not to aim at the conviction of the defendant at all cost. The desire to convict the defendant at all cost and against the run of the rules and play may predispose a prosecuting Counsel to cut-corners, manufacture evidence or even deploy unorthodox procedural steps. As demonstrated in this study, it was unethical for the private Counsel to press for the prosecution of the defendants when His Royal Highness, the Police Area Command and the trial Chief Magistrate Awala (Mrs.) have intervened and settled the charges. If Justice Ofesi had been properly briefed by eliciting the response of the defendant or his Counsel before directing the trial court constituted by Chief Magistrate Okonta Esq to hear the charge, the learned Judge would have come by the knowledge that the matter had been compromised or compounded leading to the non-participation of the Police Area Command before Okonta Esq.

Ethical standard was also cast overboard during the contempt proceeding when the trial Magistrate Edema (Mrs.) was consulted and briefed in Chambers by the learned prosecuting private Counsel, Onyenajua Esq, in the absence of the defendant. Because the defendant was not adequately represented in the briefing before the trial, the mind of the trial Court was already made up on the desire to convict the defendant with a scanty idea as to whether the trial court had jurisdiction over a contempt that did not occur in the face of the Court and whether the Court could summarily assume jurisdiction without a prior police investigation into the alleged offence. It is notable that whenever a presiding or a prosecuting officer is about to act in accordance with a premeditated state of mind, obvious and glaring mistakes are bound to occur to expose the folly of the human nature. If the trial court had given the defendant an unbiased attention in the Chambers when learned prosecuting Counsel made the accusation, the trial Magistrate could have given a second thought to the paltry sum of N15,000.00 that was involved and the general, prevailing practice that the sum was appropriate and adequate for the purpose of the defendant meeting the statutory requirements for conditions of bail by a surety and that the learned Counsel ought not to have shut at a surety coming to stand in the interest of his client. The presiding officer was obviously carried away and thereof failed to meet the required ethical standards of the circumstances of the case. If the trial Court had known the seething animosities between the lawyer and the citizen generating from common nativity of Emu, the trial Court would have not erred on the side of ethical standards as it would have been more circumspect about the allegation of bribing the Court with a paltry sum of N15,000 which was at that time and till date a statutory requirement with judicial circular backing same.





## LITERATURE REVIEW

Rendering one of the subsets of the factual narratives of this case, Agbaje Esq. states that on 1<sup>st</sup> January, 2019 Chief Okpomo residing in the neighbouring community of Owelogbo visited his cousin, Enyabegu, at Emu with whom he had kept for rearing since six years previously, eight sheep. Okpomo came on the New Year day to take one of the sheep for his celebration. As he went into the streets to capture a sheep which were usually on free-range, Onyeka intercepted him that the sheep belonged to his father who was visually impaired for more than eight years before the incident. Yielding to the interception, Okpomo released the sheep to Onyeka and reported back to his agent, Enyabegu, who was never at the scene of the interception. Okpomo however insisted that a customary inquiry be conducted as to the ownership of the sheep as native and customary keepers of sheep have a trade custom of identifying their sheep with permanent marks they inscribe on them usually on the ears of the animal as soon as they give birth. Every keeper has a unique trade mark on the ears of his sheep. The 9<sup>th</sup> of January, 2019 was earmarked for the meeting of all keepers of the animal in the community and for an inquiry into the circumstances of the allegation of the stealing of the sheep. But on the 6<sup>th</sup> of January, 2019 a conspiracy theory developed in the community spearheaded by the ‘conspirators’. It is significant to note that the lawyer behind them was Onyenajua Esq.

### First instance of persecution

On 20<sup>th</sup> November, 2019 Onyenajua Esq. had petitioned Justice Ofesi, High Court of Justice, Kwale in ‘Abuse of Judicial Process and Dragging the Court in the Mud’ as follows: ‘This is a complaint arising from the conduct of the Police at Abbi and particularly Sgt. Nwodo attached to the Magistrate Court, Abbi as prosecutor. A complaint of alleged stealing of a sheep was reported against one Enyabegu of Emu and his accomplice, Okpomo of Owelogbo communities. After interrogation and investigation, the duo was released on bail and asked to report the next day to be arraigned and charges preferred and filed in the Magistrate Court against them. Rather than returning the next day, the suspects ran to the Area Commander Ozoro, wrote a petition claiming the reverse. At Ozoro, the complainant at Abbi and other enforcement agencies in Emu community and other innocent persons were turned to accused persons on the false allegation and deceit of the said Enyabegu and his accomplice, Okpomo who are running away from prosecution at Abbi Magistrate Court.’

‘The Area Commander Ozoro called for the file and acted upon the false petition of a purported lawyer on behalf of Enyabegu and his accomplice, Okpomo, a petition without the seal of a lawyer but purported to have been signed by one Agbaje & Associate of 75 Allen Close, Victoria Island, Lagos and No 37 Ibe Street Ikeja, Lagos. Upon this deceit, the Ozoro Area Command without investigation and confirmation of the authenticity of the author since the letter had no lawyer’s seal and on the dictate of Enyabegu and his accomplice, Okpomo, charged the complainant at Abbi, Onyeka Vincent, together with (8) eight others to court in Kwale Magisterial District instead of Abbi Magisterial District. Emu, where the theft took place is under Abbi Magisterial District. Instead, they were charged at the Kwale Magistrate Court 11 for defrauding, fraudulently obtaining etc. In spite of application from Counsel that the matter is supposed to be at Abbi and not Kwale, the Magistrate went ahead to hear the matter and advised parties to opt for settlement after discovering the folly involved. Meanwhile the charge already registered at Abbi was still pending. After opening his case, Enyabegu decided to withdraw the charge against the nine innocent defendants including Onyeka, the complainant



at Abbi Police Station. The Court dismissed the action and the original defendant had to reopen the charge at Abbi.’

‘Enyabegu was arraigned at Abbi Magistrate Court on 19<sup>th</sup> July, 2019 on charge No MAB/3c/2019. A charge that is dated 10<sup>th</sup> January, 2019, awaiting the arrest and arraignment of his accomplice, even though no effort is in place to achieve that from the Police at Abbi till date. Enyabegu had lied to the Court at Kwale that the charge at Abbi had been struck off the court’s list and the Magistrate at Kwale believed the liar. Upon arraignment at Abbi Magistrate’s Court and to further disclose their conspiracy, the Investigating Police Officer at Abbi Police Station, Sgt. Nwodo, who doubles as the Prosecutor told the Court that he cannot prosecute the said Enyabegu without stating his reasons, meanwhile an 11 years old boy was in chain waiting to be arraigned and to be prosecuted by Sgt. Nwodo. The Magistrate at Abbi was furious and crossed at such utterance and display of effrontery by Sgt. Nwodo. She threatened to report the conduct to the Divisional Police Officer.’

‘Where the Prosecutor has displayed this bias, it is obvious that justice cannot be there at the Abbi Magistrate Court or otherwise, a new Prosecutor, possibly a State Counsel can be appointed to handle the matter and possibly for the matter to be heard by the Chief Magistrate Court, Kwale, with instruction that the file and exhibit, being the sheep be handed to the prosecution for justice to be assured. This is a cry of distress and an invitation for rescue. Especially where the sheep belongs to a blind man who depends on rearing livestock for his living and sustenance; his sheep is being robbed of him by healthy young men and who are trying to suppress justice with their money because they claim to be chiefs. Where this is not possible, independent investigation should be ordered then, the outcome of the interrogation and investigation anybody found wanting, prosecuted. The exhibit must be produced as it is being suppressed. My Lord, the hope of the ordinary man is the court which you head in Ndokwa West. We rely on your unshaken disposition to doing justice. Thank you and God bless you as you intervene to bring justice from the mud and from the clutches of the rich and oppressors.’ On 30<sup>th</sup> October, 2019 Justice Ofesi’s ordered as follows, ‘DCR, kindly inform the trial Magistrate to transfer this case MAB/3c/2019 to the Chief Magistrate Court 1, Kwale.’ On the basis of the order of His Lordship, they went on trial before Chief Magistrate Okonta.

### **Second instance of persecution**

Onyenajua Esq is an astute legal practitioner, a native of Emu; he runs an associate ship with his cousin C.T. Onyenajua Esq. They are influential on the Kwale legal terrain and present as the legal officers of the Emu traditional council and institution of which HRM Ulu, the Ezemu of Emu Kingdom reigns supreme. They, led by Oboro Esq, appeared in Charge No MAB/10c/2020 Commissioner of Police v. Okoro wherein the defendant was alleged to have on 5<sup>th</sup> March, 2020 obtained the sum of N150,000 from Odili Celestina for preparation of child bearing herbal medication knowing same to be false concoction. On 13<sup>th</sup> March, 2020 Okoro was admitted to bail in the sum of N300,000 and the charged was further adjourned to 17<sup>th</sup> April, 2020 by Magistrate Edema (Mrs.)

On 20<sup>th</sup> November, 2020 when the troika of learned defence Counsel appeared for Okoro a major havoc occurred. The Magistrate records, ‘Defence Counsel: Even though Okoro is still in custody, the complainant has never appeared in court since the day of arraignment. Most shockingly is the fact that a certain Enyabegu has been going to the mother of the Okoro using the court’s name to obtain money from the aged mother of the defendant, that he wants to use



the money to talk to the Magistrate to release the defendant and he collected the sum of N15,000.00 from the aged mother of the defendant and also on three different occasions he demanded money from the defendant in prison that he was going to send recharge card to the Magistrate and he was sent N3,000.00. When the information was passed to me, I was surprised and I decided to let the court know of it.’

Without more a trial commenced against Enyabegu. He was not referred or reported to the Police for a formal investigation of the allegation whereof his statement under caution would have been obtained and a proper charge laid before the court. The record of the court was expressly stated as follows: ‘Mr. Enyabegu was called into the dock. The mother of the defendant is called into the witness box. Anna Olumor is sworn in as an interpreter in this matter. The mother of the defendant is sworn on the god of iron. I am Ossai Onyeuku. I live in Umu-odio Street, Emu. I know Augustine Okoro, he is my son. Augustine Okoro is in Correctional Centre. I know Frank Enyabegu. He came to me and told me that I should give him money to give to the Magistrate and that he knows the Magistrate very well that they were classmates at Ozoro. Frank came to my house two to three times before I went to his house to give him the sum of N15,000.00 to give to the Magistrate. After I gave him the money my son is still in prison custody. Mr. Frank did not come to give me feedback on the money. I gave him the money two months ago’.

Having stated her case against the citizen, Enyabegu was called upon to cross examine the witness and she said, ‘I am not aware of my son giving him money to buy recharge card for the Magistrate but all I know is that he came to me to collect money for the Magistrate.’ She responded further as follows: ‘I never came to your house with my daughter. I gave you money because you told me that you were going to give the Magistrate the money to release my son. You collected money from me and you told me that you knew the Magistrate very well. I don’t know any Aghaoyibo Esq (a lawyer from Emu Uno), all I know is that you came to collect money from me. You promised me that the money you collected from me you were going to give to the Magistrate and if you have eaten (spent) the money you can beg for forgiveness.’

After the presentation of the prosecution’s witness and her cross examination, Enyabegu, was perfunctorily, made to open his defence as follows: ‘I was actually given N15,000.00. It was not for the Magistrate. It was for the bail of the defendant. I have the money here with me. At this junction the money was collected from Frank as Exhibit A. The money was given to me to perfect the bail conditions about two months ago. I am not related to her but we are from the same community which is Emu. She came to my house to give me the money ... Frank was very rude in court while he was in the dock raining words of abuse on Ossai Onyeuku who was in the witness box even when the court asked him to stop. A Counsel in court stood up to apologize on his behalf.’

### **Judgment against the Citizen**

After a careful rendition of the aforesaid facts, Magistrate Edeme (Mrs.) ruled as follows: ‘... It is clear that Mr. Frank Enyabegu used the Magistrate’s name to extort the sum of N15,000.00 from Ossai Onyeuku the mother of the defendant in this case. This is defamation of character to the Magistrate and also a contempt of court punishable under section 133 of the Criminal Code Law Vol. 1 Cap C21 Laws of Delta State of Nigeria 2008. I hereby find Mr. Frank Enyabegu guilty of the offence...Mr. Frank Enyabegu is hereby sentenced to one month





imprisonment with hard labour without option of fine. This will serve as deterrent to others who are extorting money from people using the name of the court.'

### **The Citizen appeals**

As Enyabegu was taken into custody at the Correctional Centre, Ogwashi-uku bedlam took over his universe and on 26<sup>th</sup> November, 2020 Suit No HCK/M/45/2020 The President and Commander in Chief of the Armed Forces of the Federal Republic of Nigeria v. His Worship, D. Edema (Mrs), Onyenajua Esq (Private Prosecutor) & Anor In Re: Chief Frank Enyabegu was filed before Justice Enemo. The application was for certiorari quashing the conviction of the applicant on 20<sup>th</sup> November, 2020 on the grounds that the conviction was unfounded in law; the trial was without due process, there was breach of fair hearing and the trial court lacked jurisdiction to try the complaint. As it turned out to be Aghaoyibo Esq. deposed to the verifying affidavit as follows: 'I am the legal practitioner that represented the applicant when he suddenly went on trial before the 1<sup>st</sup> respondent on a complaint that the 3<sup>rd</sup> respondent gave the sum of N15,000.00 to the applicant to be given to the 1<sup>st</sup> respondent as a bribe and inducement to enable the 1<sup>st</sup> respondent admit a suspect who had been remanded in custody to bail.'

'Rather than refer the complaint to the police for discrete investigation and trial before another court, the 1<sup>st</sup> respondent assumed jurisdiction and proceeded to put the applicant on trial after which the 1<sup>st</sup> respondent sentenced the applicant to jail for one month for which the applicant is currently serving at Ogwashi-uku Correctional Centre. The case of the applicant was that the sum of N15,000.00 was given to him to stand as surety in the event that the suspect was granted bail by the trial court. The money was to be used to procure recent passports of himself and the suspect, generate affidavit of means as to ownership of landed property, take officers of court to verify the residential address of the surety and make the mandatory provision of stationeries at the Registry of the Court as required by law.

The defence of the applicant that he was engaged by the 3<sup>rd</sup> respondent since March-April 2020 to stand as a surety did not gain the attention of the trial court which refused same and believed that the money was meant to bribe the court. Since March – April 2020 when the Covid 19 lockdown occurred till 20<sup>th</sup> November, 2020 when an application for bail pending trial came up, the applicant had been with the money. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents never demanded for the return of the money from the applicant and the applicant was never reported to the 1<sup>st</sup> respondent and was never under any pressure to refund the money to the 3<sup>rd</sup> respondent or pass same on to the 1<sup>st</sup> respondent.'

'The applicant, the 2<sup>nd</sup>, 3<sup>rd</sup> respondents and I are all members of Emu community. The trial court placed the applicant in the dock. The 2<sup>nd</sup> respondent led the 3<sup>rd</sup> respondent in evidence in chief and the applicant also gave evidence from the witness box. There was no formal charge laid by the police or the State against the applicant and no statement was obtained from him before the trial or did he plead to any. The trial did not meet the minimal threshold under the 1999 Constitution of the Federal Republic of Nigeria (as amended) and other laws.'

'The 1<sup>st</sup> respondent was an interested party in the case as she was the person meant to be bribed and for whom the money was obtained from the 3<sup>rd</sup> respondent as claimed by the prosecution. The 1<sup>st</sup> respondent took briefing from the 2<sup>nd</sup> respondent in Chambers over the complaint while the applicant was absent before the 2<sup>nd</sup> respondent laid the complaint in open court. The 1<sup>st</sup>



respondent being an interested party cannot be a judge in her own cause or case. The principle of fair hearing was not observed by the 1<sup>st</sup> respondent who was interested in the complaint. The 1<sup>st</sup> respondent readily gave a nod to the trial of the applicant by the 2<sup>nd</sup> respondent who engineered the 3<sup>rd</sup> respondent to lay claim to the effect that the money was bribe money to be given to the 1<sup>st</sup> respondent to induce the court to grant bail instead of money to be used by a surety to facilitate the process of standing as a surety for the suspect in the bail application the 2<sup>nd</sup> respondent had filed for the suspect in custody who was the son of the 3<sup>rd</sup> respondent. The 1<sup>st</sup> respondent had no jurisdiction to hear the complaint. The complaint was not in the nature of contempt of court and it was not committed in the face of the court. The transaction was a private understanding to act as a surety.’

‘The 2<sup>nd</sup> respondent has no locus to prosecute a criminal charge before a court of law. As a private practitioner, he did not have the fiat to appear to do so. His conduct was professionally unethical. The complaint the 2<sup>nd</sup> respondent laid before the 1<sup>st</sup> respondent was not in the right forum. Even if the 1<sup>st</sup> respondent had the right to receive the complaint as an interested party, the 1<sup>st</sup> and the 2<sup>nd</sup> respondents did not have the powers, locus and jurisdiction to try and convict the applicant as they had done. The 1<sup>st</sup> respondent was evidently biased and carried away by her office and powers to convict, especially as the complaint must have distrusted her. The 2<sup>nd</sup> respondent deliberately laid the allegation against the applicant as a “quick fix” against the applicant because of the following antecedents before the trial court between the applicant and the 2<sup>nd</sup> respondent. The 3<sup>rd</sup> respondent was therefore “quick bait” for the 2<sup>nd</sup> respondent against the applicant in the light of the petition titled, “Abuse of Judicial Process and Dragging the Court in the mud” addressed to Justice Ofesi’.

### **Argument in first instance of persecution**

The Counsel began his legal argument by a summary of what he considered as the facts above and submitted as follows: That the 2<sup>nd</sup> respondent actively participated in the trial and prosecuted the applicant as a private prosecutor without the fiat of the Attorney General of the State or the Federation (Mujuzi, 2019). The allegation against applicant was no doubt a criminal one and the 1<sup>st</sup> respondent was an interested party being the Court sought to be compromised.

In *Agina v. Agina* a decision of a trial court may be perverse where the trial judge takes into account matters which it ought not to take into account or where the judge shuts its eyes to the obvious. No prosecuting agency should be allowed to turn its prosecuting power into persecution. It is against our laws for a man to be a judge in his own cause. We should not use the instruments of our authority to terrorize or traumatize our people (Adegboruwa, SAN 2023).

The learned trial Magistrate ought to have understood that the court was an interested party and was not therefore qualified to entertain the complaint because a presiding officer cannot be a judge in his own cause; and that an allegation of bias or impartiality can be made out against it. In *Madukolum v. Nkemdilim* and numerous other decisions of the Supreme Court, a court has and can only exercise jurisdiction when it is properly constituted and the matter is brought before it within due diligence and due process of law. The applicant was not investigated by the police or was a charge framed against him for which he pleaded to. In *Orugbo v. Una* it was held that to establish bias, the Judge must be shown to have demonstrated favouritism to the respondents or hostility to the applicant. In *Commissioner for Local Government v.*



Ezemuokwe the word bias means an inclination, bent, a preconceived opinion or disposition to decide a cause or an issue in a certain way which does not leave the mind perfectly open to conviction. The facts of this case bear these issues out. In *Arjay Ltd v. Airline Management*, a trial court which goes on an unguarded journey in search for jurisdiction will be called to order by appellate courts as in this case. Now, in certiorari proceedings, the court is mainly concerned with whether the record on the face of it showed errors or jurisdictional irregularities which must be corrected by quashing the record of the inferior tribunal (*Egware v. Governor Bendel State*).

### **Judgment for the Citizen**

The appellate High Court descended harshly on the trial court and the Counsel in the orchestrated trial leading to the unlawful incarceration of Enyabegu. Justice Enemo characterized the trial leading to the jailing of the citizen as a miscarriage of justice but decline in awarding damages against the respondent Magistrate and the Counsel for which the citizen demanded N200,000,000. The trial court was covered with the cloak of immunity as it could not be held legally liable for her conduct as a presiding officer. The Counsel was equally shielded from further rebuke and the citizen was released to go home dry without financial benefit with all the mistreatments and the orchestrated desire to stigmatize and label him an ex-convict.

### **Arguments in second instance of persecution**

When therefore the prosecution, Enyabegu and Okpomo concluded their narratives before Chief Magistrate Okonta Esq, the Citizen's Counsel submitted as follows: The prosecution was unable to locate the Enyabegu at the scene of crime and therefore he raises the defence of alibi. The Okpomo who was situated at the scene raise, together with the Enyabegu, the defence of bonafide claim of right. The defences were timely raised even at the scene of crime when the Okpomo allowed the sheep to be released to the son of 1<sup>st</sup> Prosecution Witness customary determination of the ownership of the sheep. It was the defence of the claim of right that led to the transfer of the case to the Police Area Commander, Ozoro where the charge was compromised by the Police and HRM Ezemu of Emu Kingdom. It was therefore submitted that the trial of the charge was at the instance of the petition of Onyenjua Esq. to Justice Ofesi, which was irregular and this explains why the Police did not participate in the proceedings. No Investigating Police Officer testified, the extra-judicial statements of Enyabegu and Okpomo were not tendered before the court and the sheep was not brought before the court or was evidence of its disposal presented before the court.

The prosecution of offences in the Nigerian criminal justice system is at the instances of the State and the Police not the Judiciary as showcased in this trial which is thusly irregular. The evidence presented by the prosecution was entirely hearsay and ought not to be acted upon by court. The sole witness fielded by the prosecution was visually impaired 8 years before the alleged incident. He was not at the scene of the crime. His son who was allegedly at the scene of crime died before trial. No attempt was made to bring any witness to the transaction at the scene of crime, and no attempt was made by Onyenajua Esq. to tender the statement of the deceased witness in court as required by law.

The defences of alibi and bonafide claim of right were never dislodged by the prosecution. It was urged on the court to hold that the prosecution failed to establish its case beyond reasonable



doubt. Delivering the final judgment in favour of Enyabegu on 18<sup>th</sup> December, 2023 Chief Magistrate Okonta Esq could not agree less with the defence Counsel on the submissions that the prosecution failed to prove its case beyond reasonable doubt. The trial court did not border to consider the defences of the citizen as the elementary burden placed on the prosecution had not been discharged.

## CONCLUSION

Although motive for commission of crime has been rightly held by the courts as an issue which a trial court shall not inquire into, the motive for prosecution of a crime should be an issue that can be considered by the trial court if objection is raised by a defendant as to the appearance of a certain Counsel at the prosecuting stand if the defendant has been previously crossed with the Counsel on other matters the fact of which are unrelated to the facts in issue but are capable of creating in the mind of the defendant, fears of bias, persecution, and evenhandedness.

The relationship between Enyabegu and Onyenajua Esq. had not been healthy due to varied and previous animosities pre-existing between them in relationship to their nativity and clashes of interest in the governance model in Emu community. That the learned Counsel was open to the use of the instrument of criminal prosecution to settle scores with the citizen can be elicited from the manner in which the learned Counsel railroaded the citizen into a trial that landed the citizen at Ogwashi Uku Correctional Centre after the citizen was jailed by the trial Magistrate Edema (Mrs.) at Abbi – a trial that was swiftly annulled by Justice Enemo. That the learned Counsel further petitioned Justice Ofesi to transfer the charge of stealing a sheep from Magistrate Edema (Mrs.) to the Chief Magistrate Okonta Esq when the ‘sister charge’ against the ‘conspirators’ had been withdrawn before the Chief Magistrate Awala (Mrs.) on the intervention of HRM, the Ezemu of Emu Kingdom further demonstrated the desire of the learned Counsel to get at the ‘throat of the citizen’ after the citizen won the appeal of extorting N15,000.00 from the learned Counsel’s client (of Emu) to bribe the presiding Magistrate Edema (Mrs.). That the Police refused to participate in the prosecution of the sheep stealing case (as demonstrated by the conduct of Sgt Nwaodo before the Magistrate Court, Abbi and which conduct was derisively cited in the learned Counsel’s petition to the Hon. Justice Ofesi) further buttresses the bent to which the learned Counsel went in order to do the citizen in to exhibit the asymmetric relationship existing between them. On the whole, learned Counsel was manipulating the criminal justice system with the aim of putting the citizen out of circulation. The judgments of Justice Enemo and Magistrate Okonta Esq finally drove the nail into the coffin of the learned Counsel’s determination and pulled the wind out of the sail of learned Counsel’s voyage of persecution the hallmark of which was to use the instrument of the native vigilante to parade the citizen in nudity round Emu community.

## RECOMMENDATION

- Counsel who finds that he has personal interest to serve in a criminal trial arising from pre-existing animosities with the accused person should decline from the prosecution of the accused person and act as a witness instead. Just as judicial officers are expected to decline from adjudicating in a case in which they have interest, whether pecuniary or filial.



- The administration of criminal justice should be able to provide a level playing field in which a defendant is confronted to be prosecuted by his known ‘adversary’. The prosecuting Counsel should not be a person whom the defendant is capable of raising an objection to his appearance in the prosecution stand as ‘a known enemy’.
- Presiding Judicial Officers should always be at the watch out to be able to sense situations in which their courts or power and authority are being used to a manipulative end. Judicial Officers should be circumspect in situations in which learned prosecuting Counsel or any Counsel howsoever is about the business of having to lure the hands of the presiding officer to decide adversely against a defendant that the presiding officer never had the opportunity of hearing from.

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