

# Criminal Proceedings, The Public And The Media In Nigeria: Influence On Court's Decision?

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## A. Abstract

This paper focuses on the influence of the public and media on court's decisions in criminal proceedings in Nigeria. The paper notes that an accused person is presumed innocent until his guilt has been proven beyond reasonable doubt. He is also entitled to a fair trial within a reasonable time by a properly constituted court that is independent and impartial. On the other hand, the paper discovers that the Constitution guarantees freedom of expression and the press and notes that the judiciary acknowledges the fact that a free press is very vital to the survival of any democracy and the press must work together with the courts to educate the public except where circumstances prevents such. The paper notes that in the exercise of press freedom, the media has been engaging in media trial in Nigeria and this has affected the perceptions of the public with respect to criminal proceedings and judgments emanating from the courts. The paper also notes that media trial could be detrimental to the dispensation of justice where judges are pressured to give decisions in line with public opinion as against the rules laid down by the law. Having examined the laws and other issues that have arisen as a result of media trial, the paper recommends that the media should adopt best global practices in the profession and should be conversant with the law of defamation and contempt. The paper further recommends that lawyers should desist from making comments and utterances that prejudice cases before the courts but rather work towards protecting the integrity and dignity of the legal profession and the courts. The paper concludes by urging that the younger generations should be educated on how criminal proceedings work and the dangers of the perception created by media trials.

**Key Words:** Criminal, Proceedings, Media, Public, Court, Decisions

## I. Introduction

This paper examines the influence of the media and the public on courts decisions in criminal proceedings in Nigeria. This is with a view to determine the extent these affect the independence of the judiciary. The media is a very strong tool in shaping the society and ultimately it creates an image in the minds of the populace of any institution it focuses on the judiciary inclusive. The effect or impact the media has on any trial whether criminal or civil cannot be overemphasized. Criminal proceedings are instituted with the aim of punishing

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crimes and they are ultimately controlled by the State. This is due to the fact that a crime is committed against the State and not the individual who has suffered injury per se. In order to ensure justice, equity and fairness to the State, the victim and the accused person(s), the courts must do substantial justice and this can only be assured if the courts are free from all forms of interference.

The independence of the judiciary has been defined as the state or quality of being independent especially a country's freedom to manage all its affairs, whether external or internal, without control by other countries.<sup>1</sup> It is a state of freedom from outside control or support.<sup>2</sup> Therefore judicial independence would connote the ability of a judicial tribunal qualified by law, to make decisions free of undue pressure from outside sources especially from the other arms of government or institutions.<sup>3</sup> Judicial independence is guaranteed when the judges are free to decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressure, threats or interferences, direct or indirect from any quarters or for any reason.<sup>4</sup>

The interplay between the media and the Nigerian Criminal Justice system has a significant impact on the public perception or view of the effectiveness and perpetuation of justice. The media's prominent entertainment roles are framed using such methods as selective coverage of criminal trials, agenda selling and information framing. The public's reliance on the media for information and entertainment presents a gap between objectives pursued, and objectives gained. However, the public always relies on the media as a means to understand and assess the criminal justice system and the processes contained therein.<sup>5</sup> In order to determine the influence of media and public on courts' decisions in criminal proceedings, this paper is divided into five parts. Part I introduces the paper, part II discusses key Constitutional guarantees of criminal proceedings in Nigeria. Part III examines media trial in Nigeria; part IV discusses the effects of media trial while part V concludes the paper.

## *II. Constitutional and Legal Guarantees of Criminal Proceedings*

This section examines constitutional guarantees in criminal proceedings. It also examines provisions of international legal instruments in this regard. This is to determine the extent of the rights that the courts, the media and the public enjoy and the interplay of these rights

1 Garner, A. B., *Blacks Laws Dictionary*, 9<sup>th</sup> edn. (St. Paul MN; 2009) 838.

2 Meriam-Webster Online Dictionary.

3 Aka, P.C. "Judicial Independence under Nigeria's Fourth Republic: Problems and Prospects", *California Western International Law Journals* (2014), Vol. 45, No. 1, p. 9.

4 Preamble, Basic Principles on the Independence of the Judiciary, UN Human Rights Commission Press 40/32 (Nov. 29, 1985) and 40/46 (Dec 13, 1985).

5 Barak, G "Mediatizing Law and Order: Applying Cottle's Architecture of Communicative Frames to the Social Construction of Justice", *Crimes Media Culture* (2007) Vol. 3, p 101 as cited by Townsend, C "Interactions Between Media and the Criminal Justice System", *Western Australian Jurist*, pp. 193-232 at 194, <https://www.classic.austilli.edu.au/au/journals/WAJurist/2011/7.pdf>. (Accessed 31 January 2018).

and how they affect the decisions of courts in criminal proceedings. The most publicized criminal proceedings in Nigeria today are high profile corruption cases. The fight against corruption in Nigeria has become very publicized by the media as it has swallowed up all other forms of criminal proceedings that one may be forced to presume that corruption trials are the only forms of criminal proceedings in the country. Nigeria is very determined to fight this “hydra headed monster” if the nation would survive. In line with governments determination to fight corruption, high profile individual ranging from top government officials, national<sup>6</sup> and state legislators, former governors<sup>7</sup> and judicial officers<sup>8</sup> have been arrested and made to face trials and these arrests and trials have attracted media publicity and attention which may run contrary to the Constitution or the rule of law. The Constitutional guarantees include:

a. Presumption of Innocence

The 1999 Constitution as amended provides that:

*Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty: provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.<sup>9</sup>*

The import of the above provision is that any person who is charged with a crime must not be adjudged guilty until the court has adjudged him so. In addition to the above the African Charter on Human and Peoples Rights<sup>10</sup> which has been ratified and domesticated in Nigeria also guarantees that the accused is presumed innocent when it provides that:

1. *Every individual shall have the right to have his cause heard.*

This comprises:

(b) *The right to be presumed innocent until proved guilty by a competent court of tribunal.<sup>11</sup>*

6 The current Senate President of Nigeria, Senator Bukola Saraki facing trials at the Code of Conduct Tribunal which eventually set him free. Upon appeal against the judgment of the Code of Conduct Tribunal, the Court of Appeal held that Saraki had a case to answer on three count charges out of about 15 earlier quashed by the Tribunal.

7 Former Governors such as Mr. Lucky Igbinedion, James Ibori have faced trials on charges of corruption.

8 In October 2016 Judges of High Courts, Court of Appeal and the Supreme Court were arrested and prosecuted. Some have been discharged and acquitted while others are still facing trials.

9 Section 36 (5) Constitution of the Federal Republic of Nigeria 1999 as amended 2011. (Hereinafter CFRN).

10 African Charter on Human and Peoples Rights, (Ratification and Enforcement) Procedure Act, Cap A9, Laws of Federation of Nigeria 2004 (ACHPR).

11 Article 7(1) (b) ACPHR, Cap A 9 LFN 2004,.

The legal principle of presumption of innocence is hinged on the fact that until a court pronounces the guilt or otherwise of the accused person, he should be treated as innocent. Any act to the contrary would constitute a breach of the fundamental right of the accused as guaranteed by the Constitution and the Charter. It is trite to note that the presumption of innocence would be assumed only when a person has been charged with a crime. The court in the case of *Aig-Imoukhuede v Ubah*<sup>12</sup> reiterated this position when it held that the condition precedent for the activation of the right to the presumption of innocence is that the person must have been charged with a criminal offence. The court further held that the phrase 'charged' in the section refers to arraignment of an accused person before a court of law or a tribunal having judicial powers to convict and punish the accused, if found guilty. It does not extend to administrative or ministerial investigative bodies.

Again in *IGP v Ubah*,<sup>13</sup> the Court of Appeal reiterated this position when it held that the right to presumption of innocence will arise only after the accused has been charged to court.

Still on presumption of innocence, the Universal Declaration of Human Rights reinforces the principle when it provides that:

*Every person charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.*<sup>14</sup>

Although, the Universal Declaration of Human Right (UDHR) was not a binding instrument but most of its provisions have attained customary status and Article 11 is one of those provisions.

Presumption of innocence is a two pronged principle and the second arm is hinged on the fact that the burden of proving the guilt of the accused rests with the prosecution. This duty is enshrined in the Evidence Act<sup>15</sup> which states that the burden of proving the guilt of an accused person is on the prosecution who alleges that the accused has committed a crime and further it provides that the degree of such proof must be beyond reasonable doubt. To discharge this burden, the prosecution must adduce credible evidence in order to establish the guilt of an accused person beyond reasonable doubt. Invariably, where the prosecution fails to establish the guilt of the accused during the trial, the trial judge would discharge and acquit the accused person. This is irrespective of the charges or indictment brought against the accused or what popular opinion is. The judge is bound to settle any doubt in favour of the accused person.

12 (2015) 8 NWLR (Pt. 1462) 339 at 408. The court went further to state that a charge is a process by which all allegations are brought to the notice of the accused. It appears only in criminal trials. See also *Okereke v James* (2012) 16 NWLR (Pt. 1326) 339.

13 (2015) 11 NWLR (Pt. 1471) 405 at 414.

14 Article 11 UDHR.

15 Section 135 Evidence Act, 2011.

The Supreme Court reiterated this when it held in the case of *APC v INEC*<sup>16</sup> that he who asserts must prove.

In *Ibrahim v State*,<sup>17</sup> the Appeal Court held that the law imposes the responsibility of proving the guilt of an accused person on the prosecution and the proof must be beyond reasonable doubt and that it is not part of the system of our law that an accused person should prove his innocence. In support of this assertion, the Supreme Court again in the case of *Ahmed v State*<sup>18</sup> held that:

*In a criminal trial, the onus lies throughout on the prosecution to establish the guilt of the accused beyond reasonable doubt. The burden of proving a fact which if proved would lead to the conviction of the accused is on the prosecution who should prove such fact beyond reasonable doubt. Thereafter, any doubt as to the guilt of the accused arising from the contradictions in the prosecution's evidence of vital issues must be resolved in favour of the accused.*

Consequently, until the accused is charged, he is presumed innocent and during trial the prosecution must prove the guilt of the accused to secure a conviction.

#### b. The Right to Fair Hearing/Trial

The Constitution provides that: *Whenever any person is charged with a criminal offence, he shall unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal*.<sup>19</sup>

Provided that:

*a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interest of justice.*<sup>20</sup>

The above stipulation indicates that fair hearing must be conducted in the open unless the court feels otherwise in the interest of public order, morality welfare of the under aged or protection of private lives. In such a situation, the proceedings will be conducted privately.

16 (2015) 8 NWLR (Pt 1462) p531 at 545. See also *IMNL v Pegafor Ind. Ltd* (2005) 15 NWLR (Pt 947) and *NNPC v Lutin Inv. Ltd* (2006) 2 NWLR (Pt. 965) 506. Failure to discharge this legal burden alone disentitled the Applicant from the relief it canvasses.

17 (1995)3 NWLR (Pt 381) 35.

18 (1999)7 NWLR (Pt 612) 641. See also *Ameh v State* (1987) 6-7 SC 27, *State v Albert* (1982)5 SC 6.

19 Section 36(4) CFRN 1999 as amended 2011.

20 Section 36(4) (a) CFRN 1999 as amended 2011.

This means that ordinarily, the media is allowed to cover or attend court sessions but may be excluded by the court for reasons stated above. The right to fair trial is also contained in the International Covenant on Civil and Political Right (ICCPR).<sup>21</sup> The ICCPR posits that an essential aspect of fair trial is public hearing and states that:

*All persons shall be equal before courts and tribunals. In the determination of any criminal charge against him, or of this rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent and impartial tribunal established by law. The press and the public may be excluded from all or part of the trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interest of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*<sup>22</sup>

This is in tandem with the constitutional provision cited above. It is trite to note that the concept of public trial is one which is founded at the core of common law principles of fair and just criminal proceedings.<sup>23</sup> This is necessary as it permits public and professional scrutiny of decisions of court which helps to prevent any miscarriage of justice<sup>24</sup> and helps maintain confidence in the public of the courts integrity. In other words, a public trial connotes the ability of the public to attend proceedings, as well as the reporting and publication of such proceedings.<sup>25</sup>

The objective of the media in terms of information delivery to the public can obviously create issues with respect to the apparent nature of this freedom in practice. On one side of the divide is the argument that the increasing coverage of the media during criminal proceedings can hinder the ability of a court to be impartial and thus constrain the right to a fair trial.<sup>26</sup> But, it can be argued that the coverage of such proceedings, allows for greater public scrutiny, and in all will increase the occurrence of trials conducted with regard to the

21 International Covenant on Civil and Political Rights, adopted and open for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1996 (entered into force 23 March 1976 in accordance with Article 49.

22 Article 14 ICCPR. In Nigeria, the press would be excluded from cases hinged on Matrimonial Causes Act, Children and Young Persons Law. See Malemi, E. *Mass Media Law* (Lagos: 2009) 147.

23 *Scott v Scott* (1913)AC 417; *Russel v Russel* (1976) 134 CLR 495.

24 *Ibid.*

25 Townsend, note 5, p202.

26 *Ibid.*

inherent right of fair trial.<sup>27</sup> The exception to this public trial will occur in cases where the court feels it necessary to impose an order suppressing details of the proceedings as noted above. In Nigeria, the court can make a suppression order in the following instances- in the interest of national defence or security, public safety, order, morality. Open court trial would also be refused where it involves children under the age of eighteen years or matters relating to the private lives of the parties.<sup>28</sup>

### c. Freedom of Expression and the Press.

The Constitution guarantees the right to freedom of expression and the press and it provides that:

*Every person shall be entitled to freedom of expression, including freedom to hold opinion and to receive and impart ideas and information without interference.<sup>29</sup> Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions.<sup>30</sup>*

The proviso in this section states that nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society for the purpose of prohibiting the publication of information received in confidence, that is, matters classified by governments as official secrets or as confidential matters, or any matter that will affect the maintenance of the authority and independence of the courts, that is publications which constitute contempt of court, and publications prohibited by laws...<sup>31</sup>

Where a publication by the press in exercise of the freedom of press amounts to contempt, the court has in inherent power to punish same as provided in section 6 and 36 (3) (a) of the Constitution. This is necessary for the smooth administration of justice. The power to punish for contempt belongs to the realm of the discretionary powers of court. Contempt of Court was defined by Lord Diplock in the case of *A.G. v Times Newspapers Ltd*<sup>32</sup> thus:

*Contempt of court is a generic term, descriptive of conduct in relation to particular proceedings in a court of law, which tends to undermine that system or inhibits citizens from availing themselves of it for the settlement of their disputes.*

27 Kenyon, A.Y. 'Not Seeing Justice Done: Suppressing Order in Australian Law and Practice; *The Adelaide Law Review* (2006), Vol. 27, pp. 279 and 282.

28 Section 36(4)(a) CFRN 1999 as amended 2011. See also section 45(1) CFRN 199 as amended 2011.

29 Section 39(1) CFRN 1999 as amended 2011.

30 Section 39(2) CFRN 1999 as amended 2011.

31 Section 39(3) (b) CFRN 1999 as amended 2011.

32 (1973) 3 All ER 54 at 71. See also *Omojahe v Umoru* (1999) 8 NWLR (Pt. 614)) 187.

Although the Constitution guarantees freedom of expression and the press; such a freedom would be curtailed where it would impugn the authority and independence of the courts. The African Charter on Human and Peoples Rights provides that: *Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinion within the law.*<sup>33</sup>

The UDHR in recognition of the right to freedom of expression provides thus:

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and impart information, and ideas through any media and regardless of frontiers.*<sup>34</sup>

Again, the International Covenant on Civil and Political Rights guarantees the right to freedom of expression in the following words:

*Everyone shall have the right to hold opinions without interference.  
Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print in the form of art or through any other medium of his choice.*<sup>35</sup>

Freedom of expression is a key element in every democratic society. Free speech and free press are instruments of self government by the people because they enable the people to be informed and educated about the affairs of government, thereby enabling them to form and express intelligent opinions on such matters.<sup>36</sup> Again, free dissemination and discussion of ideas and opinions is indispensable to democratic government.<sup>37</sup>

As expected, the freedom of expression and the press is not an absolute right. It can be restricted and derogated from if circumstances demands for it. We earlier noted that where this right would affect the authority and independence of the court, it would be restricted. Furthermore, the Constitution provides that the fundamental rights guaranteed under it could be restricted or derogated from in the interest of defence, public safety, public morality or public health; and for the purposes of protecting the rights and freedoms of other persons.<sup>38</sup> The ICCPR also recognizes that the right to freedom of expression can be derogated from when it provides thus:

33 Article 9(1) (2) ACHPR Cap A9 LFN 2004.

34 Article 19 UDHR.

35 Article 19 (1) (2) ICCPR.

36 Nwabueze, B. *The Presidential Constitution of Nigeria*, (Enugu; 1982) p 456.

37 *Ibid.*

38 Section 45 (1) (a) (b) CFRN 1999 as amended, 2011. The rights include: right to private and family life-section 37; right to freedom of thought, conscience and religion-section 38; right to freedom of expression and the press-section 39, right to peaceful assembly and association – Section 40 and right to freedom of movement- section 41.



*The exercise of the rights provided for in paragraph 2 of this Article carries with it special responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as provided by law and are necessary: For respect of the rights of reputation of others; for the protection of national security or public order or of public health or morals.*<sup>39</sup>

Similarly, the ACHPR in Article 9(2) recognizes that the enjoyment of the right of freedom of expression shall be done within the law.

The Nigerian court in the case of *Adikwu v Federal House of Representatives*<sup>40</sup> opined per Balogun J thus:

*It must be remembered at all times that a free press is one of the pillars of freedom in this country as indeed in any other democratic society. A free press reports matters of general public importance, and cannot in law be under an obligation, save in exceptional circumstances to disclose the identity of the person who supply it with the information appearing in its reports.*

Another recognized restriction to this right is the right to the protection of reputation as provided under the law of defamation. Liability will accrue where a person in exercise of his right to freedom of expression, infringes the right of others to the protection of their reputation.<sup>41</sup> *Akhihero* notes that the media should have the freedom to inform the public on matters of public interest and concern. But in exercising this freedom, they must act with the highest sense of responsibility. He further noted that the power of the media is very enormous. It must be careful not to misuse or abuse such awesome powers. He concluded by stating that the ‘pen is mightier than the sword’ and that the media have a duty to feed the public with credible news, honest and fair comments.<sup>42</sup>

### III. Media Trial in Nigeria

In the earlier section of this paper we noted that the constitution guarantees the right to freedom of expression and the media. It was also noted that the right is not absolute and that the media owe the public the duty to feed them with credible news, honest and fair comments. In this section, we shall examine how this right to freedom of expression and the press affects courts decisions in criminal proceedings. It is important for us to note that the word media includes the main ways that large numbers of people receive information and enter-

39 Article 19 (3) (a) (b) ICCPR.

40 (1982)2 NCLR, 394 at 417.

41 *Akhihero, P.A* ‘The Impact of ‘Media Trial’ on the Constitutional Presumption of Innocence”, A paper presented at the 2017 Law week of the Benin Branch of the Nigerian Bar Association, Tuesday 9<sup>th</sup> May 2017, pp 7-8 (Hereinafter NBA).

42 *Ibid* p.8.

tainment, i.e. the television, radio, newspapers and the internet<sup>43</sup> (or the social media). From the above it could be deduced that there is print and electronic media which is the conventional media and the social media.

Social media has been defined to be a means of interactions, among people in which they create, share and/or exchange information and ideas in virtual communities and networks. It includes but not limited to Facebook, Twitter, Instagram, Snapchat, Youtube and Vimeo accounts.<sup>44</sup> It is defined as forms of electronic communications, (such as websites for social networking and Microblogging) through which users create online communities to share information, ideas, personal messages and other contents (such as videos).<sup>45</sup>

It is trite to note that the internet has made the media very interactive and the social media is more patronized than the conventional print and electronic media devices. Due to the attraction in the internet, most print and electronic media have their platforms online and materials posted thereon can be read by the public and the public in turn are allowed to make comments on such platforms. This has greatly widened the information field and allows comments from all and most times uncensored. Such uncensored comment can also be made in respect of criminal proceedings before the court. Apparently, the print and electronic media can be made to face charges for contempt and defamation but the problem arises when the media trial is from the social media. It is a problem because the social media is not regulated in Nigeria and can also be used by interested parties in a suit to disparage the judges and the judicial process. Most citizens are not aware of the operational systems of the court and they find themselves acting contrary to the rule of law processes. Again, media trial can be affected by the ownership of such media outfit. In Nigeria, media houses are owned by government and private citizens who may be politicians and these media houses are hardly objective in their reportage of issues especially when it concerns the interests of the media owners or their political affiliations.

### What is Trial by the Media?

Trial by the media refers to a situation whereby the media creates a perception that an individual or group of individuals are guilty of a criminal offence, through the dissemination of prejudicial materials, with the intention of creating a perception of guilt.<sup>46</sup> Trial is essential-

43 Oxford Advanced Learners Dictionary, 8<sup>th</sup> edn., (Oxford; 2010) p 922. (emphasis mine.).

44 "What is Social Media", <https://www.communicaitons.tufts.edu>social-media...> (Accessed 2 February 2018).

The biggest social networks are Myspace,facebook and Bebo. There are others like Blogs, Wikis, podcasts, forums, contents communities and Microblogging <https://www.crossing.com>insight.pdf-file...> (Accessed 2 February 2018).

45 Definition of Social Media" Merriam-Webster Online Dictionary <https://www.mariman-webster.com>social-media>. Accessed (2 February 2018).

46 Akinola, R., "Justice Ademola: Between Media Trial and Court Trial", <https://www.vanguard.com/2017/04/justice-ademola-media-trial-court-trial/> (Accessed 31 January, 2018).

ly a process to be carried out by the courts. In fact ‘trial’ is a word which is associated with the process of justice. It is the essential component in any judicial system that an accused should have a fair trial. Trial by the media therefore would be an undue interference in the process of justice delivery by the media.<sup>47</sup>

*Azinge and Rapu*<sup>48</sup> note that press or public Trial/Litigation is one of the frightening trend that has impinged the independence of the judiciary in recent times in Nigeria. They noted that it is not just newspapers columnists and editorial writers that are involved, but the Legal Practitioners too. Today, it is very common for us to see senior members of the bar, wig in hand after court sessions grant interview for eager pressmen oftentimes castigating the court order or judgment that has just been delivered.<sup>49</sup> This is very common with the high profile cases going on in Nigeria. The rule is that the media must not make any comment which would tend to prejudice a fair trial<sup>50</sup> even though we have noted that the freedom of the press is fundamental and enshrined in the constitution. They have the right to make fair comments on matters of public interest but this must be subject to the law.

A classical illustration of media trial could be seen in the case of *Attorney General v Times Newspapers Ltd.*<sup>51</sup> In this case, some pregnant women in England had taken a drug called thalidomide manufactured by a pharmaceutical company, Distillers. When they were delivered of their babies, the babies were discovered to be deformed. The affected parents brought an action against the company. The company tried to settle the matter out of court. The company succeeded in settling with some set of parents who consequently discontinued the action already in court. They could not settle with the second set of parents who were forced thereby to continue with the suit. The case dragged on for over ten years. In the circumstance, the Times Newspaper became sympathetic to the plight of the aggrieved parties who were seeking compensation from the court. Times Newspaper published some articles to mount pressure on the pharmaceutical company to settle with the parents out of court and pay them adequate compensation in return. They launched a media campaign against the pharmaceutical company.

Consequently, the Attorney General issued a writ against the Times Newspapers to restrain them from publishing the articles. The House of Lords in its judgment opined thus: per Lord Reid:

47 *Fogam, PK* “Crusade Against Corruption and the Effects of Trial by the Media”, paper delivered at an event of National Association of Judicial Correspondents (NAJUC), as cited by Akinnola, R. *Ibid.*

48 *Azinge, E and Rapu, J.F* “Roadmap to Judicial Transformation: Through the Lens of Retired and Serving Jurists of the Supreme Court” in *Azinge and Idornigie (eds.) The Supreme Court of Nigeria 1999-2012* (Lagos:2012)p 80.

49 *Ibid.*

50 *Akhihero*, note 41, p 9.

51 (1973) 3 All ER, p. 65; (1973)3 WLR 298 and (1974) A.C. 273.

*I think that anything in the nature of prejudgment of a case or of specific issues in it is objectionable not only because of its possible effect on that particular case or of specific issues in it is objectionable but also because of its side effects, which may be far reaching. Responsible "mass media" will do their best to be fair, but there will also be ill-informed, slapdash or prejudiced attempts to influence the public. If people are led to think that it is easy to find the truth, disrespectful for the processes of the law could follow and, if mass media are allowed to judge, unpopular people and unpopular causes will fare very badly. Most cases of prejudging of issues fall within the existing authorities of contempt.*

Lord Denning M.R in the same case held thus:

*We must not allow trial by newspapers' or trial by television' or 'trial by any medium rather than the law'. Many judicial expressions of opinion illustrate the viewpoints I have set out. Lord Hardwick, L.C. in the St. James' Evening Post Case (1742) 2 at 469 said that there was nothing of more pernicious consequence, than to prejudice the minds of the public against persons concerned as parties in causes, before the cause is finally heard.*

In Nigeria today we have reached a very frightening threshold where we not only comment freely on cases pending before courts but inadvertently dictate the judgments to the courts on the faces of newspapers and social Medias. Azinge and Rapu notes that in some case the judges are called names and harassed, while lawyers, who have the 'audacity' to appear for 'unpopular' clients are blackmailed, maligned and ostracized.<sup>52</sup>

The Supreme Court of Nigeria in the case of *Buhari v INEC*<sup>53</sup> noted that dangerous trend of media trial in Nigeria when it opined thus:

*It is sad that so much has been said in the newspapers of this country on the case. The new technology of internet reporting has added to the comments, some of them doubting our integrity to do justice according to the law. I regard them as blackmail and I will not succumb to blackmail. I swore on that eventful day as a High Court Judge to do justice to all manners of persons without fear or favour. I have never departed from that oath and I will not, God helping. It is too late in the day to do so.....*

*While I know that in every case, the judge makes an additional enemy, if I use the word unguardedly, I must state that the judge does not regard the person as his enemy. The judge who has given judgment in the light of the law must not be castigated in the way it is done in this country.*

*This is a primitive conduct and I condemn it. It is a conduct that is likely to affect adversely the administration of justice in this country. I feel very strongly that Nigeri-*

52 Azinge and Rapu note 48, p.85.

53 (2008) 19, NWLR (Pt 1120)p 246 at 408 – 412, 427-428.

*an judges should be allowed to perform their judicial functions to the best of their ability. I should also state that no amount of name calling will deter Nigerian judges from performing their constitutional functions of deciding cases between two or more competing parties. Somebody must be trusted in doing the correct thing. Why not the Nigerian judge?*

The rule that prejudicial comments should not be made on matters that are *subjudice*<sup>54</sup> is applicable in Nigeria. A breach of this rule amounts to contempt. In *Bello v A-G Lagos*<sup>55</sup> the Court of Appeal held that:

*Comments on pending legal proceedings which purport to prejudice the issues that are to be tried by the court are intrinsically objectionable as constituting a usurpation of the proper function of the court.*

*Anything in the nature of prejudicing of a case or of specific issue is objectionable not only because of its possible effect on that particular case but also because of its side effect which may be far reaching. Trial by newspaper, television or other medium other than the court is not only unacceptable but also objectionable.*

When the media commits contempt in exercise of press freedom, it is the duty of the court to punish same in exercise of the disciplinary powers of the court.

In *Okoye v Santili*<sup>56</sup> the Court of Appeal held thus:

*The jurisdiction inheres in the court as adjudicator qua judex. The power is designed for the maintenance of the dignity and integrity of the court. Unless the court exercises its disciplinary jurisdiction in appropriate circumstances, it will lose its dignity and integrity in the judicial process. The institution of the court which the law has placed in an exalted and sacred position surrounded by all aura of legalism and sanctity, will be reduced to a toothless dog which can bark but cannot bite.*

In 2009 during the Annual NBA conference in Lagos, Nigeria, Farida Waziri a former chairman of the Economic and Financial Crimes Commission (EFCC)<sup>57</sup> remarked thus:

*The judiciary is referred to as the last hope of the common man. It is the bastion or citadel of justice; it rests and carries out its functions on the pillars of the rule of law*

54 The Latin word *subjudice* means “under a judge” or “before a judge” or “judge for determination”. This rule has been established as far back as 1868 in the case of *SCOH v Stanstred* (1868) LR 3 Ex 220, where it was held that prejudicial comments on matters that are *subjudice* should not be made.

55 (2007) 2 NWLR (Pt. 1017) 115 at 151-153.

56 (1991) 7 NWLR (Pt. 206) 753 at 766. See also section 6 and 39 (3) (a) CFRN 1999 as amended 2011.

57 NBA Annual Conference 2009, held in Lagos between 16-21 August. Theme: “Lawyers in the Media (LIM)- Crusade Against Corruption and the Effect of Trial by Media”, ‘<http://www.guardian.ng/news/rival-lawyers-and-The-media-trial>’. (Accessed 2 February 2018).

*and public confidence. Anything that undermines public confidence in the judiciary is inimical to the judicial process. The media should be wary of this. Trials by the media of criminal matters, prejudices the minds of the populace and make them hold the court in contempt and dishonoured where it ultimately reaches a conflicting or different verdict. More often, than not, allegations of compromise and corruption are made against the judge. This is very unhealthy for the development of our legal system, and judicial process. The Commission has also recently come under media trial. Its efficiency is now assessed not so much on the actual work done but on the work which the media wants the public to believe that the Commission ought to have done. Slow proceedings in court are placed at the door of the Commission. The media also wants the Commission to investigate and prosecute certain individual without which the Commission would be considered as ineffective. Some of these individual are already condemned by the media as guilty of corruption even before being charged to court. This approach negates all civilized principle and particularly the rule of the law which we must all uphold.*

In October 2016, some judges' homes were raided by the Department of State Service (DSS) in what was termed operation sting. In that same operation five judges were arrested on corruption charges. This operation was blown open by the media and the judges were tried in the court of public opinion before actual arraignment and trial. It was reported that:

*In an attempt to give legitimacy to an otherwise despicable modus and acts of crude vendetta against some judges, the DSS embarked on serial media trial of the arrested judges.<sup>58</sup>*

Interestingly, after Justice Ademola was charged and tried, he was found not guilty of the allegations levelled against him by the DSS and he was subsequently discharged and acquitted. The point here is that a perception has been created in the minds of the public who may never believe that the trial was fair since he has been committed in the court of public opinion having been fed with the public show of media trial.

Another instance that is worthy of note is the case in 1986 when the Nigerian Television Authority (NTA) News line repeatedly televised and fed that public with the confession of a supposed armed robber called Temoo. The suspect had all manner of marks on his face and neck, evidence of various physical skirmishes. Each time he appeared on television, he would tell the public of his supposed robbery exploits. He was eventually charged and arraigned before the Ikeja Robbery and Firearms Tribunal. During his trial, the presiding judge, Justice Waidi Oshodi, discovered that the accused was tortured to make all the confessions and admissions of various robberies he never participated in. The judge also found that the accused was a notorious motor park tout and that the police felt the only way to get him out of the society was to torture him to accept being an armed robber. The judge

58 Akinnola, note 46.

saw through the set up and freed the accused who would have been sentenced to death by firing squad if the judge was pressured by the several media attempt to sway the court<sup>59</sup> by trying and sentencing the accused first.

Again, in 1975, one *Prince Felix Osadolor* (popularly known as Afro) was standing trial for armed robbery before the Midwest Robbery and Firearms Tribunal. The electronic and print media were all agog with negative stories of the accused alleged criminal exploits before his trial. In the public domain, his guilt had already been established. After the trial at the firearms Tribunal and during the judgment, the judge, late Justice *Ayo Irikefe* held that although Afro was very notorious in the eyes of the public, he was not guilty of the charges preferred against him. The judgment ignited public outrage.<sup>60</sup> This is an indication that judges must not succumb to public pressure. They must be bold at all times.

*Justice Nnamdi Dimgba*, another judge who was arrested by the DSS during the October 2016 operation sting has been discharged and acquitted of all charges preferred against him by the DSS. The Nigerian Judicial Council (NJC) at its meeting of February 2017 after deliberating on the petition of corrupt practices and professional misconduct held thus:

*At the end of deliberation, Council accepted the findings of the Committee that petitioner was unable to prove that you misconducted yourself or acted contrary to the Revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria and that the petitioner was unable to establish any act of corrupt practice against you, but rather withdrew the allegation. Consequently, Council decided to exonerate you of all the allegations levelled against you by the petitioner.*<sup>61</sup>

However, in the eyes of the excited and interested public, based on the media trial, *Justice Dimgba* had been convicted in the court of public opinion and the general feeling after his acquittal is that the judiciary has shielded him because he is one of their own. It should be reiterated at this point that the media must desist from media trial as there is the possibility that the courts would be exposed to prejudicial information and the public perception of the judiciary comes to nothing each time the judgment does not go the way they feel it should. Courts must be allowed to try cases that come before them based on law and not be pressured into going to market places of public opinion to shop for evidence on which to base its judgments.<sup>62</sup>

*Justice Uwais* on this issue noted that:

*....a remarkable feature of the relationship between the media and the judiciary is that the independence of the judiciary and the independence of the media is both fun-*

<sup>59</sup> *Ibid.*

<sup>60</sup> *Akhihero*, note 41, p.13.

<sup>61</sup> *Akinnola*, note 46. The former speaker of the House of Representatives, Mrs. Patricia Etteh, was hounded out of office for alleged corruption but was subsequently discharged and acquitted by the court after a long trial. She was tried and convicted in the court of public opinion.

<sup>62</sup> Per Justice Niki Tobi JSC (as he then was).

*damental to the continued exercise; and indeed the survival of democratic liberties. Furthermore, while the judiciary plays a central role in the protection and sustenance of media independence, judicial independence and integrity is also dependent on these freedoms. Consequently, I feel that the days when the publicity of active communication between the judiciary and the media was regarded as an anathema, are wrong in principle and gone forever. This is an age of communication in which, without any infringement on their independence, they can and should speak to each other, to ensure transparent administration of justice and preserve the freedom of the press which are indeed cardinal pillars of constitutional democracy...*<sup>63</sup>

#### *IV. Effects of Media Trial*

Justice Uwais, noted that freedom of the press is a cardinal pillar of constitutional democracy.<sup>64</sup> The media has several roles in the society. One of the key roles is that it helps to mould the opinion of the society and this has the capacity to change the community view point about issues.<sup>65</sup> Freedom of the press means freedom of the society and it would not be an overstatement to posit that a healthy press is indispensable to the survival of democracy. In a democracy, the press must be actively involved in all the affairs of the State and the public as it is their right to keep the society informed of the current political, social, economic and cultural life as well as other topical and burning issues so that the public can form a broad opinion about the administration and functions of government. To achieve this, the public must receive a clear and truthful account of events to enable them to form their opinions and offer their own comments and views but this role of the media must be carried out in accordance with the law.<sup>66</sup>

Recently, in Nigeria the media has turned into a public court and interferes in court proceedings by publishing cases and gathering opinions even before the matters are dispensed of in the courts. This, as earlier noted negates the right of the accused on the principle of presumption of innocence until proven guilty and guilt beyond reasonable doubt. Media and public trial sometimes produce positive results especially where the issue at stake happened before the public glare. They galvanize the responsible institution into action. For instance, in Benin City Nigeria, February 2018, a police officer was accused of pushing a young man towards an oncoming truck which incidentally killed the young man. This led to public outcry and protest from the public. Police infrastructure was destroyed in the process and it took the intervention of the Military to bring the situation under control. Eventually,

63 Hon Justice M. L. Uwais GCON (CJN as he then was). Address to mark the beginning of the legal year on 25<sup>th</sup> September 2000 and reiterated by Hon Justice Dahiru Musdapher, (CJN as he then was) GCON as cited by Azinge and Rapu, note 48, p86-7.

64 *Ibid.*

65 "Effects of Trial by Media Before Courts", <https://www.lawteacher.net/free-law-essays/commercial-law/effects-of-trial-by-media-before-courts-law-essay.php>. (Accessed 31 January 2018).

66 *Ibid.*



the police officer was arrested but yet to be prosecuted. In this instance, the public and media played active roles in ensuring that the erring police officer is not shielded as had been the practice in Nigeria. Today, we observe media trial where the media conducts investigation, builds up public opinion against the accused before the case reaches the courts. This way, the public is prejudiced and the accused that should be presumed innocent is assumed a criminal.

## How Does Media Trial Affect Courts Decisions?

### 1. Media Trial Prejudices or Interferes with the Judicial Process

The constitutional provision discussed earlier in this paper shows that an accused person should be presumed innocent until he is proven guilty.<sup>67</sup> In addition to this, the accused must have a fair trial<sup>68</sup> and the principle that justice may not only be done, it must also seem to be done cannot be over emphasized. These concepts are all hinged on the principle of natural justice. Judicial process can be prejudiced in several ways. Where the media conducts investigation and publishes the information to the public before the accused is charged, the accused may end up being sentenced for a crime he did not commit. Once a case is subjudice, no one should be allowed to comment on same. The court should be allowed to perform their functions without undue pressure from the public as a result of the influence of the media. How can the criminal justice system avoid media interference in order for the court to secure a fair and impartial trial for the accused person(s) without compromising either the Media's right or the right of the accused which is constitutionally guaranteed. The truth is that we cannot avoid interference considering the connectedness of modern society but there is a chance that the media's negative influence could be curtailed with the assistance of the law enforcement, the court and the media itself.<sup>69</sup>

### 2. Breach of Fair Hearing

The Constitution guarantees the accused a fair hearing within a reasonable time by a court or other tribunals established by law and constituted in a manner as to secure its independence and impartiality.<sup>70</sup> The independence and impartiality of the court or tribunal can be affected by Newspaper publications and the electronic media glamour. The press may use languages that are capable of influencing the judicial process which may result to the denial of a fair trial and denial of a fair hearing maybe presumed when there is an obstruction or interference in the administration of justice; when the prejudicial publication affecting the public in turn affects the accused person or when the prejudicial publication affects the

67 Section 36(5) CFRN 1999 as amended 2011.

68 Section 36(4) CFRN 1999 as amended 2011.

69 Tessa, L "The Negative Effects of the Media on the Modern Day Criminal Justice System", <http://www.teenink.com/notification/academic/article/845269/The-Negative-Effects-of-the-Media-on-the-Modern-Day-Criminal-Justice-System/>. (Accessed 31 January, 2018).

70 Section 36(1) CFRN 1999 as amended 2011.

minds of the judges and suggests to the court how and in what manner the case should proceed which may ultimately lead to wrongful convictions and wrongful acquittals as well as a different ruling in the court of popular opinion than in a well constituted court room.

### 3. High Profile Criminal Cases

High profile criminal cases are not just decided in the courts; it is also decided in the court of public opinion. In Nigeria for instance, the cases involving justices of High Courts, Court of Appeal and Supreme Court following the October 2016 raid by the DSS became very sensational. The same was the situation in the current senate president's case (Senator Bukola Saraki) on non disclosure of assets before the Code of Conduct Tribunal. Courts and legal commentators are recognizing that the media, through its reporting mechanism, has a very real impact on the resolution of individual lawsuit.<sup>71</sup> The media creates undue pressure on judges in high profile cases. Judges are aware that they are being watched by all. Gone are the days when judges were considered as not being social because of their reputation. Today, judges have become social and they care about their promotion and remunerations. In high profile cases, they tend to be bias and give verdict as per media reports just to be in the lime light.

This is particularly true when these judges were appointed not on merit but on political considerations. Delivering judgments that are in line with the expectation of their employers will help them to be promoted before other competitive judges. Media is so much into the lives of judges that the judges themselves cannot stay away from it and where a judge is not worth his sought, he plays by the rule of popular opinion at the expense of the law.

### 4. Public Perception

Today, a lot of fascinations go with crime. News broadcasts of current cases can cause so much damage. When information about a trial is aired to the public, many people and even potential judges become subject to the bias that the media is presenting. The media has the potential to completely alter the perception<sup>72</sup> of person towards a suspect by presenting the suspect in a certain light.<sup>73</sup>

Tessa posits that if a compelling story is that a suspect is a monster and should be convicted and sentenced to the full extent to the law, then that is the story the media will put

71 It is within a lawyer's role to work with reporters on their stories to ensure accurate reporting. Most times, the defense counsel in high profile cases refuse to say anything to the press out of concern that such discussions could be misconstrued as an attempt to affect the court's decision or persuade a judge.

72 Tessa, note 69, p2.

73 'Perception is defined as the way you think or understand someone or something.' This concept comes to play with the discussion of the media and the criminal justice system, as there can be a large potential for misleading perceptions of the system as the media coverage increases. One potential and dangerous example of how the media is shifting perception is the 'arm chair jury'; which is the public that has been converted by the media and can reach a different verdict than the real court. The arm chair jury then has the potential to essentially shame the entire American Criminal Justice System because of its ruling. Batagha 2012 as cited by Tessa L, *ibid*.

forth especially if it is a high profile case. In this instance, the public's opinion will be amplified; thus when the public perceives the accused as guilty, and the accused is eventually set free, the public may reproach the justice system.<sup>74</sup>

### *V. Conclusion*

The paper has extensively discussed the influence of the public and media on criminal proceedings in Nigeria and how these affect courts decisions. The paper discussed very fundamental principles that the courts must observe in criminal proceedings and they include the presumption of innocence, fair trial and freedom of expression and the press. The paper noted that in Nigeria today, media trial has taken a frightening dimension and that this does not just end with the media houses but that senior lawyers have joined in the game especially when they grant interview to the press after a judgment or ruling by a court thereby raising issues on the credibility of the judgment, the person of the judge and the judicial process in its entirety. The paper observed that a free press is a cardinal point for any democracy but the exercise of a free press must be within the law.

It was further observed that once there has been a media trial, a perception is created on the public who ultimately would want to see the decision of the court in line with public opinion and when this fails, the judicial process is undermined in the sight of the public and this amount to usurpation of the judicial functions. It is also noted that some judges may be prejudiced by the media trial and end up either convicting the innocent or acquitting the guilty. To address the issues the paper recommends that the media as the watch dog of the society should play its role by bringing the facts to the public the way they are. The media must also raise responsible men and women in the profession who will be trained and re-trained in order to be abreast with global best practices in the profession. These journalists should be conversant with the very relevant and essential areas of media law especially the rules on defamation and contempt of court.

Legal practitioners should abide by the code of professional conduct. The attitude of commenting on cases that are subjudice should cease. Senior members of the bar should desist from comments and utterances that impugn the character of judges and incite the public against the courts. When dissatisfied with the rulings or judgments of the court, the bar should learn to adopt the appeal proceedings at the Court of Appeal. Efforts should be made by law enforcement agencies and the legal profession to educate the younger generations on the proper conduct of criminal justice and the impact of perception on the public as they hear about cases on televisions or print media/social Medias.

There could also be a greater separation of the media from criminal proceedings. This can be done by preventing the media from covering cases before they go for trial. The law enforcement agencies must endeavour to keep some vital information such as the identities of suspects away from the press. The press must learn to respect the secrecy of certain crim-

<sup>74</sup> *Ibid.*

inal proceedings that may prejudice public morality and safety. There's a call on all to protect the integrity and the dignity of the courts and the judicial process. The media should desist from unfair comments against the judiciary especially when the politicians are using them in order to air their dissatisfaction in respect of a judgment. The judiciary should take charge of the happenings in court and should not bow to press or public pressure when it is obvious that the media has misinformed or created a negative perception about a case to the public as noted in the body of the paper. This can be achieved where the court establishes a public relations department that would educate the public on the processes of the judiciary especially where a sensitive case is been handled by the court. The judiciary should as much as possible be very transparent in their proceedings. There is also the need to demystify the image that the public has about the justice system. This can be done by introducing basic legal subjects at the primary and secondary schools as this would help the citizen to understand the legal processes better. This would help improve the perception of the judiciary in the minds of the public. Finally, it should be noted that the public and the media can make or mar the outcome of every criminal proceeding and efforts should be made to protect the judiciary and raise the integrity of the judges.

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