

## **Non Conviction Based Criminal Forfeiture and Right to Own Property in Nigeria\* Enhancing the Benefit and Engaging the Problems**

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**Abstract:** *The right to acquire and own movable and immovable properties must be legitimately done within the confines of law. Thus, acquisition of property by illegal means can be sanctioned through forfeiture or confiscation particularly where the culprit is not convicted of the crime. The paper examines some existing laws on criminal forfeiture, the various types of forfeiture in criminal trials in Nigeria and the constitutional rights to acquire property only within the provision of the law.*

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### **I. Introduction**

The escalation in the volume of economic and financial crimes particularly in Nigeria, necessitate the need to design measures to make such crimes less profitable for the criminals.

One of those measures is to order the forfeiture or confiscation of the corrupt enrichment or criminal proceeds to the victims of the crime, in addition to other punishments like imprisonment, binding over, or fines. The victims of economic and financial crimes may be individual, corporate bodies, government or unincorporated bodies. The punishment of criminal forfeiture of property is more appropriately imposed when the alleged property involved the government, but when the victim of property offence is not government, the sanctions of restitution or restoration of property to the original owner may be invoked. The diverse nature of economic crimes includes corrupt enrichments, smuggling, advance fee fraud, cyber crime, bank fraud, contract scam, money laundering, trafficking in illicit drugs, human trafficking and so on.

Undoubtedly, the impact of these crimes on the economic is so enormous that it is capable of undermining the stability of the country.

In spite of this, the size of the huge criminal profits makes it alluring to criminals.

Therefore the divestment of material gains of crime is a welcome trend in criminal justice administration. Between May, 2003 and June, 2004, the Economic and Financial Crimes Commission recovered another 3 Million Pounds from the British Government.<sup>1</sup> According to the Chairman of Economic and Financial Crimes Commission (EFCC), Mallam Ribadu between 2004 and 2006, the Commission recovered assets worth about 5 Billion Dollars and more than 500 Billion Naira recovered from fraudulent persons and others. More that 200 Million Naira was recovered from the failed banks, 30 Billion Naira recovered as unpaid custom duties and 242 Million Dollars from the celebrate Brazilian bank scam<sup>2</sup>.

In addition to this giant stride, the EFCC have put on trial the former Governors of Abia Orji Uzor Kalu, Chimaroke Nnamani of Enugu State, Saminu Turaki of Jigawa State and Jolly Nyame of Taraba State among others for corrupt enrichments and consequently secured an interim order of courts to attach properties traceable to the alleged crimes. One of the properties ordered by the court to be confiscated temporarily from the former governor of Abia State, Orji Uzor Kalu is the Sun Publishing Limited, publishers of *The Sun* Newspapers.<sup>3</sup>

However, the desirability of ensuring that sanctions of forfeitures or confiscations are done with circumspection is the fulcrum of this paper, after all, the Constitution guarantees the right to property under sections 43 and 44 of the 1999 Constitution of Nigeria. The paper seeks to examine some existing laws on criminal forfeiture and examine whether the modalities for their enforcement are in tune with the constitutional provisions on right to property. This particularly relates to non conviction based forfeiture, i.e. a forfeiture temporarily secured pending the determination of the guilt of the accused. The paper is divided into four segments. The first part examines the definition of terms and theoretical framework. In the second part, types of properties liable to forfeiture are examined. The third part looks at the forfeiture of properties in quasi criminal

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<sup>1</sup> Country report for Nigeria for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok Thailand 18<sup>th</sup> - 25<sup>th</sup> April 2005 P. 31

<sup>2</sup> See The Sunday Punch, September 10, 2006 p.13

<sup>3</sup> The Nation, August 22, 2007 p.6.

proceedings i.e. non conviction based forfeiture and its impact on the right to property. The paper was concluded in part four.

### **Definitions of Terms and Theoretical Considerations**

Criminal forfeiture relates to the transfer of rights, title and interest in the property which is the subject matter of an offence to the government, usually after conviction. Forfeiture can also be described as forfeiture as the loss of property, right or benefit as a penalty for doing or omitting to do some act. In the U.S., criminal forfeiture is in *personam* or against the individual and it requires the government to get indictment of the property used in or obtained with proceeds from the crime.<sup>4</sup> Upon completion of a criminal trial, if the defendant is found guilty, criminal forfeiture proceedings are conducted before a judge. The proceedings may result in a verdict of forfeiture of property used in the crime or obtained with proceeds from the crime.<sup>5</sup> However in Nigeria, criminal forfeiture order naturally follows when a person is convicted of official corruption. The court may order the forfeiture to the state of any property which has passed in connection with the commission of the offence, or if such property cannot be found, the court shall assess the value of such property and the amount shall be forfeited to the state. The payment of any sum ordered to be forfeited to the state may be enforced in the same manner as in the case of payment of a fine.<sup>6</sup>

The properties which may be subject of criminal forfeiture includes movable or immovable assets. Thus, land or landed properties, shares, money, negotiable instrument, securities, insurance policies and any investment may be object of forfeiture.

Conceptually, in the administration of criminal justice, there may be need to harmonise societal interest with those of individuals, and where harmony is impracticable, pragmatic weighing of the competing interest is necessary. This will necessitate the consideration of the claim or right of the individual in acquiring the property as well as the interest of the society in seeing that those properties are not illegitimately acquired. No doubt a citizen of Nigeria has a right to acquire and own immovable and movable properties anywhere in Nigeria<sup>7</sup>, but this must be legitimately done within the confines of the law. Hence the constitution recognises the imposition of penalties or forfeitures as a limit to the right of property, after a conviction for an offence<sup>8</sup>. The idea of using legislative measure as an instrument of social progress is a modern idea<sup>9</sup>. Classical utilitarianism believes in the use of law as instrument of social reform<sup>10</sup>. It was Jeremy Bentham's view that the task of laws should be to bring about the happiness of all the members of the community.<sup>11</sup> To him, the public ought to be the object of legislator; general utility ought to be the foundation of reasoning<sup>12</sup>.

It would appear that there is shift from the old tendency of placing undue emphasis on absolute individual rights to the neglect or detriment of rights of society as an entity. The object of sociological school of jurisprudence is to investigate how law, legal institution and the judicial process work and whether each of these satisfies the social needs and economic demands of the people, by a sociological balancing of competing interest and by continuous improvement of the existing machinery operating the system, in the light of the ends and expectations of an ever changing society.<sup>13</sup> The Supreme Court in *Attorney-General of Ondo State V. Attorney General of the Federation & Ors*<sup>14</sup> amplified the point that Corrupt Practices and Other Related Offences Act 2000 was meant to promote the good of the society. According to Uwais CJN

Section 15 sub-section 5 directs the National Assembly to abolish all corrupts practices and abuse of power. The question is: how can the National Assembly exercise such powers? It can only do so effectively by legislation. Item 67 under the exclusive legislative list read together with the provisions of section 4 sub-section 2 provided that the National assembly is empowered to make law for the peace order, and good government of the federation and any part thereof. It follows, therefore, that the National assembly has the power to legislate against corruption and abuse of office even as it relates to persons not in authority under public government office. For the *aim of making the law is for the common good*.<sup>15</sup>

<sup>4</sup> Maxeiner, James "Bane of American Forfeiture Law-Banished at last? 62 Cornell L. 768, 779, 792 (1977).

<sup>5</sup> *Ibid*

<sup>6</sup> Sections 43 and 44 of the Constitution of Nigeria, 1999.

<sup>7</sup> Section 44 (2) (b) *ibid*

<sup>8</sup> Wagar "Modern Views of the Ideas of Progress" (1967) 28 J. History of Ideas p.50

<sup>9</sup> Obilade, A.O. "The Ideas of the Common Good in Legal Theory" in J.A. Omotola (ed.) *Issues in Nigerian Law* (Lagos: Faculty of Law, University of Lagos (1991) Chapter 1.

<sup>10</sup> Bentham J. *An Introduction to the Principles of Morals and Legislation* (ed. J.H Burns and H.L. Hart 1970, London: Athlone Press, University of London) Chapter 4

<sup>11</sup> *Ibid* Chapter 1

<sup>12</sup> Adaramola, Funsho "The Relevance of the American Sociological Jurisprudence To the Nigerian Legal System" (1992) *Jus. Vol. 3 No 3 & 4* p.50.

<sup>13</sup> (2002) 27 WRN p.1 (italics supplied for emphasis)

<sup>14</sup> *Supra* pp. 176-177

<sup>15</sup> Adeyemi, A.A. "Organised Crime in Nigeria" (1990) *Jus. Vol.1 No.8* p.96

It could therefore be seen that whereas an individual has a right to own and acquire property, this must however be done legitimately, as the state have the right to have salutary and sensible ordering of things by making laws to make economic crimes less lucrative. In response to the changing trajectory and patterns of criminality<sup>16</sup> with the attendant implications for social and economic activities both locally and globally, the government of Nigeria have found it imperative to make new laws and establish agencies of tackling crimes in Nigeria. These laws includes Corrupt Practices and Other Related Offences Act 2000 (hereinafter called ICPC), the Economic and Financial Crimes Commission (Establishment) Act 2004 (EFCC), Money Laundering (Prohibition) Act<sup>17</sup> and Advance Fees Fraud and Other Related Offences Act<sup>18</sup>.

### **Types of Forfeiture in Criminal Trials in Nigeria**

1. Forfeiture of property related to specific offence:- This enables the court to make an order depriving the offender of any right he might have in a property whether real or personal, where the property was the by-product of the alleged offence. Section 18(2) of the Money Laundering Act provides that where a body corporate has been convicted of an offence under the Act, such body corporate shall be wound up and its assets forfeited to the government. Similarly, section 47 of the ICPC Act empowers the court to make an order for the forfeiture of any property which is proved to be the subject matter of the offence or to have been used in the commission of the offence, even if the offence is not proved against the accused provided the court is satisfied that the accused is not true and lawful owner of such property and that no other person is entitled to the property in good faith.<sup>19</sup>

Various methods may be used to transfer, conceal or disguise the proceeds of crime. Money acquired from drug trafficking, illegal arms sales, corrupt activities e.t.c. which cannot be pushed through banks and other financial institutions because of the “eagle eyes” of the law enforcement agencies around the world are laundered through a trade malpractices such as massive importation of goods like spare parts, pharmaceuticals products, chemicals, automobiles e.t.c. But once these illegal activities are unmasked, all the properties involved are liable to forfeiture on the order of the court. Also, if the Code of Conduct Tribunal finds a public officer guilty of contravention of any of the provisions of the Code, it may impose punishment which include seizure and forfeiture to the state of any property acquired in abuse or corruption of office<sup>20</sup>

2. Forfeiture of Forbidden Articles:- Where it is the policy of the law to prohibit the possession or exposure to view or offering for sale of certain types of article, forfeiture will be found as a method of enforcement. For example, obscene publication<sup>21</sup>, firearms and offensive weapons may be ordered to be forfeited after a conviction. Smuggled goods may also be confiscated and forfeited to the state.<sup>22</sup>
3. Forfeiture of Instrumentalities of Crime:- The court has the general power to confiscate property used in the commission of offences.<sup>23</sup> The court has the power under the Criminal Code to order the forfeiture of any personal property used in the commission of postal offences.<sup>24</sup> Property regarding which any offence appears to have been committed may be liable to forfeiture.

### **Non Conviction Based Forfeiture**

Conviction for certain offences renders an accused liable to punishment, of which forfeiture or restitution may be imposed, among others. However there is array of laws which empowers the court of the Agency responsible for implementing those laws to confiscate property whether real or in *personam* in order to preserve the *res* from being destroyed or the title in the property from being transferred to another person, pending the time the criminal trial of the accused will be concluded.

The EFCC (Establishment) Act<sup>25</sup> empowers the EFCC to trace and attach all the assets and properties of the person arrested for an offence under the Act, where the properties were acquired as a result of illegal act and shall thereafter cause to be obtained an interim attachment order.<sup>26</sup> Where the Commission has seized any assets or properties of any person arrested for an offence, the Commission shall make an ex-parte application to the court for an interim order forfeiting the property to the federal government. The court shall make an order forfeiting the property if there is prima facie evidence that the property is liable to forfeiture.<sup>27</sup> Where the person

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<sup>16</sup> No.7 of 2003, Laws of the Federation of Nigeria.

<sup>17</sup> 2006, Laws of the Federation of Nigeria.

<sup>18</sup> See also Section 19 of the criminal Code: section 30 of the EFCC Act 2004

<sup>19</sup> 5<sup>th</sup> Sch. Para. 18 (2) © of the Constitution of the Federal Republic of Nigeria 1999.

<sup>20</sup> Section 232 (3) of the Criminal Code; section 265 of the Criminal Procedure Law.

<sup>21</sup> Section 26 of the Customs and Excise Management Act Cap Laws of the Federation of Nigeria 1990.

<sup>22</sup> Section 263 of the Criminal Procedure Law

<sup>23</sup> Section 20 of the Criminal Code

<sup>24</sup> 2004

<sup>25</sup> Section 28 *ibid*

<sup>26</sup> Section 29 *ibid*

<sup>27</sup> Section 30 *ibid*

whose properties were forfeited in the interim is finally convicted of an offence, the EFCC shall apply to the court for a final order of confiscation and forfeiture of those properties.<sup>28</sup>

Similarly, the Corrupt Practices and Other Related Offences Act<sup>29</sup>, provides that the Independent Corrupt Practices Commission may seize any immovable property if it has reasonable grounds to suspect that the property is the subject matter of an offence under the Act.<sup>30</sup> However, unlike the EFCC Act, the ICPC may take physical custody of movable property or temporarily return it to the owner, subject to furnishing sufficient security on the property.<sup>31</sup> Where there is no prosecution or conviction in respect of any property seized under the Act, the Chairman of ICPC will apply to the court before the expiration of 12 months from the date of the seizure of the property to be forfeited to the state.<sup>32</sup> However, the court shall order the forfeiture of property connected with the crime upon successful conviction of the accused or if the court is satisfied at the end of the trial that the accused is not the true and lawful owner or that no other person is lawfully entitled to the property.<sup>33</sup>

The Advance Fee Fraud and Other Related Offences Act<sup>34</sup> otherwise known as 419 which aimed at tackling and obtaining by false pretences, gives the court the power to prohibit the disposition of property movable or immovable, at any stage of a trial, if it is satisfied that a prima facie has been out against an accused person, the court may also order a bank manager to stop outward payment or the operation of an account for the time being.<sup>35</sup> Moreover, where a property has come into the possession of the EFCC as unclaimed under the Advance Fee Fraud Act, Money Laundering Act 2004 or any other law enforceable under the EFCC Act, the court shall order that property or the proceeds from the sale of such property be forfeited to the federal government.<sup>36</sup> The Act also provides that an order of forfeiture so made by the court need not be based on a conviction for an offence under the Act or any other law.<sup>37</sup>

### **Criminal Forfeiture Vis a Vis Right to Property- Enhancing the Benefits and Engaging the Problems**

The Constitution of Nigeria 1999 guarantee right to property when it provide in section 43 that

“subject to the provision of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria”

The Constitution further provide in section 44 (1) that no movable property or any interest in an immovable property shall be compulsorily acquired except it is permissible by law and after prompt payment of compensation is made. This right is not absolute as it is partly qualified in section 44 (2) (b)

“for the imposition of penalties or forfeitures for the breach of law, whether under civil process or after conviction for an offence”.

The implication of the above stated provisions of the Constitution that except somebody has been convicted of a crime in court or tribunal established by law, it is wrong to confiscate or divest anybody of any interest in his immovable or movable property in Nigeria. However, the reality of the situation is that even if conviction has not been secured, or pending the time the trial will be concluded, it may be legitimate to order an accused to temporarily or otherwise forfeit property acquired unlawfully to the state in the public interest. This must not however be done in violation of other recognized constitutional provisions.

It is the cardinal requirement of criminal justice in Nigeria that every person who is charged with a criminal offence is entitled to be presumed innocent until the contrary is proved, although nothing shall invalidate any law which only requires the suspect to prove a particular fact.<sup>38</sup> A corollary of this right is that no person who is tried for a criminal offence shall be compelled to give evidence at his trial.<sup>39</sup>

The purpose of presumption of innocence is to minimize the risk that innocent person may be convicted and imprisoned. This explains why the Supreme Court held in *Onafowokan v. The State*<sup>40</sup> that it is better to allow ten guilty persons to go scot free than to convict one innocent person. It has been argued that the sense of fair play dictates a fair state-individual balance by requiring a government to leave the individual alone until good cause is shown for disturbing him and by requiring the government in its contest with the individual to shoulder the entire load.<sup>41</sup> Thus, the accused is not expected to prove his innocence, rather, it is the duty of

<sup>28</sup> 2000 Cap 359 LFN 69. (hereinafter called the ICPC).

<sup>29</sup> Section 37 *ibid*

<sup>30</sup> Section 38 *ibid*

<sup>31</sup> Section 38 *ibid*

<sup>32</sup> Section 48 *ibid*

<sup>33</sup> 2006 LFN

<sup>34</sup> Section 16 (1) *ibid*

<sup>35</sup> Section 17 *ibid*

<sup>36</sup> Section 17(6) *ibid*

<sup>37</sup> Section 36 (5) of the Constitution of Nigeria 1999

<sup>38</sup> Section 36(11) of the Constitution *ibid*

<sup>39</sup> (1986) 2 NWLR p.496.

<sup>40</sup> Atsenuwa, A.V. Due Process in Criminal Cases in pg 64.

<sup>41</sup> Section 36 (5) of the Constitution of Nigeria 1999; Section 138 (2) of the Evidence Act Cap 112 Laws of the Federation of Nigeria 1990

prosecution to prove the guilt of the accused beyond reasonable doubt.<sup>42</sup> In *Woolmington v. DPP*<sup>43</sup> Lord Sankey restated the law thus

“while the prosecution must prove the guilt of the prisoner, there is no burden on the prisoner to prove his innocence and it is sufficient for him to raise doubt as to his guilt. Throughout the web of English Criminal Law, one golden thread is always to be seen, that is it is the duty of the prosecution to prove the prisoner’s guilt---

The above decision has always been cited with approval by our superior courts in Nigeria.<sup>44</sup> In *Martins v. The State*<sup>45</sup>, the Supreme Court of Nigeria held

“It is well established principle of criminal prosecution that in criminal matters, a prosecutor is required to prove all the facts in the case. It has been stated firmly in criminal proceedings that nothing is to be taken for granted. The burden is on the prosecution throughout and that burden is to establish the case against the accused beyond reasonable doubt. Of course,, in our adversary system, the presumption of innocence is very mush with us and that the accused is entitled to sit back and leave the prosecution to prove his case.

There is nothing extra ordinary in placing the onus of the proof on the accused whose total assets exceed his legitimate income or a public officer whose on leaving office assets exceed his assets he declared upon assumption office or an accused who could not satisfactorily account for how he acquired his properties.<sup>46</sup> Hitherto, there are instances where the accused persons are burdened with proof of particular facts which arte in issue. In this respect, the accused has the evidential burden to discharge but the legal burden of proving the guilt is still on the prosecution. For example, under section 145, 146 and 168 of the Customs and Excise Management Act<sup>47</sup>, a burden is imposed on any person found in possession of dutiable goods to prove that appropriate duties have been paid on such goods or he has reasonable belief that his Vendor had paid the necessary custom duties. In *Chairman of Board of Customs & Excise v. Baye*,<sup>48</sup> it was held that once it was shown that dutiable foods were found in accused possession, a prima facie case was made out against her that she knowingly evaded payment with the intention of defrauding, the government of duties on the goods possessed. The burden would therefore be case on her to explain to the court that duties had been paid.<sup>49</sup>

Similar provision was contained in section 6 (3) of the Recovery of Public Properties (Special Military Tribunal)<sup>50</sup>, to the effect that where the prosecution has established a prima facie case against the accused, the onus or burden of proving that there was no unjust enrichment contrary to the provision of the Decree shall lie on the public officer or any person concerned.

Almost always, all the relevant information on the details of corrupt practices are peculiarly within the knowledge of the accused who may have used sophisticated methods to corruptly enrich himself and conceal his corrupt activities. This explains why the burden of proving the truth of every material particular of the allegation of corruption should not be foisted on the person alleging corruption. It is within this context that section r40 of the ICPC Act and section 28 of the EFCC Act imposes obligations on the person arrested for offences under those laws to make full disclosure of all his assets and properties or give information on any subject which is required of him by the officers investigating the offence.

However, it would seem that the presumption of innocence is manifestly transgressed if the EFCC can procure ex-parte order to seize and confiscate property of a suspect who has not even face a trial, not to talk of being convicted.<sup>51</sup> Ordinarily, criminals in their “ingenuity” may want to dispose of the property which is the subject matter of a crime or hide the true source of the monetary proceeds of their crimes through money laundering, hence the need to take a prompt action, so that the accused will not foist on the prosecution a state of helplessness with respect to tracing the ill gotten property. But this must be reconcile with the need to ensure that a third party who legitimately acquired interest in the property does not suffer. For instance, the EFCC had obtained an ex-parte order of a Federal High Court on July 24, 2007 which ordered the temporary forfeiture of all assets of the former governor of Abia State Dr. Orji Uzor Kalu to the Federal Government pending the outcome of his trial. Part of the alleged properties was the Sun Publishing Limited, publishers of the Sun Newspaper Kalu was said to have illegally transferred Abia State funds into Slok Nigeria Limited accounts, from which money was taken to buy the New Republic Newspaper, which he was said to have later changed to

<sup>42</sup> (2935) AC 462 at 481.

<sup>43</sup> *Odido v. The State* (1995) 1 NWLR pt.368 p. 88; *Onuoha v. The State* (1995) 3 NWLR pt. 385 p. 591.

<sup>44</sup> Section 54 of the ICPC Act.

<sup>45</sup> Cap 84 Vol. V. LFN 1990

<sup>46</sup> (1960) WNLR 178.

<sup>47</sup> See also *Ibiri & Anor V. Board of Customs & Excise* (1965) NMLR 35.

<sup>48</sup> Decree No.39 of 1984 as amended by Decree 21 of 1988.

<sup>49</sup> Section 28 and 29 of the EFCC Act 2004.

<sup>50</sup> See The Nation Newspaper, August 22, 2007 p.6.

<sup>51</sup> The Punch December 31, 2007 p. 10.



the Sun Newspapers. The management of the Sun Newspapers hotly disputed this account and thus filed another action seeking an order defreezing its bank accounts as well as attempt by the Federal Government to take over the management of the Newspaper.<sup>52</sup> Although the case is still pending in court, it is suggested that such ex-parte order of forfeiture, if obtained, be given publicity to enable a third party who legitimately own the property to come to court to prove its ownership and have the ex-parte order set aside. Where the property seized and confiscated on an interim bases is perishable in nature, it can be sold and put in an escrow account of the court.

It is further suggested that the property be disposed of by a licensed auctioneer authorized by the court, and not the EFCC. It is wrong to make the EFCC the accuser as well as the arbiter as to how the property should be disposed of. Only recently, the EFCC was alleged to have sold the property of a convict, Chief Emmanuel Nwude at an under-valued and sold to its cronies. The accused was convicted by a Lagos High Court for duping Banquo Noroestes of Sao Paulo, Brazil of the sum of \$242m.<sup>53</sup> Without giving credence to the allegation, it is opined that the EFCC will stand tall of probity when it is not involved in the sale or disposal of any ill gotten property whether it is based on an interim order or permanent order of the court.

It need be stated also that section 29 of the EFCC Act provides that the court must be satisfied that there is *prima facie* evidence that the property concerned is liable to forfeiture before making an order forfeiting the property to the Federal Government. It is instructive to note that *prima facie* is difficult to define precisely, but some vital ingredients are clear. Facts that are clearly revealing a crime and the crime links an accused person may be *prima facie* evidence that the accused has something to explain at the trial.<sup>54</sup> Guidance may also be found in the case of *Ajidagba v. Inspector-General of Police*<sup>55</sup> where it was held that evidence discloses a *prima facie* case when it is such that if uncontradicted and if believed, it will be sufficient to prove the case against the accused, although this is not the same proof which comes later when the court has to find whether the accused is guilty or not guilty. It is therefore suggested that facts to be relied upon before making an order of interim forfeiture must be strong, at least the quantum of such evidence must meet the requirement of establishing a *prima facie* case as enunciated by judicial authorities.

### **Concluding Remarks**

Nigeria is currently concerned about its level of corruption and has embarked upon the recovery of assets derived through corrupt practices at the national and international levels. The establishment of necessary laws and appropriate institutions like the Independent Corrupt Practices Commission (ICPC) and Economic and Financial Crimes Commission (EFCC) are part of efforts at combating corruption. The aspect of divesting corrupt person or a person involved in economic crimes of his illicit enrichment is a welcome trend in criminal prosecution.

Undoubtedly, the decision of an individual to engage in crime as a type of occupational choice is influenced by factors like the expected economic returns, the risk of punishment and the life style of a crime career.

Government must however be careful to ensure that the alarming level of crime is not used to justify extensive and inappropriate invasion of individual rights. The prevalence of serious crime like corruption and economic crimes calls for government action but does not provide a blank cheque for government to seize property without the necessary procedural safeguard. Indeed, it is precisely when public emotion is at its highest that procedural protection against possible miscarriage of justice is necessary. It has thus been suggested in this discourse that neither the EFCC nor the ICPC should be involved in the final disposal of property seized as a result of unjust enrichment. It has also been noted in this paper that the ex-parte order of interim attachment of property suspected to be unjust enrichment should be granted only if there is *prima facie* evidence linking the property with the crime and if the interest of a third party who is not in any way connected with the crime is not affected.

In the area of assets recovery from abroad, Nigeria has been having difficulties in getting the repatriation of proceeds of such assets because of reluctance and lack of cooperation by countries holding the proceeds in their banks. Therefore, there is need for international collaboration between Nigeria and other countries to ensure assets recovery-friendly. In this regard, any public officer who operate a foreign account in violation of item 3, 5<sup>th</sup> Schedule to the Constitution of Nigeria 1999 should forfeit the funds in that account to his or her home government, unless he can show that he opened the account lawfully with the authorization of his government or as an international civil servant or otherwise in a lawful foreign emolument and that the money in the account represents his remuneration from his foreign employment. The grave attention attached by the international community to global terrorism and the tracing and defreezing of account of terrorist syndicate should be extended to drug, corruption and other cases of unjust enrichment as well.

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<sup>52</sup> *Abacha v. The State* (2002) Vol. 32 WRN 1 at 61

<sup>53</sup> (1958) SCNLR 60

<sup>54</sup> (1992) 18 Commonwealth Law Bulletin p. 411.

<sup>55</sup>

It is further suggested that a comprehensive legislation similar to Proceeds of Crime Act 1991 of New Zealand<sup>56</sup> need to be enacted in Nigeria to stream line and harmonise procedure for disposal of assets forfeited to the Federal Government. This law will contain applications for confiscation orders, forfeiture orders and pecuniary penalty orders. It will also contain provisions relating orders, information gathering powers, production orders and monitoring orders.

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<sup>56</sup> Common Law Bulletin (1991), p.15.