# THE IMPACT OF "MEDIA TRIAL" ON THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE

A PAPER PRESENTED BY:


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# THE IMPACT OF "MEDIA TRIAL" ON THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.

## 1.01 INTRODUCTION:

In his address at the Anti Corruption Summit in London on the 11th of May, 2016 President Muhammadu Buhari posited that:

> ñ***Corruption is a hydra-headed monster and a cankerworm that undermines the fabric of all societies. It does not differentiate between developed and developing countries. It constitutes a serious threat to good governance, rule of law, peace and security, as well as development programs aimed at tackling poverty and economic backwardness".***

Again, while addressing the 70th session of the UN General Assembly, the President reaffirmed the unwavering commitment of the Nigerian government to fight corruption and illicit financial flows. There, he maintained that corruption and cross border financial crimes are impediments to development, economic growth, and the realization of the wellbeing of citizens across the globe. He expressed the willingness of the present regime to partner with international agencies and individual countries on a bilateral basis to confront crimes and corruption. In particular, he called upon the global community to urgently redouble their efforts towards strengthening the mechanisms for dismantling safe havens for proceeds of corruption and ensuring the return of stolen funds and assets to their countries of origin.

On the home front, the Nigerian government is actually waging a relentless war against corruption in all aspects of our national life. No sector has been spared in the current onslaught. The present campaign has culminated in the trial of top government functionaries such as national and state legislators, judicial officers (even of our revered Supreme Court), former Governors etc., etc.This time around, there appears to be no sacred cows.

Incidentally, these celebrated trials have been the subject of much public debates in the media. There have been a lot of controversies in the mode of trial of some of these suspects. This is the crux of the matter.

It is in the light of the foregoing scenario that I consider the theme of this yearôs Law Week: ***Fighting Corruption within the rule of Law in a Democracy*** to be very appropriate for discussion. Furthermore, the sub- theme on: ***"The Impact of 'media trial' on the constitutional presumption of innocence***ò is very much in tandem with these current developments.

## 2.01 CONSTITUTIONAL PRESUMPTION OF INNOCENCE:

By the provision of ***section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria,*** every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty.

***Article 7(1) (b) of the African Charter on Human and Peoples' Rights 1981*** also guarantees this presumption when it states as follows:

> ***1. Every individual shall have the right to have his cause heard. This comprises:***
>
> ***(a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force;***
>
> ***(b) the right to be presumed innocent until proved guilty by a competent court or tribunal;***
>
> ***(c) the right to defence, including the right to be defended by counsel of his choice;***
>
> ***(d) the right to be tried within a reasonable time by an impartial court or tribunal***

The presumption of innocence is the legal principle in criminal cases that one is considered innocent until proven guilty. This basically means that until a judicial pronouncement on the guilt or otherwise of the accused person is made,

he/she is to be treated as an innocent citizen; anything contrary would amount to a breach of the Fundamental Human Rights of the individual.

It is to be observed from the provision of the said section that it is only ***when a person is charged to court*** with a criminal offence that he is presumed to be innocent until he is proved guilty. In the case of: ***Aig- Imoukhuede vs. Ubah***[1] , the court 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. Furthermore, the court held that the phrase ***"charged"*** in the said section refers to an arraignment of an accused 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.

The other aspect of the presumption of innocence is that the burden of proving the guilt of the accused person is on the prosecution. ***Section 135 of the Nigerian Evidence Act 2011*** casts the burden of proving the guilt of an accused person on the prosecution who alleges that the accused person has committed an offence, and specifies the degree of such proof to be beyond reasonable doubt.

The prosecution is saddled with the responsibility of adducing credible evidence to establish the guilt of the accused person beyond reasonable doubt. No matter what indictment or formal charges are brought against him, and no matter what the popular the opinion may be, if the prosecution cannot decisively establish his guilt at the trial, he is entitled to be discharged and acquitted.

In the case of: ***Ahmed*** v ***The State***[2] ,the Supreme Court held that:

> ***"It is a cardinal principle in criminal proceedings that 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. In criminal cases, 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 person."***

In the earlier case of: ***Ibrahim*** v ***State***[3], the Court of Appeal held that the law vests the responsibility on the prosecution to prove the guilt of the accused beyond

[1] (2015) 8 NWLR (Pt.1462) 399 at 408.See also, the case of: I.G.P vs. Ubah (2015) 11 NWLR (Pt.1471) 405 at 414.
[2] (1999) 7 NWLR (Part 612) 641 at 673
[3] (1995) 3 NWLR (Part 381) 35

reasonable doubt and that it is not part of the system of our law that an accused person should prove his innocence.

## 3.01 RIGHT TO FREEDOM OF EXPRESSION AND THE PRESS:

The right to freedom of expression and the press is guaranteed and protected by ***Section 39 of the 1999 Constitution of Nigeria*** in the following terms:

1. ***Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference;***
2. ***Without prejudice to the generality of sub section (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions provided that no person, other than the government of the federation or a state, or any other person or body authorised by the president on fulfillment of a condition laid down by an Act of National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.***

The right to freedom of expression is also guaranteed under the various international instruments on human rights and fundamental freedoms. Thus, ***Article 19 of the Universal Declaration on Human Rights*** provides as follows:

> ***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.***

Similarly, ***Article 19 of the International Covenant on Civil and Political Rights*** provides for the right to freedom of expression as follows:

*1.* ***Everyone shall have the right to hold opinions without interference.***

***2. 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.***

Again, ***Article 9 of the African Charter on Human and Peoples Rights*** also provides for the protection of the right to freedom of expression in the following terms:

> ***1. Every individual shall have the right to receive information.***
> ***2. Every individual shall have the right to express and disseminate his opinion within the law.***

Freedom of expression is one of the essential ingredients of every democratic society. According to ***Professor Ben Nwabueze***[4], free speech and a 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. He therefore concluded that free dissemination and discussion of ideas and opinions is indispensable to democratic government.

However, the right to freedom of expression is not absolute, but qualified. The Nigerian Constitution and the International Instruments, which have guaranteed the right to freedom of expression, have also provided for some circumstances where this right may be restricted. Under ***section 39(3) of the 1999 Constitution*** of Nigeria, the right to freedom of expression could be restricted by any law that is reasonably justifiable in a democratic society, for the purpose of preventing the disclosure of information received in confidence or for the purpose of maintaining the authority and independence of the courts. Also, by virtue of ***Section 45(1) of the 1999 Constitution***, the right to freedom of expression and some other fundamental rights guaranteed in the Constitution could be restricted or curtailed by any law that is reasonably justifiable in a democratic society:

[4] B.O. Nwabueze, The Presidential Constitution of Nigeria (London/Enugu: C. Hurst & Co. (PublishersLtd) in association with Nwamife Publishers Ltd 1982) at 456

***(a) In the interest of defence, public safety, public order, public morality, public health: or***
***(b) For the purpose of protecting the rights and freedoms of other persons***.

***Article 19 (3) of the International Covenant on Civil and Political Rights*** provides for the restriction of the right to freedom of expression as follows:
***"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.***
***(a) For respect of the rights or reputation of others.***
***(b) For the protection of national security or public order or of public health or morals".***

Also, in this regard, the ***African Charter on Human and Peoples Rights*** simply provides that the exercise or enjoyment of the right to freedom of expression shall be done within the limits of law.[5]

In the case of: ***Adikwu vs. Federal House of Representatives***[6], ***Balogun, J***. observed 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 persons who supply it with the information appearing in its reports"***

One of the recognised restrictions to the right to freedom of expression is the right to the protection of reputation as provided under the law of

[5] See also Adikwu v Federal House of Representatives (1982) 2 Nigerian Commerical Law Report394, where a Lagos State High Court also held that a Newspaper cannot be required to disclose thesources of information except in grave and exceptional circumstances

[6] (1982) 3 N.C.L.R 394 at 417.

defamation. A person will therefore be liable if in the course of exercising his right to freedom of expression, he infringes the right of others to the protection of his reputation.

The point must be made that the media should have the freedom to inform the public on matters of public interest and concern. But in exercising this freedom, the media must act with the highest sense of responsibility. It is said that ***the pen is mightier than the sword***. The power of the media is very enormous. It must be careful not to misuse or abuse such awesome powers. They have a duty to feed the public with credible news and honest and fair comments.

## 3.02 MEDIA TRIAL:

The ***Microsoft Encarta Dictionary*** defines the media as:

> ***"The various means of mass communication considered as a whole, including television, radio, magazines, and newspapers, together with the people involved in their production***[7].ò

Today, the media space has greatly expanded. With the advent of the internet, we now have the ***conventional media*** and what we now know as the ***social media***. The ***social media*** has been defined as:

> ***"the collective of online communications channels dedicated to community-based input, interaction, content-sharing and collaboration. Websites and applications dedicated to forums, micro blogging, social networking, social bookmarking, social curation, and wikis are among the different types of social media.***[8]

Some examples of social media platforms include: ***Face book, Twitter, About me, Google+, Hotlist, Instagram, My Life*** etc., etc.

[7] Microsoft® Encarta® 2008. © 1993-2007 Microsoft Corporation. All rights reserved

[8] http://whatis.techtarget.com/definition/social-media

The social media even enjoys more patronage than the conventional media. The internet has made the media highly interactive. Most print and electronic media have their on-line platforms where members of the on-line community can read materials and make comments on-line. This has dangerously enlarged the field of contributors. Consequently, every Tom, Dick and Harry can air their views on sensitive matters such as criminal trials in court. However, the media houses still reserve the right to censor such publications.

According to ***Wikipedia,*** the online free encyclopedia, ***Trial by media*** is a phrase which was introduced in the late 20th century and early 21st century to describe the impact of ***television*** and ***newspaper*** coverage on a person's reputation by creating a widespread perception of guilt or innocence before, or after, a verdict in a court of law.

Its first inception was the phrase ***Trial by Television*** which found light in the response to the 3rd February, 1967 television broadcast of ***The Frost Programme,*** host ***David Frost***. The confrontation and Frost's personal adversarial line of questioning of insurance fraudster suspect, ***Emil Savundra*** led to concern from ITV executives that it might affect Savundra's right to a fair trial.[9]

During ***high-publicity court cases***, the media are often accused of provoking an atmosphere of public hysteria akin to a ***lynch mob*** which not only makes a fair trial nearly impossible but means that regardless of the result of the trial the accused will not be able to live the rest of his life without intense public scrutiny.

***The golden rule is that the media must not make any comment which would tend to prejudice a fair trial***. The freedom of the press is fundamental in our constitution. The media have the right to make fair comments on matters of public interest. But this is subject to the law of libel and of contempt of court.

I will illustrate the point with a few judicial decisions on the subject matter. The first case is an old celebrated English case. It is the case of: ***A.G. vs. Times Newspapers (The Thalidomide case)***[10].Sometime in the early sixties, some pregnant women in England had taken a drug called thalidomide manufactured by a pharmaceutical company, Distillers. When they gave birth, their babies were born deformed. The parents sued the company. The company tried to settle the matter out of court. They succeeded in settling with some set of the parents who discontinued their suits. They could not settle with another set of parents who were

[9] Wikipedia:Trial by Media- en.m.wikipedia.org/wiki
[10] (1974) A.C. 273.

constrained to continue their own suits. The suits became protracted and dragged on for over ten years. The ***Times Newspapers*** became sympathetic with the plight of the distressed parents who were seeking for compensation in court. The Newspapers decided to publish some articles to mount pressure on the company to settle with the parents out of court and pay them adequate compensation. They launched a media campaign against the pharmaceutical company. The Attorney General issued a writ against the Times Newspapers to restrain them from publishing the articles.

The case went up to the House of Lords. In their final verdict, the House of Lords established the principle that: ***newspapers should not publish comments or articles which "prejudged the issue in pending proceedings".***

In the celebrated Thalidomide case[11] , Lord Reid remarked thus:

> ***"What I think is regarded as most objectionable is that a newspaper or television programme should seek to persuade the public, by discussing the issues and evidence in a case before the court, whether civil or criminal, that one side is right and the other is wrong."***

In recent times, there have been reported incidents of media trials which have sparked some negative comments from members of the public. Incidentally, one of the early critics of the practice of media trial was the former ***Executive Chairman of the Economic and Financial Crimes Commission (EFCC), Mrs.Farida Waziri.***

During the 2009 Annual NBA Conference in Lagos held at the Eko Hotel, Lagos between August 16th - 21st , Chief (Mrs.) Farida Waziri in her remarks at the Lawyers In The Media (LIM) of NBA session with the theme: Crusade Against Corruption and The Effect of Trial By Mediaò noted the effects of media trial on the judicial process thus:

> ñ***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, 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 dishonored where it ultimately reaches a conflicting***

[11] (1974) A.C. 273 at 300

***or different verdict. More often than not, allegation 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 work which the media wants the public to believe that the commission ought to have done. Slow proceedings in the courts are placed at the door of the Commission. The media also wants the commission to investigate and prosecute certain individuals without which the commission would be considered as ineffective. Some of these individuals 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 law which we must all uphold".***[12]

Again, in an article published in the Vanguard Newspapers of 9th April, 2017, captioned: **BETWEEN MEDIA TRIAL AND COURT TRIAL JUSTICE ADEMOLA**[13], one Richard Akinnola observed thus:

ñ***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. Trial by the media refers to a situation whereby the media create 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. According to Prof. P.K. Fogam, in a paper titled "Crusade against corruption and the effects of trial by the media", at an event of the National Association of Judicial Correspondents (NAJUC):"Trial is essentially 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 would therefore be an undue interference in the process of justice delivery"***

[12] https://guardian.ng/news/rickey-tarfa-lawyers-and-media-trial/

[13] http://www.vanguardngr.com/2017/04/justice-ademola-media-trial-court-trial/

Only very recently, ***Hon. Justice Gabriel Kolawole*** of the Federal High Court in Abuja was forced to suspend hearing in the trial of a case involving a serving Army Colonel Nicholas Ashinze and four others as a result of a false media publication by the EFCC. One Mr. Wilson Uwujaren, who is the head of the media and publicity department in the EFCC had issued a publication to the effect that the serving colonel Ashinze had been indicted over a N36.8bn public fund diversion whereas, in the on-going trial, the accused was charged with N1.5bn public fund diversion. The offending press release also referred to Ashinze as a retired Colonel whereas, he is still serving. However, after a written apology from the EFCC was published sometime last week, the trial judge agreed to resume hearing.

Finally, in ***This Day Newspaper*** publication of 27th of March, 2017, a foremost human rights lawyer, ***Mr. Femi Falana SAN*** condemned the Nigerian Police for parading 20 suspects in the Ile-Ife crisis and 49 officials of the Peace Corps of Nigeria before the media. He stated that the media parade was absolutely illegal and a violation of their constitutional rights.[14]

The bottom line is that the media must avoid any form of media trial in respect of matters pending before the regular courts. Conducting media trial of accused persons is tantamount to the media assuming jurisdiction to try offences that should be tried by the regular courts. This is a ***naked usurpation of the judicial function*** which is contrary to the rule of law.

## 4.01 CONCLUSION:

The presumption of innocence is a fundamental right guaranteed under the 1999 Nigerian Constitution. The right to freedom of expression and the press is also guaranteed under the Constitution. The courts have a duty to protect both rights. Many years ago, that erudite jurist, ***Lord Alfred Denning, Master of the Rolls*** counseled that:

> ***"When considering the issue, it must always be remembered that besides the interest of the parties in a fair trial, there is another important interest to be considered. It is the interest of the public in matters of national concern, and the freedom of the press to make fair comment on such matters. The one interest must be balanced against the other. There may be cases where the subject matter is such that the***

[14] https://www.thisdaylive.com/index.php/2017/03/27/ile-ife-crisis-falana-faults-nigeria-police-over-media-parade-of-suspects/

***public interest counterbalances the private interest of the parties. In such cases, the public interest prevails. Fair comment is to be allowed."***[15]

Thus, it is all about balancing the right of the accused to a fair trial by enforcing his presumption of innocence with the right of the members of the public to comment fairly on matters of public interest arising from the trial.

This naturally raises some salient issues relating to the integrity of our courts and the media. Our courts must be manned by men and women of unquestionable integrity. They must be experienced enough to hold the scales of justice to balance conflicting interests. They must be courageous enough to resist the external influence of public opinion emanating from the media. The judge must not make his findings based on the popular sentiments expressed in the media.

Sometime in 1975, one ***Prince Felix Osadolor (alias Afro)*** was standing trial for armed robbery before the Midwest Robbery and Firearms Tribunal. The electronic and print media were all awash with negative stories of his alleged criminal exploits before his trial. In the eyes of the public his guilt was a foregone conclusion. On the day of judgment the Tribunal presided over by the 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 sparked an outrage from the public. But the maxim is: ***Fiat Justitia Ruat Coelum*** (Let justice be done even though the heavens fall).We need judges and magistrates of such caliber who can withstand the pressure from the public.

Coming to the media, they must raise a crop of responsible and seasoned journalists who are subjected to continuous and intensive training to meet with global best practices in the profession. They should be conversant with the essential aspects of Media Law particularly in the area of ***defamation*** and ***contempt of court***.

Legal Practitioners should abide by the code of conduct and the ethics of the Legal profession and must avoid making utterances in the media that will be prejudicial to trials in court. They must not incite the public against the courts by their conduct or utterances.

Finally, all those who are involved in the administration of justice should protect the dignity and the integrity of the courts. They should avoid frivolous petitions against judicial officers. They should also desist from unfair criticisms of

[15] Lord Denning: The Due Process of Law, Butterworths (1980) pp.46-47.

the courts in the media when they are dissatisfied with the verdict of the court. When they are dissatisfied with a court ruling or judgment they can appeal.

I will conclude with the immortal words of ***Lord Denning, Master of the Rolls*** in the case of: ***R vs. Commissioner of Police of the Metropolis***[16]:

> ***"All we would ask is that those who criticize us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication."***

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[16] (1968) 2 Q.B. 150 at 154.