VICTIM- COSTS, COMPENSATION AND RESTITUTION UNDER THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015

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1. Introduction

Until recently, the punishment policy in Nigeria weighed heavily on the side of punishment for the offender to the obvious and very concerning neglect of remedy for the crime victim. Undue emphasis was placed on the offender, crimes, even those committed against the person, were taken as offences against the State.

Although provisions were made for some form of victim-compensation and restitution in previous criminal law and procedure legislations in Nigeria; such as the repealed Criminal Procedure Act (Law), the Criminal Procedure Code as well as the Criminal and Penal Codes, these provisions were grossly limited in scope and implementation as well scarcely deployed. For instance, section 255 of the Criminal Procedure Act, provides that, upon conviction, a court may order compensation to be paid to a prosecutor and not to the victim of the crime!! While under section 256 of the CPA, compensation not exceeding the scant sum of twenty naira may be ordered to be paid to a person falsely accused of a crime or a criminal case that was ultimately found to be frivolous or vexatious.

The prosecution of most criminal cases in vast majority of cases that pass through the litigation mills of courts in Nigeria, leading up to

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the conviction of offenders in some cases will often end in the passing of a verdict of imprisonment with or without an option of fine. Where such fines are imposed and paid, the money will usually go into government coffers. Crime victims, who initiated the trial and are required to participate actively, at their own expense, in the trial to achieve success, rather than get adequate compensation or restitution for their pains and losses from the case, are left empty handed coupled and as additional take-away to these crime victims, there is the usual forlorn feeling of having being used by the government as a contributory agent to its revenue generation drive.

In a few cases, such aggrieved victims of offences are forced to institute separate civil suits in pursuit of monetary compensation, cost or restitutions. This clearly results in additional expenses, avoidable multiplicity of actions in court leading to worsening congestions in our courts and in many cases prolonged re-litigation of such cases and attendant frustration. According to Adeniyi Olatubosun[2], a situation under which the victim becomes the Cinderella of the criminal trial no longer accords with the tripartite notion of social justice, viz, justice to the accused, the society and the victim.

Happily, the salutary retention, expansion and provision of an elaborate legal framework for court- ordered award and enforcement of costs, compensation and restitution for crime-victims has come to ameliorate the perennial pains of crime victims in Nigeria. This has been described as one of the most progressive and revolutionary steps taken by the draftsmen of the Administration of Criminal Justice Act (ACJA) 2015.[3] It also represents a patent embodiment of

[2] Olatubosun A, "*Compensation to Victims of Crime In Nigeria: A Critical Assessment of Criminal – Victim Relationship*" Journal of the Indian Law Institute, Vol. 44: 2, p.205 Available at www.ili.ac.in Accessed on 15/7/25

[3] Agaba J.A "Practical Approach to Criminal Litigation in Nigeria" Bloom Legal Temple, 2017 Lagos Revised 3rd Edition, p. 881

one of the stated objectives of the ACJA (ACJL) under section 1 which is:

> To ensure that the system of procedure and administration of criminal justice in Nigeria (Edo State) promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and *protection of the rights and interests of the suspect, the defendant and the victims.* (Underlining supplied for emphasis)

Clearly therefore, one of the ways of protecting the rights and interest of crime victims is court imposed-provision and enforcement of adequate compensation and restitution at the end of criminal trials in the overall interest of justice. This Paper, with the aid of relevant provisions of the ACJA, looks at compensation and restitution under this enactment. In doing so, any reference to relevant sections of the ACJA shall be taken to also refer to same section of the Edo State Administration of Criminal Justice Law (ACJL) 2018; given that it is *impari materia* with the ACJA in the part relating to cost, compensation and restitution.

2. What is Compensation and Restitution?

The word, *"compensation"* is defined in Black's Law Dictionary,[4] as:

> ...1. Remuneration and other benefits received in return for services rendered, especially salary or wages (cases of master and servant, Employer- Employee. 2. Payment of damages, or any other act that a Court orders to be done by a person who has caused injury to another...

[4] Bryan A. Garner, "Blacks Law Dictionary" 9th Edition, at p. 322

The above definitions were referred and adopted in the cases of *Udo vs. Government, Akwa Ibom State* (2012) LPELR-19727 (CA) and *Nwankwo vs. Okereke* (2013) LPELR-21952 (CA) where it was held that:

> "... the issue of payment of compensation is a serious matter. It is always a head of claim of its own. A party has to claim for compensation and lead evidence to prove same before a Court can decide to award compensation to a party just like that. As was rightly pointed out by the Court below, the Court is not a Father Christmas." [5]

Compensation is therefore, something, typically money, awarded to someone in recognition of loss, suffering, or injury.

In the case of **restitution**, Black's Law Dictionary in relation to criminal trials defines the term *Restitution* as compensation for loss, especially, full or partial compensation paid by a criminal to a victim, not awarded in a civil trial or tort, but ordered as part of a criminal sentence or as a condition of probation..."[6]

3. Purpose of Compensation

The purpose of Compensation and Restitution is primarily to:

[5] See also: Oak Pensions Limited & Ors V. Mr. Michael Oladipo Olayinka (2017) LPELR-43207(CA), Nwankwo V. Okereke & Anor (2013) LPELR-21952(CA), Gbeneyei & Anor V. Naoc Ltd & Ors (2023) LPELR-61587(CA)

[6] Bryan A. Garner, "Blacks Law Dictionary" 9th Edition, at p. 1428

• put the victim in the financial position they would have been in if the crime had not happened; and

• recognise the harm caused to the victim.

4. Restitution And Compensation Under The ACJA/ ACJL

To address this issue, Section 319 of the ACJA/ ACJL now provides that a court may, **within the proceedings** or **while passing judgment** order the defendant or convict to pay a sum of money;

(a) **As compensation** to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant or convict, where substantial compensation is in the opinion of the court recoverable by civil suit;

(b) In compensating a bona fide purchaser for value without notice of the defect of the title in <u>any property</u> in respect of which the offence was committed and has been compelled to give up.

(c) In defraying expenses incurred on medical treatment of a victim injured by the convict in connection with the offence.

In the consideration of the above section 319 of the ACJA (ACJL), what immediately stands out is in form of a query: Which is that, if courts impose compensation *"within proceedings"* (as has been done under this section), which amounts to an order at an interlocutory state of proceedings, will that not amount to prejudging and finding the defendant guilty of the alleged offence even before judgment?

Thereby seriously prejudicing the just trial and determination of this substantive criminal trial. Does it not infringe on the Constitutional guaranteed right to fair hearing? Assuming at the end of trial, the defendant is found not guilty, how will compensation already paid by him be recovered? Depending on the view that one holds, this may be an area to be considered for future amendment of section 319(1) of the ACJA.

The provision of section 319 of the ACJA 2015 was critically examined by the Court of Appeal in *Ibrahim Musa Suleiman v. Federal Republic of Nigeria*[7] Where the court held that while the section gives the court powers to order compensation/ restitution, the section "...do not give room to any criminal Court to arbitrarily award compensation to any victim of an offence, when there is no sufficient evidence to such amount of compensation. In other words, while there is no dispute with regard to the power of the Court to order compensation/restitution, in awarding compensation under the statutes above, the Courts must however be certain as to the exact amount owing, for which compensation should be paid.

Under section 321 of the ACJA (ACJL), a court after conviction may adjourn proceedings to consider and determine the sentence appropriate for each convict:

[7] (2018) LPELR-46710 (CA)

(a) In addition to or in lieu of any other penalty authorized by law, order the convict to make restitution or pay compensation to any victim of the crime for which the offender was convicted, or to the victim's estate, or

(b) Order for the restitution or compensation for the loss or destruction of the victim's property and in so doing the court may direct the convict:

(i) To return the property to the owner or to a person designated by the owner;

(ii) Where the return of the property is impossible or impracticable, to pay an amount equal to the value of the property;

(iii) Where the property to be returned is inadequate, or insufficient, to pay an amount equal to the property calculated on the basis of what is fair and just.

Compensation may also be ordered in favour of a victim of false allegations.

Be that as it may, the law as it presently stands is that the court may order compensation to the victim of an offence in 3 circumstances:

(a) Where in the opinion of the court substantial compensation is recoverable by civil suit;

(b) In instances where a bona fide purchaser for value without notice of the defect of the title in any property in respect of

which the offence was committed and has been compelled to give up;

(c) In defraying medical treatment of a victim injured by the convict in connection with the offence.

An order of compensation may be made irrespective of the fact that no fine has been imposed on the defendant in the judgment.

At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into consideration any sum paid or recovered as compensation under section 319 (1). While the pendency of criminal proceedings shall not be a bar to a civil action in respect of the same subject matter.

A person to whom compensation is awarded may refuse to accept it[8]. But where he or she receives the compensation, or where the convict, having been ordered to pay compensation, suffers imprisonment for non-payment, the receipt of the compensation or the undergoing of the imprisonment, as the case may be, shall act as a bar to any further action for the same injury.[9]

5. Extent of Monetary Jurisdiction of Courts with Limited Jurisdiction such as Magistrates or Customary Courts to Impose Compensation.

[8] Section 324 (1)
[9] Section 324 (2)

Another point that is worthy of emphasis was underscored by the Supreme Court in *Martins v Commissioner of Police*[10] where the apex court held that the competence of a Magistrate to award compensation to a crime victim, is not limited to the extent of its monetary jurisdiction. In other words, in the exercise of the powers of a court with limited jurisdiction (such as a Magistrates or customary courts), it does not matter that the amount awarded as compensation exceeded the monetary jurisdiction in terms of fine or what it could entertain if he was sitting in his civil jurisdiction.

Similarly, the Supreme Court, while considering a similar section of the Penal Code that provide for victim compensation, in *Martins v. COP*[11] held that:

"… That Section does not affect or alter the jurisdiction of any Magistrate in civil or criminal proceedings. Once the Magistrate convicts the accused, S.78 of the Penal Code places no limit on the amount of compensation to the victim of the offence charged."

4. ENFORCEMENT OF AN ORDER OF COST, RESTITUTION AND COMPENSATION

Where compensation is ordered by any court, the ACJA provides that it may be enforced as if it were a fine (See: section 325). Where therefore, the convict is unable or unwilling to pay, the ACJA gives

[10] (2013) 4 NWLR (Pt. 1343) 25

[11] (2012) LPELR-9821(SC) (Pp 17 - 17 Paras A - C), See also: *Amos Nuhu Daniel V. A. Y. A. Agro Allied Nigeria Limited & ANOR* (2022) LPELR-57961(CA)

the court several options in the enforcement or execution of its order of compensation. These are:

4.1 By Imprisonment

Such a convict may be imprisoned in default of payment. Just in the case of custodial sentences where an order of fine in lieu is usually stated to be in lieu of a defined term of imprisonment, an order of imprisonment in default of payment of a court-imposed compensation must also be definite. This is why section 323(1) of the ACJA stated clearly that the court, may, in default of payment of such compensation, or any part of it, award a term of imprisonment against the person whom the order was made, <u>for any term not exceeding the term prescribed in respect of a like sum in the scale of imprisonment set out in this Act.</u> Or the court may sentence the person to community service in accordance with section 462 of the Act. (underlining supplied for emphasis).

In this regard, there is a scale of imprisonment contained in the 4th Schedule to the Act.

In *ABDULLAHI V. C.O.P* [12] which was against, *inter alia*, an order of a Magistrates' Court which the Magistrate stated as follows:

> COURT: In line to the pleadings (sic) by the convict and the remorseful posture by exhibited, I am of the view to

[12] (2022) LPELR-57646(CA),

hereby sentence you Adamu Abdullahi to six(6) calendar months imprisonment on each of the twin offences with an option of N30,000 (Thirty Thousand Naira) only fine (sic)on each of the twin offences, and in addition the convict shall pay for (sic) the nominal complainant a compensation of N550,000 (Five Hundred and Fifty Thousand Naira) only, failure to (sic)which the convict shall serve an additional Eighteen (18) months imprisonment as per the decision of the Court of Appeal in COP vs. Ganiyu Martins, and so be it.(sic).

Signed:
Chief Magistrate
01-11-2018.

On appeal against the above order, one of the grounds of appeal that was canvassed by counsel to the appellant was that the order of compensation as provided for in Section 330 of the ACJL, Kaduna State (which is virtually *impari materia* with section 319 of the ACJA (and Edo ACJL) does not give the trial magistrate or any other Court the powers to order a term of imprisonment in lieu of payment of compensation against a convict. In upholding the above order and dismissing the appeal, the Court held that, "*… a very wide latitude has been given to trial Judges to exercise lots of discretion on the issue of Compensation…care must be taken in interpreting our relatively young ACJL of Kaduna State 2017.*"

4.2. Execution Against the Movable And/or Immovable Property of The Offender

Under the ACJA, notwithstanding that the offender may be imprisoned, the court may also issue a warrant for the levy of the amount of compensation by any means permitted by law, including:

(a) By the seizure and sale of any movable property belonging to the defendant or convict;
(b) By the attachment of any debts due to the defendant or convict, and
(c) Subject to the provisions of the Land Use Act by the attachment and sale of any immovable property of the convict situated within the jurisdiction of the court.

A warrant for seizure and sale of the movable property of a person under this section shall be addressed to the court within whose jurisdiction it is to be executed.

Under the law, where a convict has been ordered by the Court to pay a fine with or without imprisonment in default of payment of the fine, the court under this section may exercise any of the following powers:

(a) Allow time for payment of the fine;
(b) Direct that the fine be paid by installments;
(c) Postpone the issue of warrant of execution;
(d) Without postponing the issue of a warrant, postpone the sale of any property seized under the warrant; or

(e) Postpone the execution of the sentence of imprisonment in default of payment of the fine.[13]

4.3 Provision of Security to Pay by a Convict

The ACJA allows the convict to provide satisfactory security by means of a bond with or without sureties, in which case, the court may order that the execution of sentence of imprisonment on a convict who has been committed to prison in default of payment of fine (compensation) be suspended and that he be released.[14]

5. Conclusion

In this paper, reference has been made to the state crime victim compensation and restitution in criminal legislations before the enactment of the ACJA in 2015. In doing so, the point has been underscored that before 2015, the relief of compensation and restitution under previous laws in the criminal justice system of Nigeria was limited in scope and implementation. The ACJA has now come to change all of that. In line with one of its stated objectives, the ACJA recognizes that the notion of tripartite justice which regularly subsumes, *"justice for the victims of crime"* at the lowest rung of the trinity ladder of criminal justice is overhauled and re-defined. This has been achieved by the provision of a regime of more expansive legal framework for payment of

[13] ACJL, section 327 (1)
[14] Section 327 (3)

compensation and restitution to victims of crimes. Many of the ACJA provisions in this area have been highlighted and examined. The salutary effect of these extant provisions of the ACJA cannot be over emphasized, especially against the backdrop of contemporary advancements crimes, many of which come with great physical harm and financial losses.

Thanks for listening and God Bless.

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