

A LEGAL EXAMINATION OF THE POWERS OF THE NIGERIAN POLICE TO EFFECT ARREST

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ABSTRACT

The Nigerian Police is notably the principal agency saddled with the responsibility of maintaining law and order throughout the federation. In carrying out its duties as specified under the Nigerian Police (Enforcement) Act 2020 and other relevant statutes, the Nigerian Police is vested with several powers for efficient and effective policing and the enforcement of extant laws. One of such powers is the power to effect the arrest of any person allegedly associated with any criminal activity. The Nigerian criminal justice system empowers a police officer to effect the arrest or the detention of any person who he reasonably suspects to have committed a criminal offence. Such arrest may be effected with or without warrant depending on the circumstances and the designation of the law creating the offence. However, the law requires that a police officer effecting the arrest of a suspect should first satisfy himself that there are reasonable or probable cause for the arrest. In addition, he is required to conduct the arrest in the very manner specified by law. Thus, where an arrest effected by a police officer enjoys legal backing, any legal action against the police officer or the Nigerian Police would fail even if subsequent investigation exonerates the arrestee. The fundamental rights of a person arrested or detained must however be respected as any arrest effected in a manner that offends the law will be declared unlawful, irregular or in default in which case will entitle the victim to a right of action against the police.

Keywords: Policing, Power of Arrest, Nigeria.

INTRODUCTION

All over the world, governments have the responsibility to protect life and property. Here in Nigeria, the Constitution provides that the 'security and welfare of the people shall be the primary purpose of government². The Police as a law enforcement agency has the principal duty to maintain law and ensure order. In carrying out its duties however, there are certain enabling legal and regulatory enactments which defines its composition, purpose, duties and powers. One of the powers exercised by the Nigerian police is the power to effect arrest. This power is statutory and there are several circumstances in which it can be exercised.

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² CFRN 1999, S 14 (2)

In order for an arrest to be considered lawful, it must be executed within the confines of the rules of law. Rule of law in this regard entails the enforcement of law in compliance with the procedures specified, including the respect for the rights and civil liberties of citizens. Rule of law is regarded as a dynamic concept employed to safeguard and advance the will of the people.³ It connotes actions according to law. Thus, an arrest will enjoy statutory flavor or be considered lawful only when the legal formalities of the law are adhered to. This and more will be examined by the writer in this project work.

CONCEPTUAL FRAMEWORK

This chapter deals with the definitions, meanings and the analysis of legal and institutional concept. It also seeks to throw more light on the concepts by examining with instances the circumstances they will apply. Below are the various concepts:

Legality

The term legality is a derivative of the word legal meaning relating to law; falling within the province of the law; established, required or permitted by law.⁴ Legality simply connotes compliance with the provisions of the law or the adherence to the wordings and language of the law. Conversely, where an act is carried out contrary to the provisions of the law, it constitutes illegality. Illegality is derived from the word illegal and a direct opposite of legality. It means everything prohibited by law;⁵ forbidden by law.⁶ An arrest effected by a police officer on reasonable suspicion of robbery or armed robbery,⁷ would be regarded lawful or legal. But where arrest is made in contravention of the provision of section 7 and section 36 of ACJA and the Act respectively which prohibit arrest on civil wrong or for breach of contract, it would be declared illegal by the court.⁸

Arrest

Arrest simply entails seizure or forceful restraint; the taking or keeping of a person in custody by legal authority especially in response to criminal charge; the apprehension of someone for the purpose of securing the administration of the law, especially of bringing that person before a court.⁹ The concept of arrest only arises when crime is alleged to have been committed or is being committed. It does not arise in civil or contractual matters as same is expressly prohibited by law.¹⁰

With regard to power of arrest, the term power connotes the 'legal right or authorization to act or not to act; a person or organization's ability to alter by an act of will, the rights, duties and liabilities or other relations either of that person or of

³. Lon Fuller, *Morality of Law* (Yale University Press, 1964) 39

⁴. B. A. Garner (ed), *Black's Law Dictionary* (9th edn, Thomson West, 2009) 975.

⁵. Penal Code, s. 29

⁶. B. A. Garner (n6) 815

⁷. Criminal Code Act, s. 401, 402

⁸. *McLaren v Jennings* (2003) 3 NWLR (Pt. 808) 470 CA.

⁹. B A Garner (n6) 166

¹⁰. ACJA, s. 8(2); Police Act, s. 3 2(2)

another¹¹. Power of arrest consists of the legal right or authorization exercised by a person or organization in forcefully restraining or apprehending a person who is reasonably suspected of having committed a crime. The police which is considered the principal law enforcement agency in the state has the inherent power vested on it by the law to cause the arrest of any person or group of persons involved in the commission of a crime. However, for arrest to be lawful, the probable cause for arrest must relate to crime otherwise any forceful restraint or arrest of a person where no crime exists may constitute false imprisonment and an affront to the liberty of the arrestee.¹²

Due Process of Law

Due process of law connotes observance of the law. It goes beyond fundamental right to fair hearing provisions of the 1999 Constitution and embraces fairness in administrative process and execution of action in accordance with the law. Due process requires that the activities of individuals, groups, government and its agencies be carried out in accordance with legal framework. The police as an agent of government having the primary duty to maintain law and order in the society, has a statutory obligation to carry out its activities including the arrest and prosecution of suspects in the very manner defined by law.

Holding Charge/Remand Order

Holding charge is a situation where the police or any other law enforcement agency, arrest and detain a person alleged to have committed a crime and then rush to court especially magistrate court to get a remand order to keep the person in prison custody for a long period pending trial which goes beyond the constitutional period of 24 or 48 hours as the law demands.¹³ The Black's Law Dictionary defines holding charge to mean 'a criminal charge of some minor offence filed to keep the accused in custody while the prosecutor takes time to build a bigger case and prepare more serious charge'¹⁴.

Court of Competent Jurisdiction

Jurisdiction means a court's power to decide a case.¹⁵ the authority which a court has to decide matters that are litigated before it, or to take cognizance of matters presented in a formal way for its decision.¹⁶ The limit of this authority is however imposed by statute, charter or convention creating the court and may also be extended by similar means.¹⁷ Jurisdiction is a cardinal principle of every legal system. It determines the competency of a court in inquiring into any cause of action be it criminal or civil.¹⁸ The court in *Edet v The State* it was stated that 'Jurisdiction is radically fundamental

¹¹. B. A. Garner (n6) 1288

¹². COP Ondo State v Obolo (Unreported) Suit No. M/44/83 of 30/7/84

¹³. Sam Okolie, 'The Illegality of Holding Charge' Independent (15 November 2018) <<https://www.independent.ng/the-illegality-of-holding-charge/>> accessed 7 July 2020

¹⁴. B.A. Garner (n6) 800

¹⁵. B. A. Garner (n6) 927

¹⁶. Halsbury Law of England, vol. 4th Edition, para. 715

¹⁷. Shell Petroleum Development Company v Isiaha (2001) 11 NWLR (Pt.723) 168

¹⁸. *Madukolo v Nkemdilim* (1962) SCNLR 341

to any judicial proceedings. It must be clearly shown to exist at the commencement of or during the proceedings otherwise such proceedings no matter how well conducted and any judgement arising therefrom, no matter how well considered or beautifully written, will be a nullity and a waste of time.¹⁹ Jurisdiction is conferred by statute and were a court lacks jurisdiction, whatever it does including the outcome will be declared a nullity.

The Rights of a Suspect

Upon the arrest of a suspect, some aspects of his rights are suspended to allow the law take its course. Most critically are the right to freedom of liberty and the freedom to move about his business. These rights are taken away from him unless an administrative or judicial bail is granted to him. However, there are certain aspects of rights which the law allows a suspect to exercise upon arrest. These rights aim at protecting the health and personality of the defendant and at the same time avail him the opportunity to adequately defend himself. Rights of a suspect therefore includes all rights that are necessarily permitted by law to protect the health, integrity, interest and liberty of the accused and at the same time affords him the opportunity to adequately defend himself against a criminal charge²⁰. Underneath are the following rights available to any person arrested or detained by the police.

The Right to Life

The constitutional provision which entitles every Nigerian the right to life²¹ also applies to all persons arrested or detained by the police. Section 33(1) of the 1999 Constitution is to the effect that every person has a right to life and that no one should be deprived of his right to life save in the execution of the sentence of the court in respect of a criminal offence for which he is found guilty. In the case *Joshua v. The State*²² the appellant and others were arrested and charged for the offence of conspiracy to commit armed robbery and armed robbery. They were subsequently convicted and sentenced to death. Their deprivation of the right to life in the circumstance is lawful and constitutional. It shows that the right is not absolute but qualified. It is however not extinguished until a person arrested and charged for a criminal offence is convicted and his right of appeal exhausted. Until then the State has no legal right to deprive any person the right to life regardless of the form, nature or degree of offence a person is accused of. Flowing from the above submissions, it is clear that a police officer in exercise of his duty to effect the arrest of any person alleged to have committed a crime, has no right whatsoever to deprive the person arrested of his right to life regardless of the offence involved except as permitted by law. The right to life also applies to persons who though have been convicted of a criminal offence punishable with death but has yet to exhaust his right of appeal. Any attempt to deprive such person his right to life would be considered unlawful,

¹⁹. (2009) ALL FWLR (Pt. 463) 1430

²⁰. *CFRN 1999*, S.36 (5)

²¹. *Ibid* s. 33 (1), ACHPR, Art. 4, UDHR, Art. 3

²². (2008) ALL FWLR (Pt. 479) 1626

unconstitutional and a violation of his God given right as was held by the court in *Nosiru Bello v Attorney-General of Oyo State*²³.

The 1999 Constitution entitles any person arrested or detained the right to undertake and sustain a silent disposition and to avoid answering any question until after consultation with a legal practitioner of his choice.²⁴ The right to remain silent is otherwise known as Miranda right or the right against self-incrimination. By this right, any person who is arrested or detained by the police in connection with any criminal activity of whatever nature or gravity, has the constitutional right to refrain from saying anything or answering any question until after consultation with his solicitor. It is therefore unlawful to try to induce a person arrested or detained over an offence to speak or force words out of his mouth were he has refuse to speak and has requested to see his lawyer or any other person of his choice. Compelling him to make any statement against his free will is prohibited by law and in fact inadmissible in evidence. However, where he volunteered to make a statement, it will be admitted in evidence.²⁵ In *Bassey v The State*,²⁶ the accused persons were tried and convicted for offence of murder. The Court of Appeal in allowing their appeal held that for a confessional statement to be admissible, it must be voluntary.

Right of Access to a Legal Practitioner

A police officer in charge of the police station has a statutory duty to inform a suspect who has been arrested of his right to consult with any legal practitioner of his choice before making or endorsing any statement or answering any question.²⁷ This is in line with the decision of the court in the case of *Miranda v The State of Arizona*²⁸. The role of a solicitor at the police station is to afford a suspect legal advice and to observe his client's interview for the purpose of ensuring the protection of the rights and interest of his client at the police station and in the court should the matter proceed to trial. The need to have a solicitor around during the interview of a suspect is underscored by the fact that a suspect held in custody may be frightened, tortured or disoriented into making statements that would implicate him hence the need to have any counsel of his choice present in his interview.

Presumption of Innocence

Any person arrested or detained for a criminal offence is presumed innocent until declared otherwise by a court of competent jurisdiction.²⁹ The Nigerian criminal justice system is accusatorial in nature as the trial or prosecution of an accused person is initiated and sustained by accusation. However, no matter the seriousness or gravity of the offence allegedly committed, the charge or information upon which an accused person is arraigned remains an allegation until he is pronounced guilty by a court of competent jurisdiction. The onus of proving the guilt of the accused lies on the

²³. (1986) 5 NWLR (Pt. 45) 828

²⁴. CFRN 1999, s. 35(2); ACJA 2015, s. 6(2)(a); Police Act, 35(2)(a)

²⁵. Evidence Act 2011, s. 28

²⁶. (1993) 7 NWLR (Pt. 306) 409 CA

²⁷. CFRN 1999, s. 36(6)(c); ACJA 2015, s. 6(2)(b); Police Act, s. 35(2)(b)

²⁸. 384 U.S. 436

²⁹. CFRN 1999, s. 36(5)

prosecution which is accusing him of committing the alleged offence. Thus, when any person is arrested or detained for an offence or is being subjected to trial for a crime he is alleged to have committed, a plea of innocence (not guilty) is sustained in his favor until the prosecution is able to prove beyond reasonable doubt that he indeed committed the offence alleged.³⁰ In *Odunlami v Nigerian Army*,³¹ the accused a Naval officer was alleged to have shot and killed a commercial motorcyclist, it went further to hold that a person accused of committing a crime is considered innocent until he is convicted and that the onus of proving his guilt lie squarely on his accusers. Where his accusers fail to prove his guilt beyond reasonable doubt, the trial will be vitiated in favour of the accused and he will be discharged and acquitted accordingly.

Freedom from Torture and Respect for the Dignity of the Human Person

The law entitles every person the right to the dignity of the human person and as such, no one should be subjected to any form of torture, inhuman or degrading treatment.³² The National Assembly has gone further in strengthening this constitutional safeguard by enacting the Anti- torture Act 2017. The Act prohibits every form of torture regardless of the offence involved.

LEGAL AND INSTITUTIONAL FRAMEWORKS

National Legal Framework

(a) The 1999 Constitution of Federal Republic of Nigerian

The 1999 Constitution of the Federal Republic of Nigeria (as amended) is the fundamental law of the land. It is usually described as the *grund norm* basic norm). It is the principal law from which all other extant applicable laws derive their validity.³³ All other laws assume their force and validity from the constitution. It is important to observe that the Police (Enforcement) Act 2020 which empower the police to arrest suspects for acts of crime also derive it validity from the 1999 Constitution. Section 33(1) of the Constitution declares that every person has a right to life and no person is to be deprived of his life save in the execution of a court sentence in respect of a criminal offence which he has been found guilty of in Nigeria. Section 34(1) (a) of the Constitution states that every individual is entitled to respect for the dignity of his person and accordingly, no person shall be subjected to torture or inhuman or degrading treatment. Section 35(1) of the Constitution provides that every person shall be entitled to his personal liberty and that no person should be deprived of such liberty save in the manner permitted by law. Section 35(2) states that any person arrested or detained shall have the right to remain silent. Section 36(3) requires that a person arrested or detained shall be informed in writing the details of his offence. Section 35(4) provides that any person arrested or detained shall be brought before a court of law within a reasonable time and if not tried two months after, beginning from the date of arrest or detention in the case of someone who is in

³⁰. CFRN 1999, s. 36(5); Evidence Act 2011, s. 138

³¹. (2001) ALL FWLR (Pt. 594) 83

³². CFRN 1999, s. 34 (1) (a); ACJA 2015, S. 8(1); Police Act, 37 (1); Art. 5 ACHPR

³³. CFRN 1999, s. 1 (3)

custody or is not entitled to bail or within three months in the case of someone who has been released on bail, he shall be released unconditionally.

Section 35(6) stipulates that any person unlawfully arrested or detained shall be entitled to compensation and public apology. **35(7)** is to the effect that section 35(4) does not apply to persons arrested or detained upon reasonable suspicion of having committed a capital offence. Section 36(1) of the Constitution stipulates that a person shall be entitled to fair trial within a reasonable time by a court or tribunal. Section 36(5) is to the effect that every person charged with a criminal offence is presumed innocent until proven guilty. Section 36(6) stipulates the various ingredients of a fair trial. Section 36(8) provides that no person shall be guilty of a criminal offence on account of any act or omission that did not constitute an offence at the time it was committed. Section 36(12) requires that a person shall not be convicted for a criminal offence unless that offence is defined and penalty prescribed in a written law. Section 41 of the Constitution entitles every citizen of Nigeria the right to move freely throughout Nigeria and to reside in any part thereof and that no citizen of Nigeria shall be expelled from Nigeria or refuse entry or exit there from.

Section 214(1) established the Nigerian Police. Section 214(2) vest on the National Assembly the power to make law on the organization, regulation, structure, duties and powers of the Nigerian Police.

(b) Nigerian Police (Establishment) Act, 2020

The Nigerian Police (Establishment) Act 2020 is an act of the National Assembly. It repealed the Nigerian Police Act³⁴ and provides for the structure, organization, discipline, regulation, duties and powers of the Nigerian Police. The Act vest on the Nigerian Police the power to maintain law and order and to arrest and prosecute any person or group of persons allegedly suspected of committing acts contrary to law.

Section 4 of the Act makes provision for the primary functions of the Nigerian Police. Section 31 and 32 confers on police the power to investigate crimes reported to it and to arrest any person alleged to have participated in the commission of the act. Section 32(2) prohibits the arrest of any person merely on civil wrong or for breach of contract. Section 32(3) requires that a person arrested should be brought before the court within a reasonable time or be released conditionally or unconditionally. Section 35(1) requires a police officer effecting the arrest of a suspect to notify the person being arrested the reason for his arrest. Section 35 (2) (a) (b) (c) requires that the police officer effecting an arrest should notify the arrestee of his right to remain silent or avoid answering any question and in addition, his right to consult a legal practitioner of his choice and free legal representation by Legal Aid Counsel of Nigeria or any other organization where applicable. Section 35(3) requires that the authority having custody of a suspect should notify the next of kin or his relative of his arrest. Section 36 prohibits the arrest of a person in place of a suspect. Section 37 requires that a person arrested should be treated with dignity and in a humane manner and should not be subjected to any form of torture or inhuman treatment. Section 38 and 86 empowers a police officer to arrest without warrant persons suspected of committing

³⁴ CAP. 19, LFN 2004

an offence in certain circumstances or is about to commit an offence which the officer believe cannot otherwise be prevented. Section 39 empowers private individuals to arrest without warrant in certain circumstances. Section 42 makes it mandatory for any person being requested by a judge, magistrate, police officer or such other person requesting for his assistance to effect an arrest or prevent an escape from lawful custody to render such assistance. Section 49(2) and 52 vest on a police officer the power to detain and search any suspected person, property or building. Section 98 of the Act makes it criminal to assault a police officer. Section 54 prohibits the arrest of any person was reasonable suspicion does not exist. Section 99 of the Act makes it criminal not to aid or assist a police officer who while in the execution of his duty is or likely to be assaulted or being resisted.

(c) Administration of Criminal Justice Act, 2015

The Administration of Criminal Justice Act 2015 is an Act of the National Assembly made in exercise of its powers under the Constitution.³⁵ The ACJA 2015 repealed the Criminal Procedure Act CAP. C41 LFN 2004, the Criminal Repeal Procedure (Northern States) Act CAP. C42 LFN 2004 and the Administration of Justice Commission Act CAP. A3 LFN 2004.³⁶ The Act was significantly enacted to enhance the administration of justice in the courts of the Federal Capital Territory and other Federal Courts in Nigeria. The Act makes clear provision on the regulation and administration of criminal justice system including complaint, investigation, arrest, drafting of charges, bail, trial, acquittal, conviction, sentencing and punishment. It should be noted, that ACJA 2015 has been adopted and domesticated by the various States of the Federation and applicable in State Courts. The provisions are significantly similar with ACJA but the sections are not arranged in a similar manner. Example is the Administration of Criminal Justice Law of Rivers State 2016 and the Administration of Criminal Justice Law of Lagos State 2011.

POLICE POWERS OF ARREST AND THE CONSEQUENCES OF UNLAWFUL ARREST

The concept of arrest generally, the legality of arrest made by a police officer, judge, magistrate, justice of the peace and private persons. In addition, it also examines critically some of the circumstances whereby a person may be arrested with or without warrant of arrest by a police officer or such other person as may be authorized. The chapter also discuss succinctly and extensively those circumstances where an arrest by a police officer may be declared irregular, unlawful by the courts, the rights of an arrested person and the remedy for unlawful arrest.

Brief Historical Background of the Nigerian Police

The historical background and development of the Nigerian Police would be examined under the three different periods namely: pre-colonial, colonial and post-colonial period. The prior to the arrival of the Europeans, the Kings in the various Nigerian communities such as the Obas, the Ezes and the Emirs had their guards in

³⁵. CFRN 1999, s.4

³⁶. ACJA 2015, s. 493

place to carry out their biddings. They had the responsibility of enforcing the orders of the King. What is crucial to note is that even before the arrival of the European people in the West Coast of Africa, there were such bodies carrying out the resolutions of the kings and their Chiefs which today is equivalent with the Nigerian Police having the responsibility of enforcing the laws and regulations of the State. On the arrival of the Europeans, a treaty was signed between the British Administration and King Dosumu of Lagos ceding Lagos to Her Majesty's Government. The Britons came to Nigeria to carry out business activities hence, the British Government provided Coast Guards to secure the water ways. That was the beginning of what we refer to as police today in modern era.

The Nigerian Police succeeded the Northern Nigerian Police (NNP) and the Southern Nigerian Police (SNP). Before the enactment of the 1979 and 1999 constitutions, the Independent and Republican Constitution of 1960 and 1963 respectively made provisions for the establishment of the police. The Republican Constitution created the police at the central and regional level. It is pertinent to point out that over the years, the Nigerian Police has always been used by each administration to maintain law and order and to enforce laws and regulations in the Nigerian society.

POLICE POWERS UNDER THE NIGERIAN CONSTITUTION

Generally, the police are provided under section 214 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). By section 214 (1) of the 1999 Constitution, it provides that the Police shall be established and to be known as "the Nigerian Police Force". Section 214 (4) provides that the Nigerian Police shall be organized and administered in accordance with such provisions as may be prescribed by the National Assembly. By this provision, it is only the National Assembly that can legislate no matters dealing with the Nigerian Police. The section further provides that the members of the Nigerian Police shall have such powers and duties as any be conferred upon them by law. The Nigerian Police is under the command of the Inspector- General of Police who is appointed by the President on the recommendation of the Nigerian Police Council while State Commissioners appointed by the Police Service Commission oversee the contingents of the Nigerian Police at the State level.³⁷

A General Overview of the Powers and Duties of the Nigerian Police It is necessary to underscore at this juncture that the Police (Establishment) Act 2020 which contains the powers and duties of the Nigerian Police including other enabling enactments derived their validity from the 1999 Constitution of the Federal Republic of Nigeria. Thus, whereas the 1999 Constitution makes provision for the establishment of the Nigerian Police, the Police Act clearly defines the power and duties to be exercised by the police. The Police Act is an Act of the National Assembly made in exercise of their legislative powers.³⁸ The Act provides the framework, scope, powers and duties

³⁷. CFRN 1999, s 215

³⁸. Ibid, s. 5, 214 (2), (a)

of the Nigerian Police. By section 4 of the Act, the Nigerian Police has the following duties;

- Prevention and detection of crime;
- To maintain public safety, law and order;
- To protect lives and property of all persons in Nigeria;
- Due enforcement of all laws and regulations;
- To discharge such duties within and outside Nigeria as may be required of them;
- To collaborate with other agencies to take any necessary action and to provide support to persons in distress.
- To facilitate free passage and movement among others.

By law, the Nigerian Police has the civil responsibility to keep the majesty of law and order in the society. In other words, the Nigerian Police as noted earlier, is the principal agency saddled with responsibility to maintain law and order in the Nigerian State and to apprehend and prosecute offenders in line with the provisions of existing laws. The Nigerian Police plays a very significant role in the administration of criminal justice in Nigeria. This is so because the detection and prevention of crime, apprehension and prosecution of offenders are carried out by the police. In the course of carrying out its statutory duties, police officers are empowered to effect the arrest or detention of any person reasonably suspected of having committed an offence or seen committing an offence. Such arrest or detention must however fall within the ambit of the law if it is to enjoy legal backing otherwise it will be declared irregular and unlawful by the court. Flowing from the above, it is clear that one of the cardinal duties of the Nigerian Police is to enforce existing laws and regulations, maintain peace and order and to effect the arrest and prosecution of law breakers.

Arrest Generally

Arrest entails the forceful seizure or restraint of a person. It can also be described as the apprehension of someone. In exercising its powers under section 4 of the Nigerian Police Act, the Nigerian Police have the legal backing to conduct investigation,³⁹ carry out search,⁴⁰ effect summons,⁴¹ effect arrest,⁴² grant bail,⁴³ and to prosecute.⁴⁴ In making an arrest, a police officer is required to show restraint and avoid the use of excessive force except where necessary. He is allowed to touch the body of the person being arrested unless there is submission to custody by words or action.⁴⁵ A suspect need not be handcuffed, bound or subjected to restraint except where there is reasonable apprehension of violence, or escape, or where the safety of the suspect is at stake or there is an order of court to that effect.⁴⁶ The arrestee must be notified of

³⁹. Police Act, s. 31

⁴⁰. *ibid*, s. 52

⁴¹. *ibid*, s. 65

⁴². *ibid*, s. 32

⁴³. *ibid*, s. 62

⁴⁴. *ibid*, s. 66

⁴⁵. ACJA 2015, s. 4; Police Act, s. 33

⁴⁶. AJA 2015, 5 ACJA, section 34 PA

the reason for his arrest, his right to remain silent and the right to an attorney, and in addition, the authority having custody of the suspect has a duty to notify his next of kin or relative of his arrest.⁴⁷ Excessive force is prohibited in effecting arrest of a suspect,⁴⁸ except where the offence is a felony punishable with death or seven years imprisonment or more and the offender takes to flight. To prevent his escape, the police officer may shoot to kill if the offender cannot otherwise be arrested. As noted above, arrest could be effected with or without warrant depending on the nature and circumstance of the offense involved.⁴⁹

THE LEGALITY OF ARREST EFFECTED BY A POLICE OFFICE

The Nigerian Police in exercise of its general duties, has the power to effect the apprehension of offenders of the law. This power is inherent in the Nigerian Police and enjoys legal and statutory backing. Thus, officers of the Nigerian Police can with or without warrant as required by law effect the arrest of any person where there is reasonable suspicion that crime was committed by the suspect, or where the offender is seen in the process of committing the crime, or where a warrant of arrest has been issued against as was pointed out by the court in *Yusufv Obasanjo*⁵⁰ As noted earlier, a police officer may touch or confine the body of a suspect except where there is a willful submission to custody either by words or action. A person arrested should be accorded humane treatment and should not be subjected to any form of torture, cruel or inhuman treatment.⁵¹ It is only when all the formalities of the law put in place are adhered to by a police officer effecting an arrest, that same would be considered legal.

CONCLUSION

It is not in controversy that the Nigerian Police has the inherent power to effect the arrest of any person in matters involving criminal offence, such arrest must however, not be carried out in any manner that the law frowns at if the arrest is to enjoy statutory flavor. An example includes a situation where a person is arrested in lieu of another or arresting a person in matters involving civil complaint, breach of contract or for failure to repay a loan. Such arrest would be considered unlawful and unjustifiable by the court. This paper unfolds the fact that the Nigerian Police has the dual obligation of ensuring the enforcement of law and order for the good of all in the society on one hand and the protection and respect of individual rights and liberty on the other hand. To this effect, the police must eschew all forms of arbitrary arrest, torture or inhuman or degrading treatment, and all forms of right abuses and to accord equal respect for the rights and dignity of all persons even in the face of arrest or detention. Any disregard for the rights and liberty of the citizens in the form of arbitrary arrest, torture or detention is usually met with severe consequences by the court except evidence suggest otherwise. Finally, the writer observed in the course of this work that a person unlawfully arrested or detained or whose rights were breached

⁴⁷. ACJA 2015, s. 6 (1) (2); Police Act, s. 35

⁴⁸. CCA, s. 272

⁴⁹. ACJA 2015, s. 18; Police Act, s. 38,71, 86

⁵⁰. (2004) ALL FWLR (Pt. 213) 1884

⁵¹. ACJA 2015, s. 8; Police Act, s. 37

during the pendency of his arrest or detention has the legal capacity to institute an action in court for redress.

The onus of proving that an arrest or detention of any person met the requirements of the law lies with the Police. Where it fails to discharge the burden of proving the legality of arrest or detention, the applicant is entitled to damages which may be in form of compensation and public apology or in any other form as the court may declare in the circumstances.

RECOMMENDATIONS

The writer firmly admits that there exist quite interesting statutory provisions defining the scope of power and duties exercisable by the Nigerian Police. It is not in contention that these legal enactments have aided the Nigerian Police in fighting crimes and enforcing law and order in Nigerian societies. The Nigerian Police deserve commendations for the successes recorded over the years in the apprehension and prosecution of offenders and the maintenance of peace throughout the Federation. However, there are some shortcomings which ought to be address especially in the area of arrest and detention of offenders by the Nigerian Police if the Nigerian criminal justice system is to be made more effective. The first inadequacy that needs to be addressed is in the area of training. It is evident that a lot of officers of the Nigerian Police do not possess the knowledge and skills necessary in policing as required by law.⁵² There are numerous reported cases of unlawful arrest, torture, brutality, unlawful detention and other forms of right abuses by police officers in Nigeria. In some cases, they effect arrest before carrying out investigation which sometimes result in liability on their part. This goes to show that several personnel of the Nigerian Police lack proper skill, training and knowledge required for policing as envisaged by the Act.⁵³ It is therefore the writer's recommendation that applicants should be made to undergo proper and adequate training on basic policing, ethics, code of conduct, operational procedures, crime detection, investigation and human rights before there are admitted into the Nigerian Police Force. Thorough and extensive investigation should also be conducted before arrest is effected to prevent abuse of rights and the liabilities that may arise to their disadvantage. More so, there is need to redefine the powers of the Nigerian Police particularly in the area of arrest.

⁵². Police Act, s. 20

⁵³. Police Act, s. 20