



AN APPRAISAL OF THE APPLICATION OF THE DOCTRINE OF
NOLLE PROSEQUI IN NIGERIA

G. O. ETOSE;
J. U. AZIEGBEMHIN;
and P. U. AGHEDE-EHIKWE¹

ABSTRACT

The fundamental conception of the nature of our criminal law is the dictate of the Anglo-America adversarial system. The constitution however established an accusatorial system of public trials to determine the guilt of persons charged with crimes. In contradiction to the inquisitorial system, the accusatorial system pictures a contest between state and defendant at the trial. Thus, the power of nolle prosequi is a formal entry on the record by the prosecuting officer declaring he will not prosecute the case further. However, the power to enter a nolle prosequi in a criminal case has been recognised as an undoubted power vested only on the Attorney-General which is effectively provided for in the constitution and also at common law. Essentially, the nolle prosequi is a power of the Attorney-General to discontinue any criminal trial at any stage before judgment in any court of law in Nigeria other than a court-martial as this has been recognized by the court. The Attorney-General of the federation has the primary responsibility with respect to prosecution of criminal cases which is provided for in the Constitution of the Federal Republic of Nigeria. The objectives of this research are to examine the basis of the exercise of the power of nolle prosequi, to examine the consequences of the exercise of the power of nolle prosequi and to assess the relevance of the exercise of the power of nolle prosequi. The materials resorted to in arriving at the overall process and procedure of this research inter alia includes text

books, dictionary, law report, statutes, law journals, newspapers, public opinion amongst other research instrument to arrive at a solution to the research problem by applying all instruments methodologically and analytically to its fullness. One of the findings is that the exercise of the power of nolle prosequi has political considerations. Secondly, that it equally has judicial considerations and that the exercise of the power of nolle prosequi is subject to abuse.

Keywords: Nolle Prosequi, Justice System, Constitution, Nigeria.

1. INTRODUCTION

Nolle prosequi is a discretionary power exercise by the Attorney-General in any public or private prosecution to discontinue any criminal proceedings at any before judgment is delivered in any court of law in Nigeria other than a court-martial. The power of the Attorney-General to institute any proceedings, takeover and continue is exercise in similar fashion with respect to the discontinuation of criminal proceedings instituted by any person or authority in any court of law.² However, Nolle prosequi originated from the common law. This prerogative of the Attorney-General to institute and discontinue in this contemporary time is similar to that of the crown under the

¹ The authors are lecturers in the Faculty of Law, Ambrose Alli University Ekpoma Edo State, Nigeria

² Sections 174 and s.211 of the 1999 Constitution

English law Practice on proceedings with respect to criminal indictment³.

The attorney-General, may institute such proceedings in the name of the crown indictment, the consequence of which stops the proceedings⁴. The power *Nolle prosequi* is not subject to the control of the courts. The position under the common laws was the process of administration of criminal justice. The above statement of law finds judicial support in case of *R.v. Comptroller-General of Patents, Designs and Trademarks, ex parte Tomlinson*.⁵ The grant of a *nolle prosequi* does not amount to an acquittal, and accordingly, the accused may brought before the court on the same charges and the consequence of the exercise of *nolle prosequi* would be to institute a further application to discontinue the charge. The Attorney-General at common law has been a master of himself and no control whatsoever, judicial otherwise vis-à-vis his power of instituting or discontinuing a criminal proceedings or to enter a *nolle prosequi*⁶. The Attorney General however, can extend this power at common law to criminal proceedings instituted by any other person or authority as the case may be. This right exercise by the Attorney General under the common law was not subject to review by any court of law or the crown⁷.

However, at common law in the course of exercise of the power of *Nolle prosequi* by the Attorney General, he may discontinue any criminal proceedings in any court of law in Nigeria within its jurisdiction⁸. The position in Britain is that powers exercised by the Attorney General cannot be questioned by any court law office⁹, the authority to exercise the power on his behalf.

The effect of exercise of this power at common law is that the Attorney General is conferred with such enormous powers in the administration of criminal justice. These powers are unlimited, limitable and incontrovertible. The cumulative consequence of entry a *nolle prosequi* at common law is a discharge and does not operate as a bar to subsequent trial of the accused person.¹⁰ This common law position however has been inherited and incorporated into the Nigeria legal system. The position has been the same in this country and can clearly be seen in the various pre- 1979¹¹. Constitutions of this country and various court decisions bar true testimony to this which now codify the power of the Attorney General with respect to the entry of a *Nolle Prosequi*. The Attorney General power of discontinue any criminal proceedings at any stage is absolute under the common law as well under the constitution. The exercise of the power is not subject to nay fiat from any authority of person.¹²

2. POWERS OF THE ATTORNEY GENERAL UNDER THE LAW

The powers given under section 174(1) and 211(1)¹³ of the constitution to the Attorney General cannot be whittled down by reference to the powers which the Attorney General in England could exercise whilst initiating or under taking a criminal proceedings. Because of the provisions of sections 174 and s.211¹⁴ of the 1999 constitution, it will not be right to construe s. 74 and s. 253¹⁵ of the Criminal Procedure Act or Code as limiting the powers of the Attorney General of the Federation or State as regard exhibiting to the high court information in the high court information in the high court of justice in England. It must be borne in mind

³ J O. Akande, *Introduction to the Constitution of Nigeria*, M.I.J Professional Publisher Ltd, 2000. pg 316-323

⁴ Opt. Cit 317.

⁵ J. Bentham, *theory of Legislature*, London. 1864 pg. 317

⁶ (1990) 1Q.B. 909,914

⁷ J O. Akande, *Introduction to the Constitution of Nigeria*, M.I.J Professional Publisher Ltd, 2000 pg 321

⁸ *Atta V.C.O.P.* {2003} 17 N.W.L.R. (pt 849) 250

⁹ Section 174 (2) and s. 211 (2) 1999 Constitution

¹⁰ *Clark and ors V. Att. Gen. of Lagos state* (1986) 1 Q.L.R.N. 119

¹¹ Section 191. Constitution of the Federal Republic of Nigeria 1979

¹² (2003) 17 N.W.L.R. 250; *Osahon V.FRN*, (2003) 16 N.W.L.R. (pt. 345)

¹³ Constitution of the Federal Republic of Nigeria 1999

¹⁴ *Ibid*

¹⁵ S.73 C.P.A. Cap C41 L.F.N. 2004 and s. 253 C.P.C. Cap. 30 LFN 1990 respectively

that s. 174 (3) and s. 211 (3) does not make any difference to the exercise of the power to enter a Nolle prosequi by the Attorney General on the ground that the section is merely restating factors which the Attorney General would have borne in mind, in any case, in discharging his duties, so that the directives are merely for the guidance of the Attorney General and not limitation on his power.

In the United Kingdom (the origin of the common law base of Nolle prosequi which many of the common law countries adopted) the power of Nolle prosequi is not subject to constrains by any court. The position there is stated quite clearly in the case of *R.v. Comptroller of Patents*¹⁶. Smith L.J. said:

Everybody knows that he (Attorney General) is the head of the English Bar. We know he has had from the earlier times to perform high judicial functions, which are left to his discretion to decide. For example, where a man who is tried for his life and convicted alleged that there is an error unless he obtains the fiat of the Attorney General, and no court in kingdom has any controlling jurisdiction over him. That perhaps is the strongest case that can be put as to the position of the Attorney General in exercising judicial functions. Another case in what the Attorney General is the power to enter when a case as before a judge a prosecutor may not ask the judge to allow the case to be withdrawn, and the judge may do so if he is satisfied that there is no case, but the Attorney General alone has power to enter a nolle prosequi; and that power is not subject to any control...

It must be borne in mind that in the United States the general approach to the issue is the same as that in the U.K. in *United States v. Thompson*¹⁷, the Supreme Courts have power to control the initiation of Criminal

Proceedings, the Supreme Court of Rhode Island in *Orobora v. Liriseli*¹⁸ that under the constitution and by long established practice great power and responsibility for the enforcement of criminal laws are lodged in the Attorney General. He has control of his docket for the trial of criminal cases. The Attorney General may enter a nolle prosequi without the advice or permission of the court. But although the practice of entering nolle prosequi is very old and it seems to have become accepted that the courts are not legally competent to interfere I the exercise of the power by the Attorney General.

However, s. 174 and s. 211 of the constitution has specifically provided that the Attorney General of a state shall have regard to public interest, interest of justice and the need to prevent abuse of legal process in the initiating, take over and continue any criminal proceedings against any person or authority to enter and discontinue at any stage before judgment is delivered in any court of law other than a court-marital.

The importance of the Attorney-General in the administration of justice cannot be over emphasized. Consequently, previous constitutions had created the office of the Attorney-General¹⁹. However, the Attorney-General is the Chief Law Officer of the State and Commissioner of Justices. The position of the Attorney-General is an exalted office. The Attorney-General has power to discontinue any criminal proceedings instituted by any person or authority in any courts other than a court-martial before judgment is delivered.

By the provision of s.174 and s.211²⁰ is to the effect that the Attorney-General shall have powers to undertake the following functions:

- (a) Institute and undertake criminal proceedings against any person before any Court of law in Nigeria, other than a court-martial, in respect of any offence

¹⁶ (1899) IQB 909, 913-914

¹⁷ 252 U.S. 457

¹⁸ 49 R.I. 443

¹⁹ 1960, 1963, 1999 Constitutions of Nigeria

²⁰ Constitution of the Federal Republic of Nigeria, 1999

created by or under Act of the National Assembly, (State House of Assembly);

- (b) Takeover and continue of such criminal proceedings that may have been instituted by any other authority or person; and
- (c) Discontinue at any stage judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.

Similarly, the powers conferred on the Attorney-general may be exercised by him in person or through Officers of his department upon delegation²¹. This principle of delegation of his power to any person or to delegate a Legal Practitioner was put into practice in the case of *Ibrahim v. State*²² in this case the Attorney-General delegated the power to a legal practitioner. The Attorney-general has discretion in deciding who to prosecute and for what offences where several persons committed the same species of offence. The Attorney-General is a law unto himself in taking decisions on matter under s.174 (10 and s.211 of the constitution 1999²³. In the course of the exercise of his powers, the Attorney-General shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process. Thus how to determine the adequacy or otherwise of the Attorney-General is rather subjective. This phrase i.e. what the Attorney-General shall have regards to have been held by the court to be merely declaration and not directory of nolle prosequi. It must be borne in mind that where there is no incumbent or substantive Attorney-General, the powers cannot be exercised by any officer of his department²⁴

In *Attorney General Kaduna State v. Hassan*²⁵, the solicitor-General of Kaduna State entered a nolle prosequi in respect of a charge of culpable homicide not punishable with death

against some villagers where there were no substantive or incumbent Attorney Generals of the state. The trial judge terminated the proceedings and on appeal, it was held that the power of the Attorney General cannot be exercised by the Solicitor-General or any officer of his department in the absence of an incumbent Attorney-General. However, in recent court of appeal decision in *State v. Obasi and ors*²⁶, the case of Attorney General Kaduna State V. Hassan²⁷ was being tried on information for murder and here was incumbent Attorney General. The Court of Appeal held that the law officers in Attorney General Department can initiate criminal proceedings where there was no incumbent Attorney General but cannot enter a nolle prosequi in any criminal proceedings instituted by any person or authority. It allowed the appeal and ordered the continuation of the trial.

Furthermore, where the power of the Attorney General to enter a nolle prosequi had been delegated to officers of his department, such powers or instrument must be in writing. A state counsel cannot enter a nolle prosequi or discontinue any criminal proceeding in any Court orally. The instrument authorizing such delegation must be tendered in court²⁸. Idigbe, JSC, in the most celebrated case of *The State v. S.O. Ilori and ors*, it was held that:

.....at common law the decision of the Attorney General in granting or refusing his fiat is final and conclusive. While the court, in appropriate case, can compel him (by mandamus) to hear or entertain application for his fiat, no court can compel him to grant his fiat nor question the propriety of his refusal of same who can enter a nolle prosequi exempting the fiat of the Attorney general.

²¹ *Osahon V.F.R.N Supra.*

²² (1986) 1N.W.L.R. 650

²³ Constitution of the Federal Republic of Nigeria 1999.

²⁴ *Attorney-General Kaduna State V. Hassan* (1985) N.W.L.R (pt.8) 483

²⁵ *Ibid*

²⁶ (1998) 9 N.W.L.R (pt. 567) pg. 686

²⁷ *Op. cit*

²⁸ *State V. Chukwura and ors* (1964) N.W.L.R. 64

Apart from the extremely wide powers conferred on the Attorney General by s. 191²⁹ of the constitution. It merely restated the position of the Attorney General at common law and in the 1979 constitution of Nigeria. However, the office of the Attorney General of a state is established by virtue of the provision of s. 179 and s. 191³⁰ of the constitution which of course specified for the powers of the Attorney General. It is pertinent too to note that the proper meaning and import of subsection (3) of section 191 of the 1977 constitution applies to the whole of s. 191 which enact thus:

- (a) To institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial in respect of any offence created by or under any Act of the National Assembly
- (b) Take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and
- (c) Discontinue at any stage instituted or undertaken by him or any other authority or person.

The Attorney General of a state in Nigeria under the constitution has many powers and duties with regard to criminal proceedings in respect of any offence created by or under any law of the House of Assembly of the state. The Attorney General may, for example, stop any prosecution under state law by entering a nolle prosequi. He need not give any reason for his decision. This was however the basis for the decision in *The State v. Adakole Akor and others*³¹, in this case, the Attorney General of Benue State informed the court in writing that he no longer intended to prosecute 27 accused persons in respect of all criminal charges he had previously laid in court against them. He said he was doing this in the exercise of this

power under s. 191(1) of the 1979 constitution. This was challenged on the ground that the nolle prosequi had not been properly entered in the manner in which it has been done having regard to the provision of s. 191(3) of the constitution 1979. It is arguable that s. 191(3) do not make any difference to the exercise of the power to enter a nolle prosequi by the Attorney General on the ground that the section is merely restating factors which the Attorney General would have borne in mind, in any case, in discharging his duties, so that the directives are merely for the guidance of the Attorney General and not limitation of his power and that the court cannot review the exercise of the power. All he needed to do when deciding to enter a nolle prosequi or to discontinue any such criminal proceedings instituted by him or any person or authority at any stage of the proceedings is to “have regard to the public interest of justice, and the need to prevent abuse of legal process.” A number of factors known to the Attorney General, must of necessity, come to his mind when he decides whether to prosecute or not in the public interest to disclose any of these. The Attorney General is the principal law officer of the state coupled with the fact that he should not be subjected to any pressure either by the executive or by the courts in exercise of this enormous power³².

Incidentally, the Attorney General of the federation has the same powers and duties under s. 160 of the same constitution with regard to criminal proceedings in respect of any offence created by or under any Act of the National Assembly. It is however necessary to put on record that the position under the 1979 constitution is the same under the 1999³³ constitution respectively. It must of course, be understood that any Attorney General of the federation or of a state, is answerable for his actions not only to his appointor, but also the National Assembly as the case may be. It must be borne in mind that the Attorney General is, of necessity also subject to the comments,

²⁹ Constitution of the Federal Republic of Nigeria 1979

³⁰ Ibid

³¹ (1981) 2 N.C.L.R. 410

³² J.O Akande, *Introduction to the Constitution*, 2000. M.I.J. Professionals Publishers Ltd, 2000 page 319-320.

³³ Ss. 174 and s. 211 of the 1999 Constitution

favorable or otherwise, of the public opinion³⁴. It may also not be out of place to record, in this context, the public's general aversion of mixing politics with the enforcement of the criminal law. The supreme importance of maintaining the prerogative and independence of the Attorney General when discharging his responsibility inherent in his office, as provided for under the 1969 and 1999 constitutions respectively, for the proper administration of the criminal law must, therefore be emphasized.

Recent decision of the Court of Appeal in *State v Obasi and ors*³⁵ has now stand as a caveat to the initial position under the 1979 constitution that only where is the presence of a substantive or incumbent Attorney General or upon delegation that he is the only and one person that can enter a nolle prosequi in any criminal proceedings but the position the case law in the above case is that "the law officers in the Attorney General department can initiate criminal proceedings where there is no incumbents Attorney General. Thus the powers to initiate and discontinue criminal proceedings by officers in the department of the Attorney General were succinctly distinguished. So the power to enter a nolle prosequi can be delegated to any officers of his department but such power must be in writing. For a State Counsel cannot enter or discontinue a criminal proceeding in court orally.

3. THE APPLICATION OF THE POWER OF *NOLLE PROSEQUI*

The Attorney-General is the Chief Law Officer of the State. The Federal Attorney General is the Chief Law Officer of the Nigerian Federation; while the State Attorney General exercises control over criminal proceedings. This is by virtue of the powers given to him under the Criminal Procedure Act and the Constitution. The Attorney-General has power to file information under Section 72 of the CPA. Furthermore, the

Attorney General has powers of general control of prosecution under Section 213 of the CPA. The section provides:

S. 213 (1): "Where any person other than the Attorney-General of the State prosecutes in any criminal proceedings for an offence against a law of the state on behalf of the state, or any public officer prosecutes in his official capacity in any such criminal proceedings, such person or public officer shall prosecute such case subject to general or specific directions as may be given by the Attorney-General of the State."

S. 213 (2): "Where proceedings in respect of any offence against a law of the state within the criminal jurisdiction of a court are brought by a police officer in the exercise of his official duty and it is not provided by any written law that such proceedings shall only be brought by or in the name of some specified person, such proceedings may, subject to any special or general direction in the name of the public officer, police officer instituting the proceedings or making the arrest, if any, or in the case of a member of the police force in the name of the Commissioner of Police of the State."

S. 213 (3): "The provisions of subsections (1) and (2) of this Section, shall apply in relation to proceedings for an offence against a Federal law as they apply in relation to offences against a law of the State but as if references to the Attorney-General of the State were references to the Attorney-General of the Federation."

The Attorney-General of the Federation may delegate to the Attorney-General of the State the powers conferred upon him by this section either generally or with respect to any offence or class of offences. Under the 1999 Constitution of Nigeria, the powers of the Attorney-General of the Federation is contained in Section 174 (section 160 of 1979 Constitution); while the power of the State Attorney-General is provided for in section

³⁴ *State V. Ilori* Supra

³⁵ (1998) 9 NWLR (pt. 567) 686

211 (section 191 of 1979 Constitution). Section provides *inter alia*:

(1) The Attorney-General of a State shall have power:

- a) to institute and undertake criminal proceedings against any person before any Court of law in Nigeria;
- b) to take over and continue any such criminal proceedings;
- c) to discontinue at any stage before judgment is delivered any such criminal proceedings.

Section 211(2). Went further to state that: The powers conferred upon the Attorney-General under Subsection (1) of this Section may be exercised by him in person or through officers of his department. Also, Section 211(3) provides that: In exercising his powers under this Section the Attorney-General shall have regard to the public interest, the interests of justice and the need to prevent abuse of legal process.

Under the provisions of section 211(1) (a) and section 174(1)(a), the State and Federal Attorneys-General respectively have power to institute and undertake criminal proceedings against any person before any court of law in Nigeria. It is important that the appropriate authority should institute and undertake criminal proceedings to avoid the unfortunate situation which occurred in *Anyede v. State*.³⁶ The accused was prosecuted for possessing fire arms without a valid licence contrary to Section 4 of the Firearms Act, 1958 as amended by the Firearms Decree 1966. The Attorney-General of Benue State instituted the action against the accused. On appeal, it was argued that the law allegedly contravened being a federal enactment; the prosecution ought to have been instituted by the Attorney-General of the Federation. The Supreme Court held that the offence being a federal offence could only be prosecuted by the Attorney-General of the Federation.

³⁶ (1986) 1 S.C. 87.

Where an offence is enacted by the federal legislature but to take effect as a State enactment, the State Attorney-General could have the power to institute criminal proceedings.³⁷ Also, the Attorney-General of the Federation may delegate to the Attorney-General of the State the power to prosecute offences.³⁸ By the provisions of Section 211 (1)(b) of the 1999 Constitution, the Attorney-General has power to take over and continue any such criminal proceedings where it has been privately instituted by any other person or authority other than the Attorney-General.

*Barkono v COP*³⁹ is illustrative. This was a private prosecution. After the conviction of the accused, the Director of Public Prosecutions took over the case on appeal. The issues are whether counsel for the complainant has right to be heard after the takeover and whether it is desirable to give notice to original parties where the D.P.P. intervenes. It was held that the D.P.P. has power to take over criminal proceedings instituted by a private person. It was further held that it was not questioned that the DPP had taken over the present proceedings and the moment he had done so, the complainant ceased to be a party to the proceedings so that his counsel could not be held. It was also held that although it was desirable that the D.P.P. should notify a person who instituted a private prosecution that he was taking over those proceedings, failure to do so in no way vitiated the step taken by the D.P.P.

Section 211 (1)(c) of the Constitution provides that the Attorney-General has the power to discontinue at any stage before judgment is delivered any such criminal proceedings. Where there is no incumbent Attorney-General the power cannot be exercised because there will be no donor of the power. In *A.G. of Kaduna State v. Hassan*,⁴⁰ the Supreme Court held that the powers of the Attorney-General cannot be exercised by the Solicitor-General or any other

³⁷ *Emelogu v. State* (1988) NWLR pt. 78, p. 524

³⁸ S. 213 (4) CPA.

³⁹ (1971) ALL NLR 505

⁴⁰ (1985)2 NWLR pt. 8, p. 483.

officer of his department in the absence of an incumbent Attorney-General. An advice to the police to discontinue criminal proceedings is not a nolle prosequi.⁴¹ The power of the Attorney-General to institute and undertake, take over and continue and discontinue criminal proceedings may be exercised by him in person or through officers of his department. The Attorney-General can delegate the power of instituting criminal proceedings to members of his department.

In *Ibrahim v. State*,⁴² the appellants were charged in the High Court and convicted on various offences on information signed by a Senior State Counsel for the D.P.P. without reference to the Attorney-General. On appeal to the Supreme Court, the appellants' counsel contended that the appellants should not have been convicted as the information was preferred without authority, that the trial and conviction were null and void. He argued that Section 191 (2) was only enacted to relieve the Attorney-General of the burden of personally preparing and signing the information. There was evidence that by a legal notice, the Attorney-General had delegated his powers of prosecution under Section 191(1) and (3) to the D.P.P., his deputy and all grades of State Counsel in the department of public prosecutions, subject to the immediate direction and control of the Director. It was held that the Attorney-General has power to delegate all his power to the Public Prosecution Department by virtue of the provisions of S. 191 (2). The Attorney-General, having delegated his power to the D.P.P. and State Counsels in the department, the information was properly filed.

Officers of Attorney-General's department have general authority under S. 211 (2) to institute criminal proceedings. The Attorney-General cannot constitutionally restrict their authority. State Counsel may sign without naming the Attorney-General as ultimate authority since correct delegation of powers

under S. 211 will be presumed. *The State v. Ogunjobi*⁴³ illustrates this point. The accused raised a preliminary objection that the information preferred against him was incompetent. Information was filed against the accused in the High Court which was signed for the DPP by a State Counsel, both of them are officers in the Department of Attorney-General. Counsel for the accused raised a preliminary objection, before pleas were taken, on the ground that the information was neither signed by nor made out in the name of the A. G. as required by section 191 and that Public Prosecutions Authorization Notice of 1981, in which the Attorney-General delegated his power of instituting criminal proceedings to the D.P.P., specifically excluded the High Court, thus making the information in the present case incompetent. The State contended in reply that the information was in order because S. 191 (2) of the Constitution provides that the Attorney-General's power of instituting criminal proceedings can be exercised by him in person or through officers of his department, and therefore it was not necessary for the State Counsel to show that he had the authority of the Attorney-General to prosecute. The State submitted that the Public Prosecutions Authorization Notice was intended not to limit the power of members of the Attorney-General's department but to exclude the police from instituting criminal proceedings. Dismissing the objection, it was held that the power to institute criminal proceedings conferred on the Attorney-General and members of his department by Section 191 of the Federal Constitution is a general power, which needs no enabling law to implement it and which the Attorney-General himself cannot limit or restrict by excluding any member of his department from exercising it. In so far as the Public Prosecutions Authorisation Notice of 1981 limits or restricts the powers of members of the A. G.'s department to institute criminal proceedings, it would therefore appear to be unconstitutional and consequently null and void. It was further

⁴¹ Ujah V.A.G. Benue State (1981) 2 NCLR 348

⁴² (1986)1 NSCC Vol. 17 P. 130

⁴³ (1981) NRC 348.

held that since by virtue of Section 191 all members of the Attorney-General's department have the authority to institute criminal proceedings, it was not necessary for the information in the present case to show that the Attorney-General authorised, instructed or advised the State Counsel to institute the proceedings but it would be presumed as a matter of law. The information was therefore in order, and the objection overruled.

The Attorney-General may delegate all or some of his powers to institute criminal proceedings at his discretion. In *D.P.P. v. Idowu*,⁴⁴ the accused was charged with stealing and forgery. An "Original information" which was headed "DPP V. Peter Idowu" together with a covering letter asking that it be filed, was sent to the High Court Registry. The information stated that the High Court had been informed of the charges against the accused, though it did not say on what date. It was signed by State Counsel, on behalf of the DPP. It appeared that the High Court had not in fact ever been informed of the charges. The accused raised a preliminary objection to the validity of the information, contending that by Section 191 of the Federal Constitution only the Attorney-General may initiate criminal proceedings unless he delegates his authority to members of his department, and the only delegation made, which was by the Public Prosecutions Authorization Notice, 1981, limited the powers of the D.P.P. to the initiation of proceedings in Courts inferior to the High Court. The information was accordingly a nullity and no amendment could save it. In reply, the prosecution contended that the Public Prosecutions Authorization Notice was contrary to the Constitution and should be ignored. An application was made to amend the information, substituting the Attorney-General for the D.P.P. It was held that Section 191 (2) of the Federal Constitution, 1979, which allows the Attorney-General to delegate his powers do not prevent him from delegating some, rather than all, of his powers

⁴⁴ (1981) 2 NCR 355

and it was therefore quite permissible for him to delegate to the D.P.P. the power to initiate proceedings in the lower Courts but not in the High Court as he did in the Public Prosecutions Authorization Notice, 1981, which was therefore Constitutional. That notice was also quite plain in its meaning-the D.P.P. could not initiate proceedings against the accused in the High Court and the information by which he purported to do so was accordingly null and void.

The Attorney-General can enter an oral nolle. He can delegate the power to an officer of his department. If the Attorney-General intends to enter a nolle prosequi without physically present in Court he will file an instrument to be tendered by an officer in his department. Furthermore, where the power of the Attorney-General to enter a Nolle prosequi has been delegated to officers of his department, such power or instrument must be in writing. A state counsel cannot enter or discontinue a criminal proceeding in court orally, the instrument authorizing him that is the gazette or certificate for such delegate must be tendered in court as demonstrated in the most recent but unreported case of the State V. Chief James Akor and 4 ors⁹. In this case the state counsel in company of three other lawyers, in an entry of nolle prosequi to discontinue the charge against the accused presented the certificate authorizing him so unreported to do a certificate written and signed by the Attorney-General was presented and the state that he does not wish to continue the criminal proceedings any longer, the court in receiving this without hesitation granted the nolle prosequi and the case was determine thereof. A State counsel cannot make an oral nolle. In *State v. Chukwurah*,⁴⁵ a state Counsel made an oral application to discontinue criminal proceedings against the accused person. The High Court rejected the application on the ground that only the Attorney-General could make an oral nolle.

⁹ Case No H.C.L/36C 2005. Unreported

⁴⁵ (1964) MNLR 64.

In exercising his powers the Attorney-General is required by Section 191(3) to have regard to the public interest, the interests of justice and the need to prevent abuse of legal process. Upon the authority of *Amaefule v. State*,⁴⁶ an abuse of legal process always involves some bias, malice, some deliberateness, some desire to misuse or pervert the system. There was an action pending in the Magistrate's Court. Another action was commenced at the High Court against the accused person on the same facts without terminating the initial action. The accused brought an action to quash the action in the High Court on the ground that it amounted to an abuse of the process of court. The Supreme Court, affirmed the lower Court's ruling that it was not an abuse. But in *Edet v. State*,⁴⁷ with similar facts to the above, the Supreme Court held that it amounted to an abuse of the process of court. It further held as follows:

The Court of Appeal held that although by virtue of Section 191 (3) the Attorney-General is presumed to have regard to the public interest, the interests of justice and the need to prevent abuse of the legal process and he is not obliged to give or state his reasons expressly either orally or in the document filed before the Court while entering a nolle prosequi, a person aggrieved may adduce evidence and prove that in exercise of entering such nolle prosequi, the Attorney-General did not have regard to the provisions of Section 191(3). On appeal to the Supreme Court, it was held that at common law and under the pre-1979 Constitution the Attorney-General is a master unto himself and is under no control whatsoever, judicial or otherwise vis-à-vis his power of instituting or discontinuing criminal proceedings. These powers are not just exercised by the Attorney-General arbitrarily or on a rule of thumb. As the chief law officer of the state, the Attorney-General exercises these powers with regard to public interest, interests of justice, and the need to prevent abuse of legal process. It was further held that since the powers of the Attorney-General to

institute and discontinue criminal proceedings cannot be questioned, the remedy for abuse of powers by the Attorney-General does not lie in judicial review of this abuse.

A private legal practitioner can appear for the Attorney-General. The constitution has given private prosecution latitude to conduct independent investigation and act on independent materials obtained as a result of such investigation. The power to initiate criminal prosecution whether by the Attorney-General or by a private prosecutor is a right in the broad sense. It is recognized by laws and the constitution of Federal Republic of Nigeria. It is in respect of the state, recognized by section 211 of the 1999 constitution¹⁸ and, in respect of the federation; it is recognized by section 174¹⁹. While the right of any other authority or person to initiate criminal proceedings is respectively as was the decision of the supreme court of Nigeria in *Fawehimi v. Akilu*²⁰. In this case, Chief Gani Fawehinmi applied for the fiat of the Attorney-General to privately prosecute only upon the fiat of the Attorney-General which he latter got to prosecute the accused person in relation to the alleged crime of murder of Dele Giwa.

For a private prosecution to prosecute any criminal case, he would not be under legal obligation to rely on police investigation before he could proceed to prosecute. All the connection with the private prosecutor has with law officer or the Attorney-General is that the officer endorsed the information, which is to be filled by the private prosecutor, to the effect that he, the law officer declines to prosecute must sought and obtained the signature of the law officer on the information to be filled as the case may be. This was given approval in the case of *Fawehinmi v. Akilu*²¹. It must be borne in mind that sections 12 and 342 (1) of the criminal procedure law²², and similar provision in section 130 of the criminal

¹⁸ *Fawehinmi V. Akilu and ors. Supra*

¹⁹ *supra*

²⁰ (1987) 12 S.C. 136, S.C.N

²¹ *Supra*.

²² Criminal procedure law, Cap, Lagos State, 1973

⁴⁶ (1988)2 NWLR pt. 75, p. 156

⁴⁷ (1988) 4 NWLR pt. 91, p. 722

code²³, and section 191 of the constitution of Nigeria²⁴. All these provisions contained clear and unequivocal statutory right which in Lagos state has been given to any person not only to apprehend 'felon' but, subject to certain conditions to initiate criminal proceedings against him, that is, to sought and obtained the signature fiat of the law officer concern or the Attorney-General concern of the information of his declination to prosecute²⁵. Importantly, where a public officer, like the Director of public prosecutions is placed under a duty to perform a specific act where the prescribed conditions are satisfied, that is to sign the information to be filled by the private prosecutor, to enable him prosecute the case, mandamus will be issue to compel him perform that act in one way or the other. The law is that mandamus will not issue to resolve a private dispute where the nature of a case is of such, this principle of law was established in the case of R.V. Wheeler²⁹. It was maintained in this case that mandamus will not lie to order admission or restoration to an office that is essentially of a private dispute.

In *D.P.P. v. Akozor*.⁴⁸ After terminating private prosecution, the D.P.P. instituted fresh proceedings against the defendant on similar charges. The D.P.P. briefed a private practitioner. Counsel for the defendant objected to a private practitioner appearing for the D.P.P. on the ground that Section 97 of the 1960 Constitution (equivalent to Section 191 of the 1979 Constitution) precludes the D.P.P. from instructing a private legal practitioner to appear in a criminal case, either alone or together with a member of the Director's staff. It was held that section 97 of the Constitution of the Federation, in providing that the D. P. P. shall have power to institute and undertake criminal proceedings, means that he and his staff can commence and make themselves responsible for criminal proceedings and not that they cannot brief private legal

practitioners to appear on behalf of the D. P. P. either alone or together with a member of the Director's staff. The Supreme Court held in *State v. Aibangbee*,⁴⁹ that instituting and undertaking a criminal prosecution within the meaning of Section 191 means that the Attorney-General and his staff can commence and make themselves responsible for criminal prosecutions, and not that they cannot brief private legal practitioners to appear on behalf of the Attorney-General either alone or together with a member of his staff.

The entering of a nolle prosequi acts as a discharge and not an acquittal. It leads to stay of proceedings. The same offender in respect of whom a nolle has been entered could still be arrested and tried on the same charge. In *Gbadamosi v. State*,⁵⁰ the Court held that there is a world of legal difference between the discharge of an accused and his acquittal. An accused person who is discharged of an offence stands the risk of being charged of the same offence. This is because in the eyes of the law he did not receive a full trial on the merits of the case. On the other hand an accused person who is discharged and acquitted will not face the ordeal of a second trial on the same offence. He is free for all times and for all purposes as far as the particular offence is concerned. If he is so charged Section 33 (9) of the 1979 Constitution will come to his aid.

4. THE DUTIES OF THE COURT

Courts are independent branch of government that exists to interpret laws, to enforce the laws, to resolve disputes, and to protect the rights people have as citizen of the Federal Republic of Nigeria. The Constitution of Nigeria 1999, like all other previous constitutions of Nigeria especially that of 1979, provides for the separation of powers among the three arms of government.⁵¹ Pursuant to this separation, section 6(1) and

²³ Criminal Code Cap. 31 Laws of Lagos State, 1973

²⁴ constitution of the Federal Republic of Nigeria 1979

²⁵ *ibid*

²⁹ (1935) Cast. Hard. 99; Eng. Report Vol. 95K.B, p.61

⁴⁸ (1962) ALL NLR 235.

⁴⁹ (1988) 3 NWLR PT. 84, P. 548

⁵⁰ (1991) 6 NWLR pt. 196, p. 182.

⁵¹ Section 4,5 and 6 of the Constitution of the Federal Republic of Nigeria, 1999

(2) vests judicial powers of the federation and that of states in courts. Following this separation, it is understood that only the court has the constitutional duties of interpreting the laws. It is properly termed judicial powers. Courts in the course of discharging their constitutional functions, serve as the guardian of the constitution to protect the violation of it's by any government department or institution. This is the primary role of its court as earlier noted, the court have consistently protected the principle of separation of powers as enshrined in the constitution by the observance of this non-interference y each arms of government on the constitutional functions of others. The rationale behind this is to avoid conflicts and the amelioration of frictions from inevitable interactions that is the hallmark of the court's duty. The court, in the course of interpretations of the constitutions is to ensure that there are no interdepartmental conflicts. At present, the 1999 constitution in its language prescribed the judicial power of the courts thus:

That such powers shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law; also shall extend to all matters between persons, or between government or authority and to any person in Nigeria and to mall actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.⁵²

The courts had made several effort aimed at limiting the powers of *Nolle prosequi* as exercised by the Attorney General, especially where the exercise of that power affects constitutional right of the citizen, or where there is flagrant abuse of *Nolle* power by the Attorney General. As already discussed, it is also pertinent to emphasize here that under the 1960 constitution, like in common law practice, Attorney General has absolute

powers of entering a *Nolle prosequi*⁵³.The said section of the 1979 constitution provides:

That Attorney General in exercising his powers under this section, the Attorney General shall have regards to the public interest, the interest of justice and the need to prevent the abuse of legal process.

From the forgoing provisions, it appears that the court is authorized to question the legality or otherwise of nolle power of the Attorney General. The first instance of courts challenging the nolle power of the Attorney General formed the subject of judicial pronouncement in *The State v. Adakole Akor and Others*,⁵⁴ in this case Attorney General of Benue state entered a *nolle prosequi* pursuant to section 191 (1) (c) of the 1979 constitution. This was challenged on the ground that the *nolle prosequi* had not been properly entered in the manner in which it has been done having regard to the provisions of section 191 (3) of the Constitution. The contention was that Attorney General is required under that subsection, to indicate reasons for his action, which would fall within the import of the subsection before it can be said that a *nolle prosequi* has been properly entered.

In spite of the erudite reasoning of his Lordship Idoko J. (as he then was, his decision was overruled by the Court of Appeal. Adeneka Ademola, J.C.A. (as he then was) observed that Section 191 (3) governs the exercise of the power of the Attorney General in respect of all matters stated in section 191 (1) of the Federal Republic of Nigeria, 1979. the section 191(3) does not make any difference to the exercise of the power to enter a *nolle prosequi* by the Attorney General on the ground that the section is merely restating factors which the Attorney General would have borne in mind, in any case, in discharging his duties, so that the directive are merely for the guidance of the Attorney General and not

⁵² Section 6(6) (a) (b) of the Constitution of the Federal Republic of Nigeria, 1999

⁵³ Section 160 and 191 (3) of the Constitution of the Federal Republic of Nigeria 1979

⁵⁴ (1981) 2 N.C.L.R. 410

limitations on his powers. The learned justice of the Court of Appeal anchored his judgment thus:

The question may be asked when the Attorney General begins a prosecution before a court, is he obliged to disclose to the courts such reasons as are within matters specified in section 191 (3) of the constitution of federal Republic of Nigeria, 1979 or when he continues or takes over a prosecution begun by someone else, is he obliged to disclose to the court such reasons that have compelled him to take over the prosecution? In my view there is clearly no such obligation on him to do all these.⁵⁵

In corollary to the foregoing the Supreme Court laid this contention to rest in the celebrated case of *The State v. S.O. Ilori*,⁵⁶ wherein, in the trial court, the Attorney General, Lagos State issued a *nolle prosequi* to discontinue a private prosecution pursuant to section 191 (1) of the Constitution of the Federal Republic of Nigeria, 1979. Both the trial court and Court of Appeal upheld the *nolle prosequi*. The court of Appeal further contended that the Attorney General's power of entering *nolle prosequi* was no longer absolute, being now subject to Section 191 (3) of the Constitution and that a person who can prove that the Attorney General was motivated by malice or what could be properly termed bad faith could get the court to go behind the certificate of discontinuance⁵⁷. Subsequent upon this decision, the case went to the Supreme Court, where it was laid to finality. At the Supreme Court, the issue considered was whether by virtue of the provision of Subsection 3 of Section 191 of the 1979 constitution the position has changed from what it was under the common law as well as the 1960 and 1963; Constitutions, and whether the said section 191 (3) is circumscribed by a precondition, or notwithstanding the provision

of the subsection the legal position is still the same. The Supreme Court in its ruling affirmed the pre-eminence of the Attorney General's power of entering a *nolle prosequi*⁵⁸. Furthermore, any provision in the 1979 Constitution which could be interpreted as changing either the common law or the pre-1979 position regarding the quality, strength and absoluteness of the Attorney General's powers is null and void.

In spite of the blanket powers granted to the Attorney General by the constitution, the power of the courts as regards the exercise on *nolle prosequi* is very much felt. The power of the court in determining the legality or otherwise of the exercise of *Nolle prosequi* in Nigeria by an aggrieved person cannot be over emphasized, this is because the court has tried to strike the balance in the exercise of *Nolle* power by the Attorney General. Hence, in *The State v. Ilori*,⁵⁹ *Eso J.S.C.* explained the role of the courts as follows:

But more importantly is the fact that a person who suffered from unjust exercise of his power by an unscrupulous Attorney General is not without remedy; for he can invoke other proceedings against Attorney General.⁶⁰

5. ATTORNEY-GENERAL'S POWER TO TAKE OVER CRIMINAL PROSECUTIONS

The function and powers of the Attorney-General under the constitution does not exclude the powers granted to any other person or authority by law to institute and undertake criminal proceedings as well as to take over and continue any criminal proceedings in any court of law other than a court-marital. This power grant to such other person or authority is however, subject to the powers of the Attorney-General to take over and continue or discontinue such criminal proceedings.

⁵⁵ Ibid at P. 718

⁵⁶ (1983) 1 SCNLRP. P. 94

⁵⁷ Ekundayo. Op. Cit. P. 16

⁵⁸ Ibid

⁵⁹ Supra

⁶⁰ Doherty. Op. Cit. p. 63

The power of the Attorney-General to take over criminal proceedings in the court at any stage before judgment is delivered either in private prosecution or where the state is a party to the case or proceeding can only come to be exercised upon the completion of investigation in case of public prosecution and upon investigation by a private prosecutor before the Attorney-General can exercise his power to take over that is, he must first sign the instrument to be filed by the private prosecution to the effect that his discontinuation or decline to prosecute the case and this must be presented to the court upon the hearing of the proceedings.

6. ATTORNEY-GENERAL'S POWER OF DISCONTINUING CRIMINAL PROSECUTION

Nolle prosequi is a formal entry on the prosecuting officer by which he declares that he will not prosecute the case further. The power to enter a nolle prosequi in a criminal case has been recognized as an undoubted power incumbent only on the Attorney-General. The constitution has arrogated powers to the Attorney-General be it of the federation or state to the extent that he shall have powers to act upon some criminal proceedings instituted within its jurisdiction in the following words; section 211 or 174³⁵,

- (a) To institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court-martial in respect of any offence created by or under any law of State Assembly;
- (b) To take over and continue any such criminal proceedings that may have been instituted by any authority or person; and
- (c) To discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him on any other authority or person.

³⁵ ibid

It must be noted that in exercising his power under the constitution, the Attorney-General shall have regards to the public interest, the interest of justice and the need to prevent abuse of legal process³⁶. Apart from the constitution, the Attorney-General has the power under the common law to discontinue criminal proceedings instituted by any authority or person. The Supreme Court found it necessary to make that clear in the celebrated case of *The State V. Ilori and 2 others*³⁷, where it constructed the provision of sections 160 and 191³⁸, that under the provision of subsections (1) of s. 191 of the constitution³⁹, the Attorney-General at the period before the 1979 constitution, still has an unquestioned discretion in the exercise of his powers to institute or discontinue criminal proceedings.

The Attorney-General common law pre-eminent and incontestable position with respect to the discontinuance of any criminal proceedings instituted by any authority or person at any criminal proceedings instituted by any authority or person at any stage before judgment is delivered is still preserved by that provisions and notwithstanding subsection (3) thereof, which is a restatement of the law up to 1979; he is still not subject to any control whatsoever, in so far as the exercise of his powers under section 191⁴⁰ of the constitution as concerned, and, except for public opinion, and the reaction of his appointer, he is still, in so far as the exercise of those power is concerned, law unto himself.

The Attorney-General has absolute discretion in deciding who to prosecute and for what offences where several person commit t he same offence. He is a law unto himself in taking decisions on matters under s. 174(1) and 211(1)⁵⁵. In exercising this power, the Attorney-General shall have regard to the

³⁶ Section 211 (3) and s. 174(3) Constitution of the Federal Republic of Nigeria..1999

³⁷ supra

³⁸ Constitution of the Federal Republic of Nigeria 1979

³⁹ ibid

⁴⁰ Constitution of the Federal Republic of Nigeria

⁵⁵ Constitution of Federal Republic of Nigeria 1999

public interest, the interest of justice and the need to prevent abuse of legal process. His action cannot be questioned or reviewed by the courts⁵⁶. It must also be borne in mind that where there is no incumbent Attorney-General, the power to discontinue any criminal proceedings at any stage before judgment is delivered in any court in Nigeria other than a court-martial cannot be validly exercised by any officer of his department⁵⁷. In *Attorney-General Kaduna State v Hassan*⁵⁸ the solicitor-General of Kaduna state entered a nolle prosequi in respect of culpable homicide not incumbent or substantive Attorney-General of the state. On appeal, it was held that the power of the Attorney-General cannot be exercised by the Solicitor-General or any officer of his department in the absence of an incumbent or substantive Attorney-General.

7. PROSECUTION IN THE NAME OF COMMISSIONER OF POLICE

The maker of the condition were well aware of the fact that criminal proceedings have for a considerable number of years been instituted in the name of the commissioner of police by virtue of section 19 of Police Act⁶⁸. However, it seems that the order of prosecution in relation to criminal justice is, that is, prosecuting in the name of the commissioner of police is a familiar system. It is obvious that the commissioner of police is representing the Attorney-General at the lower level especially in some criminal issues. The prosecution in the name of the commissioner of police is eminent in term of criminal justice system in Nigeria. By this process, it seems that the commissioner of police has dual function in term of criminal prosecution. He does not appear in person but also through an officer in charge of prosecution who prosecute for and on behalf of the commissioner of police for the state. If the constitution had intended that the power of instituting criminal proceedings should be exercise by the Attorney-General to

the exclusion of any other authority or person it shall so provide.

Finally, the power of the Attorney-General “to institute and undertake criminal proceedings is solely the constitutional power of a substantive and incumbent Attorney-General to takeover and also to continue any criminal proceedings that may have been instituted by any other person or authority as well as to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertakings by him or any other authority or person. But by the reason of the fact that the powers conferred upon the Attorney-General under subsection (1) section 174 and 211⁷⁴ respectively may be exercised by him in person or through officers of his d department. Essentially, to institute and undertake criminal proceedings can be done by the police by prosecuting in the name of the Commissioner of Police.

As to the exercise of this power of prosecuting in the name of the Commissioner, the power of the Police Commissioner, to conduct prosecution is subject to the powers vested in the Attorney-General of the Federation ad of the state. These powers upon which criminal case can be prosecuted in the name of the commissioner of Police are statutory recognized.⁷⁵

8. THE POSITION OF THE SOLICITOR-GENERAL IN AN ENTRY OF NOLLE PROSEQUI

The Solicitor-General without specific delegation from the Attorney-General could not exercise any of the powers of the Attorney-General under sections 174 and 211⁷⁶. If there is no Attorney-General there will be no one to make the necessary delegation. However, this principle of law was express in the very case of *Amaefule v. State*⁷⁷. In respect of state

⁵⁶ *State v. Ilori*, supra

⁵⁷ *Attorney-General of Kaduna State v. Hassan* Supra

⁵⁸ Supra

⁶⁸ Police Act. Cap. 359 L.F.N. 1990

⁷⁴ Constitution of the Federal Republic of Nigeria 1999

⁷⁵ Section of the Police (Amendment) Degree 1987 (1987, No. 14)

⁷⁶ Constitution of the Federal Republic of Nigeria 1999

⁷⁷ (1988) 2 N.W.L.R. (pt. 75) 156 at 177 SCN

offences, the Director of Public Prosecution of the Federation has no power to initiate or undertake prosecutions before the Court of Law of that state in issue, unless such power had been previously delegated to him in accordance with the provisions of section 211⁷⁸ of the state constitution in that regard vis a-vis the Attorney-General of the Federation and with the power of the Director of Public Prosecution in the name of Director of Public Prosecutions in the Federation.

This common law prerogative was vested only in the Attorney-General alone who could exercise the power except where he had given specific authorization⁷⁹ to other for such exercise, but even then, this was done only in particular cases. However, in this country, after the 1960 constitution, but before the 1979 constitution, there was no longer necessary for a specific authorization. It must be put on record that under the 1960 constitution, the power to institute and discontinue any criminal proceedings instituted by any authority or person was not vested in the Director of Public Prosecution of the Federation and each Region as the case may be.

Consequently, under this present constitution and pre-1979 constitution the power to enter a nolle prosequi was never vested in the Solicitor-general. Though he is an officer in the department of the Attorney-General and with much influence but he cannot enter a nolle prosequi on its own, but he could do this upon the power specifically delegated to him by the Attorney-General. The Solicitor-General may sign the instrument to be presented to the court to institute or particularly to discontinue any criminal proceedings he does not wax this power unilaterally but upon specific authority or general authority of the Attorney-General. This principle of law was demonstrated in Kogi State in the case of *State v. Chief James Akor and 4 ors*⁸⁰. When the Attorney-General decided to enter a nolle prosequi, the Solicitor-

General only came with the instrument or the certificate, and he would have to present it to court in company of some other team of Lawyers and the Court upon receiving the instrument properly executed, will not hesitate to grant the nolle Prosequi.

Although the Solicitor-General can institute any criminal prosecution as the case may be upon a general authority granted to him by the Attorney-General but this does not mean or extend to the power to enter a nolle prosequi unilaterally without the Attorney-General because any attempt to enter a nolle prosequi where there is no incumbent Attorney-General, it would be declare null and void ab initio on appeal⁸¹. This function is exercised by the Solicitor-General only upon the specific authorization for the Attorney-General under section 174 and 211.⁸²

9. CONCLUSION

It is a known fact under the constitution that the Attorney-General has the power to institute and undertake criminal proceeding, takeover and continue any criminal proceedings and to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or other authority or person and for the Attorney-General to exercise the power conferred upon him under the constitution, he may delegate this power to any authority or person or through officers of his department. But it is however expected of the Attorney-General to have regard to the public interest, the interest of justice and the need to prevent the abuse of legal process. It is therefore imperative for the courts in Nigeria to be more positive in interpreting the constitution and protecting the citizen against abuse of office by some overzealous officers under the guise of public interest and look into the propriety or otherwise of the entering of nolle prosequi in criminal prosecution in any court of law other than a court-martial. Hence, the need to

⁷⁸ Constitution of the Federal Republic of Nigeria 1999

⁷⁹ Section 174(2) and s. 211 (2) of 1999 Constitution

⁸⁰ Case No. HCL/36C/206 (unreported) supra

⁸¹ *Attorney-General Kaduna State v. Hassan* Supra

⁸² Constitution of the Federal Republic of Nigeria 1999

perpetually protect or control the absolute power of the Attorney-General in the exercise of nolle prosequi had received tremendous attention in some jurisdiction other than Nigeria and this must be follow to eradicate the misuse of the office of the Attorney-General in the application of the power of nolle prosequi in Nigeria.