The Impact of the Power of Nolle Prossequi on the Fight against Corruption in Nigeria

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ABSTRACT

Nigeria since independence has been battling with the endemic problem of corruption. Corruption has eaten up the fabric of the nation. It has always been fanned by the embers of tribalism and nepotism, lack of political will to face corruption headlong, weak criminal justice administration system and most importantly, weak institutions. The constitution of the Federal Republic of Nigeria, provides for the office of the Attorney General of the federation and or of the state/region. The Attorney General is to function as the Chief law officer and the minister of justice of the federation and or Commissioner of Justice of the state and or region. The fight against corruption has defied all known theories known to the Nigerian public and has not produced any reasonable results and one of the major reasons is the fact that those who have been at the leadership positions have scarcely been convicted of corruption even the corruption cases are very glaring. The constitution of Nigeria, as in many other Common Law nations, vests on the attorney general, the power to institute and discontinue any criminal proceedings before judgment is delivered. In the exercise of this power in Nigeria nay other common law countries, the attorney general is a law unto himself as he should only have regard to public interest, interest of justice and abuse of court processes. This article seeks to address the impact, the exercise of this power of Nolle Prosequi has had in the fight against corruption in Nigeria. The researcher tends to use several cases where the attorney generals of the federation and the states have evoked the power of Nolle Prosqui and critically analyze how such invocation has helped the fight against corruption or whether such invocation has aided and abated corruption. The research findings however reveal that the Attorney generals have rather used the power of Nolle Prosequi to stall the process of bringing to justice, corrupt government officials standing trials in different parts of the country. Finally, the researcher will make some recommendations which in his opinion, will remedy the situation.

INTRODUCTION

That corruption has deeply eaten up the fabric of our nation is a given. In its 2023 Corruption Perception Index (CPI), Transparency International, ranked Nigeria as 145 out of 180 countries that were considered. The corruption in Nigeria is so endemic that it permeates every facet of the nation's life and history. Every administration in Nigeria has always enunciated the fight against corruption as one of the high points of its agenda but rather than ameliorating, the cases keep growing worse by the day.

It is a given that states are governed by the Rule of Law and this Rule of Law is enshrined in the constitution of the state which is the grand norm that rules the affairs of such a state. In Nigeria, the constitution provides for the Office of the Attorney General of the federation who doubles as the Minister of Justice of the federation and the states or regions as the case may be.

Section 174 of the constitution provides inter-alia, the powers of the attorney general to initiate, take-over and discontinue any criminal case against any person or body in Nigeria before the judgment is delivered. In doing so, the attorney general is expected to take into consideration, the interest of the public, the interest of justice

and abuse of legal processes. In a landmark judgment by the Supreme Court in the case State V Ilori, the Supreme Court stated as follows:

*The pre-eminent and incontestable position of the Attorney General, under the common law, as the chief law officer of the State, either generally as a legal adviser or specially in all court proceedings to which the State is a party, has long been recognised by the courts, In regard to these powers, and subject only to ultimate control by public opinion and that of Parliament or the Legislature, the Attorney-General has, at common law, been a master unto himself, law unto himself and under no control whatsoever, judicial or otherwise, vis-a-vis his powers of instituting or discontinuing criminal proceedings. These powers of the Attorney-General are not confined to cases where the State is a party. In the exercise of his powers to discontinue a criminal case or to enter a nolle prosequi, he can extend this to cases instituted by any other person or authority. This is a power vested in the Attorney -General by the common law and it is not subject to review by any court of law. It is, no doubt, a great ministerial prerogative coupled with grave responsibilities. (*2 S.C. 42/1982)

Thus by this pronouncement of the Supreme Court, the attorney general assumes the position of a Law unto himself in the exercise of the power of Nolle. But it is a common dictum that power corrupts and absolute power corrupts absolutely. How well have the attorney generals of the federation faired in the use of this absolute power. In Nigeria especially in the fourth republic, the fight against corruption has suffered several setbacks as a result of the invocation of the power of Nolle to terminate criminal proceedings against highly placed individuals.

Several cases of misuse of the Power of Nolle abound in Nigeria and especially in this fourth republic. It was alleged that under the erstwhile Minister of Justice and Attorney General of the Federation, Michael Aondoakaa, several corruption cases initiated and prosecuted by the EFCC (Economic and Financial Crimes Commission) against top politicians who were alleged to have mismanaged the resources of their states were discontinued by Aondoakaa in the exercise of this constitutionally granted power without any cogent reasons. The actions of Aondoakaa were seen as deliberate act to shield his political aliies from the long arm of the law (Olugbenga, A. 2013). His successor, Mohammed Bello Adoke did not fare better as he was accused of towing the same line as his predecessor. But this research will focus on the tenures of Mohammed Bello Adoke, as Attorney-General (2010-2015) during the Goodluck Ebelle Jonathan administration and Abubakar Malami as Attorney-General of Nigeria, 2015 - 2023, during the Mohammed Buhari administration.

ORIGINS OF THE POWER OF NOLLE PROSEQUI

The origin of the office of the Attorney-General is usually traced to the 13th century when as a king's attorney or King's Sergeant, he was responsible for maintaining the interest of the King in the royal courts. The 1st reference to the regular Crown counsel appeared in the reign of Henry III when it was recorded that one Lawrence del Brok pleaded for the King from 1253 to 1267. However, the office appears to have become a fixed institution only after the ascension of Edward IV in 1461, when John Herbert, the first to be called "Attorney-General" was appointed as the King's principal law officer. 1

The power of nolle which is of common law origin confers on the Attorney General the power to terminate legal proceedings against an accused person. This power which is an extension of the royal prerogative of the monarch in England is exercised by the Attorney General. Accordingly the courts in England have declared that this power is not subject to judicial review but to the expectation that the Attorney General "will never prostitute those functions which he has to perform." (Ogidi, H. & Chukwuma, S. 2014)

Other jurisdictions with colonial links to England have also adopted this model of conferring the power of nolle prosequi to the attorney general or any authority performing the role of the Attorney General.6 Likewise the power of nolle prosequi has been firmly established under Nigerian legal jurisprudence for over five decades. However, it was not until recently that the propriety of conferring such power has become the centre focus of legal arguments.

NOLLE PROSEQUI IN NIGERIA

The Offices of the AttorneyGeneral, Solicitor-General, Regional Attorney-General and Crown Counsel were created under the Law Officer Order 1951 and Law Notes 1955. As a country operating the common law system, Nigeria also adopted the common law practice of empowering her attorney general to initiate, take-over and discontinue criminal cases in the country. It is note-worthy that the 1960 Nigerian Parliamentary Constitution and Regional Parliamentary constitutions removed all the common-law powers of the Attorney-General with respect to the prosecution of criminal cases and the discontinuance of the same and bestowed the said powers on the Federal and Regional Directors of Public Prosecutions, respectively. Owing to this development, the Director of Public Prosecutions (DPP) became the only civil servant imbued with such enormous powers. Fortunate enough, they could not be removed from office without following some long and cumbersome process under the Civil Service Rules. On its part, the 1963 Parliamentary Republican Constitution removed the control of criminal prosecutions from the hands of the DPP and returned it back to the Attorney-General, as was the case under the common-law. It goes further to make the hitherto, meaning before now, independent office of the DPP sub-ordinate to that of the Attorney-General (Abuza, A. E, 2021).

These powers are derived from sections 174 and 211 of the constitution. Section 174, which is reechoed by section 211, states as follows:

(1) The Attorney-General of the Federation shall have power -

(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) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.

(2) The powers conferred upon the Attorney-General of the Federation under subsection (1) of this section may be exercised by him in person or through officers of his department.

(3) In exercising his powers under this section, the Attorney-General of the Federation shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process.

Unfortunately, the constitution did not give any annexure as to what constitutes public interest, interest of justice and abuse of judicial process. The determination of these three elements are left to the discretion of the Attorney-General, what a huge lacuna. To make the matter worse, the Supreme Court declared that in matters of Nolle, the Attorney-General is a law unto himself. This power is not questionable by the courts according to the Supreme Court, thus it is not justiciable.

"Public interest" is a disclaimer that is pretty ineffectual at this stage. Never in the history of Nigeria has an Attorney-General stepped down from office because of a public outcry of injustice. If the people call "scam", he simply blends into the shadows not to be heard of until his next deed. The interest of justice is one of the top justifications for acts of government officials. (Ayebai-Preye. 2021).

A close second is ***"national security"***. As mentioned earlier, these prerequisites that are to be fulfilled before the filing of a nolle have a subjective meaning. Whatever the AG regards as being in the interest of the public is what he carries out. It does not matter if the public in question happens to be the top 5% of the population of Nigeria who would rather not be bothered by trivialities at the courts. The AG is not obligated to consult anybody before the filing of a nolle (Ayebai-Preye, 2021)

The landmark case of ***R v. Comptroller-General of Patents [1899]*** established that the power of the Nolle is indeed absolute, leave need not be sought of the court before invocation and the powers are not subject to judicial review. The Attorney-General is not under compulsion to explain the reasons for the nolle.(Ayebai-Preye, 2021)

It has been contended that the Supreme Court failed to consider the intent of the drafters in inserting section 191(3) vis a vis the other provisions of the constitution in deciding the case before it. In a Critique, Omoregie, E. B.(2004) stated that such discretion is much too wide to be consistent with the intendment of the framers of the constitution or to be consistent with the tenet of constitutional democracy, which is founded on the need to forestall the exercise or blossoming of arbitrariness in government. However, it is pertinent to note that the Supreme Court turned blind eyes to the provisions of Section 6 of the 1979 constitution despite the section forming part of the basis of the decision of the court of appeal. Section 6, with reference to the power of the courts stated that: The judicial powers vested in accordance with the foregoing provisions of this section –

(a) shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law (b) shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person; (c) shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution; (d) shall not, as from the date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966 for determining any issue or question as to the competence of any authority or person to make any such law.

This pronouncement of the Supreme Court for all intents and purposes, amounts to an infraction of the powers of the judiciary as enunciated above. (Ogidi & Chukwuma, 2014)

NOLLE PROSSEQUI UNDER MOHAMMED BELO ADOKE SAN

Sahara Reporters of February 17, 2011, reported that, Civil society groups working in the anti-corruption field in Nigeria have called for the prosecution of the Attorney General of the Federation and Justice Minister, Mr. Bello Adoke (SAN), for "aiding and abetting" corruption in the country. They also called on him to resign his office immediately, and for President Goodluck Jonathan to categorically dissociate himself from his AGF's pro-corruption position.

In February 2010, the Nigerian Bar Association through its President, Mr. Rotimi Akeredolu SAN, raised an alarm over attempts by the Federal Government to sweep the Halliburton scam under the carpet. A year after the clarion call, it is distressful to see Bello Adoke SAN, the Attorney General of the Federation and Justice Minister following the line of his predecessor-in-office Chief Michael Aondoakaa who was unwilling to prosecute public officials involved and was shown the way out in circumstances that are dishonorable and disgraceful.

It is clear that Bello Adoke SAN, has demonstrated a total lack of commitment to the anti-corruption war and has aligned himself with the conspiracy to continue the cover-up. It appears as if Mr. Adoke SAN, has suddenly become one of the richest sitting Ministers of Justice in the contemporary world today, with a level of wealth comparable only to those of the oil czars. We do not know the mystery behind his vast riches but we know that since coming into office:

He further accused the AGF Bello Adoke SAN of flagrantly violating sections 15(5) and 174 (3) of the 1999 Constitution when he set out to withdraw several cases on economic crimes against the public interest.

We note in particular the case of the Vaswani Brothers whom EFCC was bent on prosecuting for multi-billion naira tax evasion and forgery; his morbid deal with former Governor of Bauchi State, Adamu Muazu to stop his prosecution; withdrawal of charges and return of recovered stolen funds to former National Electricity Regulatory Commissioners; assurances of safe landing for Dele Oye and Akingbola's return from criminally self-imposed exile; the trial of Chief Kenny Martins handled by Festus Keyamo, for embezzling Police Equipment Funds was profanely halted by the AGF; so also was the trial of Julius Berger, Siemens Plc., Saipem, Technip and Halliburton Inc.; the attempt to stop the criminal trial of the Anosikes (Daily Times N3Billion scam), was resisted by a brave Trial Judge who actually overruled the AGF when he applied for a withdrawal of the charges on the ground that it was not in the public interest to do so. Within his ten months of being in office, the AGF has an all-time record of over 25 cases withdrawn by him against corrupt persons with a high political profile.

According Ayo Oluokun of Sahara Reporters (2011): In what looked like a throwback to the era of former AGF, Mike Aondoaka's tenure, a curious letter from the office of Mohammed Adoke, the current Attorney General of the Federation and Minister of Justice stopped the trial of Minister of State for Health Alhaji Suleiman Bello for corruption by the Independent Corrupt Practices and other Related Offences Commission (ICPC) which was scheduled to begin at Federal High Court, Yola, Adamawa State.

The anti-graft agency had dragged Suleiman to court over allegations that he received a sum of N11.2 million from Governor Murtala Nyako as 'hardship allowance" when he was the Resident Electoral Commissioner in Adamawa State. ICPC had accused Bello of conferring corrupt advantage upon himself by unlawfully soliciting for the fund from the governor.

The anti-graft agency said the minister's behavior is contrary to and punishable under Section '19' of the Corrupt Practices and Other Related Offences Act 2000, and was duly informed of his arraignment in court. However, while the two other accused persons were arraigned and granted bail and the case against them adjourned till 1st of March, the Minister was not in court as a result of a letter from the AGF office in which the ICPC was asked to hand off the matter.

No reason was given in the letter for the demand that ICPC should hand off the case, even though the anti-graft agency has successfully prosecuted cases on its own in the past.

It will be recalled that Mike Aondoakaa, the former Minister of Justice and the Attorney General of the Federal had provoked outrage locally and internationally with his attempts to also take over cases being prosecuted by the anti-graft agencies. Many believe that Adoke is also set to put the anti-graft war in danger with his current moves. (Sahara Reporters, 2011).

According to The Daily Trust of November 2, 2010, the Minister of Justice and Attorney General of the Federation, Bello Adoke (SAN), has continued to receive negative public opinion over the exercise of his discretionary power to discontinue prosecution (nolle prosequi) of some sundry politically exposed persons, heads of agencies, and private individuals indicted for corruption. According to an impeccable source at the Ministry of Justice, in barely six months in office, Bello Adoke (SAN) has dropped criminal charges against no fewer than 16 persons facing corruption charges in various courts.

The Nation Newspaper of January 6, 2013, quotes Alhaji Abubakar Tsav, a retired Police Commissioner and critic, as describing the performance of the Minister for Justice and Attorney General of the Federation, Mohammed Adoke (SAN), as below par. According to the Benue-born ex-serviceman, with so much expected from the minister when he took over on April 6, 2010, very little could be said positively about his activities in office since then.

"Tell me of a single major conviction the ministry recorded out of the multitude of corruption cases he inherited over two years ago. Thieves and looters continue to walk the streets free. Corrupt politicians and their friends continue to enjoy their loot without any challenge and the Attorney-General wants us to believe

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he delivered. That is impossible. In a situation where only petty thieves and pickpockets get punished by the state for corruption, while the real looters walk free, the Minister of Justice has failed woefully," says Tsav.

Corroborating the foregoing, the Head of the Coalition against Corrupt Leaders (CACOL), Debo Adeniran was quoted by The Nigerian Voice Newspaper of October 28, 2010 as saying that, "within the last six months he has served as Minister of Justice, Mr Bello Adoke has tactfully aided corruption by withdrawing more than fifteen cases against corrupt politicians instituted by the EFCC.

It is however pertinent to note that all these cases that were withdrawn by the Attorney-General had all died natural deaths as no attempt has been been made by that same office to pursue the 'res' of the criminal charges.

NOLLE PROSEQUI UNDER ABUBAKAR MALAMI SAN

Sahara Reporters in their June 03, 2020 edition, chronicled several cases where the then Attorney General Mallami entered a nolle prosequi in high profile corruption cases and that signaled the end of such cases.

According to the report, The Attorney-General of the Federation, Abubakar Malami, has grabbed the headlines again after taking over the case involving Bala Hamisu Wadume, a notorious kidnapper. Some soldiers had killed three policemen in Taraba State while Wadume was being taken to the police headquarters in Jalingo, the state capital.

Wadume was later re-arrested in Kano and is facing prosecution alongside Tijjani Balarabe, an army captain; and 18 others on a 16-count charge bordering on terrorism by the Inspector-General of Police, Mohammed Adamu. However, the matter took a new turn when a lawyer from the Ministry of Justice, Shuaibu Labaran, informed the court that Malami would be taking over the case.

This action attracted reactions with many saying the AGF was plotting how to kill the case, going by his past records. This is marked by previous top corruption cases taken over by the AGF as some of them ended up being swept under the carpet or the trial withdrawn.

Another of such cases taken over by the AGF is the money laundering trial of Akinola Ogunlewe being handled by the Economic and Financial Crimes Commission. At the continuation of the trial on March 10, 2020, Labaran told the court that Malami had shown interest to take over the matter. In view of the interest shown by the AGF, counsel to the first, second, third, fourth and fifth defendants, Ebun-Olu Adegboruwa, and the prosecution counsel, Bala Sanga, agreed to return before the court on April 7, 2020 to report on an out-of-court settlement. That was the last heard of the matter as Ogunlewe walked away a free person.

Another case taken over by Malami was the N25bn fraud trial of Danjuma Goje, former governor of Gombe State. The case was stalled when in an emergency hearing before Justice Babatunde Quadiri EFCC counsel, Mr Wahab Shittu, told the court that the agency was withdrawing from the case and handing it over to the office of the Attorney-General for continuation. The AGF however, stated that he found no prima facie case and withdrew the charges against Goje from the court in exercise of his constitutional power.That action by the AGF made Goje a free man.

Another of such corruption and controversial case taken over by the office of the AGF was the alleged debt of MTN's N242bn and $1.3bn for its business malpractices in the country. MTN announced that it received through its counsel, Wole Olanipekun (SAN), a letter from the AGF formally withdrawing the country's demand for the payment and referred the matter to the Federal Inland Revenue Service and the Nigeria Custom Service to resolve the controversy. The matter has since fizzled into oblivion.

Also, in 2017, Malami ensured the withdrawal of an ongoing corruption case involving three former officials -- Nasiru Ingawa (former Special Adviser on Sure-P to former Governor Ibrahim Shema), Abdulazeez Shinkafi (former director of finance and Account at the Katsina State Sure-P department) and Bello Bindawa

(former Chief Store Officer in the Katsina State civil service) who were being prosecuted for allegedly mismanaging N5.7bn Sure-P funds.

However, on October 25, 2017, the Katsina State Attorney-General, Ahmed El-Marzuqat, notified the court that the state government was taking over the prosecution of the accused persons from the ICPC following a fiat from the office of the AGF to take over the prosecution of the case. After a slow prosecution by the state government, the Katsina State High Court terminated the corruption trial of the three persons.

The AGF was also accused of stopping the prosecution of former Senate President, Dr Bukola Saraki, for allegedly forging the Senate rules to conduct the election of principal officers of the upper legislative chamber.

In 2019, the Concerned Football Patriots accused Malami of making frantic efforts to shield the President of Nigeria Football Federation, Amaju Pinnick, and other accused officials from being prosecuted for the mismanagement of $9.5m FIFA grant.

While the case was going on, Malami reportedly sent Abubakar Musa, a lawyer in his office, to pray the court for an adjournment to allow the AGF harmonise all the cases in the various courts. After a month, the Federal Government withdrew the case against Pinnick, NFF Secretary-General, Sunusi Mohammed; 1st Vice President, Seyi Akinwumi; 2nd Vice President, Shehu Dikko and Yusuff Fresh, an executive member.

The International Centre for Investigative Reporting further reported that Malami also hijacked a Visa scammer's case from the ICPC. In a report by Tajudeen Suleiman (2016), the centre stated that the decision of the Minister of Justice and the Attorney General of the Federation, AGF, Abubakar Malami, a Senior Advocate of Nigeria, SAN, to take over the prosecution of one Bello Akano, by the Independent Corrupt Practices and Other Related Offences Commission, ICPC, is generating debate among lawyers and members of the civil society.

Akano, who claims to be a travel agent, is facing criminal charges relating to visa procurement scam at the Federal Capital Territory High Court, Abuja. He was arraigned on November 30, 2015 on a 7-count charge bothering on possession of forged documents contrary to Section 368 of the Penal Code Act and making false statement to a public officer contrary to Section 25(1)(a) of the Corrupt Practices and Other Related Offences Act 2000.

The case had suffered several adjournments because Akano failed to show up in court, forcing the trial judge, Justice U.P Kekemeke, of the Federal Capital Territory, FCT, High Court, to order the ICPC to arrest and produce him in court.

However, to the utmost surprise of many lawyers, including the prosecutor and the judge, when the case came up for hearing, a senior counsel who represented the Attorney General of the Federation, AGF, told the court that the office of the AGF was taking over the prosecution of the case because it involved diplomatic relations with foreign countries. The taking over of Akano's case is even more curious as he is said to have boasted that the case against him will not "go far".

Abubakar Malami had however denied involvement and quashing of corruption cases in the country. Defending an allegation by Transparency International, Malami described reports of him compromising corruption fight in Nigeria as false, frivolous and baseless.

"If the AGF had watered down corruption cases since he assumed office as maliciously claimed in the report, then all the convictions on corruption cases recorded by the EFCC would have been taken over and stopped by the AGF using his constitutional power of Nolle Prosequi.

"However, the AGF allowed the EFCC to thrive well due to his total commitment to the fight against corruption in line with the manifesto of President Muhammadu Buhari," Malami said, clearing himself of all corruption allegations. (Akinkuotu E., 2021)

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ISSUES WITH NOLLE PROSEQUI

It is pertinent to note that the power of Nolle Prosequi can be used for good and bad cause. It can also be abused. These explain why the AGF is required to use the provisions of section 211 of the constitution with full consciousness of public interest and while ensuring that justice is not compromised.

Justice Usman Bukar Bwala (2019), in Dr Adekanya vs FRN 2005 reechoed the position of the Supreme Court that: An Attorney-General is therefore 'domino litis' as regards prosecution of all criminal matters before any court other than a Court Martial. The discretionary powers are far too wide and could, as is the case with absolute powers,be abused.

In the opinion of Abuza (2021), one major problem associated with the power of Nolle Prossequi is the backing of the Supreme Court. The apex Court in the ILori case had suggested that where the Attorney-General had abused the exercise of his power of nolle prosequi under the Constitution there is nothing the court could do about it but that he must be left to his appointor and public opinion. Indeed, this is a restatement of the position at common-law. It should be noted that the Attorney-General's appointor, the president or governor is not likely to remove or sanction the Attorney- General, as, often times, the power of nolle prosequi is exercised by the Attorney-General at the instance of the appointor. Also, unlike the situation in the developed nations such as the UK where public opinion may compel a public officer to resign his office, the situation in Nigeria is such that public officers hardly resign their offices in the face of adverse public opinion. Many Nigerian public officers actually take public opinion less seriously. In this way, public opinion may not weigh on the mind of the Attorney-General who wishes to abuse the power above. (Abuza 2021)

Since the Attorney general is a member of the executive council, he is automatically subject to the control of the executive arm of govt. In other words, it will be very impossible for the Attorney general to go against the will of his appointers (the executive) in matters that his appointers have interest. (Lawrence Emeka, 2020).

A second issue that arises from the proclamation by the Supreme Court is that the exercise of the power of Nolle is subjective and at the discretion of the Attorney General. It is contended that a decision that can negatively impact on the civil rights and obligations of a citizen of Nigeria, including any question or determination by or against any government or authority cannot be reached subjectively. An important point to bear in mind is that the power to exercise a nolle prosequi in criminal proceedings under section 191 (1) (c) of the 1979 Presidential Constitution or section 211 (1) (c) of the Constitution is a quasi-judicial function which must be done objectively and in which the court of law should look into and that is the basic reason why it has been contended above that the Attorney-General in exercising the power of nolle prosequi bestowed on him by the sections above must in doing so have regard to the public interest and so on. Thus if the Attorney General continues to enjoy this absolute or wide-discretionary power of nolle prosequi, there is no gain-saying the fact that this can engender manifest misuse of power, as he tries to protect or shield relatives, friends and political associates. (Abuza 2021)

One question that has been begging for answer is why a lawyer should single-handedly determine what amounts to abuse of court process instead of approaching the courts for such determination. The interest of justice can not be left to the whims and caprices of an individual. There are always two sides of any story and this individual may not be priviledged based on the high position of authority he is occupying, to hear both sides of the story to enable him determine what would be just to all parties concerned.

The cumulative effect of entering a nolle prosequi in criminal trials by the Attorney-General at common-law is not an acquittal but a discharge and does not operate as a bar to subsequent trial of the accused. The effect is, certainly, unfair; particularly when the nolle prosequi of the Attorney-General is entered on the day of judgment or before judgment after all prosecution witnesses might have testified. No doubt, a lot of time and resources would have been expended or wasted by the accused person at that stage, given the nature of criminal trials in Nigeria which are characterized by frequent, and often unending, adjournment of cases. Abuza (2021). However, it must be noted that there has not been any case in Nigeria that resurrected after a Nolle Prosequi

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had been entered by the Attorney General. Since the power of Nolle is absolute, there is nothing stopping the Attorney General from entering the Nolle a second time. Thus, the claim that it is not an acquittal in Nigeria does not hold any water.

In Nigeria, where we have strong individuals with weak institutions, the repository of such unquestionable powers on an individual in whatever guise is not and will never be in the interest of justice. Recently in Nigeria, the incumbent president introduced a new lexicon in our vocabulary 'Emilokan' which means, 'it is my turn', and goes on to win elections under very questionable circumstances. The judiciary was quoted to have been worse of it, having written judgments that caused outrage in the country.

The abuse of the power to enter a nolle prosequi in criminal trials by the Attorney-General does not augur well for the anti-corruption crusade or campaign embarked upon by the all the civilian administrations in the 4th Republic. Corruption is usually committed by those at the corridors of power. They are the close associates of those to be so appointed as Minister of Justice and Attorney General. Thus, the fight against corruption cannot be won nor can corruption be deterred when criminals or corrupt elements in the Nigerian society are set free and allowed to re-unite with innocent members of the Nigerian public by the sole proclamation of nolle prosequi by the Attorney-General in criminal proceedings. The fact that a corruption proceeding can be halted and swept under the carpet by the entering of a Nolle Prosequi which even the Solicitor general can exercise according the section four of the Law Officers Act, 2004, further gives impetus to corrupt officials of government that they can always get away with corruption. The war against corruption becomes an empty slogan or at best a selective justice system that only catches up with those who are not adequately connected with either the Attorney General or his appointors.

That corruption is endemic in Nigeria is a given. Everyday, new methods of entrenching corruption in the system is being developed by those concerned. One loophole, once discovered can be utilized to the fullest. The lacuna created by the constitution with regard to not subjecting the powers of the Attorney General to some check, is a grave oversight that needs to be addressed. in a country where nepotism, tribalism and religious bigotry form the basis of national interactions and engagements, the provisions of section 174 and 211 of the constitution as regards the powers of the Attorney General needs to be urgently addressed.

A bold attempt had been made by the House of Representatives to whittle down the powers of the Attorney General and to separate the office of the Attorney General from that of the Minister of Justice. The two separate bills had passed second reading on the floor of the House of Representatives in 2012 but none was passed into law. The Nigerian Voice Newspaper of May 24, 2012, quoted the then minority leader of the House of Representatives, Femi Gbajabiamilla as saying that, section 174 of the 1999 constitution had given the Justice Minister wide and ominous powers which required urgent steps to be removed in relation to corruption cases. Mr Femi Gbajabiamilla further argued that if the relevant sections of the 1999 constitution were amended, the Attorney General of the Federation can only exercise the powers subject to Acts of Parliament while the EFCC and other anti-graft bodies would be better empowered to do their jobs effectively. He noted that the Crown Counsel Act in the United Kingdom and the Ethics of Government Act in the United States, all prescribe the independence and impartiality of the Attorney General.

In conclusion, I lend my voice to the call for the separation of the Office of the Attorney General from that of the Minister of Justice. There is absolutely no way a politician can serve you justice in Nigeria. The politicians in Nigeria are known for wanting to win at all costs. Their slogan today is "declare me winner first and go to court".

The fight against corruption will remain a mere jamboree if a member of the political class is vested with the powers of halting criminal proceedings against his colleagues and members of his political party as nobody can be a judge in his own case.

The retention of the power of Nolle may be necessary for the smooth operations of the criminal justice system but it has to be re-posited in the office of an Attorney General who is equally not the Minister of Justice. The

Attorney General has to be supervised by the National Assembly in the exercise of such powers. Alternatively, the constitution has to stipulate what such vague clauses as “Public Interest” and “Interest of Justice” mean and when they can be invoked in a criminal proceeding as is the case with other common law countries.

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