

**THE IMPORT OF SECTION 396 OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT (ACJA) 2015: CASE STUDY OF FEDERAL REPUBLIC OF NIGERIA v DR OLUBUKOLA ABUBAKAR SARAki\***

**Abstract**

*The ACJA 2015 has repealed and replaced the Criminal Procedure Act and the Criminal Procedure Code in Federal courts. The scope of Section 396 of the ACJA however needs to be determined and adhered to in a bid to ensure that speed which is one of the aims of the ACJA is not defeated in criminal trials before the superior courts of record. This paper seeks to examine critically the relevant sections thereof in the light of the prevailing need.*

**Key words:** *Criminal Procedure Act, Criminal Procedure Code, Administration of Justice Act, Superior courts of record, Corruption*

**1. Introduction**

President Muhammadu Buhari, after his inauguration, enjoined all political office holders to declare their assets on assumption of office. The Code of Conduct Bureau thereafter discovered that the assets declared by Saraki were marked with irregularities. The Code of Conduct Tribunal therefore issued a 13-count charge on false asset declaration against him.<sup>1</sup> The charge sheet was signed on 11<sup>th</sup> September 2015.<sup>2</sup> Saraki, who is currently facing corruption charges before the Code of Conduct Tribunal was arraigned on September 18, 2015 and he pleaded not guilty to the charges on September 22, 2015 and was granted bail.<sup>3</sup> He is being prosecuted on 13 counts of false and anticipatory asset declaration which he made at the beginning and end of each of his two terms as governor of Kwara state.<sup>4</sup> The tribunal chairman adjourned the case to October 21, 22 and 23, 2015 for further hearing. He filed interlocutory applications before the Court of Appeal in the meantime. On the adjourned date of October 21, 2015, Saraki's lead counsel, informed the tribunal that the Court of Appeal was supposed to give her ruling on October 19, 2015, which was not ready on that date. The case was therefore adjourned to November 5 and 6 of 2015 for hearing so as to give the Court of Appeal time to deliver her ruling on the interlocutory application before her<sup>5</sup> which challenged the jurisdiction and constitution of the tribunal. The decision of the Court of Appeal on the tribunal's jurisdiction was appealed against and the Supreme Court on February 12, 2015 struck out the appeal. Saraki further applied to the Federal High Court, a court of coordinate jurisdiction with the Code of Conduct Tribunal, for a breach of his fundamental human rights.<sup>6</sup> The judges in these courts heard his applications and gave their rulings. The case is still ongoing before the Code of Conduct Tribunal.

The discourse in this article borders on the legality or otherwise of the courts hearing his applications and the Code of Conduct Tribunal staying proceedings pending the decisions of these courts in the light of Section 396 of the Administration of Criminal Justice Act 2015 which states thus:

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<sup>1</sup> *Federal Republic of Nigeria v. Dr Olubukola Abubakar Saraki*. Suit No CCT/ABJ/01/15; Ugonna C, Saraki's resignation, 2016 budget, others as NASS returns from recess. Accessed 16 April 2016 from <https://www.naij.com/796329-sarakis-resignation-2016-budget-focus-nass-resumes-plenary-today.html>

<sup>2</sup> C. Ejiofor, CCB files 13-Count Corruption Charge against Bukola Saraki. The charge sheet can be viewed at <https://www.naij.com/551839-breaking-see-13-count-corruption-charge-filed-saraki-assets-declaration.html>. Accessed 16 April 2016

<sup>3</sup> E. Okakwu, Saraki's corruption trial resumes at Code of Conduct Tribunal – Live Updates. Accessed 16 April 2016 from <http://www.premiumtimesng.com/news/top-news/191842-sarakis-corruption-trial-resumes-at-code-of-conduct-tribunal-live-updates.html>

<sup>4</sup> M. Abimboye, How Saraki's aides lodged N.6m 70 times for him in one day. Accessed 16 April 2016 from <https://www.naij.com/789989-newspaper-review-sarakis-aides-lodged-n-6m-70-times-one-day.html>

<sup>5</sup> E. Okakwu, *op.cit*

<sup>6</sup> I. A. Morgan, Why Bukola Saraki must not be Senate President (Part 2). Accessed 16 April 2016 from <https://www.naij.com/598968-saraki-must-go-everybody-hates-senate-president-part-2.html>

- (1) The defendant to be tried on an information or charge shall be arraigned in accordance with the provisions of this Act relating to the taking of pleas and the procedure on it.
- (2) After the plea has been taken, the defendant may raise any objection to the validity of the charge or the information at any time before judgement provided that any such objection shall only be considered along with the substantive issues and a ruling thereon made at the time of delivery of judgement.
- (3) Upon arraignment, the trial of the defendant shall proceed from day to day until the conclusion of the trial.
- (4) Where day to day trial is impracticable after arraignment, no party shall be entitled to more than five adjournments from arraignment to final judgment: provided always that the interval between each adjournment shall not exceed fourteen working days.
- (5) Where it is impracticable to conclude a criminal proceeding after the parties have exhausted their five adjournments each, the interval between one adjournment to another shall not exceed seven days inclusive of weekends.
- (6) In all circumstances, the court may award reasonable costs in order to discourage frivolous adjournments....

The article is divided into five parts, the first being this introductory. The second part discusses briefly the corruption prevalent in Nigeria that led to the Code of Conduct Bureau Act and the Administration of Criminal Justice Act. The third part reflects on whether the procedure adopted on the issue of Jurisdiction in the case under discussion is authority to the effect that case law can vary/alter the provision of statute. The fourth part is the way forward and conclusion.

## **2. Corruption in Nigeria and Responses to curbing it**

Corruption, like most intellectual discourse, has no precise and generally accepted definition because it has variants and is intricately woven into other forms of political and administrative behaviour. It can be political, financial, social or otherwise in nature.<sup>7</sup> Its definition depends on who is defining or from what perspective. Curzon defines it as “an inducement by means of improper consideration to violate from duty.”<sup>8</sup> Abegunde defines it as the deliberate violation of gainful ends of standards of conduct legally, professionally or even ethically established in private and public affairs.<sup>9</sup> World Bank defined corruption as “the abuse of office for private gains”:

Public office is abused for private gain when an official accepts, solicits, or extorts a bribe. It is also abused when private agent actively offers bribe to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of states assets or the diversion of states revenue.<sup>10</sup>

Osoba defines corruption as:

a form of antisocial behaviour by an individual or social groups which confers unjust or fraudulent benefits on the perpetrators, is inconsistent with established legal norms, and prevailing moral ethos of the land and is likely to subvert or diminish the capacity of the legitimate authority to provide fully for the material

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<sup>7</sup> O. Friday, Exploring the Legal and Practical Problems in Controlling Electoral Corruption in Nigeria. (M.A. Dissertation, University of Northumbria, Newcastle Upon Tyne, 2003) 2.

<sup>8</sup> L. B. Curzon, *A Dictionary of Law* (London: Macdonald & Evans, 1979)

<sup>9</sup> B. Abegunde, “Legal and Institutional Panacea to Corruption”, *Ibadan Bar Journal* Vol. 4, 2005, 50 -63

<sup>10</sup> World Bank Report, *Helping Country Combat Corruption: The Role of the World Bank* (Poverty Reduction and Economic Management, World Bank, 1997) 8-9

and spiritual wellbeing of all members of the society in a just and equitable manner.<sup>11</sup>

The United Nations Convention against Corruption 2004 recognises corruption as a multifaceted, dynamic and flexible phenomenon and therefore does not define but describe corrupt practices. The Criminal Code creates the offences of Corruption by public officials.<sup>12</sup>

There is no gainsaying that corruption is the major challenge faced by Nigeria which has become an epidemic phenomenon and eaten deep into the fabrics of Nigeria's citizenry and collective psyche.<sup>13</sup> It affects the growth and development of a nation. It is equally a social problem found in the award of contracts; promotion of staff; dispensation of justice; misuse of public offices, positions, privilege; embezzlement of public fund and other areas.<sup>14</sup> Corruption displays itself through embezzlement, inflation of contracts, conversion of public property, sexual harassment and so on.<sup>15</sup> Corruption is bedevilled by the following which is obvious in the life of the nation state Nigeria:

- a. Inefficient economic outcome
- b. Impediment of foreign and domestic investment
- c. Reduction in the ability of a state to revise revenue leading to imposition of higher tax rates on the few tax payers.
- d. Promotes inflation, undermines professionals.
- e. Prevents the attainment of set economic goals.
- f. Prevents the achievement of societal development.

The above points herald economic ruin.<sup>16</sup> The causes of corruption are so many. According to Seidman "there is no single cause of corruption motivation. It exists in a wide variety of circumstances. The pressures pointing towards corruption are many and varied."<sup>17</sup> Nigeria has several anti-corruption laws<sup>18</sup> one of which is the Code of Conduct Bureau and Tribunal Act. Despite these anticorruption laws,

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<sup>11</sup> C. A. Omaka, U. Uchechukwu, F. S. Ogazi., A. U. Eseni, and Chinedu-Igwe. "Legal Representation of Corrupt Political Office Holders in Nigeria – Between Professionalism and National Development". A paper presented by the Faculty of Law, Ebonyi State University, Abakaliki at the NALT 46<sup>th</sup> Annual Conference Proceedings – Unilorin. 159 – 185 at 161.

<sup>12</sup> Criminal Code Act Cap. C 23, LFN 2004, Section 98 (1)

<sup>13</sup> A. I. Abikan, Address of the President of the Nigerian Association of Law Teachers Presented at the Opening Ceremony of the 46<sup>th</sup> Annual Conference of the Association held at the University of Ilorin Auditorium on Tuesday 23<sup>rd</sup> April, 2013.

<sup>14</sup> Address by the Vice Chancellor, Prof. Ambali on the Occasion of the 46<sup>th</sup> Annual Conference of the Association held at the University of Ilorin Auditorium on Tuesday 23<sup>rd</sup> April, 2013.

<sup>15</sup> S. Ogunche, "An Appraisal of the Role of the EFCC and ICPC in combating Corruption and Financial Crime in Nigeria", *UniJos Law Journal* Vol. 9. No. 2, 2010. 74-104.

<sup>16</sup> Transcript of the Keynote Address delivered by Hon. Justice M.M.A Akanbi at the Opening Ceremony of the 46<sup>th</sup> Annual Conference of the Association held at the University of Ilorin Auditorium on Tuesday 23<sup>rd</sup> April, 2013.

<sup>17</sup>R. Seidman, "Corruption: A Case Study in Deviance" In B. Paul, *Sources Book of Ethiopian Law and Development* (Addis Ababa: Artistic Printers, 1974) 264.

<sup>18</sup> Anticorruption Legislation include: Investigation of Assets (Public Officers and Other Persons) Decree 1968; The Corrupt Practice Decree 1975; Public Officers (Special Provisions) Decree 1976; Miscellaneous Offences Act 1983; Recovery of Public Property Decree 1984; Bank Employees (Declaration of Assets) Act 1986; Promulgation of the Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act No. 13 1988; National Drug Law Enforcement Agency (NDLEA) Act 1990; The Public Complaints Commission Act 1990; The Code of Conduct Bureau and Tribunal Act 1990; Bank and Other Financial Institutions Act 1990; Recovery of Public Property (Special Military Tribunal) Act 1990; The Failed Banks (Recovery of Debts) and Financial Malpractices Act No. 18 of 1994; Failed Banks Act No. 16 of 1996; Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995; Advanced Fee Fraud and Other Related Offences Act No. 13 of 1995; Money Laundering Act No. 3 of 1995; Banks and Other Financial Institutions (Amendment) Act 2002; The Independent Corrupt Practices and Other Related Offences Act 2002; The Economic and Financial Crimes Commission Establishment Act 2004;

the menace of corruption and corrupt practices has increased. This signifies that the actual problem is not a dearth of legislation but weak and inefficient enforcement mechanisms among other factors which may include interpretation of the law. The search for a solution cannot be separated from the reasons for the promulgation of the ACJA which has as part of its agenda, the need for speedy trials so that justice delayed will not culminate in justice denied.

### **2.1 The Code of Conduct Bureau and Tribunal Act<sup>19</sup> (CCBTA)**

The Code of Conduct Tribunal is a creation of the Constitution.<sup>20</sup> The seriousness of the provisions on Code of Conduct for public officers is underscored by the fact that it is incorporated into the constitution. The Code of Conduct Bureau and Tribunal Act was promulgated to deal with complaints of corruption by public servants for the breaches of its provisions. The Bureau aims to establish and maintain a high standard of morality in the conduct of government business and to ensure that the actions and behaviour of public officers conform to the highest standards of public morality and accountability.<sup>21</sup> The Court of Appeal has appellate and supervisory jurisdictions over the proceedings of the Code of Conduct Tribunal and not any other court.<sup>22</sup> The Vice President, Prof. Yemi Osinbajo (SAN), GCON, in a paper titled: “Strengthening the Code of Conduct Bureau”<sup>23</sup> argued that the Code of Conduct for Public Officers is a component of the Nigerian anti-corruption and transparency framework. It is perhaps the first formal legislation creating offences and sanctions for official corruption and other acts in breach of the prescribed ethics for public officers.

### **2.2 The Administration of Criminal Justice Act (ACJA)**

The ACJA has as one of its purposes, the speedy dispensation of justice and calls on the courts and law enforcement agencies and other authorities and persons involved in criminal justice administration to ensure compliance with its provisions so as to ensure the realisation of its purposes.<sup>24</sup> The ACJA has repealed the Criminal Procedure Act<sup>25</sup> and the Criminal Procedure Code<sup>26</sup> that previously governed criminal procedure in the Southern and Northern parts of Nigeria respectively.

The rules of procedure annexed to the CCBTA in its rule 17 states that the CPA and CPC shall govern respectively in states where they are applicable when procedural issues involved are not expressly provided for. Now that the CPA and CPC have been repealed by the ACJA, it is implied that this provision makes it possible for the provisions of the ACJA to hold sway in the procedure of trial of cases before the tribunal. On this premise, the provisions of the ACJA relating to the time for raising certain objections, day to day trial and adjournment should be followed.<sup>27</sup> Also, section 2 of the ACJA which provides for the application of the ACJA to all criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, except a court martial, makes the ACJA an Act to be followed in the proceedings of the Code of Conduct Tribunal. One of the presumptions of interpretation of statutes expressed in the Latin maxim ‘*expressio unius est exclusio alterius*’ meaning the expression of one thing implies the exclusion of another.<sup>28</sup> This presumption buttresses the fact that the express mention of court martial stipulates that it is the only court excluded from the superior courts where the ACJA is to be applied.

### **3. Laying a Precedent or Carried out *Per Incuriam*?**

Central in fighting corruption is the judiciary, saddled with the duty of interpreting laws made by the legislators and ensuring fairness in each case that comes before the court. They are to be true to their

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<sup>19</sup> No. 1 of 1989, Cap.C15, Laws of the Federation of Nigeria,2004.

<sup>20</sup>CFRN 1999, as amended, 5th Schedule Part I

<sup>21</sup> Code of Conduct Bureau and Tribunal Act, 1991. section 2

<sup>22</sup> CFRN, section 246(1a)

<sup>23</sup>How powerful is the Code of Conduct Tribunal? *The Nation Newspaper*, September 22, 2015. <http://thenationonlineng.net/how-powerful-is-code-of-conduct-tribunal/>

<sup>24</sup> ACJA, Section 1 (1) & (2)

<sup>25</sup> Criminal Procedure Act, Cap. C 30 LFN, 2004 (repealed)

<sup>26</sup> Criminal Procedure Code, Cap. C 32 LFN, 2004 (repealed)

<sup>27</sup> ACJA, Section 396(1) - (6)

<sup>28</sup> *Lowe v. Dorling* (1906) 2KB 773 at 793

oath of office while they remain independent, impartial and well informed.<sup>29</sup> The question to be reflected upon in this section is: In this situation where the High Court, the Court of Appeal and the Supreme Court have ruled on interlocutory applications bordering on jurisdiction in Saraki's case, does it mean case law has overruled the provisions of statute? Have they shown that they are well informed as to the purposes of the ACJA? In a bid to answer this question, reference will be made to the idea of separation of powers under the Nigerian legal system and the role of judges. After that discussions will follow on the position of the law in situations where the Supreme Court makes a pronouncement without giving consideration to an existing law.

### **3.1 Doctrine of Separation of Powers<sup>30</sup>**

Under the Doctrine of Separation of Powers, government powers are divided into three branches comprising the executive, legislature and the judiciary. The three branches are to work independently as a preventive measure against abuse of power. According to Montesquieu:<sup>31</sup>

Political liberty is to be found only when there is no abuse of power. Experience shows that every man invested with power will abuse it by carrying as far as it will go... To prevent this abuse, it is necessary from the nature of things that one power should be a check on another... when the Legislature, Executive and Judicial Powers are united in the same person or body...there can be no liberty... Again there is no liberty if the judicial power is not separated from the legislative and executive... There would be an end to everything if the same person or body, whether of the nobles or of the people, were to exercise all three powers.

Chief Obafemi Awolowo, SAN, GCFR, while explaining the doctrine as enshrined in the Constitution and practiced in Nigeria said:

...absolutism and oligarchy of any kind is outlawed; true democracy is entrenched and manifestly seen to be entrenched in the constitution. In other words, each of the three arms of government is obligated to keep within and guard its bounds of authority... But does this all mean that each must operate in watertight compartments regardless of consideration for the other two?... Whilst the judiciary must be detached and independent from the other two organs and be manifestly seen to be so, the legislature and the executive must work in close and harmonious collaboration with each other, if the welfare of the people is to be truly and effectively served ... It is quite clear that the objective of the legislature and the executive is one and the same- to promote and serve the best interests of the people. If they work at cross purposes, or refuse to cooperate or collaborate with each other, the interests of the people will be seriously endangered...if each of the two, in the absence of consensus, claims the right of last say then, the common objective will either be unattainable, or be very slow of attainment.<sup>32</sup>

The last portion of the above quote can equally be viewed from the angle of what will happen if after the legislators have laid down what should be in the best interest of the people and the judiciary fail to interpret the law in this manner thereby making it impossible for the legislative act to advance the remedy it envisaged. This brings to mind the role of the judiciary in the society.

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<sup>29</sup> On independence of Judiciary, See generally K. M. Mowoe, *Constitutional Law in Nigeria*. (Lagos: Malthouse Press Ltd. 2008) 183

<sup>30</sup> For a detailed discussion of this doctrine, see E. Malemi, *Administrative Law*. (4<sup>th</sup> Ed. Lagos: Princeton Publishing Co. 2012) 61-75

<sup>31</sup> *Espirit Des Lois*. (Spirit of the Laws) Chapter 11, pp.3-6; see also *Lakanmi & Anor. V. A.G. Western State* (1971) 1 U.I.L.R 201; *Liyanage v. The Queen* (1967) A. C. 259 PC; *Governor of Kaduna State v. House of Assembly Kaduna State* (1981) 2NCLR 444 HC

<sup>32</sup> O. Awolowo, "Separation of Powers Among the Three Arms of Government" *Voice of Courage* 172-175

### 3.2 Role of Judiciary in the Society

In Nigeria, the role of the judges is to interpret and apply the law as it is and not to make law. Judicial legislation does not obtain in Nigeria. Where there is gap in the law, the duty of the courts is not to lay down the law but to allow the legislature amend and reform the law. Judges are to apply the law as made by the legislature. The positivist school of law is to the effect that law that is clear, plain and unambiguous should be applied by the judges according to its clear meaning and not according to the court's view of what it ought to be.<sup>33</sup> The Constitution has delegated judicial powers to the courts established for the federation.<sup>34</sup> The judiciary is therefore the 'branch of government invested with the judicial power; the system of courts in a country; the body of judges; the bench; that branch of government which is intended to interpret, construe and apply the law.'<sup>35</sup> 'Judicial powers' is not defined in the Constitution but Justice Miller has referred to it as the '...power of the court to decide and pronounce a judgement and carry it out into effect between parties and persons who bring a case before it.'<sup>36</sup> The court in *Muskat v. United States*<sup>37</sup> defined judicial powers as 'the right to determine actual controversies arising between diverse litigants duly instituted in courts of proper jurisdiction.' In line with the definitions above, the Supreme Court of Nigeria in *Senator Abraham Adesanya v. President of the Federal Republic of Nigeria*<sup>38</sup> stated that:

The words 'judicial power' as used in the Constitution means the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, or between itself and its subject, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding authoritative decision (whether subject to appeal or not) is called upon to take action.

Nnaemeka Agu JCA, in *Senate v. Momoh*<sup>39</sup> described judicial power as the authority exercised by the department of government charged with declaration of what the law is and its construction. It is therefore apt at this point to say judicial power entails not only the authority to adjudicate and say what the law is but also the power to give binding decisions.<sup>40</sup> The ability of the judiciary to give binding decisions which will be followed in subsequent cases is known as judicial precedent or Doctrine of *Stare Decisis*.<sup>41</sup> This doctrine is the principle of English Law that precedents are authoritative, binding and must be followed unless there is reason to deviate. It is the practice of standing by and applying earlier judicial decisions, where the same points arise again in litigation and not disturb settled points of law.<sup>42</sup> Decisions of higher courts on settled points of law are therefore binding on lower courts. However, in situations where a court has reasons not to follow an earlier case or judicial precedent, he has the liberty to distinguish<sup>43</sup> the earlier case from the case at hand so as to reach a decision in accordance with the circumstances of the instant case. In a situation where the court makes a pronouncement without having recourse to existing law or judicial decisions i.e. through want of care, such cases are said to have been given *per incuriam* and is not meant to be followed in subsequent cases but should be distinguished. In *Ahmadu Makun & 6 Ors v. Federal University of Technology, Mina & 2 Ors*<sup>44</sup> the court held that "per incuriam is a Latin phrase which generally means 'through inadvertence'...Per incuriam means the judge giving a judgement in ignorance or forgetfulness of an enabling statute or some binding authority on the court".

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<sup>33</sup> E. Malemi, *The Nigerian Legal Method...op.cit.* 129

<sup>34</sup> CFRN, Section 6 (1) and (2)

<sup>35</sup> *Black's Law Dictionary*, West Edition 762.33

<sup>36</sup> *On the Constitution* [New York:1991] 314

<sup>37</sup> *Muskat v. United States* 219 U.S 346 (1911)

<sup>38</sup> *Senator Abraham Adesanya v. President of the Federal Republic of Nigeria* (1981) 5S.C 112; (1981) 2 NCLR 358

<sup>39</sup> *Senate v. Momoh* (1983) 4NCLR 269

<sup>40</sup> Mowoe, *op.cit.* 178-179

<sup>41</sup> The doctrine means to abide by or adhere to decided cases. *Adetoun Oladeji (Nig.) Ltd v. Nigeria Breweries Plc.* (2007) 1SCNJ 375

<sup>42</sup> Malemi E, *The Nigerian Legal Method* (Lagos: Princeton Publishing. 2012) 125

<sup>43</sup> *FCSC V. Laoye* (1989) 2 NWLR (Pt. 106) 652

<sup>44</sup> *Ahmadu Makun & 6 Ors v. Federal University of Technology, Mina & 2 Ors.* (2011) 6-7 SC(pt.v) 32

### 3.3 Reflections

There is a presumption against the repeal of a statute, except, it is repealed by specific words or reference.<sup>45</sup> This presumption clearly shows that since the Supreme Court did not make a pronouncement on the issue of her hearing Saraki's appeal amounting to overruling the provisions of the ACJA, it cannot be reasoned out to have intended such. One way to justify the procedure of hearing the appeal is to say the issue of jurisdiction is a fundamental one in any suit as the heart and soul of the suit which renders the proceeding and judgement a nullity if found to be lacking.<sup>46</sup> The issue of jurisdiction queries the power of the tribunal and goes to the root of the action.<sup>47</sup> It radically forms the foundation of adjudication.<sup>48</sup> The poser at this juncture now is: Does this serve as an exception to the provision of the ACJA that states thus: "After the plea is taken, interlocutory applications should be addressed same time with final judgement"?

The position of the law is that the rights of parties are governed by the state of the law as at the time when the cause of action arose and there is a presumption against retroactive laws.<sup>49</sup> In this case, the ACJA had come into operation in federal courts before the charge was signed and Saraki was arraigned. There is therefore no reason for the provisions of the ACJA to be ignored at any stage in the conduct of the criminal proceedings before the code of conduct tribunal. It is therefore trite to say that the decision on the issue of jurisdiction which went on appeal to the Courts of Appeal and Supreme Court should be regarded as having been done *per incuriam* and as such should not be followed as a precedent for other cases to be adjudicated upon using the ACJA. It is also noteworthy that the Central Bank Cases on Mutilated Naira notes prosecuted by the Economic and Financial Crimes Commission (EFCC) are also running fowl of Section of 396 of the ACJA. These cases before the Federal High Court, Ibadan Judicial Division, have been adjourned *sine die* because the defendants have appealed to the Court of Appeal on the failure of the Federal High Court to grant their bail applications.

### 4. Conclusion

One of the aims of the Administration of Criminal Justice Act is to ensure speedy trial and disposition of cases before the courts. The attitude of the courts adhering to the age long practice of staying proceedings pending the determination of the issue of jurisdiction which can be raised at any time in a trial has come to an end as it is contrary to the essence of the provision of section 396(2) and has to be adhered to so as to prevent counsel raising the issue of jurisdiction as a clog in the wheels of progress towards achieving speedy disposal of criminal cases. As the vicious circle of corruption is getting wider and wider, with the law enforcement agencies not finding it easy to achieve the statutory purposes in place to curb it, there is the need for the courts to make a pronouncement urgently on the scope of this section. It is hereby submitted that since the provision of section 396(2) of the ACJA is clear, the Code of Conduct Tribunal and courts ought to have followed it and not allowed Saraki to appeal to the appellate courts neither should the Federal High Courts in Ibadan have allowed the defendants to stall the prosecution of the cases as stipulated by the ACJA up to the point that the cases now stand adjourned *sine die*. Equally, the appellate courts should not have allowed the appeals of the defendants to their courts on the strength of Section 396 of the ACJA as it is obvious that allowing the appeal has automatically created an avenue and a basis of delaying trials at the lower courts. This situation has created an avenue to defeat the purpose of the legislative intent which is to decongest prisons through speedy trials. The courts are also enjoined not to use this case as a precedent or the mutilated currency cases and any other case decided after the ACJA has come into force which borders on corruption, without taking cognisance of the import of section 396(2) which is to the effect that after a defendant takes his plea, all objections raised should be addressed in rulings pronounced at the time of judgement.

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<sup>45</sup> E Malemi, *The Nigerian Legal Method*. 2<sup>nd</sup> Edition. Lagos: Princeton Publishing Co., 2011, p. 408

<sup>46</sup> *John Okechukwu Emeka v. Lady Margery Okadigbo & 4 Ors.* (2012) 7SC (Pt.1) 1; *Agbule v. Warri Refinery & Petrochemical Co. Ltd.* (2012) 12 SC (Pt. VII) 112;

<sup>47</sup> *Lovleen Toys Ind. Ltd v. Kolawole* (2012) 10-11 SC 192; *The Federal Republic of Nigeria & Anor v. Lord Chief Udensi Ifegwu* (2003) 8 SCM 111

<sup>48</sup> *Olusegun Egunjobi v. Federal Republic of Nigeria* (2012) 12 SC (pt.iv) 148

<sup>49</sup> *Ibid*; see also Constitution of the Federal Republic of Nigeria, 1999, section 36(8) and (12); *Aoko v. Fagbemi* (1961) 2 ALL NLR 400; *Tofi v. Uba* (1987) 3NWLR Pt. 62, p. 707 CA