

## DEFINING THE AGENCY OF THE POLICE: CONFLICTING LEGAL APPROACHES

### **Abstract**

*In view of the broad based functions of a Principal or the diverse economic nitty-gritty in global communities, a Principal is often in need of representatives who are vested with powers of an agent in an agency agreement. Similarly, in the dispensation of functions of office, agents are vital tools to authorities who are saddled with the responsibilities of service delivery to the public. These agents carry with them the aura of authority such as the law has vested on the principal. Agents possess powers to the limits of authority accruing unto them from the Principal. Much more worrisome is a situation where the agent is made to perform his responsibilities under a total stranger to the agency agreement. In this case, we are not talking of the third party, but a totally different issuing authority. This raises a very germane question of whose agent such errant or erring agent would be. This paper takes a look at some of the conflicting decisions of the Court of Appeal on the issue of the Nigerian Police and who should take responsibility for any infractions committed by the police in the course of their duties.*

**Keywords:** Agency, Police, Law, Nigeria.

### **1. Introduction**

Agency is defined as ‘a consensual relationship existing between two parties by which one, the Agent, is expressly or impliedly authorized to act on behalf of another, the Principal, in any dealing with third parties’.<sup>1</sup> Flowing from the above definition, an agent is therefore that person whom the learned authors Keith Abbott & Norman Pendlebury defined as ‘a person who is used to effect a contract between the principal and a third party’.<sup>2</sup> According to Achike, Agency is ‘the consensual relationship which arises when a person called the agent acts on behalf of another called the Principal whereby the latter becomes answerable for the lawful acts of the former done within the scope of his authority as they affect the legal relationship between the principal and a third party.’ It is a renowned principle of Law of Agency that he who acts through another is deemed to have acted through himself. This aphorism is captured in the legal maxim, ‘*Qui facit per alium facit per se*’.<sup>3</sup> Arising from the above therefore:

- (a) The agent is a tool or channel through which the Principal acts and the agent immediately drops out after accomplishing the transaction between the Principal and the third party.
- (b) Agency envisages the execution of a legal transaction. Therefore, where the agent is involved in any criminal or tortuous act, he cannot rely on the defense that he was acting as an agent and so acting under the instruction of the Principal. If he so act either criminally or tortuously, he shall be liable for the offence committed or as a joint tortfeasor.
- (c) Every contract concluded by the agent binds the principal.
- (d) Such relationship creates privity of contract between the Principal and the third party as if the principal himself created the contract.

This principle of law is not unqualified as a principal, whether disclosed or undisclosed, is only bound by those authorized acts of his agents which are within the ambit and scope of their employment or

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<sup>1</sup> M. C. Okany, *Nigerian Commercial Law*; Onitsha; Africana- Fep Publisher(1992) pg 343

<sup>2</sup> Keith Abott and Norman Pendlebury, *Business Law*

<sup>3</sup> *Odogwu v Ilombu* [2007]8 NWLR Pt 1037,488

authority.<sup>4</sup> It follows therefore, that where an agent is on a frolic of his own or performs a lawful act in an expressly prohibited manner, he will himself reap the nauseating fruits of his unscrupulous business and the principal will be absolved from any liabilities incurred. It is a legal aphorism that a man intends the natural consequences of his action.

The Nigeria Police is an agent of the government and as its principal; the government is bound by the acts of the police subject of course, to the above exception. It has been stated<sup>5</sup> that agencies of government are organs of initiatives whose powers are derived either directly from the Constitution or from laws enacted there under. They therefore stand in relationship to the Constitution as it permits their existence and functions.<sup>6</sup>

The purpose of this work therefore is to briefly highlight Police duty in the quest to ascertaining its primary social obligations, ex-ray its nature, showing expressly who its acts bind, between the Federal and the State Government since the police is supposedly servant of the Federal Government.

The question then is whether the Nigeria Police is an agent of the Federal Government or the State government and if the answer to the above is affirming the Police as agent of the Federal Government, to what extent then can it bind the Federal Government in its day to day dealings with the public where its act are done for the interest of the State Government. To effectively answer the above therefore, it is imperative to take a cursory look at the history of the Police in Nigeria.

## 2. History of the Nigeria Police

The word 'Police' was derived from the Greek word 'Polis' meaning that part of non- ecclesiastical administration having to do with safety, health and order of the State.<sup>7</sup> It is a department responsible for the preservation of law and order, detection of crime and enforcement of civil law.<sup>8</sup> Before the arrival of the British into the geographical entity known as Nigeria, the traditional societies had their system of crime prevention and security. Law enforcement was traditionally the responsibility of the community as a whole or individual victim or certain age grades vested with such responsibility.<sup>9</sup> In the North, the Dogaris, Yan Doka, and Yan Gadis, who were able bodied young men, were employed by the Emirs with responsibilities of enforcement of law and order and execution of sanctions in native courts.<sup>10</sup> In the Eastern part of Nigeria such cult groups as the Ekpe or Okonko were saddled with the responsibilities to maintain law and order. Among the Yorubas, the use of the Oro Cult groups and the Egunguns were prominent in the enforcement of law and order before the advent of the modern Police system.<sup>11</sup>

In the colonial period, for the purpose of enforcement of consular orders and execution particularly against uncooperative chiefs and to stop slave trade, there was the need to have a police system by the British Colonial masters.<sup>12</sup> After the annexation of Lagos in 1861, William McCosky, the first acting

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<sup>4</sup> Okany, supra, p. 345

<sup>5</sup> Per Aboki, JCA in *AG fed. v Abubakar* (2007) 8NWLR pt 1035,117

<sup>6</sup> Ibid

<sup>7</sup> I. C. Nnerole, *Police Interrogation in Criminal Investigation*, (Minna Haligrapy Nig. Ltd 2008)

<sup>8</sup> The New Webster Dictionary of English Language International Edition 2006

<sup>9</sup> A. A. Ayuk et al, *Traditional methods of crime control and community security in Odukpani Local Government Area of Cross River State- Nigeria* www.iosrjournals.org Accessed on 11- 10- 2017

<sup>10</sup> Nnerole Supra note 8

<sup>11</sup> G. Akinpelu, *Essay on Administration of Criminal Justice* (cited by Nnerole I.C) Supra note 8 pg 10

<sup>12</sup> M. A. Ajomo and I. E. Okagbue, *Human Rights and Administration of Criminal Justice in Nigeria ( Lagos NIALS1991) P. 90*

Governor of Lagos established a small Police Force Consular Guard consisting of about 30 men. The force was later enlarged to about 113 men. Another group of liberated Hausa slaves were also constituted into about 100 Hausa Constabulary.<sup>13</sup> The Royal Niger Company on its own part established the Niger Constabulary to protect its business in 1886. These men were armed. This force was disbanded in 1900 when the Protectorate of Northern Nigeria with headquarters in Lokoja was proclaimed.<sup>14</sup> At the Oil River Protectorate at Calabar, acting Consul Amesley raised a small Police force of about 22 men with arms. Later Consul Claude Macdonald formed a Police Force called court messengers at the Niger Coast Protectorate which replaced the Oil River Protectorate in 1892. Alongside the court messengers was a fairly strong military force of about 497 men used for more difficult expeditions. This force was later disbanded with the formation of the Niger Coast Constabulary in 1894 which lasted until 1900 when the Colony and Protectorate of Southern Nigeria was proclaimed.<sup>15</sup> By the Police Ordinance of 1895, a small Police Force was established in the Colony of Lagos called the Lagos Police. The Ordinance of 1897 declared it an armed force charged with the usual police duties and the defence of the colony against external aggression.<sup>16</sup>

At the beginning of the twentieth century, three separate police forces existed in Nigeria. There was the Lagos Police Force, the Northern Police Force and the Southern Police Force. In 1906, the Colony of Lagos was merged with the Southern Protectorate. In 1914, the Northern Colony and the Southern Colony were amalgamated to form the Protectorate of Nigeria. But the Police Force remained separate until 1<sup>st</sup> April 1930 when both Police Forces were merged to form the Nigeria Police Force under an Inspector General of Police called Duncan by Ordinance No 2 of 1930.<sup>17</sup> The 1960 Independence Constitution established the Nigeria Police Force as a Federal Force charged with the responsibility of maintenance of law and order throughout Nigeria. However, Section 98 (7) of the 1963 Constitution empowered the Legislature of a region to make provision for the maintenance of a police force by any native authority or any local government authority. Accordingly Native Authority Police Forces were established in Northern Nigeria and Local Government Police Force were established in the western region and mid-west Regions respectively. However, the Native Authority and Local Government police forces could no longer effectively play their complimentary role of enforcement of law and order; they were phased out by the military regime<sup>18</sup> and the forces were integrated with the Nigeria Police in 1968.<sup>19</sup> The 1979 Constitution uniquely established for the whole Country a single Police Force in Nigeria. This provision was equally re-enacted in 1999 Constitution.<sup>20</sup>

### **3. Nigeria Police as an Agency**

The Nigeria Police Force is established under the 1999 Constitution of the Federal Republic of Nigeria. This statute book (*grundnorm*) also provides that members of the Nigeria Police shall have such powers and duties as may be conferred upon them by laws.<sup>21</sup> Section 214 (1) of the Constitution provides thus: ‘There shall be a Police Force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section, no other Police Force shall be established for the Federation or any part thereof. Sub-section (2) further provides that subject to the provision of this Constitution’ -

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<sup>13</sup> *ibid*

<sup>14</sup> S. G. Ehindero, *The Police and Human Right* ( Jos, Ehindero Press: 2004) P4

<sup>15</sup> *ibid*

<sup>16</sup> Ajomo and Okagbue, *Supra* note 12

<sup>17</sup> Ehindero, *Supra* note 14 P12

<sup>18</sup> Ajomo and Okagbue, *Supra* note 16

<sup>19</sup> *ibid*

<sup>20</sup> Section 214

<sup>21</sup> *ibid*

- (a) The Nigeria Police Force shall be organized and administered in accordance with such provision as may be prescribed by the Act of the National Assembly;
- (b) The members of the Nigeria Police Force shall have such powers and duties as may be conferred upon them by law;
- (c) The National Assembly may make provisions for branches of the named force of the Federation or for the protection of harbors, waterways, railways and air fields.

The Nigeria Police Force is a part of the Executive Arm of the Federal Government and it is headed by the Inspector-General of Police, followed by the Deputy Inspector-General, the Assistant Inspector-General, the Commissioner of Police down to the recruits, in the ladder of progression. Its general administration is vested on the Police Council which is constituted by the Chairman of the Police Service Commission.<sup>22</sup>

Section 215 expressly provides for the Office of the Inspector General of Police and a Commissioner of Police for each State of the Federation. Sub section (1) provides that there shall be –

- (a) An Inspector General of Police who, subject to section 216(2) of this Constitution shall be appointed by the President on the advice of the Nigeria Police Council from among serving members of the Police Force;
- (b) A Commissioner of Police for each state of the Federation who shall be appointed by the Police Service Commission.

Sub section (2) states further that the Nigeria Police Force shall be under the command of the Inspector-General of Police and any contingents of the Nigeria Police Force stationed in a state shall, subject to the authority of the Inspector-General of Police, be under the command of the Commissioner of Police of the State. The President or such other Minister of the Government of Federation as may be authorized in that behalf may give to the Inspector-General of Police such lawful directions with respect to the maintenance and securing of public safety and public order as he may consider necessary, and the Inspector-General shall comply with those directions or cause them to be complied with.<sup>23</sup> The Governor of a State or such Commissioner of the Government of the State as may be authorized in that behalf, may give to the Commissioner of Police of that State lawful directions with respect to the maintenance and securing of public safety and order within the State as he may consider necessary, and the Commissioner of Police shall comply with those directions or cause them to be complied with.<sup>24</sup> Provided that before carrying out such directions under this sub section, the Commissioner of Police may request that the matter be referred to the President or such Minister of the Government of the Federation as may be authorized in that behalf by the President for his directions. Finally, any direction given under this section shall not be inquired into in any court.<sup>25</sup>

The importance of the Nigeria Police cannot be over-emphasized since its duties are copiously itemized in the Police Act and other enabling laws. In the case of *Fawehinmi v IGP*<sup>26</sup> the Supreme Court per Uwaifo JSC quipped:

...S.214 (1) of the 1999 Constitution recognized one Police Force for Nigeria and the said police are given a duty under s.4 of the Police Act... to prevent and detect crime, apprehend offenders, preserve law and order, protect life and property and enforce all

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<sup>22</sup> See generally, S.9 Police Act Cap P19 LFN, 2010.

<sup>23</sup> Section 215 (3) of CFRN

<sup>24</sup> Section 215(4) *ibid*

<sup>25</sup> See generally, s. 215(5) of the Constitution.

<sup>26</sup> (2002)7 NWLR pt 767, 600.

laws and regulations with which they are directly charged, and that is an important statutory duty which they owe to the generality of Nigerians and all other persons lawfully living within Nigeria.

In carrying out its duties, Police Officers<sup>27</sup> are always exposed to legion of hazards, both social and otherwise. This stems from the precarious nature of their job as in all cases, they are only conspicuous to the men of the underworld and other possible law breaking elements; whereas these group of people are not so revealed to the Police. The Police may not find it quite easy detecting all crimes within limited time frame, which may underpin the aphorism ‘justice delayed is sometimes justice denied’.<sup>28</sup> Their hasty conclusions and failure to exercise due diligence in their investigations for example, have resorted in many extra judicial killings for which they are personally liable<sup>29</sup>. One of such erratic police extra judicial killings is the case of the killing of one tricycle operator called Akeem Aranse in May 2015 in Lagos by a top Police Officer called ASP Mohammed during an exchange of words.<sup>30</sup> In a similar occurrence, one Korie, aged 37years, a psychology graduate from Imo State University Owerri, was killed by Police men who accosted him and demanding some money from him.<sup>31</sup>

Onnoghen, JSC <sup>32</sup> frowned seriously at such attitudes, which has the consequence of the saying ‘whoever sows the wind of lawlessness must reap the whirlwind of constitutional accountability’. According to his lordship:

It is the unfortunate acts of the police like this that have made it near impossible for Nigerians to really consider police as their friends. The fact of this case has made it necessary for us to have a rethink about the modus operandi of our police force and may advise the wisdom of approach of investigation before arrest instead of arrest before investigation as hitherto is in vogue.

#### 4. Nature of Police Duty

Some persons interpret the phenomenon guiding the duties of the police as executive while others perceive it as administrative. Many more people see the police acts as ministerial exigency. The paramount and unavoidable question now is, ‘where do we classify police acts’? For a proper understanding, these terms require concise and specific definitions. The Executives enforce the law, the Police belongs to the Executive Arm. Logically, it follows that police performs executive duties. This claim sounds plausible to the right minded members of the society and the generality at large.<sup>33</sup> Administrative duties on the other hand are those which involve the management or performance of the executive duties of a government, institution, or business. In Public Law, it involves the practical management of executive department and its agencies.<sup>34</sup> Conversely, a ministerial act or duty is one which a public officer or agent is required to perform upon a given state of facts in a prescribed legal

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<sup>27</sup> S.1 police Act defines officer as any member of the police force.

<sup>28</sup> [www.lawyersclubindia.com](http://www.lawyersclubindia.com). See also [dailypost.ng/2014/01/31/dealing-delayed-justice-syndrome/](http://dailypost.ng/2014/01/31/dealing-delayed-justice-syndrome/)

<sup>29</sup> See *Ibikunle v The state* (2007)2NWLJ pt1019,546.

<sup>30</sup> The Sun Newspaper of 22<sup>nd</sup> January 2016. [Sunewsonline.com/anxiety-over-extra-judicial killing](http://Sunewsonline.com/anxiety-over-extra-judicial-killing). Accessed 11-10-2017

<sup>31</sup> *ibid*

<sup>32</sup> *Ibikunle v The state* *supra*

<sup>33</sup> Lord Denning says that the right minded members of the society are lawyers since they represent the right minded of any society in seeking to do what is good between man and man and between man and the society. See also, Prince Nath. Obiokolie, “Justice No Longer Slave To Semantics” *Legal wave*, Anioma Voice Vol. No 2 (March 28 – April 4, 2007).

<sup>34</sup> See Black’s Law Dic., 7<sup>th</sup> Ed.

authority and without the propriety or impropriety of the act to be performed.<sup>35</sup> Ipso facto such performance must be with decorum and probity.

Idigbe, JSC of blessed memory in *Shitta-Bey v Fed. Public Service Commission*<sup>36</sup> opined that the world ‘ministerial’ has no fixed meaning but is sometimes used to describe any duty, the discharge of which does not involve any element of discretion or independent judgment.’ It seems Uwaifo, JSC<sup>37</sup> expressed same view when he stated that ministerial duty is one regarding which nothing is left to discretion a simple and definite duty, imposed by law and arising under conditions admitted or proved to exist. Therefore could the duties ascribed to the Police be considered as one that admits of no discretion as defined by the authorities examined above? If this is answered in the affirmative, then the police may not be said to be vested with ministerial duty. Of relevance may be the dictum of this legal icon on this point:<sup>38</sup> ‘whichever definition is taken, police duty cannot be adequately defined as ministerial. It cannot be said to be a simple duty imposed by the law. ...’ Again he added: ‘I think it will be a denigration of aura of authority they represent and a disservice to society to suggest that they can exercise no discretion in their duty of maintaining law and order to be specific, in their investigation of crime even if it were to be an obvious wide-goose chase.’

As to whether police duty is executive or administrative, it has been held that police performs both duties as was held in *UTB v Ukabia*<sup>39</sup>. In this case, it was held that whenever the police in the performance of its duties arrests and detains a suspect or citizen, it exercises its executive power as provided by the police Act. But that when the police dismiss<sup>40</sup> one of their men from service in line with their Regulation, such an action can be described as administrative action.

### 5. Whose Agent is the Police?

Another issue of great concern is the question whether the Police is an agent of the Federal government or State government. Although there have been conflicting views of the Court of Appeal on this point, it seems that a preponderance of recent authorities support the claim that Police is an agent of the Federal Government and not that of the State. Earlier in *Okoroma v Uba*<sup>41</sup> Ubaezonu, JCA of the Enugu Judicial Division had expressed his opinion thus:

There is a temptation to regard an act of Federal Public Officers an act of the Federal Government agency. I say no to such temptation. I shall not succumb to it. If the framers of the Decree intended that ‘agencies’ shall be synonymous or conterminous with Federal Government Public officer, it would have said so... Thus a Federal Government Officer does not carry the stamp of Federal Government agency on his forehead wherever it goes or whatever it does. Whether he qualifies as such depends on the function he performs and what act he did that gave rise to the cause of action.<sup>42</sup>

On the status of Police Officers, it was held that Police share dual status as both Federal and State Government agents. According to Salami JCA,

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<sup>35</sup> *Fawehinmi v IGP* (supra)

<sup>36</sup> (1981) 1SC,40.

<sup>37</sup> In *Fawehinmi v IGP* (supra)

<sup>38</sup> Per Uwaifo, JSC (Ibid)

<sup>39</sup> (2001)FWLR pt51,1889.

<sup>40</sup> As was the case in *Agieniji v COP*, (2007)4NWLR pt1023,23. See also, *Okoebor v Police Council* (supra).

<sup>41</sup> (1999)1NWLR pt587,359 at 379.

<sup>42</sup> Ibid pg 213

A Police Officer in Nigeria is capable of enjoying a dual status. When he is complying with the directions of the Governor of a State with respect to maintaining and securing Public safety and Public Order within the State, he is an agent of the State even though he is a servant of the Federal Government. On the other hand, where he is complying with the directions of the President in maintaining law and order, by Order issued to the Inspector General of Police, then he is acting as agent of the Federal Government.<sup>43</sup>

Gravitating towards same view, the Court of Appeal held before *Okoroma v Uba* (supra), that a Commissioner of Police, being a Police Officer plays dual roles of both Federal and State Government.<sup>44</sup> This can be gleaned from the dictum of Abdullahi, JCA. It is instructive to therefore quote it *in extenso*:

A military Administrator and a Commissioner of Police posted to a State when carrying out a duty purely in relation to the state matter cannot be regarded as agent of the Federal Government when carrying out such a duty. This is because; the state on whose behalf both the Military Administrator and the Commissioner of Police act is a creation of the Constitution. It is the same Constitution that created the Federal Government. Under the Constitution, separate functions are assigned to both Federal and State Governments in the exercise of their functions.<sup>45</sup>

On the other side of the divide are recent Court of Appeal decisions on this point. First to be considered is *Ekwedike v Aninweri*,<sup>46</sup> wherein Obadina, JCA of Jos Division had this to say:

In order to determine whether the Commissioner of Police Plateau State is an agent of the Federal Government regard must be had to the statute and /or the Constitution of the Federal Republic of Nigeria which created the Nigerian Police Force. A critical and sober reading of the foregoing seems to leave no one in doubt that the offices of the Inspector General of Police the Commissioner of Police are agencies of the Federal Government.<sup>47</sup>

Similarly, in the case of *Alamiyeseigha v Igboniwari*<sup>48</sup> the Court of Appeal Port Harcourt again held that the Commissioner of Police is an agent of the Federal Government without more. Galadima,<sup>49</sup> JCA puts it succinctly in the following wordings:

...with due respect to the learned Counsel for the Appellant, I do not agree with him that the powers of the Governor to issue lawful directives to the State Commissioner of Police will whittle down the status of his office as Federal Government Agent. To subject a State Commissioner of Police to the directives of a State Governor (the chief security officer of the state) is for security purpose.

To be able to come to terms with any of the sides of the decisions emerging from the court of Appeal, it will be germane to examine some existing principles of labour law. In labour law, the term agent and

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<sup>43</sup> Ibid Pg 387

<sup>44</sup> That was in *Military Admin. Kwara v Lafagi* (1998)7NWLR pt557,202

<sup>45</sup> *Okoroma v Uba*, supra note 42, p. 213

<sup>46</sup> (2004)All FWLR, pt21,218 at 860

<sup>47</sup> Police Act CAP P10 LFN 2010.

<sup>48</sup> (2007)7NWLR pt 1034,524

<sup>49</sup> At 576

servant is often used interchangeably. To determine who is, therefore, a servant one needs to examine some questions and some tests. Such questions as:

- i. Who pays the policeman's salary?  
It is not farfetched to conclude that the Federal Government through the Ministry of Finance is responsible for the payment of the Police Officers salary.
- ii. Who can discipline him?  
The discipline of the Police Officer is the responsibility of the Nigerian Police Council<sup>50</sup>
- iii. Who has the power to terminate his employment?  
The Nigerian Police Council is vested with powers to dismiss an errant Police officer.
- iv. What structure of command does he fall under? is it
  - a. Control test
  - b. Multiple test or
  - c. Organizational test.
- v. Where a staff is seconded to another master, who is vicariously liable for his act?
- vi. Can a State High Court try the matter, if not, why?

The above puzzles will be taken one after the other for the writer to be able to decide what side of the legal divide between the Court of Appeal decisions he shall align with. The term agent as used in the context of this paper also imply servant as defined in the law of master / servant relationship. In *A-G Bendel State & Ors v Okwumabua*<sup>51</sup> the Court held that by virtue of Section 277(1) of 1999 Constitution all Staff of public educational institutions owned or controlled by the Federal or State government or its agencies are public servants. Impliedly therefore, the police officers are Public Servants.

### Control Test

The control test postulates the employer's right of control of the servant. In *Francis Dola v Cecilian John*<sup>52</sup> the servant was said to be a person subject to the control of his employer as to the manner he is to do his work. Admittedly, the job of the police man demands use of his discretion as he is a professional trained in the art of weapon handling and investigation. He would not need to be controlled or instructed all the time to take certain steps. The control test therefore would not entirely cover the nature of his services. By the provisions of the Police Act<sup>53</sup> the Police force shall be under the Inspector General of Police while the contingents of the force stationed in any State, shall be under the command of the Commissioner of Police.

### Multiple Tests

In *Short v Henderson Ltd*<sup>54</sup> the multiple test was enunciated to take care of those classes of workers whose work condition do not entail control by reason of the professional uniqueness required in their duty. The Test postulates three conditions for examination. These are:

- a. Who has the power of selection?
- b. Who fixes his wages?
- c. Who can discipline where necessary?

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<sup>50</sup> Regulation 369 to the Police Act CAP P10 LFN 2010 ( the said Regulation under Regulation 372 provides that the competent authority to discipline is the Nigerian Police Council of the federation)

<sup>51</sup> (1980) F.N.R.485

<sup>52</sup> (1973) 1 NMLR58

<sup>53</sup> S.6 CAP P19 LFN 2010

<sup>54</sup> (1965)62 T.L.R4267



The test was applied in the case of *Morren v Swinton & Pendlebury Borough Council*<sup>55</sup> where a resident site engineer who was appointed and paid by local authority, got selected to work under the instruction of a firm of consultant engineers. The Court needed to resolve whether for the purpose of superannuation, the engineer was an employee of the Council. The Court applied the multiple tests and held that despite the fact that he was not under the direct control of the Council, he was a servant of the Council.

From the foregoing therefore, it would appear that whether the Police man is assigned to the Governor, he does not cease to be the servant or agent of the Federal Government. Moreover, the police man is paid by the Federal Government, his salary is determined by the Federal Government, his discipline is by the Federal Government. The last issue to look at is whether an action against a policeman, for infractions arising from the execution of his responsibilities, can be brought in any other court except the Federal High Court. Section 251(1)(r) of the Constitution<sup>56</sup> states clearly the Federal High Court shall exercise exclusive jurisdiction on matters bothering on any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the federal government or any of its agencies. Afortiori, an action against a policeman can only effectively be brought at the Federal High Court because he is an agent of the Federal Government.

## **6. Conclusion**

From the above analysis, it is safe to conclude that there are conflicting views from the Court of Appeal on this point of law. Despite its divisions which are only for administrative convenience and proximity to counsel and litigants, the Court of Appeal remains one appellate Court of the land, hence one Court of Appeal decision cannot be binding on another Division. It is only the Supreme Court decision that can bind all courts in this land including the Court of Appeal. In *Olabanjo v Odofin* for example, it was held that appeal is the only way through which the Supreme Court can exercise supervisory jurisdiction over the Court of Appeal and other Courts in deserving circumstances. I am convinced that this matter has not been canvassed at the apex court. Someday, it shall certainly form an issue thereat and it is my belief that the Supreme Court would certainly be divided on the matter if a detailed and effectual consideration is given to the provisions of S.215(4) 1999 constitution.

In International law, there is the principle of state responsibility for internationally wrongful action in which a state is responsible for the acts of its organs. The question has always been whether an agency/entity is an organ of state, if it is, the state is liable. To determine whether an entity is an organ of the state, the Court looks at the law/ statutes establishing that organ; it also looks at whether the state has command and control over that entity etc. if it does then that entity is a state organ. It is submitted in line with the decision supporting the proposition that the Police are agents of the Federal Governments, irrespective of the circumstances of the case. It is the liabilities of Government for the acts of its agencies. On the other issue whether Police exercises discretion in their duties, It is submitted that the view of the Supreme Court on this matter is impeccable. Having regard to public policy, nature of the offence, cost of the investigation and time, it is proper that police exercise some measure of discretion. Same opinion may also be deciphered from the Court of Appeal decision in *Asua v Tofi*, Wherein it was stated that it is the duty of police to decide whether an allegation is strong enough for prosecution and that it can neither abdicate its responsibilities nor be bamboozled into prosecuting an offence unless it is necessary. Conclusively, our Courts should watch over the Police to ensure that such discretions are not abused, overstretched or otherwise used for personal aggrandizement.

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<sup>55</sup> (1965) 2 All E.R. 349

<sup>56</sup> 1999 Constitution (as amended 2010)