

CONTEMPT AND PERJURY AS OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE IN NIGERIA*

Abstract

Crimes against the administration of justice impede the government's ability to carry out the important functions of prosecuting and convicting criminals, which in turn destroys citizens' confidence that the Nigerian Legal system is effective in ensuring individual safety and security. Perjury and contempt are one of such crimes against the administration of justice. While contempt of court is the disobedience of court orders in Nigeria, Perjury, the crime of lying under oath is an offence that derails the fundamental goal of the justice system. It is a charge often threatened but rarely used. For there to be a smooth running of government under a democratic dispensation, there must be respect for the judiciary as an institution with full legal clothing from the Constitution and other legislative enactments made pursuant thereof. Disregard for the orders and judgment of a court surely does no good to the rule of law and democratic process; instead anarchy and impunity become the order of the day. This paper examines contempt of court in Nigeria; it also identifies the common reasons for filing a contempt of court action. The paper finds that despite the fact that the offence of Perjury and the sanctions for breach of the offence has been clearly spelt out under our criminal law, lawyers have failed to enforce same and as such witnesses and deponents have intentionally and wilfully continued to base their testimonies on falsehood and lies which have occasioned substantial injustice, resulting in miscarriages of justice. It is for this reason that this article also analyzes the offence of perjury in Nigeria and United States and further emphasizes on the need to enforce it for lawyers and the general public.

Keywords: Contempt, Perjury, injustice, disobedience, contemnor, witness, oath, falsehood

1. Introduction

There is a supposedly high public interest in preserving the administration of justice in Nigeria. One of the obvious ways the course of the administration and dispensation of justice can be protected, if not preserved, is by dutiful obedience to the orders of a court and also ensuring that witnesses testify truthfully so that justice can be done in each individual case. A judicial order is an authoritative command or direction; it is either an order restraining a person from carrying out an action, or compelling a person to carry out a certain act.¹ Defiance to court orders and judgements attracts dire consequences. Therefore, disobedience of court orders alternatively referred to as contempt of court has different connotations. The rationale for contempt proceedings is the need to vindicate the dignity of the court as an institution, and thereby protect it from denigration and ensure due administration of justice. It is not to bolster the power, dignity and ego of the judges as an individual.² Once a competent court of law issues an order, it is expected to exude obedience, and default of that attracts the offence of contempt to the contemnor; except and only if the orders have been set aside. No doubt, the law of contempt of court and perjury are crucial to the effective administration of justice in any society as both are serious offences which can undermine the integrity of the judicial system and result in miscarriages of justice.

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¹ *Dicken Humphery Ogaji & Ors v. Chief Teke Igonikon-Digbani & Anor.* [2010] 10 NWLR (Pt. 1202) 289.

² *Federal Republic of Nigeria v. Joe Brown Akubueze* [2010] 17 NWLR (Pt. 1223) 525.

2. Meaning of Contempt of Law

By way of a general statement, it is indeed difficult to give an exact definition of what amounts to or what contempt of court is in all cases, since the facts and circumstances vary from one case to another. As a result, contempt or what may amount to contempt of court would depend on the peculiar facts and circumstances of each case. A succinct and frequently quoted definition of contempt is found in *R. v. Gray*,³ where Lord Russell of Killowen, C.J. offered the following:

'Any act done or writing published calculated to bring a Court or a judge of the Court into contempt, or to lower his authority, is a contempt of Court. That is one class of contempt. Further, any act done, or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Court is a contempt of Court.'

In addition, contempt of court has been defined to mean and include, any act or conduct which is calculated and tends to bring into disrespect, scorn, or disrepute, the authority of the court and administration of justice.⁴ Furthermore, it is an act which is done to embarrass, hinder, or obstruct the court in the administration of justice, or which is calculated to lessen its authority or dignity, either in the face of the court or outside of the court. Any affront to the peaceful administration of justice is contemptuous.

2.1 Types of Contempt

There are two types of contempt as identified by *Elias*⁵ and *Yakubu*⁶, and in the case of *Aniweta v The State*⁷, *Awobuivin v Adeyemi*; *Afe Babalola v Federal Electoral commission and Chief Adegborioye*⁸. They are: (i) criminal contempt and (ii) civil or non-criminal contempt. In *Hart v Hart*, the court held that contempt of court is criminal when the act interferes with the administration of law thus impeding and preventing the course of justice. It is civil when it consist processes of the court resulting or involving a private injury. In *Re: Dr. Olu Onagorowa*⁹, the court stated that contempt could be committed in the face of the court, referred to as in facie curie, or outside of the court termed ex facie curie. Examples of contempt in facie curie include word spoken or act done within the precincts of the court which obstructs or interferes with due administration of justice or calculated to do so. It may be an angry outburst, a contemptuous gesture, a professional indiscretion, a refusal to be sworn or answer a question. Contempt ex-facie curie includes words spoken or otherwise published the court which are intended or likely to interfere with or obstruct the fair administration of justice. Other examples include;¹⁰ illegal resistance to any order or process made or issued by it; disobedience to any subpoena issued by it and duly served, or refusing to be sworn or to answer as a witness; or knowingly assisting, aiding or abetting any person in evading service of the process of such court; failure to testify before a judge when lawfully required to do so; bribing, attempting to bribe, or in any other manner improperly influencing or attempting to influence a juror to render a verdict, or suborning or attempting to suborn witness; disobedience by an inferior tribunal, magistrate, or officer to any lawful judgment, order or process of a superior court, or proceeding

³ [1900] 2 QB 36, at 40.

⁴ *Mobil oil v S.T. Assan* 1995 8NWLR (Pt 412)129.

⁵ T Elias, *The Nigerian Press Law*, (Lagos: Evans Brothers Limited, 1969).

⁶ J Yakubu, *Press Law in Nigeria*, (Ibadan: Malthouse Press Ltd, 1999).

⁷ FSA/E/47/78.

⁸ AK/MA/77 of 21/3/78.

⁹ FCA/E/117/79 No 5/2/80.

¹⁰ OCK Igbokwe, 'Knitting Contempt of Law to the Administration of Justice on Nigeria: No Longer at Ease', 2017: <https://www.researchgate.net/publication/317640076>, accessed January 15, 2023.

in any matter in a manner contrary to law, after it has been removed from such tribunal, magistrate or officer and any other act or omission specially declared a contempt by law are all ways disregard for court orders can manifest.

Before an act or omission is deemed contempt it must be done with intention or intentionally.¹¹

2.2 Reasons for contempt of Court

So many reasons exist as to why contempt- whether *in facie curiae* or *Ex facie curie*. Below are some of the reasons;

- i. It helps to preserve the dignity and respect of courts. In the case of *Chapman v Honig*¹², the Court held ‘... that for the purpose of deciding whether a contempt of court has been committed in a case of this kind, the determining factor is no harm done to the individual but harm done to the future administration of justice’. It is not to bolster the power, dignity and ego of the judges as an individual.¹³
- ii. It ensures a fair trial by ensuring the dignity of court and reputation as an institution. In the case of *Jennison v Baker*¹⁴ the court held ‘... the power exists to ensure that justice shall be done and solely to this end, it prohibits acts and words tending to obstruct the administration of justice. In *Chief Odu v Chief Jolaoso*¹⁵ it was opined by the court as ‘... by its nature, punishment for contempt to punish an offender for an act that somehow affects the dignity of the court in the administration of justice’ All courts have an innate that is an inherent power to punish for contempt.
- iii. It exists as a useful tool in the administration of justice; in the case of *Fame Publications v Encomium Ventures*¹⁶. The court held that ‘it must be remembered that the principle enshrined in the law of contempt are to uphold and ensure the effective administration of justice’. Contempt checks undue interference with the administration of justice. In the case of *Hermone v Smith*¹⁷, the court aptly captured the above point as follows; ‘...’ the object of the discipline enforced by the court in case of contempt of court is not to vindicate the dignity of the court or the person of the judge, but to prevent undue interference with the administration of justice’.

2.3 Punishments for Contempt

Contempt of court is an imputation of crime arising out of a civil matter. The onus is on the applicant to prove that there is a contempt of court and the respondent is the person who actually committed the said contempt deliberately and with guilty mind, especially disobedience to a court order that was entered against the contemnor.

By virtue of the provisions of the law, the judiciary get its power to summarily convict a person of an offence such as contempt not written anywhere. Nevertheless, Section 6(6) of the Constitution seems to be where the judicial powers emanate: it provides this;

(6) 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 person in Nigeria, and to all actions and proceedings relating thereto, for

¹¹ *Basil Okoma v Sunday Udoh* (2002) 1 NWLR (Pt 748) 438.

¹² (1963)2Q.B 502 at 518.

¹³ *Federal Republic of Nigeria v. Joe Brown Akubueze* [2010] 17 NWLR (Pt. 1223) 525.

¹⁴ (1972) 1 All ELR 997 at 1001.

¹⁵ (2005) All FWLR (PT 262) 428.

¹⁶ (2000) 8NWLR (PT 667)105.

¹⁷ (1887) 15 Ch.D 449 at 455.

the determination of any question as to the civil rights and obligations of that person

Inherent and sanction powers of court to punish for contempt may be said to be implied in Section 6(6)(a) and such inherent powers and sanctions shall extend to any person in Nigeria. Worthy to note as well is Section 72 of the Sheriffs and Civil Process Act,¹⁸ which provides:

If any person refuses or neglects to comply with an order made against him, other than for payment of money, the court, instead of dealing with him as a judgment debtor guilty of the misconduct defined in section 66(f) of this Act, may order that he be committed to prison and detained in custody until he has obeyed the order in all things that are to be immediately performed and given such security as the court thinks fit to obey the other parts of the order, if any, at the future times thereby appointed, or in time or until he has paid such fine as the court directs.

From the foregoing provisions, one can authoritatively assert that the inherent powers of courts either court of first instance or Appellate Courts to punish for contempt is expressly preserved under the laws and rules of court.

If found guilty of contempt the court may punish the contemnor in several ways which includes; committal to prison, fine, social service to a community etc. However, the court may pardon the contemnor if his conduct was unintentional and he apologises to the court. The court may refuse to hear anything further from the contemnor who has disobeyed an order of the court, until he has purged himself of the contempt i.e he has complied with the court's order.

The granting of orders more often than not involves the exercise of discretionary powers by the courts. The discretionary powers of the court are bound by rules and principles of law and not arbitrary, capricious or unrestrained emotions. It has been said that this discretionary power of the court should not be abused yet some judges have continued to abuse same. The recent case of Effiong Innibehe is a clear example of an abuse of this discretionary power. The Chief Judge of Akwa Ibom State, Ekaette Obot, on 27th of July, 2022 sentenced a Lagos based human rights lawyer, Inibehe Effiong to one month in jail for alleged contempt of court Inibehe while conducting the case of Governor Udom Emmanuel and Leo Ekpenyong. The Chief Judge ordered news reporters to leave the courtroom and he had prayed the court to let them stay since the proceedings was public, but the court did not budge. Inibehe further objected to the presence of armed police officers in court as their presence made the atmosphere tensed and uncomfortable for him to proceed. It was at that moment the Chief Judge asked him to step out of the bar and ordered the Police men to take him to the Uyo correctional centre and keep him for one month over alleged rudeness. The writer states that the shocking aspect of the case of Effiong Inibehe is the fact that no contempt proceeding whatsoever was held before his conviction and sentencing and neither was he allowed to show cause why he should not be punished for contempt, as obtainable under summary trials for contempt. Also, sentencing without trial is definitely not welcome under the Nigerian Criminal justice system as it emblems an exercise of arbitrariness and a slap on the hallowed concept of the rule of law. To sentence for contempt in the face of the court by the judge who feels offended will naturally bring about a case of the judge being a judge in her own case and for that the judge has to be more circumspect in the exercise of her powers. The Appeal and Supreme courts have

¹⁸ Cap. S6, LFN 2010.

cautioned that judges faced with cases of contempt to be weary and circumspect in dealing with such cases, the case of *Obiukwu v Ugwuerruchukwu & ors*¹⁹ posits this principle of law. The writer opines that if Effiong Inibehe has been accused of contempt then he ought to be tried for contempt in accordance with the due legal procedure before being sentenced.

2.4 The implications of Disobeying Court Orders

Obedience to orders of court is fundamental to the good order, peace and stability of the Nigerian nation. The ugly alternative is a painful recrudescence of triumph of brute force or anarchy - a resort to our old system of settlement by means of bows and arrows, matchets, and guns or, now, even more sophisticated weapons of war. Disobedience to an order of the court should, therefore, be seen as an offence directed not against the personality of the judge who made the order, but as a calculated act of subversion of peace, law and order in the Nigerian society. Obedience to every order of court is therefore a duty which every citizen who believes in peace and stability of the Nigerian State owes to the Nation.²⁰

Rule of law must prevail in every democracy at all cost. Therefore, to avoid anarchy, everyone is expected to regard the orders of a court. If not, the implications thereof are dire. A blatant disrespect to a court of law, in whatever ramification, is antithetical to the rule of law; the fundamental objectives of democracy, and the well cherished independence of the judiciary. The importance of a competent, independent and impartial judiciary in preserving and upholding the rule of law cannot be over emphasized. There is no doubt, that public confidence in the courts, in the integrity of judges that man such courts, and in the impartiality and efficiency of the administration of justice as a whole, play a great role in sustaining the judicial system of a (democratic) nation.²¹

3. Offence of Perjury

Perjury (or false evidence, as it is sometimes coined) is a law on evidence recognized by various States and countries. Perjury has been defined²² as the intentional act of swearing a false oath or falsifying an affirmation to tell the truth, whether spoken or in writing, concerning matters relating to an official proceeding. In defining perjury, the Nigerian Supreme Court²³ restated the first paragraph of section 117 of the Nigerian Criminal Code Act when it pronounced:

*Any person who, in any judicial proceeding or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then depending in that proceeding, or intended to be raised in that proceeding, is guilty of an offence, which is called perjury.*²⁴

Before taking a step further, it is germane we see how false evidence has been defined by statutes. Section 156 of the Penal Code of Nigeria define false evidence by saying,

Whoever, being legally bound by an oath or by any express provision of law to state the truth or being bound by law to make declaration upon any subject, makes any statement, verbally or otherwise, which is false in a material

¹⁹ (2019) IpeLR-46616 (CA).

²⁰ Per Nnaemeka Agu, JSC in *Louis B. Ezekiel Hart v. Chief George I. Ezekiel Hart* [1990] 1 NWLR (Pt. 126) 276 at 279.

²¹ *Zenith Bank v. Igbokwe & Anor* (2013) LPELR-21975 (CA).

²² I Ogbah, *Defence of Alibi* (pp. 185-186). (Legal Jurisprudence Limited, 2017) pp 186-187.

²³ In the case of *Omoregie v. Director of Public Prosecutions* (1962) NSCC 107 SC.

²⁴ This definition is a verbatim quotation of section 123 of the Queensland Criminal Code Act of 1899.

*particular and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.*²⁵

The elements of perjury or false evidence will be distilled from the above provisions and allusions;

- i. **There must be a witness or deponent:** Witnesses and deponents are to perjury what judges are to the judiciary. There will be no law of perjury without witnesses in court or deponents to depositions. On who a witness is, the Nigerian Court of Appeal in *Idowu v. Olorunfemi & Ors*,²⁶ said “the term witness” in its strict legal sense means one who gives evidence in a cause before a court and in its general sense includes all persons from whose lips testimony is extracted in any judicial proceeding.” And a deponent has been defined to be a person who testifies by deposition or a witness who gives written testimony for later use in court. Under the elements of perjury, the competence or admissibility of the witness is immaterial in establishing the commission of perjury or false evidence in certain jurisdiction.²⁷
- ii. **The false testimony must have been in a judicial proceeding:** Judicial proceeding is the regular and orderly progression of a lawsuit, including all acts and vents between the time of commencement and the entry of judgment. It also includes any proceeding in the court, tribunal, or an inquiry where evidence may or may not be taken on oath.²⁸ Section 205 of the Nigerian Evidence Act 2011 posits that all oral evidence in any judicial proceeding must be given upon oath or affirmation administered in accordance with the provisions of the Oath Act of 2004.²⁹ From the wordings of the first paragraph of section 117 of the Nigerian Criminal Code Act already produced above, perjury is not confined to giving false testimony as a witness in an ongoing proceeding. It extends to doing so with the slightest intention of instituting any judicial proceeding as a deponent, where judicial proceeding is imminent or threatened. All that matters is the false evidence or testimony have a linkage with the judicial proceeding. Besides, under the Criminal Code Act, the falsehood must not be sworn. The mental element or mens rea of knowingly“ must be unwaveringly present. The Nigerian Supreme Court navigated this path and settled in it when it held in *Omoregie v. Director of Public Prosecution*³⁰ that on a charge of perjury, the prosecution must prove that the accused gave the testimony knowing it to be false.
- iii. **There must be statements on oath or affirmation.** With the presence of Section 205 of the Nigerian Evidence Act 2011 which posits that all oral evidence in any judicial proceedings must be given upon oath or affirmation³¹ and administered in accordance

²⁵ It must be noted that while the Criminal Code Act is the main regulatory legislation of criminal law in Southern Nigeria, it is the Penal Code that is recognized in Northern Nigeria.

²⁶ (2013) LPELR-20728(CA).

²⁷ Nigerian Criminal Code Act, s 117, fifth paragraph and Queensland Criminal Code Act 1899, s 123, for instance.

²⁸ Nigerian Criminal Code Act, s 113 and Penal Code, s 9 respectively, as well as section 1(2) of the English Perjury Act 1911., s13

²⁹ The exceptions to this general rule are the provisions of sections 208 and 209 of the said Act. In effect, persons with religious objections to oath taking can be exempted from taking oath as well as anyone who is less than the age of 14 years of age at the time of the oath taking or affirmation.

³⁰ (1962) NSCC 107 SC.

³¹ B A Garner, *Black's Law Dictionary*, 10th ed. (USA, Thomson & Reuters, 2014). Garner defines “oath” as a solemn declaration accompanied by a swearing to God or a revered person or thing, that one’s statement is true or that one will be bound to a promise. “Affirmation” is defined, op. cit., as a solemn pledge equivalent to an oath but without reference to a supreme being or to swearing.

with the provisions of the Oath Act of 2004,³² it is not a prerequisite for the law of perjury under the Nigerian Criminal Code Act. Section 117 of the said Act stressed this point when it outlined in the second paragraph of the section that it is immaterial that the testimony is given on oath or under any other sanction authorised by law. The implication is that even lies told outside the confines of a Court of Law, whether sworn or not, are brought within the classification of perjury in the Southern principal criminal enactment of the Country. In the Nigerian Penal Code, under the Section 156, however, such evidence must have been given under oath or under the express provision of law which expressly compels a person to assert what is true of the facts and warns him of the implications of wilfully misleading the court vide his testimony. Such express provision is found in section 206 of the Nigerian Evidence Act. The provision of section 156 of the Nigerian Penal Code as it relates to taking of oath is akin to both sections 1 (1) of the English Perjury Act 1911 and 1621 of the United States Code.

3.1 The rationale for Perjury

The law of perjury or false evidence is founded on the need for litigants to experience and achieve justice when their conflicts come before the court. Consequently, the rationale for criminalizing legal lies cannot be far-fetched; to prevent litigants from usurping of the powers of the court, to instil on litigants and witnesses the credibility and politeness of coming clean before the court and stating the true facts surrounding the subject or object of the dispute, and to prevent the occasion of injustice. If legal falsehood is not penalized, a leeway for false claims, statements and assertions in the justice system will be established, making certain a death of trust in the judiciary.³³

3.2 Offence of Perjury in the United States of America

There are three primary perjury statutes in the US.³⁴ Each involves a statement or writing offered under oath or its equivalent.

- i. Section 1621 of Title 18 of the United States Code proscribes two forms of perjury generally, one for testimony and the other written statements. it condemns presenting material false statements under oath in federal official proceedings. Perjury conviction under section 1621 requires the collaboration of at least two witnesses.
- ii. Section 1623 of Title 18 of the United States Code proscribes perjury before a court or grand jury. It prohibits presenting material false statements under oath in federal court proceedings, although it lacks some of Section 1621's traditional procedural features, such as a two-witness requirement.
- iii. Section 1622 of Title 18 of the United States Code proscribes subornation of perjury that consists of arranging for someone else to commit perjury.

The elements of perjury are;

- i. That the declarant took an oath to testify truthfully
- ii. That he wilfully made a statement contrary to that oath
- iii. That the declarant believed the statement to be untrue.
- iv. That the statement made a material fact

³² The exceptions to this general rule are the provisions of sections 208 and 209 of the said Act. In effect, persons with religious objections to oath taking can be exempted from taking oath as well as anyone who is less than the age of 14 years of age at the time of the oath taking or affirmation.

³³ O Bassey, A Anyakweh and N Ebere, (2020) 'Rethinking the Basis and Relevance of the Law of Perjury: a Pathway to its Resuscitation' *Sch Int J Law Crime Justice* <https://saudijournals.com/sijlclj>, accessed January 17, 2023.

³⁴ C Doyle, 'False statements and Perjury: An overview of the Federal Criminal law' 2018.

Section 1001 of Title 18 of the United States Code, the general false statement statute, outlaws material false statements in matters within the jurisdiction of a federal agency or department. It reaches false statements in federal court and grand jury sessions as well as congressional hearings and administrative matters but not the statements of advocates or parties in court proceedings. Under Section 1001, a statement is a crime if it is false, regardless of whether it is made under oath.

All four sections carry a penalty of imprisonment for not more than five years, although Section 1001 is punishable by imprisonment for not more than eight years when the offense involves terrorism or one of the various federal sex offenses. The same five-year maximum penalty attends the separate crime of conspiracy to commit any of the four substantive offenses.

4. Conclusion

There can be no doubt the law of contempt of court and perjury are crucial to the effective administration of justice in any society. The right and power of a court to punish or pronounce sanction on whoever disobeys its order and gives false evidence is legitimate and it exists primarily to protect the administration of justice. However, the Court of Appeal has held³⁵ that the powers of the Court to punish for contempt should be sparingly used. It further held that there must be restraint in its exercise; more so, as it is entirely at the discretion of the Judge how to punish for contempt because the power at the discretion of the courts in contempt proceeding is enormous and open to abuse. The current form of the law on contempt may run contrary to the individual's right to a fair trial under both the Constitution and the African Charter on Human and People's Rights. These considerations suggest that a legislative scheme for contempt is required. Perjury is a daily occurrence within juridical and legal confines and can be used to both usurp the power of the courts and occasion substantial injustice, resulting in miscarriages of justice. Given that our courts are courts of facts and not of truth, and one, more often, cannot discern what the truth really is by merely putting his ears or eyes to use in court, It is also our suggestive submissions that perjury be extended to cover persons who aided or counselled the falsehood. This emanates from the realisation that certain perjured witnesses and deponents are abetted and counselled by the attorneys and lawyers representing them. These attorneys will go thick and thorns to get judgments and rulings in favour of their clients thus ever willing to misguide the court The department and ministries of justice in various countries and their equivalence are further encouraged to convene educative and reminder conferences on the effect of perjury on the justice system and the need to enforce it for lawyers and the general public.

³⁵ *Karimu Ogunlana v. Oba Lateef Abayomi Dada & Ors.* [2010] 1 NWLR (Pt. 1176) 534 at 563.