

Legislative Immunity in Nigeria and the Arrest of Senator Rochas Okorochoa by the Economic and Financial Crimes Commission: Interrogating the Law against the Sentiments

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Abstract

It is not unusual in Nigeria for persons to engage in confrontation with law enforcement officers in Nigeria at the point of attempt to arrest them. This nation became saddled with this development on the evening of the 24th day of May 2022 when virtually all the television channels in Nigeria and the social media was agog with live pictures from the Abuja, Federal Capital Territory residence of His Excellency Senator Rochas Okorochoa. The operatives of the Economic and Financial Crimes Commission (hereinafter referred to as EFCC) with the Nigerian Police in an attempt to arrest the senator encountered resistance as he refused to surrender himself to the law enforcement agents but rather locked all the entrances to his residence. Reasonable force was deployed and some part of the roof and ceiling was pulled off in order to secure access to before he was arrested. This paper seeks to question the propriety or impropriety of the destruction of his property in an attempt to arrest the Senator without warrant of arrest; to examine the immunity of the senator from arrest being a serving senator and a former Governor of a State under the Nigerian laws in comparison with what obtains in foreign jurisdictions.

Keywords: Arrest; Warrant of Arrest; Immunity; Legislator; Police.

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1.0 INTRODUCTION

In this work we are to x-ray the actions and inactions of the EFCC, the Nigerian Police, and senator Rochas exhibited to the world in the national television and social media on the 24th day of May 2022. This x-ray is to be anchored on the provisions of Nigerian law relating to arrest and the extent of force to be deployed by law enforcement officers to effect an arrest upon resistance by the suspect. We will also consider whether the serving senator who was also a former Governor of Imo State of Nigeria is immune from arrest under the 1999 Constitution and other laws. The burning question as to whether or not he could have been arrested with or without warrant of arrest will be answered according to law; the writers will also compare the Nigerian position with the position applicable in other foreign jurisdictions in order to advocate for the adoption of best international standard practices in arrest. The work will conclude in an attempt to answer the rhetorical question 'whether this show of shame and naked dance in the public was avoidable'.

2.0 The Story of the Arrest

The operatives of Economic and Financial Crimes Commission laid a siege on the residence of the former Governor of Imo State of Nigeria, serving Senator of the Federal Republic of Nigeria, and a stalwart of the All Progressive Congress His Excellency Senator Rochas Okorochoa in his Abuja residence situate at Maitama. He was arrested on Tuesday 24th May 2022 at about 6:30pm after over 6 (six) hours siege [¹]. The siege attracted protesters who gathered to prevent the arrest chanting solidarity songs, which compelled the security operatives to fire teargas to disperse the crowd [²]. The story is the anti-graft agency mobilized security

¹ <https://www.premiumtimesng.com/news/headlines/532208-breaking-efcc-arrests-okorochoa-after-hours-of-siege.html> visited 23rd September 2022 at 08: 30pm.

² <https://www.premiumtimesng.com/news/top-news/532192-breaking-security-operatives-fire-teargas-to-disperse-protesters-at-okorochoas-house.html> visited 23rd September 2022 at 08:39pm.

operatives to assist them in the arrest of the serving senator who they said who is being investigated for allegedly stealing public funds whilst in office as Imo State Governor between 29th May 2011 to 29th May 2019. The EFCC stating the reason for the invasion of Senator Okorochoa's residence had said that the Commission had earlier on arrested him and released him on Administrative bail. That upon completion of investigation, the Commission had on 24th January 2022 filed a 17 (seventeen) count charge at the Federal High Court, Abuja Judicial Division relating to diversion of public funds and properties worth N2.9 billion (two billion and nine hundred million naira) only. The case was subsequently assigned to Hon. Justice Inyang Ekwo and all attempts to serve him with the criminal charge and summons to appear in court for arraignment has on two occasions being aborted as a result of his act of evading service of the process. The Commission said that the senator jumped the administrative bail he was granted and refused to honour its invitations [³] and that at the last adjourned date, March 28, 2022, Justice Ekwo before adjourning the proceedings to May 30, 2022, had warned that it was the last adjournment to be granted in the matter [⁴].

The senator representing Imo west senatorial district upon notification of the presence of operatives of the Commission with Nigerian Police had earlier declined to be taken away by the operatives, insisting that he will not submit himself to the anti-graft agency without a warrant of arrest issued and shown to him [⁵]. The senator also noted that it was a grand conspiracy to prevent him from participating in the All Progressive Congress presidential screening scheduled for May 24th and 25th respectively [⁶] and minutes before the officers broke in, after he had denied them entry, in a live video made on his official Facebook page said that officers of the operatives of the commission are in his residence with gunmen and had broken all his bulletproof doors, that this may be his last appearance because he does not know what they want to do [⁷]. Reacting his lawyer had

said that there was valid court orders from two courts barring the commission from arresting the senator [⁸].

3.0 Immunity of Nigerian Legislators from Arrest

It is submitted that the immunity provision contained in the Constitution of the Federal Republic of Nigeria 1999 (as amended) hereinafter referred to as CFRN, applies only to categories of persons occupying and or elected to the office of President or Vice President, Governor or Deputy Governor within the period while such a person is the holder or occupant of such office [⁹]. Section 308 CFRN popularly referred to as the immunity clause provides in *extenso*;

- (1) *Notwithstanding anything to the contrary in this constitution, but subject to subsection (2) of this section-*
- (a) *No Civil or Criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office;*
 - (b) *A person to whom this section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and*
 - (c) *No process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued:*

Provided that in ascertaining whether any period of limitation has expired for the purposes of any proceedings against a person to whom this section applies, no account shall be taken of his period of office.

- (2) *The provisions of subsection (1) of this section shall not apply to civil proceedings against a person to whom this section applies in his official capacity or to civil or criminal proceedings in which such a person is only a nominal party.*
- (3) *This section applies to a person holding the office of President or Vice President, Governor or Deputy Governor; and the reference in this section to "period of office" is a reference to the period during which the person holding such office is required to perform the functions of the office.*

The immunity provision pursuant to section 308 (3) of the 1999 Constitution of the Federal Republic of Nigeria exempts the holders of such office as listed in the sub-section from civil or criminal proceedings against them [¹⁰]. The section automatically stays any civil or criminal proceedings pending against

³ <https://dailypost.ng/2022/05/24/efcc-finally-arrests-rochas-okorochoa/> visited 25th September 2022 at 05:10am.

⁴ <https://dailytrust.com/updated-efcc-officials-arrest-rochas-okorochoa> visited 25th September 2022 at 05:47am.

⁵ <https://www.thecable.ng/breaking-security-operatives-break-doors-gain-access-into-okorochoas-home> visited 25th September 2022 at 05:39am.

⁶ <https://www.vanguardngr.com/2022/05/siege-efcc-has-stopped-me-from-going-for-apc-presidential-screening-says-okorochoa/> visited 25th September 2022 at 06:01am.

⁷ <https://punchng.com/breaking-at-last-efcc-arrests-okorochoa-ends-siege-to-residence/> visited 25th September 2022 at 05:50am.

⁸ <https://punchng.com/efcc-breaks-into-okorochoas-abuja-residence-arrests-ex-gov/> visited 25th September 2022 at 06:20am.

⁹ Section 308 (3) 1999 Constitution of Federal Republic of Nigeria as amended.

¹⁰ *Federal Republic of Nigeria v Dariye* (2011) 13 NWLR (Pt. 1265) 521 CA.

the holders of such office mentioned in the sub-section prior to their assumption of office to await commencement at the expiration of their tenures [11]. It should also be noted that the immunity conferred on the holders of the offices mentioned does not prohibit them from suing in their personal capacities to enforce their rights even during their tenures notwithstanding the provision [12].

The immunity of the above mentioned office holders however, do not extend to criminal investigation for an alleged commission of an offence [13]. It should also be noted that this immunity does not exclude them from being sued in election disputes [14]. Specifically, in *Turaki v Dalhatu* [15] the Court of Appeal per Oguntade JCA (as he then was) held that: "If a Governor were to be considered immune from our court proceedings, that would create the position where a sitting Governor would be able to flout election laws and regulations to the detriment of other person contesting with him. This will make a non-sense of the election process and be against the spirit of our national Constitution, which in its tenor provides for free and fair election."

The implication of the immunity clause above is that any person to whom the section applies shall not be arrested or imprisoned either in pursuance of the process of any court of law in Nigeria or otherwise and no process of any court requiring or compelling the appearance of the person shall be applied for or issued. We submit that the officers covered by section 308 of the Constitution can be investigated on allegation of a criminal offence as was recently demonstrated in the criminal investigation of the then executive Governor of Ekiti State, His Excellency Ayodele Fayose by the anti-graft agency, Economic and Financial Crimes Commission. In *Gani Fawehinmi v Inspector General of Police* [16] the Supreme Court held:

"That a person protected under section 308 of the 1999 Constitution, going by its provisions, can be investigated by the Police for an alleged crime or offence, is in my view, beyond dispute. To hold otherwise is to create a monstrous situation whose manifestation may not be fully appreciated until illustrated...The evidence may be useful for

impeachment purposes if the House of Assembly may have need of it. It may no doubt be used for prosecution of the said incumbent Governor after he has left office. But to do nothing under the pretext that a Governor cannot be investigated is a disservice to the society."

Again, it should be noted that the immunity granted the Governors under the above section does not protect them outside the territories of Nigeria, hence the trial of former Governor of Bayelsa State in United Kingdom [17]. It is submitted that it only protects the President under International Law as it does not cover the President under the Rome Statute that Nigeria is a signatory [18].

Thus, the constitutional immunity envisaged by the Constitution does not extend to the holder of any Legislative office in Nigeria whatsoever as any serving member of the National Assembly is not immune from prosecution. By the Literal Rule of interpretation enunciated in the case of *Abioye v Yakubu* [19] combined with the legal maxim *expressio unius est exclusio alterius* [20], Legislators in Nigeria do not enjoy constitutional immunity. Hon. Justice Ogbuagu JSC (as he then was) in *Ehuwa v O.S.I.E.C* [21] opined as follows:

"It is now firmly established that in the construction of a statutory provision, where a statute mentions specific things or persons, the intention is that those not mentioned are not intended to be included..."

The implication of the above statement is that aside from the four public officers expressly mentioned in section 308 of the 1999 Constitution, every other person including, the Senate President, the Speaker of the House of Representatives, Speakers of State Houses of Assemblies, judicial officers (Chief Justice of Nigeria inclusive) do not enjoy any special protection from criminal investigations and prosecutions during the subsistence of their tenure in office. We therefore submit that immunity cannot be inferred by implication. It must be specifically conferred or granted by law.

4.0 Legislative Immunity under Nigerian Law

Nigeria operates a bicameral legislature and accordingly the legislative powers of the Federal Republic of Nigeria are vested in the National

¹¹ *Col. Oluwole Rotimi v Macregor* (1974) NSCC 542; *Bola Tinubu v I.M.B Securities Ltd* (2001) 16 NWLR (Pt. 740) 670; *Media Technique Nig. Ltd. v Lam Adeshina* (2004) 44 WRN 19.

¹² See *Tinubu v I.M.B Securities* (2001) 16 NWLR (Pt. 740) 670; *Global Excellence Communications Ltd. v Duke* (2007) 16 NWLR (Pt. 1059) 22.

¹³ See *Fawehinmi v Inspector General of Police* (2002) All N.L.R 357 SC.

¹⁴ *Amaechi v INEC* (2008) 5 NWLR (Pt. 1080) 227; *Baido v INEC* (2008) 12 NWLR (Pt. 1101) 379.

¹⁵ (2003) 38 WRN 54 at 168.

¹⁶ (2002) 23 WRN 1 S.C

¹⁷ *R (on the application Alemeseigha) v Crown Prosecution Service* (2005) EWHC 2704; *Federal Republic of Nigeria v Joshua Dariye* (2007) S.R (D) 179.

¹⁸ *Minister of Justice and Constitutional Development & ors. V The South African Litigation Centre & Ors (Unreported case No 867/15).*

¹⁹ (1991) 5 NWLR (Pt. 190) 130.

²⁰ *Ehuwa v O.S.I.E.C* (2006) 10 NWLR (Pt.1012) 544 S.C; *C.P.C v I.N.E.C* (2012)1 N.W.L.R (Pt.1280)106 at 125.

²¹ *Supra.*

Assembly. Section 4 (1) of the 1999 CFRN provides that ‘The legislative powers of the Federal Republic of Nigeria shall be vested in the National Assembly for the Federation which shall consist of a Senate and a House of Representatives’ [22]. It is however noteworthy to state that by virtue of *sections 47-89 of the Constitution* [23] there is no immunity vested on members of the National Assembly and by extension State Houses of Assembly. In the absence of protection in the Constitution, the members of the National Assembly and State Houses of Assembly are not left without any protection. *The Legislative Houses (Powers and Privileges) Act, 2018* clothes legislators with immunity from litigation from actions taken at plenary or committee deliberations, proceedings including utterances only.

4.01 Legislative Immunity from Civil and Criminal Proceedings and other Jurisdictions

To ensure untrammelled freedom and unbridled parliamentary debate *section 3 of the Act* [24] provides as follows:

“No Civil or criminal Proceedings may be instituted against any member of a Legislative House-

- (a) In respect of words spoken before that House or a committee thereof; or
- (b) In respect of words written in a report to that House or to any committee thereof or in any petition, bill, resolution, motion or question brought or introduced by him therein.”

From the above provisions, the section does not confer immunity on the leaders or members of the National Assembly or State Houses of Assembly from civil or criminal prosecution where there has been allegation of infraction of our laws. Legislators are immune from actions for libel or slander in relation to anything said or printed at the session of the Assembly similar to what obtains in democracies world over but does not protect them upon commission of a criminal act. This was recently demonstrated in the case of *Olubukola Saraki v Federal Republic of Nigeria* [25].

In the *United States of America*, Article 1 of the US constitution [26] established the legislative branch of the Federal Government and provides for a bicameral legislature like Nigeria [27]. A Member of Congress is not immune from arrest where he has committed a criminal offense. They are however

precluded from arrest during their attendance at the sessions of their respective houses and in going to and returning from the same. This exemption does not relate to the offence of treason, felony or breach of the peace, that is, irrespective of whether they are attending or returning from parliamentary sessions they can be arrested for the above offenses. For every other offense, the officers must take cognizance of whether or not they are attending or returning from sessions [28]. It is doubtful whether this provision would be upheld in court today because when the section was enacted it was practicable for persons to be arrested for civil offense and not only criminal offense in United States [29].

In *Australia*, members of parliament do not enjoy immunity from criminal prosecutions but they cannot be sued or prosecuted as a result of anything they say in debates, that is, they enjoy unlimited freedom of speech (known as privilege of freedom of speech) [30]; witnesses before parliamentary committees cannot also be sued or prosecuted for giving evidence or for the content of the evidence they gave [31]. The senators are immune from arrest in connection with civil causes (not on a sitting day and for 5 days before or after sitting days) but are not immune from arrest in criminal causes [32]. There must however be notification to the senate from the Police or the Court on the detention of any member and the reasons thereof [33].

It is submitted that *Article 9 of the Protocol on the Privileges and Immunities of the European Communities* [34] which is similar to *section 3* of our Act [35] state that ‘members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings relating to opinions expressed or votes cast by them in the performance of their duties’. Accordingly, it is believed that the objectives of the above provision is to protect and safeguard the freedom of legislators by ensuring that physical pressure in the

²⁸ See Article 1, section 6, clause 1 US Constitution; [https://www.wcnc.com/article/news/verify/no-members-congress-arent-immune-getting-arrested/275-eb867380-1350-4af6-b694-19de7d750ce6#:~:text=Below%20is%20Article%20accessed 29th September 2022 at 08:30am.](https://www.wcnc.com/article/news/verify/no-members-congress-arent-immune-getting-arrested/275-eb867380-1350-4af6-b694-19de7d750ce6#:~:text=Below%20is%20Article%20accessed%2029th%20September%202022%20at%2008:30am.)

²⁹ [https://www.wcnc.com/article/news/verify/no-members-congress-arent-immune-getting-arrested/275-eb867380-1350-4af6-b694-19de7d750ce6#:~:text=Below%20is%20Article%20accessed 29th September 2022 at 08:30am.](https://www.wcnc.com/article/news/verify/no-members-congress-arent-immune-getting-arrested/275-eb867380-1350-4af6-b694-19de7d750ce6#:~:text=Below%20is%20Article%20accessed%2029th%20September%202022%20at%2008:30am.)

³⁰ Article 9 Bill of Rights 1689.

³¹ See section 49 of the Commonwealth of Australian Constitution Act; Section 16 of the Australian Parliamentary Privileges Act 1987.

³² Section 14 Parliamentary Privileges Act 1987.

³³ See Senate Resolution of 18th March 1987.

³⁴ April 8 1965.

³⁵ Supra note 24.

²² See also section 47 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

²³ 1999 Constitution of Federal Republic of Nigeria as amended.

²⁴ *The Legislative Houses (Powers and Privileges) Act, 2018.*

²⁵ (2016) 3 NWLR (Pt. 1500) SC 531.

²⁶ Article 1 United States Constitution 1787.

²⁷ See section 4(1) 1999 Constitution of the Federal Republic of Nigeria as amended.

form of threats of arrest and court proceedings is not brought to bear on them while in the just execution of their responsibilities. The European Courts in avalanche of judicial authorities have found occasions to uphold the above provisions [36]. Parliamentary privilege was referred to as a ‘fundamental liberty’ [37] and one of the principles of ‘fundamental importance’ [38] in the law.

Furthermore, Article 90 of the Constitution of the *Republic of Benin* provides that Legislators cannot be followed, searched, arrested, detained or judged for opinions or votes issued by him during the exercise of his duties at the chambers. This implies that there is a complete bar on the arrest of a legislator regarding anything said or done in the course of parliamentary debate at the legislative or committee sittings. There is no prohibition of investigation, arrest, and prosecution for criminal offences unrelated to legislative matters in this jurisdiction.

On the other hand with respect to criminal charges, *section 25 of the Nigerian Legislative Act* [39] makes it an offence punishable with two years’ imprisonment or an option of fine or both imprisonment and fine for a member to receive bribe to perform his duties. The section provides: “Any member of a Legislative House who accepts or agrees to accept or obtains or attempts to obtain for himself or for any other person any bribe, fee, compensation, reward or benefit of any kind for speaking, voting or acting as such member or for refraining from so speaking, voted or acted or having so refrained shall be guilty of an offence and liable on conviction to a fine of four hundred naira or to imprisonment for two years or to both such fine and imprisonment”.

The inevitable question at this juncture is whether the attempt by EFCC to arrest His excellency Senator Rochas Okorocha is in relation to utterances, comments, made with respect to legislative matters at the chambers of the National Assembly, or whether it relates to allegation of an alleged commission of an offence unrelated to legislative matters? In a press statement by the spokesman of EFCC, Wilson

Uwujaren, reported by sun news online [40] the mystery encompassing the arrest was demystified when he said: “Operatives of the Economic and Financial Crimes Commission (EFCC), today, May 24, 2022, arrived at the Maitama, Abuja home of a former governor of Imo state, Senator Rochas Okorocha, to effect his arrest.

“The move followed the refusal of the former governor to honour invitations after jumping the administrative bail earlier granted him by the Commission.

“EFCC had, on January 24, 2022, filed a 17-count criminal charge bordering on diversion of public funds and properties to the tune of N2.9 billion against Okorocha.

“The case was assigned to Honourable Justice Inyang Ekwo of the Federal High Court, Abuja, but attempts to arraign Senator Okorocha were twice stalled, owing to the absence of the ex-governor who evaded service of processes.

“At the last adjourned date, March 28, 2022, Justice Ekwo, before adjourning until May 30, 2022, had warned that it was “the last adjournment I shall grant in this matter”.

“In the circumstances, the Commission is left with no option than to effect the arrest of Senator Okorocha and bring him to trial.”

Assuming without conceding that the above statement represents the true state of facts, in view of the numerous laws referred to above, can it be argued by any stretch of imagination that the Senator cannot be arrested until his tenure of office as a Senator ends? The answer definitely is in the negative. The Legislative Houses (Powers and Privileges) Act does not clothe members of the National Assembly with immunity from arrest and prosecution arising from allegation of the commission of a criminal offence. On the other hand, assuming the reason for the arrest was in relation to comments made at the chambers during parliamentary debate, but perceived to be against Governmental policies, we submit with respect that he is immune from arrest on those matters.

5.0 The Legality of the Arrest of Senator Rochas Okorocha without Warrant of Arrest

A combined team of the operatives of EFCC and men of the Nigerian Police besieged the residence of the former Imo State Governor and a current serving senator of the Federal Republic of Nigeria representing Imo West Senatorial District to effect his arrest without warrant of arrest. In this segment we shall examine the

³⁶ *CJEU, Ashley Neil Mote v European Parliament*, T-345/05, EU:T:2008:440, Paras. 50; [http://www.europarl.europa.eu/RegData/etudes/IDAN/2014/509981/IPOL_IDA\(2014\)509981_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2014/509981/IPOL_IDA(2014)509981_EN.pdf). Accessed on 4th October 2019 at 11:06 PM.

³⁷ *A. v United Kingdom (2002) ECHR 35373/97*.

³⁸ Lord Browne-Wilkinson in *Pepper v Hart (1993) AC 593at 638*.

³⁹ The Legislative Houses (Powers and Privileges) Act, 2018.

⁴⁰ <https://www.sunnews.com/efcc-rearrests-okorocha-vows-to-prosecute-him/> accessed on 27th September 2022 at 09:03 PM.

propriety or otherwise of the arrest of the senator without warrant. Question as to whether or not the Nigerian Police and indeed other law enforcement agencies have the power to make an arrest without obtaining a warrant of arrest will be answered. The inevitable question is, what offence did the senator commit to necessitate his arrest? In January 2022 the anti-graft agency had filed in the Federal High Court Lagos a 17 (seventeen) count charge against the senator and others for allegedly embezzling 2.9 billion naira belonging to Imo State while in office as the Governor of Imo State [41]. Attempts to arraign the senator and other co-defendants on 22nd February and 28th March 2022 respectively were unsuccessful due to the absence of the senator who was yet to be served with the charges but according to report was evading service forcing the presiding judge to threaten to strike out the case on the next adjourned date if he is not brought to court and adjourned for the last time to 30th May 2022 [42].

Prior to filing any charge, the anti-graft agency must as a matter of international best practice in policing conduct investigation which will certainly lead to the interrogation of suspects and questioning of potential witnesses [43]. In doing this the suspects are usually invited to the Commission for interview or arrested depending on the circumstances of the case [44]. The senator was arrested and or invited for interview during the course of investigation and thereafter was granted administrative bail by the Commission on terms as is usual according to law [45]. The life span of this administrative bail is until the conclusion of investigation and/or possible arraignment in court. From available facts, the anti-graft agency have concluded investigation and filed a charge in court, obtained date for arraignment, served other suspects in the same case with the charge sheet except the senator who incidentally is the 1st defendant and who was alleged to be evading service of the process. The combined act of non-service, non-attendance of the 1st defendant in court stalled arraignment and court proceedings for 22nd February and 28th March 2022 respectively. The court had to threaten to strike out the case on the 30th of May 2022 if the senator was not produced in court.

41

<https://www.premiumtimesng.com/news/headlines/533542-okorochoa-appears-in-court-pleads-not-guilty-to-n3-billion-fraud.html> accessed 30th September 2022 at 08:00am.

⁴² *Ibid* note 41.

⁴³ See section 31 Police Act 2020.

⁴⁴ See *Hassan v E.F.C.C* (2014) 1 NWLR (1389) 607; *Oguebie v FBN Plc.* (2020) 4 NWLR (Pt. 1715) 531 SC.

⁴⁵ See section 30 (1) and (2) of Administration of Criminal Justice Act 2015.

It is submitted that failure to abide by the terms of the bail is considered as breach of the administrative bail. The poignant question from the above analogy of facts is assuming without conceding that the EFCC did not notify the senator of his date of arraignment in court, is it possible that the other co-defendants who are related to him did not intimate him of the developments in court on the adjourned dates when proceedings was stalled as a result of his absence, certainly it is unlikely. Most importantly, the report of these failed attempts at arraignment was also reported in the media. Section 38 (1) of the Police Act [46] provides *inter alia* 'A Police officer may, without an order of a court and without a warrant, arrest a suspect: (j) whom he is directed to arrest by a judge or magistrate'. It is submitted that by the proceedings of 28th March 2022 there was a directive by the trial judge to arrest the senator in order to produce him in court for arraignment. This directive inevitably dispensed with the need to obtain warrant of arrest. The combined team of EFCC operatives and the Police acted within the bounds of the law to have effected the arrest without obtaining a warrant of arrest. Furthermore, the senator having being granted administrative bail by the EFCC, and having failed to make himself available for arraignment is deemed to have breached the terms of the bail, thus rendering himself liable to be arrested without warrant.

6.0 The Justification of the use of force in the Arrest of Senator Rochas Okorochoa

It was also reported that the combined team of EFCC operatives and the Police deployed the use of force in arresting the senator [47]. Where there is failure to submit to the authority of the Police or other law enforcement agencies in appropriate circumstances as in the instant case under reference, and denial of access into the building, the law empowers the officers to use reasonable force to enter the building and effect the arrest [48]. The law also empowers the officers to use reasonable force to break out of a place for purpose of liberation [49]. To justify our position, we place reliance on the provisions of section 12 of the ACJA [50] which provides as follows:

- (1) "Where a person or Police officer acting under a warrant of arrest or otherwise having authority to arrest, has reason to believe that the suspect to be arrested has entered into or is within any house or place, the person residing

⁴⁶ Police Act 2020.

⁴⁷ <https://punchng.com/okorochoas-arrest-display-of-weakness-of-nigerian-state-osita-chidoka/> visited 5th October 2022 at 05: 37 am.

⁴⁸ See section 149 (2) Administration of Criminal Justice Act 2015.

⁴⁹ Section 13 Administration of Criminal Justice Act 2015.

⁵⁰ Section 12 Administration of Criminal Justice Act 2015.

in or being in charge of the house or place shall, on demand by the Police officer or person acting for the Police officer, allow him free access to the house or place and afford all reasonable facilities to search the house or place for the suspect sought to be arrested.

- (2) Where access to a house or place cannot be obtained under subsection (1) of this section, the person or Police officer may enter the house or place and search it for the suspect to be arrested, and in order to effect an entrance into the house or place, may break open any outer or inner door or window of any house or place, whether that of the suspect to be arrested or of any other person or otherwise effect entry into such house or place, if after notification of his authority and purpose, and demand of admittance duly made, he cannot obtain admittance” (underlining ours for emphasis).

Consequent upon the above provisions, the combined team of EFCC operatives and officers of the Nigerian Police were denied access when demanded into the house of the senator to arrest him for about 6 (six) hours as the senator locked himself in, knowing that the bullet proof doors and windows are impenetrable^[51]. Eventually, entrance into the building was secured through the roof and ceiling as operatives had to use reasonable force to break the roof and ceiling in order to secure ingress^[52]. It is submitted that the EFCC and officers who effected the arrest are protected by the provisions of the law under reference. The Nigerian Police and by extension other law enforcement officers have the right of ingress and egress to any premises by simply deploying reasonable force to gain entrance where their entrance has been impeded. We are further fortified in our view by the provisions of *section 28 of the Administration of Criminal Justice Act*^[53] which provides that ‘A person authorized to effect the arrest of any suspect may, for the purpose of effecting the arrest, pursue him into any part of Nigeria’.

We submit that the only caveat in complying with the above provisions to break into the residence of a person whose arrest is sought to be effected is to comply with the provisions of *section 12 (3) of the Administration of Criminal Justice Act* by ensuring that the rights of a woman in seclusion is not violated. The section provides thus:

⁵¹ <https://phenomenal.com.ng/2022/05/help-efcc-men-have-broken-my-bulletproof-doors-okorocho-cries-out/> visited 5th September 2022 at 06:15pm.

⁵² <https://saharareporters.com/2022/05/26/how-anti-graft-agency-efcc-officials-came-through-roof-forcefully-arrest-okorocho-%E2%80%93> visited 5th September 2022 at 06:24pm.

⁵³ Administration of Criminal Justice Act 2015.

“Where the suspect to be arrested enters a house or place in the actual occupancy of another person being a woman who by custom or religious practice does not appear in public, the person making the arrest shall:

- (a) Before entering the house or place, give notice to the woman that she is at liberty to withdraw; and
(b) Afford her very reasonable opportunity and facility for withdrawing, and may then enter the house or place, but the notice shall not be necessary where the person making the arrest is a woman”.

It is submitted that there was no allegation that a woman in seclusion^[54] was within the premises at the time of the arrest. Assuming there was such a scenario, the law entitles the operatives upon being notified of such situation to give reasonable time for the woman to withdraw before their entry^[55].

CONCLUSION AND RECOMMENDATIONS

Unequivocally, we have established that Legislators in Nigeria can be arrested upon reasonable suspicion of their having committed a criminal offence or for purposes of preventing their commission of a criminal offence. It is our submission that distinguished Senator Rochas Okorocho and indeed any other legislator in Nigeria is not immune from investigation, arrest, and prosecution where there is an allegation of commission of an offense during or after expiration of their tenures as legislators.

The arrest, subject matter of this paper was lawful in the circumstances even though it was an arrest executed without warrant of arrest. It is unnecessary to apply for warrant of arrest in the circumstances of this case because there is a clear directive from the judge in open court that he must be brought to the court for arraignment. His arrest was to give effect to the courts’ order.

The use of force to secure entrance into the premises is also justified by law as the senator refused arrest, denied the operatives and Police officers access to his residence when demanded. The force applied by breaking in through the roof and ceiling was reasonable in the circumstances since the bullet proof doors and windows are impenetrable. The action of EFCC and Police was within the ambit of the law.

We cannot confirm if there was collusion between EFCC and the Nigerian Police to ridicule or thwart the presidential ambition of the senator when the

⁵⁴ These are woman who by Islamic religion cannot be seen in private except by their husband (women in purdah) and does not appear in public.

⁵⁵ See section 12 (3) (a) and (b) and 149 (6) Administration of Criminal Justice Act 2015.

arrest was conducted. The senator had alleged of a political vendetta to stop him from being screened as one of the presidential candidates of his party. Law enforcement by security agencies and anti-graft war must be done and fought with clean conscience devoid of political vendetta regulated by rule of law. The agency must be seen to be independent and not a puppet in the hands of the executives used only to intimidate political enemies and opposition members.

The furor generated by the arrest of the senator is predicated upon the fact that he is a wealthy man, a politician who belongs to the ruling class in the society. Assuming he is a poor man, will this furor has been

raised? Definitely not, as it will not be reported by the news media. The political class is afraid that the same treatment may apply to them if and when they are perceived to be in the bad book of the decision maker. The truth is, there is equality of all citizens before the law irrespective of the political class. Whether this is the case in Nigeria is a topic for another research, but it is a matter of *res ipsa loquitur*. We recommend that the same standard of policing in compliance with the rule of law regarding citizens' rights should be available to all whether a senator or private citizen. Conscious effort must be made to dismantle the class society we have erected in Nigeria to create an egalitarian society with what is obtainable in foreign jurisdictions.