

Dissecting a Legal Equilibrium and the Right of the Court to Convict for a Lesser Offence Proved

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Abstract

Criminal justice system administers justice and safeguards the lives and properties of individuals in the society. It is regarded as the stage a defendant passes through until the final determination of his case. One of these stages is the criminal trial of the defendant. Criminal trials are often bedeviled with challenges relating to the appropriate procedures to be followed for proper administration of justice in respect of a criminal charge. When the prosecution or the court faults procedures, it affects the constitutional rights of the defendant and often leads to injustice. When a charge is preferred before the court and the plea of the defendant is taken based on the charge before the court, courts in most cases have formed the usual practice of convicting the accused person based on the evidence of the prosecution whose evidence discloses a different offence from the one charged. This practice violates procedural rules and it is a breach of the right to fair hearing of the defendant. This study examined the procedure in criminal trial, the duties of the court in criminal trial and the constitutional provisions on the rights of the defendant. The study adopted doctrinal research methodology with specific reliance on primary and secondary sources such as judicial decisions, statutes, textbooks, articles, online materials among others. The study concluded that the necessary procedural steps should be observed where the evidence of the prosecution discloses a lesser or different offence other than the one charged and pleaded to by the defendant.

Keywords: Bindingness, Charge, Constitution, Court, Defendant, Justice, Offence.

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1.0 INTRODUCTION

Access to justice and proper justice delivery are vital factors in administration of criminal justice system. Criminal justice system is a stage after an offence has been committed by the defendant [1]. Criminal justice system encompasses the process of the arrest, criminal trial and until judgment is delivered by the court [2]. It is a way of redressing the wrong committed and ensuring that the powerless gets justice. Criminal trial is a distinct justice system that is specifically concerned with the prosecution of the defendants. All criminal trials or justice systems are expected to ensure that parties are given fair hearing and must be adequately notified of the charge against them so as to afford them the opportunity to adequately prepare for their defence. Administration

of Criminal Justice Act (ACJA) 2015 is the most prominent national legislative piece on criminal justice and trials in Nigeria. It is applicable to criminal trial and proceedings in Nigeria but it is not applicable to offences created by State Laws [3]. ACJA was enacted to cure the defects and shortcomings of the Criminal Procedure Act and Criminal Procedure Code. One of the basic requirements in criminal trial is the document that contains the information about the crime committed by the defendant.

As soon as a defendant is alleged to have committed an offence, the defendant is arrested (with or without warrant), he is detained at the police station where his statement is taken. Where the crime is a

¹I. K. E. Oraegbunam, M. Ozioko and C. Osim., 'Nature and Principles of Sentencing in Criminal Jurisprudence in Nigeria' (2019)7(3) *International Journal of Innovative Legal & Political Studies* 29-42 at 29.

²P. A. Akhiero., 'Arrest, Remand and Awaiting Trial Syndrome in Criminal Justice: Fixing the Jigsaw to end

Prison Congestion (Being a Paper Presented at the Law Week of the Ekpoma Branch of the Nigerian Bar Association held on 27 July 2018) 1-25 at 2.

³Notwithstanding the enactment of the ACJA, many states have also enacted their own laws known as the Administration of Criminal Justice Law (ACJL)

bailable offence, the defendant may be granted administrative bail by the police and charged to court at the conclusion of investigation. Arraignment of the defendant in court marks the commencement of the prosecution of the defendant. As soon as a charged is preferred and the defendant is arraigned before the court, the plea of the defendant must be taken.

Where the defendant pleads not guilty to the charge, the prosecution is allowed to prove its case against the defendant. However, where the evidence adduced by the prosecution discloses a lesser offence, the defendant will be convicted by the court based on the evidence presented before the court as against the charge before the court [4]. In most northern states, the word “charge” is used at the Federal High Court, and State High Court while the word “information” is used at the Federal High Court and State High Courts of Southern States. It is however important to note that the word charge will be used for both charge and information for the purpose of this study. This study examines the meaning of a charge, procedures in criminal trial, duties of the court in criminal trial and the constitutional provisions in relation to the right of the defendant.

2.0 Conceptual Clarification of a Charge

A charge is a formal accusation of an offence as a preliminary to prosecution [5]. It is a prescribed indictment of criminal activities and an offence committed by the defendant. It is an allegation against a person concerning the commission of an offence [6]. It is the document presented before the court where there is a reasonable ground to suspect that a person has committed a crime. In other words, it shows the offence which the criminal prosecution will initiate upon against the defendant and it is one of the ways of instituting a criminal action in the court of law. In the Southern States, it is known as a charge at the Magistrate Court while at the High Court it is called information. A charge is a statement of offence or offences which a defendant is charged with in a trial either by summary trial at the Magistrate Court or by information at the State High Court [7]. A charge is commonly defined as the document or a court process filed by the prosecution or prosecuting

authority which culminates in the initiation of criminal action against the defendant who is deemed to have violated any substantive law [8]. It may also be referred to as a notice directed at the defendant and the court in respect of the criminal wrong, which the defendant is to be prosecuted for [9]. Where there are more than one defendant, they must be notified through the charge. In *Jibrin v. State* [10], the Supreme Court Stated ‘the fairness of a trial could be illusory if the defendant is not aware that he is or not charged with the commission of the offence...the absence of a formal charge against him for committing the offence in such a count violates his fundamental right given him by section 36(6)(a)’ [11].

A charge notifies the defendant of the case against him and when the charge contains statement and particulars of offence which the defendant is tried before a court of law in compliance with section 38(6) [12], then it is sufficient to invoke the jurisdiction of the court to try the offence [13]. The essence of a charge is to give the defendant clear and precise information of the nature of the offence he allegedly committed [14]. A charge comprises of two main parts such as the commencement and the particulars of offence which are often fused into a single paragraph such as the particular of the defendant (name and alias-if any), time (preceded with the use of ‘on or about or between’) [15], place, statement of the offence allegedly committed, and the name of the person against whom the offence was committed. Other information includes gender of the defendant, at large (where one or more of the defendants cannot be found), description of the offence and law creating the offence. It is important that the charge must be written in the language of the court or English language. It must contain the relevant provisions of the law that states the offence allegedly committed by the defendant [16]. The Attorney General or a law officer working in the Chamber of the Attorney General, legal officer of the law enforcement agencies or an investigating police officer can draft a charge. The investigating police officer drafts the charge at the Magistrate Courts of Southern Nigeria while the Magistrate Courts draft the charge in the Northern part of Nigeria after listening to some of the witnesses of the complainant [17]. Anyone drafting a

⁴*Imieka v. FRN* (2021) ALL FWLR (Pt. 1089) 1450 at 1456

⁵B. A. Garner (ed.), *Black’s Law Dictionary* (9th Edn, West Publishing Co, 2009) 265; *Okoye v. C.O.P* (2015) ALL FWLR (Pt.799) 1101 at 1114.

⁶ J. K. Tiwari., ‘Framing of a Charge’18 <https://www.jiwaji.edu/pdf/ecourse/law/Framing%20of%20Charge%20Dr%20J%20K%20Tiwari.1pdf> accessed 06 October 2023.

⁷Administration of Criminal Justice Act 2015, s494(1).

⁸ G. P. West., Charge and Information (A Paper Presentation at the three-day Legal Department In-house Training Workshop on the Administration of Criminal Justice Act 2015). 1-26 at 2.

⁹ *Ibid*

¹⁰(2021) ALL FWLR (Pt. 1110) 348 at 358-359; *Ifeanyi v. Federal Republic of Nigeria* (2019) ALL FWLR (Pt.1009) 101 at 112

¹¹ Constitution of the Federal Republic of Nigeria 1999.

¹² Constitution of the Federal Republic of Nigeria, 1999.

¹³ *Attah v. State* (1993) 7 NWLR (Pt. 305) 257.

¹⁴ *Shukla v. State* (1980) CrLJ 690.

¹⁵ The essence of allowing these words precede the time and date in a criminal charge is to demonstrated the fact that the court has jurisdiction over the case and to ensure that the case is not caught up with limitation of time where time is of the essence or within the commencement date of the law in respect of the offence.

¹⁶ Tiwari (n 6).

¹⁷ West (n 8) 6.

charge must be abreast of fact of the case, the elements of the offence, the provision of the law prohibiting the commission of the offence; the court vested with the jurisdiction over the matter and must be guided by different judicial precedents [18].

Where a charge is defective, an amendment can cure such defect. A charge can be amended prior to the commencement of criminal trial or before the charge is filed or brought before the court or before arraignment of the defendant or before the plea of the defendant is taken [19]. As soon as an application is brought before the court for amendment of charge, the court has the discretion to amend the charge [20]. It can also be amended in the course of proceedings (even after the plea of the defendant has been taken), or before judgment is delivered. Amendment can come by way of addition, alteration or outright withdrawal of some count(s) on the charge [21]. A charge can be amended or altered by a court or prosecutor and must bear the same charge number it is substituted with and must follow the same process of filing before it is presented to the court. The amended charge must be read and explained to the defendant and his plea must be taken in respect of the new charge [22]. Failure to adhere to post amendment procedure may vitiate the trial where there is no overwhelming evidence against the defendant. Courts are expected to grant permission to amend a charge where it is in the interest of justice for the charge to be amended.

3.0 Constitutional Provision in Relation to the Right of a Defendant

The rights of a defendant are paramount in criminal prosecution. Both the prosecution and the court must respect the right of the defendant and same must not be violated because he has the right to enjoy the same right like others except where the Constitution provides otherwise. Section 35(2) guarantees the constitutional right to silence of the defendant [23]. In other words, anyone who is arrested or detained has the right to remain silent until after consultation with a legal practitioner or any person of his choice. Any statement made involuntarily by a defendant is inadmissible in criminal trial [24]. As part of the constitutional right of a defendant, he is entitled to a timely trial or within a reasonable period of time. Trial within a reasonable time is necessary to avoid undue delay, which may impair the ability of the defendant to defend himself and the

availability of witnesses or their ability to remember the facts of the case after a long period of time [25].

There are certain constitutional precautions on the right of defendant. These precautions are important prior, during and after the commencement of trial. Section 35(4)(a)(b) of the 1999 Constitution makes provision for the timely arraignment of a defendant. It provides that any person who has been arrested, detained and brought before the court, must be tried within a period of two months from the date of his arrest or detention in the case of a person who is not on bail and within three months period from the date of his arrest or detention in the case of a person who has been released on bail. In other words, where a defendant is not arraigned within these stipulated periods, he will be entitled to be released conditionally or unconditional by the Court.

As part of the Constitutional rights of the defendant, he must be informed on time and given adequate time and opportunity to defend himself as stated in Section 36 (6)(a)(b) of the Nigerian 1999 Constitution (as amended) which provides that:

Every person who is charged with a criminal offence shall be entitled to-

- (a) Be informed promptly in the language that he understands and in detail of the nature of the offence;
- (b) Be given adequate time and facilities for the preparation of his defence.

These rights of the defendant must not be violated because it would amount to a breach of the right to fair hearing and a miscarriage of justice [26]. Miscarriage of justice is a decision or outcome of proceedings that is inconsistent with the substantial rights of the party [27]. In other words, where a person is charged with a criminal offence, he must be given fair hearing within a reasonable time by the court unless the charge against him has been withdrawn [28].

4.0 Procedure in Criminal Trial

Jurisdiction is an important factor that must be determined before the commencement of proceedings. Criminal jurisdiction is the power of the court to try

¹⁸ *Ibid* 4.

¹⁹ *Ibid* 10.

²⁰ *PML (Securities) CO. Ltd v. FRN* (2018) ALL FWLR (Pt 966) 168 at174.

²¹ *PML (Securities) CO. Ltd v. FRN* (2018) ALL FWLR (Pt 966) 168 at174.

²² *Attah v. State* (1993) 7 NWLR (Pt. 305) 257

²³ Constitution of the Federal Republic of Nigeria (CFRN) 1999.

²⁴ Evidence Act 2011, s29.

²⁵ Nnadi, I.H., 'Impediments to Fair Criminal Trial in Nigeria' (2021)9(3) *International Journal of Innovative Legal & Political Studies* 84-96 at 86; Constitution of the federal Republic of Nigeria, 1999, s36(1) and (4).

²⁶ *Tyonex Nig. Ltd v. Pfizer* (2021) ALL FWLR (Pt. 1078) 538 at 543.SC.

²⁷ *Abakpa v. Onoja* (2015) ALL FWLR (Pt. 792) 1729 at 1734 CA.

²⁸ Constitution of the Federal Republic of Nigeria (CFRN) 1999, s 36(4).

criminal cases before it [29]. Where a court lacks jurisdiction to entertain a matter, decision reached by such a court is a nullity no matter how brilliantly conducted [30]. In *Attorney General Lagos State v. Eko Hotels Ltd & Anor* [31], the Supreme Court held that where the court lacks jurisdiction to entertain a cause, the entire process, no matter how well conducted is an exercise in futility. In *Johnson v. State* [32] the Court of Appeal held that jurisdiction is a very important and fundamental aspect of any criminal proceedings that underscores the need for strict and mandatory compliance. In *Amiwero v. Attorney General of Federation* [33] the Court held that 'in determining whether a court has the jurisdiction to entertain a criminal charge brought before it, the first place to explore is the charge sheet containing the offence(s) alleged to have been committed by the accused person'. It is an important issue in respect of any case before the court and the authority of the court and it can be raised at any time in the course of proceeding [34]. The jurisdiction of a Magistrate and High Court to try matters differ, because not all criminal matters can be tried by a Magistrate or District Court [35].

The procedure a defendant or an accused person passes through in criminal justice delivery from arraignment until the final determination of the case would either result in a discharge and/or acquittal or conviction and sentence. To Ilo and Imosemi [36], the procedure is divided into three stages such as law enforcement agency (police), the judicial process (which includes the magistrates, judges, prosecutor and the defence lawyer) while the final stage is the correctional centre (probation officer and prison officers). This procedure enhances the smooth running of the criminal justice process [37].

Criminal trial commences with arraignment of the defendant before a competent court. In the North, a defendant is arraigned through a first information report by a private complaint while in the South it is a charge/information, which is read and interpreted to the defendant in the language he understands [38]. This was

reiterated in *Effion v. State* [39] where it was held that trial of a defendant starts when the defendant is docked and the charge read over to him in open court. Where the defendant is an illiterate, the charge is explained to him in the language he understands and he is asked whether he understands the allegation against him [40]. Upon the arraignment of the defendant whereon his plea has been taken (either guilty or not guilty), proceeding may commence or the conviction and sentence of the defendant may be pronounced against the defendant. Where the defendant pleads guilty to the charge against him, the court may convict and sentence the defendant where the court has satisfied itself that the defendant understood the charge read to him. However, where the charge in respect of which the defendant pleads guilty is a capital offence, a plea of not guilty is entered for him and the court would commence trial [41]. Where the defendant pleads not guilty to the charge, it will be recorded against his name and the prosecution would be allowed to make its case against the defendant because in that circumstance, the defendant is deemed to have put himself to trial [42]. Where he refuses to make a plea, a plea of not guilty will be recorded in his name.

Depending on the nature and type of crime committed by the defendant, the defendant may be granted bail after his plea has been taken. An application for bail may be made orally at the Magistrate Court and in writing at the High Court. Before bail is granted, the court must consider whether the defendant will be available to stand trial, the likelihood of repeating the same offence, his criminal antecedent, and presentation of sureties [43].

In the case of a Magistrate Court, trial is expected to commence within 30 days of filing the charge while in the case of the High Court, notice of trial must be served on the parties involved within 10 working days of filing the information [44]. The prosecutor and defence lawyer announce their appearances while the prosecution informs the court about the nature of the offence, the language the defendant speaks and understands to enable the court make provision for

²⁹ D. Ormerod., *Smith and Organ: Criminal Law* (Oxford University Press, 2005) 97730-07735.

³⁰ *Ojo v. Adesida* (2021) ALL FWLR (Pt. 1079) 833 at 845 SC; *Joe v. State* (2019) ALL FWLR (Pt. 985) 522 at 536.

³¹ (2019) ALL FWLR (Pt. 1006) 643 at 648.

³² (2019) ALL FWLR (Pt. 1020) 40 at 43 CA.

³³ (2015) ALL FWLR (Pt. 802) 1742 at 1754.

³⁴ Nnadi (n 25).

³⁵ Duru, O., 'Laws and Rules Applicable to Criminal Courts in Nigeria' 1-36 at 21 <https://www.legalemperors.com> accessed 17 October 2023.

³⁶ B. O. Ilo and A. F. Imosemi., 'Prospect and Challenges of Criminal Procedures in Nigeria: A Review'

(2022)8(2) *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang* 279-312 at 281.

³⁷ *Ibid*.

³⁸ *Auwula v. F.R.N* (2018) ALL FWLR 294 at 304

³⁹ (1995) 1 NWLR (Pt 373) 50

⁴⁰ Kwahar, P. T., *Trial in Magistrate Courts: Practice and Procedure* (Being a paper presentation at a Refresher Training for Magistrate at the National Judicial Institute Abuja 27th April 2017) 1- 15 at 10.

⁴¹ Administration of Criminal Justice Act, 2015 s274(3). A guilty plea must be unequivocal and clear.

⁴² Administration of Criminal Justice Act 2015, s273.

⁴³ *Bamaiyi v. State* (2007) ALL FWLR (Pt. 375)558; *Dokubo-Asari v. Federal Republic of Nigeria* (2002) 5 NWLR (Pt. 761) 638.

⁴⁴ *Ibid*, s382(2)

interpreter where necessary [45]. The court is expected to commence proceedings with the evidence of the prosecution who presents his case by calling witnesses and proving the charge against the defendant. In establishing the case against the defendant, the prosecution is expected to include the following proof of evidence such as list of witnesses, list of exhibits to be tendered, summary of witness statement, copies of the extrajudicial statement of the defendant, particulars of bail (if the defendant is on bail), and any other relevant documents or material reports [46].

Thereafter the defendant is allowed to prove his innocence by cross-examining the witnesses of the prosecution. Upon the close of the prosecution's case, the defendant will open his defence and adduce evidence to support his defence. The prosecution or the complainant can cross examine the defendant and his witnesses after they have adduced evidence in support of their case [47]. Where the case of the prosecution discloses an offence not specifically contained in the charge or a lesser offence not in the charge, is often made to face trial in respect of an offence he is not particularly prepared for. The court usually convicts the defendant based on the evidence adduced by the prosecution and in respect of a different offence not stated in the charge. This is often the practice in most courts in Nigeria. The foregoing procedure is emphasized under sections 160-171 [48] which allows the court to convict a defendant for an offence other than the one he was originally charged for. For instance, section 160 [49], 171 [50] and section 223 [51] provide thus:

160 Where a defendant is charged with an offence but the evidence establishes an attempt to commit such offence, he may be convicted of having attempted to commit that offence although the attempt is not separately charged.

171(1) In addition to the provision specifically made in this law, whenever a person is charged with an offence consisting several particulars, a combination of some only of which constitutes a complete lesser offence in itself and such combination is proved but the remaining particulars are not proved, he may be convicted of such lesser offence or may plead guilty to it although he was not charged with it.

171(2) when a person is charged with an offence and facts are proved which reduce it to a lesser

offence, he may be convicted of the lesser offence although he was not charged with it.

223 where a defendant is charged with one offence and it appears in evidence that he committed a similar offence with which he might have been charged under the provision of the Act, he may be convicted of the offence, which he is shown to have committed although he was not charged with it.

These provisions above, including section 161-170 of the Ekiti State ACJL and Section 223 of the ACJA allowing a defendant to be convicted for a lesser offence or offence not charged or pleaded by the defendant is a procedural defect that violates the right of the defendant. This practice often takes the defendant involved by surprise and puts him to a defence he was never prepared for. These provisions violate the principle of law that courts are bound by the charge before it [52].

If courts are bound by the charge before it, convicting a defendant for an offence not stated in the charge and not pleaded to (irrespective of the fact that it may be a lesser offence) may occasion miscarriage of justice. One of the fundamental principles of fair hearing in criminal trial is the constitutional provision that the defendant must be given adequate opportunity to prepare for his defence as the defendant could not prepare for the unknown.

Conversely, while most courts have the right to convict a defendant for a lesser or different offence, due process of the law must be followed in the interest of justice. In other words, where the evidence of the prosecution discloses a lesser offence or another offence not stated in the charge and for which the plea of the defendant has not been taken, the court is under the obligation to allow the prosecution to amend the charge in respect of the evidence of the prosecution before the defendant is allowed to enter his defence. On the amendment of a charge, Section 216 provides that [53]:

- (1) A court may permit an alteration or addition to charge or framing of a new charge at any time before judgment is pronounced.
- (2) An alteration or addition of a new charge shall be read and explained to the defendant and his plea to the amended or new charge shall be taken.

⁴⁵ O. R. Haruna., 'Summary Trial: Practice and Procedure for Honorable Magistrates of the FCT and State High Courts'(Being a Paper Delivered at the Induction Course for Newly Appointed Magistrates and other Judges of the Lower Court, 30th May-3rd June 2022) 1-47 at 21.

⁴⁶ 'An Overview of the Administration of the Criminal Justice Act 2014' https://nji.gov.ng/images/workshop_Papers/2016.pdf accessed 20 October 2023.

⁴⁷ Haruna (n 45)at 39.

⁴⁸ Ekiti State Administration of Criminal Justice Law (ACJL) 2014, s160.

⁴⁹ *Ibid*, s160.

⁵⁰ *Ibid*, s171.

⁵¹ ACJA, s 223.

⁵² *Sani v. State* (2015) ALL FWLR (Pt. 811) 1303 at 1308 SC.

⁵³ Administration of Criminal Justice Act 2015.

- (3) Where a defendant is arraigned for trial on an imperfect or erroneous charge, the court may permit or direct the framing of a new charge, or an addition to, or the alteration of the original charge.
- (4) Where any defendant is committed for trial without a charge or with an imperfect or erroneous charge, the court may frame a charge or add or alter the charge as the case may be having regard to the provision of this Act.

In this case, once the charge is amended in tune with the evidence of the prosecution, a fresh plea of the defendant must be taken in respect of the amended charge [54]. Thereafter, the defendant is allowed to defend himself in respect of the amended charge [55]. Where proceeding to trial immediately will not be prejudicial to the defendant in his defence or the prosecutor, the court may allow it [56]. This literally saves the defendants of the breach of his constitutional right on the right to be informed of the nature charge against him so as not to be taken by surprise and the requirement of time and opportunity to prepare for his defence [57]. However, an amendment would not be required when the offence proved is an element of the offence in the charge or part of the offence. In *Okumo v. State* the Supreme Court held that 'an accused can be convicted on a lesser offence disclosed by evidence at the trial where the offence proved is part of the offence charged or an element thereof [58].

5.0 Duties of the Court in Criminal Trial

Justice administration and fair play are vital attributes of courts in criminal trial. Courts are presiding officers; they exercise their powers over the cases within their jurisdiction. Courts exercise jurisdiction to try offence and defendants who have committed offences are recognized and punishable under the law [59]. It is an umpire saddled with the duty to examine the processes filed by the parties thoroughly and dispassionately [60]. It provides equal access to justice and ensures that judicial independence is preserved and the interests of individuals are protected. It must act judicially and judiciously as stated in *Zenith Bank Plc v. Ogbodo* where the Court of Appeal held that:

acting judicially imports a balanced consideration of the interests of both sides to a case and weighing them in order to arrive at a just and fair decision while to act judiciously means showing sound judgment, wisdom and

good sense in the exercise of a discretion and determination of issues in a case.

The court administers justice fairly, promotes justice in such a way that would boost the confidence of the public. At the commencement of trial, the court must observe the following steps:

- a. The defendant must be placed before the court unfettered unless the court shall see cause otherwise to order;
- b. The charge or information must be read over and explain to the accused to the satisfaction of the court by the registrar or other officer of court;
- c. It must be read and explained to the defendant in the language he understands;
- d. The accused must be called upon to plead thereto unless there exist any valid reason to do otherwise such as objection to want of service where the defendant is entitled by law to service of a copy of the information and the court is satisfied that he has in fact not been duly served [61].

The Court determines whether evidences presented before it are admissible or not. It accepts both the admission and denial of guilt of the defendants when their pleas are taken. It listens to the submission of the prosecution and defence, decides matters based on laws or laws that specifically make provision for the crime committed and undisputed facts [62]. Based on the provision of the law, it decides whether to send the defendant to jail, release him, give him an option of fine, pay restitution among others. In other words, court determines the guilt or innocence of the defendant.

Courts are not bound to speculate on the possible defences that may be available to the defendant. However, where for instance in the trial of murder, the evidence adduced by the prosecution portrays a line of defence, the court is under the obligation to consider the defence whether or not the defendant or his counsel raises it [63]. It is however not the duty of the court to fill yawning gap in the case of the prosecution.

6.0 Concluding Remark and Recommendation

Courts in Nigeria play a vital role in the administration of criminal justice and they determine the fate of the defendant based on the evidence presented before them and the relevant laws. Once a charge is preferred and filed at the registry of the court, it is

⁵⁴ *Ibid*, s217(1); *Aliu v. State* (2015) ALL FWLR (Pt. 782) 1706 at 1709.

⁵⁵ *Ibid*, s217(2).

⁵⁶ Administration of Criminal Justice Act 2015, s218(1).

⁵⁷ CFRN 1999, s36(6)(a)(b).

⁵⁸ *Okumo v. State* (2021) ALL FWLR (Pt 1078) 652 at 658 SC.

⁵⁹ *Haruna* (n 45) at 7.

⁶⁰ *Akingbola v. FRN* (2015) ALL FWLR (Pt. 789) 1152 at 1154.

⁶¹ *Joe v. State* (2019) ALL FWLR (Pt. 985) 523 at 533 CA.

⁶² 'Deciding Disputes' <<https://www.britanica.com/topic/court-law>> accessed 25 October 2023

⁶³ *Takida v. State* (1969) 1 ALL NLR 270 at 273.

assigned to a court where the prosecution and defence counsel presents their evidences before the court. Where the evidence of the prosecution discloses a lesser or different offence against the defendant, the practice of convicting the defendant for an offence with which he is not charged or his plea taken negates the constitutional right of the defendant and should be discharged. It is note worthy to stress that amending a charge to reflect the offence sustainable by the prosecution evidence adduced before the court will not in any way detract from the speedy trial of criminal cases. This is because it is only upon the conclusion of the prosecution evidence that the defendant is expected to enter his defence.

This study however recommends that where the prosecution's case discloses a different offence other

than the offence charged, the court is expected to allow the prosecution to amend the charge and subsequently allow the defendant to take a fresh plea. After the plea of the defendant, has been taken, he is expected to be given ample opportunity and time to prepare for his defence in respect of the new charge as provided under section 36(b) of the 1999 Constitution before he can be called upon to enter his defence. In situations where the evidence of the prosecution discloses a lesser offence or offence not stated in the charge before the court, Section 223 of Administration of Criminal Justice Act 2015 and section 160-171 of Ekiti State Administration of Criminal Justice Law 2014 should be amended to give effect to amendment of the charge and a fresh plea of the defendant taken before he is allowed to enter his defence.