

THE RIVERS STATE CRIMINAL TRIAL PRACTICE DIRECTION NO. 1 OF 2023 AND THE SUPREME COURT DECISION IN THE CASE OF F.R.N. VS. NNAMDI KANU: A CRITIQUE

By

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Abstract

This article appraises the legality of the power of the court to invite parties to address it where it is of the opinion that the case as contained in the processes filed lacks merit as provided in the Rivers State Criminal Trial Practice Direction No. 1 of 2023, within the context of the recent Supreme Court decision in the case of Federal Republic of Nigeria v Nnamdi kanu on prima facie case, as well as other human rights implications of the said provision as made by the current Chief Judge of Rivers State. The research methodology adopted is the doctrinal research methodology. This was done by placing reliance on primary and secondary sources of law like the Constitution of the Federal Republic of Nigeria 1999 (as altered), the Rivers State Administration of Criminal Justice Law, No. 7 of 2015, the Rivers State Criminal Trial Practice Direction No. 1 of 2023 and judicial authorities, to mention but a few. It was found amongst other things that the Judex of the Rivers State Judiciary may have difficulty applying the said provision in view of the binding effect of the decision of the Supreme Court of Nigeria, pursuant to section 287 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as altered). The recommendation of this article includes that paragraph 3 (d) of the Rivers State Criminal Trial Practice Direction No. 1 of 2023 should be amended to bring it in line with the provisions of section 309 of the RSACJL 2015 and the Supreme Court decision in the case of Federal Republic of Nigeria vs. Nnamdi kanu in such a way that it shall no longer be in doubt to a reasonable man.

Keywords: Legality, Prima Facie, Criminal, Trial, Rivers State, Practice, Direction.

1.0. Introduction

The Rivers State Criminal Trial Practice Direction No. 1 of 2023 has made far reaching provisions, especially in relation to the condition for the filing of an information or charge, elimination of unnecessary delays in criminal trial and the prioritisation of cases bordering on financial crimes, rape, money laundering, kidnapping, human trafficking, murder and corruption.¹ However, the purpose of this article is to evaluate the appropriateness or otherwise of the power of the court to invite parties to address it where it is of the opinion that the case as contained in the processes filed lacks merit with a view of striking out the same if the need arises as provided in the Rivers State Criminal Trial Practice Direction No. 1 of 2023, in view of the recent Supreme Court decision in the case of *Federal Republic of Nigeria v Nnamdi kanu*.²

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¹ See generally Rivers State Criminal Trial Practice Direction No. 1 of 2023 (CPTD 2023).

² [2024] 11 NWLR (Pt 1949) SC 231.

The scope of the study in terms of time covers the period of 2015 to 2024. In terms of the geographical area covered, the whole of Rivers State, although, the article also made references to the Constitution of the Federal Republic of Nigeria 1999, as altered (CFRN 1999), as well as judicial precedents. The subject matter covered is Directive “D” under Filing of Information/Charge in the Rivers State Criminal Trial Practice Direction No. 1 of 2023, sections 300, 301 and 302 of the Administration of Criminal Justice Act 2025 (ACJL 2015), which is in *pari material* with sections 307, 308 and 309 of Rivers State Administration of Criminal Justice Law No. 7 of 2015 (RSACJL 2015), and the relevant decision in the case of *Federal Republic of Nigeria v Nnamdi kanu*.³

2.0. Conceptual Framework

Conceptual framework deals with the common concepts or languages that are used to describe the subject area of this article and the presumed connection among them.⁴ These common concepts are not only limited to the definitional elements of this article but extends to other concepts used often in the body of the article.⁵ The definition and clarification of common terminology and their use in relation to the article in this part becomes most necessary. These concepts include, legality, *prima facie* and subsidiary legislation.

2.1. Legality

Legality is strict adherence to law, prescription, or doctrine; the quality of being legal or being in accordance to law.⁶ Legalistic means characterised by legalism, exalting the importance of law or formulated rules in any area of action.⁷ Legal is what is required and permitted by law.⁸ Because of the principle of *stare decisis* applicable in Nigeria, once a pronouncement has been made on any subject matter by the court, especially the apex court, in Nigeria, the said decision becomes the position of the law and the determinant of legality⁹ until set aside or expressly repealed by legislation made by the appropriate law making body, which is the National Assembly or House of Assembly of the State.

2.2. Prima Facie

Prima facie is a Latin word, which means at first look, on first appearance, but subject to further assessment.¹⁰ It also means enough to raise a presumption, unless rebutted by superior evidence.¹¹ *Prima facie* case means the establishment of a legally required rebuttable presumption.¹²

2.3. Subsidiary Legislation

Subsidiary legislations made by the executive or judicial arm of government with the express or implied consent authority or permission of the legislature.¹³ Legislation can be broken down into two categories: primary legislation, or laws passed by parliament; and subsidiary or subordinate legislation, or laws

³ (n2).

⁴ M B Miles and A M Huberman, *Qualitative Data Analysis: A Methods Sourcebook* (Sage 1994) 18.

⁵ (n4).

⁶ B A Garner (ed), *Black's Law Dictionary* (9 edn, Thomson Reuters 2009) 977.

⁷ (n6).

⁸ (n6), 975.

⁹ Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999), s 287 (1) (2) (3).

¹⁰ (n6) 1310.

¹¹ (n10).

¹² (n10).

¹³ Edo University, 'Delegated or Subsidiary Legislation' <<https://www.edouniversity.edu.ng>> accessed 15 August 2022.

made by entities or people with authority granted to them by parliament. They are able to enact such legislation due to these powers.¹⁴

Accordingly, Rules of Court or Practice Direction are not mere Rules but they partake of the nature of Subsidiary Legislations by virtue of *section 18 (1)* of the Interpretation Act 1964 (IA 1964) and therefore have the force of Law.¹⁵ That is why Rules of Court must be obeyed; when there is non-compliance with the Rules of Court or Practice Direction, the Court should not remain passive and helpless; there must be sanction; otherwise the purpose of enacting the Rules will be defeated.¹⁶ Rules of Court are not meant only to be obeyed, they are also binding on all parties before the Court; it is the duty of the Court to ensure that it is bound by the Rules made under the law of the Land, such Rules can never be ignored, if it does, the attainment of justice may be left to the whims and fancies of powerful individuals and this would not be in the interest of justice.¹⁷

Parties who appear before Nigerian courts has been enjoined to study their Rules carefully and approach the Courts according to laid down rules in order to avoid chaos in the judicial process, where a court insist that the Rules must be obeyed, it should not be equated with technicality.¹⁸ Practice Directions like the Rivers State Criminal Trial Practice Direction No. 1 of 2023 (CTPD 2023) are part of the Rules of part, which as stated above partake of the nature of Subsidiary Legislations.¹⁹

However, subsidiary legislation like Rules of Court and Practice Direction have recently been held as the handmaid of justice, with emphasis on substantial justice, not technical justice and where strict application of same will lead to injustice, the court should be cautious in the strict application of same.²⁰

3.0. Legal Framework

Legal framework is the existing statutory provisions on substantive law and procedural law in relation to the subject matter of this article. The legal frameworks examined are the Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999), as altered, the Administration of Criminal Justice Act 2015 (ACJL 2015), the Rivers State Administration of Criminal Justice Law No 7 of 2015 (RSACJL 2015) and the Criminal Trial Practice Direction No. 1 of 2023 (CTPD 2023).

3.1. The Constitution of the Federal Republic of Nigeria 1999 (as amended)

According to the CFRN 1999,²¹ whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or

¹⁴ Zimlil, 'Delegated or Subsidiary Legislation' <<https://old.zimlil.org/content/delegated-or-subsiary-legislation>> accessed 16 August 2022

¹⁵ *Adeniran v Olusokun II* [2019] 8 NWLR (Pt 1673) 98 Ratio 13, 114 Paras A-G, Per Mary Peter-Odili JSC.

¹⁶ (n15); *Owners of MV Arabella v N.A.I.C.* [2008] 11 NWLR (Pt 1097) 182; *Agip (Nig.) Ltd, v Agip Petroli Int.* [2010] 5 NWLR (Pt 1187) 348; *NNPC v Famfa Oil Ltd.* [2012] 17 NWLR (Pt. 1328) 148; *Popoola v Babatunde* [2012] 7 NWLR (Pt 1299) 302.

¹⁷ (n15).

¹⁸ (n15).

¹⁹ Interpretation Act 1964, Cap I 23 LFN 2004, s 18 (1).

²⁰ *Suntrust Bank (Nig.) Ltd. v Eaton Acquisitions Ltd.* [2024] 15 NWLR (Pt 1962) SC 589, 608, paras B-G.

²¹ (as altered).

tribunal:²² Every person who is charged with a criminal offence shall be presumed to be innocent until he is proven guilty: provided that nothing in section 36 shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.²³

Accordingly, every person who is charged with a criminal offence shall be entitled to be informed promptly in the language that he understands, and in details the nature of the offence;²⁴ be given adequate time and facilities for the preparation of his defence;²⁵ defend himself in person or by a legal practitioner of his own choice;²⁶ examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution;²⁷ and have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.²⁸

Furthermore, no person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.²⁹ Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined, and the penalty therefore is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.³⁰ The Attorney General has the power to take over and discontinue criminal proceedings.³¹

In the same stratum, the pronouncement of the Supreme Court shall be enforced in any part of the Federation by all authorities and persons and by courts with subordinate jurisdiction to that of the Supreme Court.³² The pronouncements of the Court of Appeal shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Court of Appeal.³³ The pronouncements of the Federal High Court, the National Industrial Court, a High Court and of all other courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons, and by other courts of law with subordinate jurisdiction to that of the Federal High Court, the National Industrial Court, a High Court and those other courts, respectively.³⁴

²² (n9), s 36 (4).

²³ *Ibid*, s 36 (5).

²⁴ *Ibid*, s 36 (6) (a).

²⁵ *Ibid*, s 36 (6) (b).

²⁶ (n9), s 36 (6) (c).

²⁷ (n9), s 36 (6) (d).

²⁸ *Ibid*, s 36 (6) (e).

²⁹ (n9), s 36 (8).

³⁰ *Ibid*, s 36 (12).

³¹ *Ibid*, s 174, 211.

³² (n9), s 287 (1).

³³ (n9), s 287 (2).

³⁴ (n9), s 287 (3).

3.2. Administration of Criminal Justice Act 2015

The Administration of Criminal Justice Act 2015 (ACJL 2015) provides that after a defendant is arraigned before a court on a charge alleging the commission of a criminal offence and after he has pleaded not guilty or not making a plea, the prosecution shall open the case by stating in brief or shortly, by what evidence it intends to prove the case against the defendant.³⁵ Thereafter the witness shall be led in examination-in-chief by the prosecution and cross-examined by the defence, and if need be, re-examined by the prosecution.³⁶ After the presentation and conclusion of evidence by the prosecution, the defendant is entitled to present his case and adduce evidence if need be³⁷ or he may make a no-case submission to the effect that the evidence presented by the prosecution in proof of the offences in the charge is such that no reasonable tribunal or court can convict on it even if believed, on the ground that, on its face, none of the essential elements or ingredients of the offence is shown to exist to warrant calling on the accused person to enter defence by adducing evidence to explain his own side of the case.³⁸

The court has the judicial discretion, on its own motion, or after taking the evidence presented by the prosecution, where it considers that such evidence is not sufficient to ground the continuation of the trial; that is, no prima facie case has been disclosed by the evidence presented by the prosecution, record a finding of not guilty for the defendant without the need to call on him or them to enter or present evidence in his defence.³⁹

3.3. The Rivers State Administration of Criminal Justice Law No 7 of 2015

The Rivers State Administration of Criminal Justice Law 2015 (RSACJL 2015) provides that after a defendant is arraigned before a court on a charge alleging the commission of a criminal offence and after he has pleaded not guilty or not making a plea, the prosecution shall open the case by stating in brief or shortly, by what evidence it intends to prove the case against the defendant.⁴⁰ Thereafter the witness shall be led in examination-in-chief by the prosecution and cross-examined by the Defence, and if need be, re-examined by the prosecution.⁴¹ After the presentation and conclusion of evidence by the prosecution, the defendant is entitled to present his case and adduce evidence if need be⁴² or he may make a no-case submission to the effect that the evidence presented by the prosecution in proof of the offences in the charge is such that no reasonable tribunal or court can convict on it even if believed, on the ground that, on its face, none of the essential elements or ingredients of the offence is shown to exist to warrant calling on the accused person to enter defence by adducing evidence to explain his own side of the case.⁴³ The court has the judicial discretion, on its own motion, or after taking the evidence presented by the prosecution, where it considers that such evidence is not sufficient to ground the continuation of the trial; that is, no prima facie case has been disclosed by the evidence presented by

³⁵ ACJA 2015, s 300 (1).

³⁶ (n35), s 300 (2).

³⁷ (n35), s 301.

³⁸ *FRN v Kanu* [2024] 11 NWLR (Pt 1949) SC 231, 330-331, paras C-E.

³⁹ (n35), s 302.

⁴⁰ ACJL 2015, s 307 (1).

⁴¹ (n40), s 307 (2).

⁴² (n40), s 308.

⁴³ (n38).

the prosecution, record a finding of not guilty for the defendant without the need to call on him or them to enter or present evidence in his defence.⁴⁴

The RSACJL 2015 empowers the Chief Judge of the State to issue Practice Directions in relation to the success and management of criminal cases,⁴⁵ a specific case or court or group of cases or courts and jurisdiction.⁴⁶ The purpose of this power vested on the Chief Judge of the state is to ensure the fairness, accessibility and efficiency of the criminal justice system,⁴⁷ to ensure the unambiguous expression of the RSACJL 2015,⁴⁸ to ensure the expeditious and efficient dispensation of criminal cases by all stakeholders in the justice sector, especially, the court, the prosecutor, the defendant and his counsel;⁴⁹ and to ensure diligent prosecution and defence of criminal cases as regards the real issues in dispute on the date of hearing.⁵⁰ The said Practice Direction must be published in the state Gazette⁵¹ and come into force not on the date of the publication but on the date indicated by the Chief Judge.⁵²

3.4. Rivers State Criminal Trial Practice Direction No. 1 of 2023

The Rivers State Criminal Trial Practice Direction No. 1 of 2023 (CTPD 2023) provides *inter alia* that where the Court is of the opinion that the case as contained in the processes filed lacks merit, the Court shall, as a matter of course, invite parties within fifteen days of receipt of the case file to address it as to why such case should not be struck out. Where no cogent reason is disclosed to the Court, such matter shall be struck out.⁵³ The CTPD 2023 provides that all preliminary objections shall be taken at the address stage.⁵⁴

4.0. The Rivers State Criminal Trial Practice Direction No. 1 of 2023 and the Decision of the Supreme Court in the Case of FRN vs. Nnamdi Kanu: A Critique

As stated in the foregoing paragraph, the Rivers State Criminal Trial Practice Direction No. 1 of 2023 (CTPD 2023) empowers the court in Rivers State to strike out a charge before commencement of evidence where it is of the opinion that the case as contained in the charge and proof or evidence lacks merit, provided that parties shall be invited to take a decision before the said charge shall be struck out.

Conversely, the Supreme Court of Nigeria has recently held in the case of *Federal Republic of Nigeria v Nnamdi Kanu*,⁵⁵ that from the provisions of sections 300, 301 and 302 of the ACJA 2015, which is in *pari material* with sections 307, 308 and 309 of RSACJL 2015, that the stage at which a court is to make a determination of whether a *prima facie* case was disclosed by the evidence presented by the prosecution after the arraignment of, and plea by the defendant before a court on a charge for criminal offences, is after the presentation, examination, cross-examination and re-examination of witnesses, if

⁴⁴ (n40), s 309.

⁴⁵ (n40), s 500 (3).

⁴⁶ *Ibid*, s 500 (4).

⁴⁷ *Ibid*, s 500 (5) (a).

⁴⁸ (n40), s 500 (5) (b).

⁴⁹ *Ibid*, s 500 (5) (c).

⁵⁰ *Ibid*, s 500 (5) (d).

⁵¹ *Ibid*, s 500 (6) (a).

⁵² *Ibid*, s 500 (6) (b).

⁵³ CTPD 2023, para 3 (d) cf *FRN v Kanu* [2024] 11 NWLR (Pt 1949) 231, 330-331, Paras A-E Ratio 39, 40; ACJA 2015, ss 300, 301, 302; RSACJL 2015, ss 307, 308 and 309.

⁵⁴ CTPD 2023.

⁵⁵ (n2).

any, by the prosecution and the defendant or his attorney. That is the procedure provided for in criminal proceedings where an accused was arraigned and his plea taken for offences on a charge against him.⁵⁶ In other words, the issue of whether a *prima facie* case has been made by the prosecution to warrant a reaction from the accused as provided by the procedural laws and Act comes in when the prosecution witnesses have given evidence on oath before a court of law. Thereafter, the defendant's counsel may make a submission to the effect that the accused has no case to answer-usually called a No-Case submission.⁵⁷

The Criminal Procedure Law of Rivers State (RSACJL 2015) does not provide for the procedure for leave to prefer a charge usually made *ex parte*,⁵⁸ if it did, the provisions of section 3 (d) of the CTPD 2023 would not have been necessary, as the court would have been able to examine processes to be attached to the *ex parte* application for leave to prefer a charge or information and refuse to grant same if it is of the opinion that the process filed lacks merit.

However, since leave of court is not required to file a charge in Rivers State, it is submitted that the court cannot on its own motion form an opinion that the processes filed lacks merit when the prosecution has not yet presented its case within the circumference of the reasoning in the case of *FRN v Kanu*, especially given the fact that the CTPD 2023 provides that all preliminary objections shall be taken at the address stage; which presupposes that even though the defence objects to a defective charge, it would be taken at the address stage, which may be at the point of no-case submission address and/or final address, should the defendant be asked to present his case.

Another issue to be determined is this; at what point will the court validly invite the parties within 15 days of receipt of the case file? Is it before plea is taken or after plea is taken or after commencement of the case of the prosecution, provided that it is still within 15 days? Is such a call for the address of the parties at the stage where the prosecution has not presented its case in a charge validly filed not contrary to the decision of the Supreme Court in the case of *FRN v Kanu*? Since the effect of striking out a suit is a mere discharge and not acquittal, is the court which ought to be an unbiased umpire not descending into the arena by denying the defendant who would have benefitted from an acquittal if the prosecution is unable to prove its case such benefit? Instead of the procedure contained in section 3 (d) of the CTPD 2023, would it not have been better for the court to ask parties to come to court on a designated date with all their witnesses and the prosecution asked to present and conclude its case, after which the court may apply section 309 of the RSACJL 2015⁵⁹ and discharge and acquit the defendant whom the prosecution have not been able to present a *prima facie* case or whose process filed against lacks merit in the opinion of the court?

The answer to the above questions is that it is better that a legal practitioner with impeccable integrity within the work force of the judiciary or administrative judge nominated by the Chief Registrar or Chief Judge, as the case may be, peruse through all uploaded charges or information before a suit number will be given to it, so that such information or charge shall not be accepted for filing, but rather sent back

⁵⁶ (n2), 330-331, paras C-E.

⁵⁷ (n2), 332-333, paras F-E.

⁵⁸ *Dariye v FRN* [2015] 10 NWLR (Pt 1467) 325.

⁵⁹ ACJL 2015, s 302.

to the Attorney General for reconsideration and the name of the defendant noted, while the defendant or suspect is granted bail on terms since no formal charge has been filed. Should the Attorney General consider to re-file the formally rejected charge or information, the corrupt free legal practitioner or administrative judge shall bring the same to the attention of the Chief Judge before assigning a suit no, to enable it to be assigned to a judge who shall note the circumstances behind the charge and information, and make an order for accelerated hearing. Once a charge or information has been accepted for filing and assigned a suit number, it may not be necessary for the court to invite the parties within fifteen days or any other days of receipt of the case file, whether it is before plea is taken or after plea is taken or after commencement of the case of the prosecution to address it, as doing so may be argued to be contrary to the decision of the Supreme Court in the case of *FRN v Kanu*, which held amongst other things that the stage at which a court is to make a determination of whether a *prima facie* case was disclosed by the evidence presented by the prosecution after the arraignment of and plea by the defendant before a court on a charge for criminal offences, is after the presentation, examination, cross-examination and re-examination of witnesses, if any, by the prosecution and the defendant or his attorney. The Supreme Court held this as the procedure provided for in criminal proceedings where a defendant was arraigned and his plea taken for offences on a charge against him.⁶⁰ It is germane to stress that the courts in Rivers State who are all under the judicial hierarchy of the Supreme Court have no option but to enforce the decision of the Supreme Court of Nigeria⁶¹ in the said case of *FRN v Kanu*.⁶²

The court should wait for the prosecution to present its case, especially in view of the fact that the effect of striking out a suit is a mere discharge and not an acquittal, the court which ought to be an unbiased umpire may be perceived by a defendant whose counsel has communicated the nature of the prosecution's case and his strategy to letting the defendant off the hook, as descending into the arena if calling for the said address within fifteen days would deny the defendant who would have benefitted from an acquittal if the prosecution is unable to prove its case such benefit.

Furthermore, it is submitted that instead of the procedure contained in section 3 (d) of the CTPD 2023, it would be better for the court to ask parties to come to court on a designated date with all their witnesses and the prosecution asked to present and conclude its case, after which the court may apply section 309 of the RSACJL 2015 which is in *pari material* with section 302 of the ACJA 2015, whether on its own motion or on an application by the defendant, discharge and acquit the defendant whom the prosecution has not been able to present a *prima facie* case or whose process filed lacks merit in the opinion of the court.

5.0. Conclusions, Summary of Findings and Recommendations

Indeed, the efforts of the current Chief Judge of Rivers State in addressing the unnecessary delay in criminal trial are highly commendable. However, it must be done in a manner that is in conformity with established legal procedure and the decision of the apex court in the land. It was found amongst other things that the *Judex* of the Rivers State Judiciary may have difficulty applying the said provision in view of the binding effect of the decision of the Supreme Court of Nigeria, pursuant to section 287 (1)

⁶⁰ (n 56).

⁶¹ (n 32); *Ombugadu v Alhaji* [2024] 7 NWLR (Pt 1936) 73, 105, Paras A-F, 115, paras E-H, Garba, JSC.

⁶² (n2).



of the Constitution of the Federal Republic of Nigeria 1999 (as altered). The recommendation of this article includes that *paragraph 3 (d)* of the Rivers State Criminal Trial Practice Direction No. 1 of 2023 should be amended to bring it in line with the provisions of section 309 of the RSACJL 2015 and the Supreme Court decision in the case of *Federal Republic of Nigeria v Nnamdi kanu*⁶³ in such a way that it shall no longer be in doubt to a reasonable man.

⁶³ (n2).