

Review

## Code of conduct tribunal proceedings and related constitutional issues

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**Servants of the public are themselves masters of themselves. The striking paradox of consequence of corruption has placed a high degree of proof on public officers who retain the level of fairness that match with the degree of the onus. The issue of corruption is not restricted to the dark hallways of government offices but officers who are under duty to enhance the society have rendered in tatters the entire sacrosanct mainstay of common good. This paper attempts to explore the Code of Conduct Bureau and Tribunal Act 2004. For the writer, the procedural form and provisions of the Act has inalienably invited constitutional problems. The case of *Nwankwo v Nwankwo*<sup>1</sup> that has set a limit of locus in action under the Act was reviewed. The paper identifies widespread discrimination in the enforcement of code of conduct for public officers in Nigeria. As part of recommendations the paper advises that the basic text of strong discipline in public service is the extent to which officials are being trained and tried for uncomplimentary relationship between the code and the judiciary. So the restriction of access to the tribunal at the detriment of individual with a cognizable interest is fatal to a regime committed to instilling discipline in public service.**

**Key words:** Code of Conduct, constitutional issues, right and problems.

### INTRODUCTION

Failure to declare assets in Nigeria is a rule instead of the exception. The agency powered<sup>2</sup> to collate assets declaration form is the Code of Conduct Bureau. The Code of Conduct Bureau (hereinafter referred to as the "bureau") is a sister agency to the Code of Conduct Tribunal (hereinafter referred to as the "tribunal"). The Code of Conduct Bureau and Tribunal Act (hereinafter referred to as the "Act") carries the aura to desist the nauseating odor of corruption in public service in Nigeria and replace

same with a system of accountability and responsibility cutting across institutions and arms of government. The monitoring and enforcement of assets declaration by public officers being the primary responsibility of the agency is a constitutional requirement for public officers including members of the executive, judicial and legislative arm of government.<sup>3</sup> The declaration of assets by public officers is the fulcrum of compliance to the code of conduct of public officers. A basic text of strong discipline

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in public service is the extent to which officials are being trained and tamed for complimentary relationship between the rules of the code and service.

### **Trial procedure at the tribunal**

This is the process by which public officer<sup>4</sup> accused of breach of the code is arraigned and tried.<sup>5</sup> Before trial commences, the bureau initiates investigation on its own or after receipt of complaint with necessary investigation,<sup>6</sup> bundle<sup>7</sup> the public officer involved to the tribunal. The pre trial application of the bureau to the tribunal is ex parte in nature and the tribunal is powered by the Act to issue warrant of arrest against the accused based on the face of the allegations filed by the prosecutor.<sup>8</sup> The compelling appearance<sup>9</sup> of the accused leaves much to be desired, considering the responsibility of public officers in the development of any nation. The common object of the summary application is to bring the suspect before a Commission of Enquiry (*Ikone v Commissioner of Police /1986*) and not for the purpose of determining the guilt of the accused. Every citizen is entitled to right of personal liberty<sup>10</sup> under the constitution and no person shall be lawfully denied of this right by means of arrest or detention. An efficient and effective criminal justice administration founded upon the basic principle of law and justice and propelled by a vibrant and seamless judicial process, is without doubt, the sine qua non for egalitarian society. This is a society where respect for rule of law, due process, human rights and democratic ideals holds sway, as envisaged under the Nigerian Constitution (Frank, 2009).

Criminal summons is an alternative to warrant of arrest. It is usually issued in respect of misdemeanour. It may also be issued if the person whose attendance is required is not likely to refuse to attend the court (Bryan; Black's Law Dictionary, 6<sup>th</sup> Edition). It is not every case or complaint against a public that deserves the deployment of warrant of arrest. It is my submission that the use of warrant against a public officer is oppressive seeing that the benefit that may flow from enforcement or the penalties that are likely to be ordered may not be justified by the costs involved in securing attendance. Breach of the code is not a capital offence and any law that creates warrant of arrest for non capital offences goes with bail endorsement.<sup>11</sup> An arrest order without a provision for bail bond is an infringement on the constitutional rights of public officers.<sup>12</sup> Even though the Act presumes that the accused is guilty of corruption on any allegation of contravention of the code, I submit that it is not at the pre trial stage.

Whether a reasonable man acting without passion or prejudice would fairly have suspected the arrestee of having committed an offence is determined by the application supported with summary of evidence and affidavit made by the prosecutor and also the explanation of the

suspect. Where the suspect reasonably explains the situation and contradicts the application of the prosecution, at least at the material time, any detention in that circumstance has no foundation on reasonable suspicion and it may be unlawful. Agree that the proof of reasonable suspicion is on probability but the onus rest comfortably of the prosecution. An examination of the powers, provisions and trial procedural in the Act show the trappings of a criminal trial.<sup>13</sup> The essence of developing a gauge for reasonable suspicion and arrest is to prevent abuse of powers and infringement of rights and undue harassment, victimization and sustenance of judicial esteem. In the tribunal proceedings, the witness seems to be of more value than the accused person. In ***Ikonne v COP***<sup>14</sup> the Supreme Court held that the conduct of the Judge in issuing the warrant of arrest upon what was obviously a fictitious reason, had the undesirable effect of denigrating the judiciary in the eyes of the public and of eroding the confidence of people in judicial process and the rule of law. The deterrence value becomes uncertain particularly if the persons most likely to be prosecuted are without resources or standing. The tribunal must allow suspects to access their counsel at the point of arraignment.<sup>15</sup> This right is the gate way to the realistic exercise of all other rights of citizen.<sup>16</sup> It must also be noted that the suspension of a public officer by the bureau pending the decision of the tribunal will not amount to breach of right to fair hearing, (*Esiaga v UNICAL (2004)*)<sup>17</sup> so long as the suspension was running before the charge was made in the tribunal.

### **Frame of fair hearing at the code of conduct tribunal**

Fair hearing is not only a common law requirement but also inherent in rule of law and attracts the aura that inaugurates natural justice characteristic of a judicial process. It is a statutory and constitutional right.<sup>18</sup> The foretaste of this rule in Nigeria was made manifest in *Garba v UNIMAID* where the Supreme Court held that the rules of natural Justice must be observed in any adjudication process by any court or tribunal established by law.<sup>19</sup> Fair hearing under the Act means that the accused shall not only have the opportunity to present evidence in his favor, but shall be expose to the evidence of the prosecution challenging his own, so that at the conclusion of the hearing, the tribunal may be in a position to know all of the evidence on which the matter is to be decided.<sup>20</sup> The absence of judicial division of the tribunal accounts for the cross- country and laborious trial for the accused which in turn affects substantially the rights of the accused under the law. A public officer who breaches the code in state other than its present posting cannot all be tried in Abuja. All actions against a public officer and suits for penalty or forfeiture is commenced and tried in the Judicial Division of the Court in which the cause of action arose.<sup>21</sup> The essence of trial within a

jurisdiction where action arose culminates in a stress free environment. I submit that it is not only a constitutional requirement but a subtle condition for fairness. In the case of **R v Benbrika and Ors**<sup>22</sup> the Supreme Court of Victoria held that the circumstance in which the defendants were being transported meant that they were subjected to undue stress such that the conditions rendered the trial unfair.

All public officers are mandated under the law and the Constitution<sup>23</sup> to declare all his properties, assets and liabilities and those of his spouse or unmarried children under the age of 21 years. Where a tribunal finds a public officer guilty of contravention of any of the provisions of the code, the tribunal shall impose upon that officer any of the punishment specified in par 18(2) of the 5<sup>th</sup> Schedule 1999 Constitution which include: -

- (a) Vacation of office or seat in any legislative house as the case may be;
- (b) Disqualification from membership of any legislative house, as the case may be, holding of any public office for a period not exceeding 10 years and
- (c) Seizure and forfeiture to the state of any property acquired in abuse or corruption of office.<sup>24</sup>

Will it be fair for the tribunal to order for forfeiture of money traceable to an account bearing a separate name from that of a public officer without hearing from the bearer of the account? It is my submission that children's gift cannot be said to be assets of the parents, save tied to or linked with assets declaration form or proceeds of office of the accused. It will also be unfair and unconstitutional for a tribunal to make an order against the assets of a spouse or child not joined as a party in the suit. In similar vein, the thought that assets of unmarried children or children below the age of 21 years<sup>25</sup> are that of the parents militates against the right of children to own immovable property in the Constitution.<sup>26</sup> It is no doubt that where a public officer has corruptly enriched himself the appropriate authority<sup>27</sup> would direct under the law that the funds so misappropriated be refunded by such an officer (Tyonzughul v A.G. Benue State (2005)). Various laws<sup>28</sup> empowers agencies in Nigeria to invite public officers to furnish them a statement on oath on how they own, possess any interest in property which is excessive having regards to his present, past emoluments and all other relevant circumstances.<sup>29</sup> There is a presumption of corrupt enrichment on all public officers.<sup>30</sup> The court or relevant tribunal has the power to order for the forfeiture of property or proceeds of crime of all public officers who failed to rebut the presumption of corrupt enrichment, breach of the code and abuse of office. A significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions is nothing less than corrupt enrichment. The onus to prove that the property own by family member of a public officer is corruptly acquired is on the prosecution, this is so because the right of an individual to own property is

fundamental right. The burden of proving of infringement of fundamental rights is on the infringing authority and in this case the prosecution (SSS V Agbakoba (1999)). The tribunal is under the constitution mandate to investigate assets declaration made by public officers, investigate the assets acquired in the name of family members and sue them appropriately<sup>31</sup> and respectively<sup>32</sup>. Specially, where the forfeited property constitutes evidence of the subject matter of the offence, there will be forfeiture of the proceeds of crimes to the state under the Act and Criminal Code.<sup>33</sup> This is in addition to additional penalty that may be imposed.<sup>34</sup> For an order of interim forfeiture to be granted by the court, the onus to prove the link between the alleged offence and the property is on the prosecutor.<sup>35</sup> The variations of conviction based forfeiture in Nigeria are forfeiture of proceeds of assets acquired through proceeds derived from the offence of conviction. The second is where statute imposes pecuniary penalty or authorizes the forfeiture of assets equivalent to the penalty from the offence. And lastly, subject to forfeiture all traceable assets of the convicted person (Adedeji Adekunle 2011). Under our law, convict of financial crime may forfeit to the Federal Government properties obtained directly or indirectly as a result of such offence not disclosed on assets declaration form.<sup>36</sup> The constitutionality of forfeiture was put to test in Nwaigwe v FRN<sup>37</sup> The court held that forfeiture of property by accused is constitutional since the court can revoke the order anytime. The primary essence of forfeiture order is to stop the accused from transferring or disposing off the proceeds of crime (Abacha vs FRN (2006)).<sup>38</sup> The guiding principle is that the action and parties must be before the appropriate court or tribunal.

#### **Burden of proof placed on the accused: constitutionality or otherwise**

Abuse of power has assumed both national and international priority (Niki Tobi 2008). In an ideal society the profligates that we have in the wheel of governance in the name of public officers cannot be there. It is no news that the pulling force of citizens to appointive or elective offices is spur by an endless and mindless cash kitting. According to **Oyebode**<sup>39</sup> all most everybody in Nigeria is corrupt; they all leave above their income. The struggle for the control of state power is largely to enhance the predatory access to resource windfall (Olowu, Kayode 1995). Hardly a day passes without some new and shocking evidence emerging that corruption is alive and well in public service. Public officers are proud to hear of their complicity and the resultant hatred the people which they wear like a badge. So the Act in his magnanimity presumes all public officers to be the looters of the national treasury unless the contrary is proved.<sup>40</sup> The onus of proof that the accused is guilty still lies on the bureau at the time of making the complaint to the tribunal.

A petition on oath that is idle and unproved requires timorous denial for same to establish a case of damages against the prosecuting agency. Though those who disregard the oath of office have the onus of prove to be fit to continue to discharge the trust reposed on them, yet the presumption of innocence of an accused is sacrosanct in any offence under Nigeria laws.

The Court of Appeal in *Wabara and 2 Ors v FRN*<sup>41</sup> while commenting on section 53 (1) of the *ICPC Act 2000* held that the presumption of corruption is unconstitutional being odd with the requirement of section 36 (5) of the *constitution*. While I agree that accused persons as long as he remains guilty needs equal protection as other victims of crime or other accuser of its status, It is my humble submission that civil proof of probability by the accused to rebut allegation of abuse of office or failure to declare assets is allowed to prove that the property or assets acquired was not in contravention of the code.<sup>42</sup> Where a public officer asserts that he complied substantially with the code of conduct, he has the evidential burden of proving same. The tribunal takes judicial notice<sup>43</sup> of the effortless confetti of guilt worn around by public officers. A public officer charged with offences relating to failure to declare his assets cannot be prevented from disputing the incorrectness by offering evidence like assets declaration form and or pay slips. Arguably where failure to declare assets is used in the counts, the *mens rea* of the offences charged is embedded and disclosed therein.<sup>44</sup> It will whet the edge of venality if the guilt of an accused over failure to declare assets is on the prosecution.

This burden of proof enunciated by the Act may be discharged as soon as the accused introduces acceptable evidence showing balance of assets and income or reasonable compliance with the code of the conduct. The burden of proof shifted on the accused does not violate existing law in our practice and the law of evidence, but proof as to any particular facts lies on that person who wishes the court to believe in its existence.<sup>45</sup> Similarly, even though an accused is presumed corrupt until the contrary is proved, breach of the code cannot be established by looking at only the charges or documentary exhibits tendered.<sup>46</sup> In the case of *Ereku v Queen*,<sup>47</sup> the court in one of the first corruption charges in Nigeria held that failure to call or explain the absence of a witness one who had been requested to do the bribery, receipt of which formed the subject matter of the count of corruption was fatal to the count. It is needful that petitioner or investigative officer in the bureau be invited to the tribunal to give evidence failure of which may render the allegation fatal and unproved. The accused with the leave of court will be allowed to adduce further evidence to rebut the evidence of the prosecution on a new issue arisen even after they both closed their case.<sup>48</sup>

There are two distinct and frequently confused meaning of burden of proof. There is proof in the sense of introducing evidence and proof as a matter of law and

pleadings (*Buhari v INEC (2008)*). As regards the burden of proof in this Act, for the accused to discharge the onus, recourse will be made to the substance of the offence. Where the accused is charged of illegal accumulation, the item or facts constituting the ingredient of the offence are peculiarly within the knowledge of the prosecution and the burden of proving same lies on him<sup>49</sup> independent of the merit of the exercise. It is only at the discharge of this onus by the accused that the court would come to the conclusion that the alleged breach was not done with the aim of earning or accumulating wealth illegally or that the assets profile of a public office is not influenced by ill-wealth (*Swem vs Dzungwe (1960)*). This position is neither trite nor arid but a basis of contemporary judicial precedence. With an élan of informed jurist in an arcane world of practice and procedure, Niki Tobi JSC in a paper titled 'the *rule of law and anti-corruption crusade in Nigeria* (9<sup>th</sup> Justice Idigbe Memorial Lecture held at Akin Deko Hall, University of Benin, on 6<sup>th</sup> of August 2008) drove a comprehensive nail on the intractable ghost of onus of proof in anti – corruption cases. He has this to say;

The burden of proof is on the prosecution to prove the guilt of the accused beyond reasonable doubt. The same cannot be said of section 3(2)(3) of the Money Laundering (Prohibition) Act 2004 which provide that individual and body corporate shall be required to provide proof of identity in money laundering related cases. The above principle is consistent with section 139 of the Evidence Act which provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existent.

It is my sube4rd4344mission that the constitutionality of burden of proof on the accused is a mixed canvass of virtue and villain. *Section 15 (3) of the Act* save in limited exceptional cases is not inconsistent with the constitutional presumption of innocence,<sup>50</sup> since the discharge of the onus does not depend on proof beyond reasonable doubt or preponderance of evidence but on moral certainty or balance.<sup>51</sup> A conviction of honour and good sense is sufficient, the accused need not establish a prima facie case of compliance to the code, evidence of reasonable or prospective compliance with the code should not be disregarded by the tribunal unless there are stronger proofs of evidence against it.

Another justification for the onus of proof on the accused denotes that the tribunal cannot come to the conclusion only on the evidence of the prosecution to confirm the guilt of the accused. Since the tribunal is bound by its own rules there should be a fragile onus of disprove of facts within the knowledge of the accused. For instance false declaration and non compliance with the code is by their nature imputation of crime. The production of certified true copies of assets declaration form discharges and shifts the perennial onus of moral allegiance on the prosecution. Similarly, an allegation that

a public officer is a cultist must require the prosecution to prove that the public officer promotes a cause or purpose that foster his or her personal or group interest without due regard to merit or fair play (Orji v Ugochukwu (2009). The reverse will culminate in breach of fair hearing and can vitiate the entire trial for non compliance with the rules of natural justice.<sup>52</sup>

### **Non applicability of immunity in code of conduct tribunal proceedings**

Immunity is available for certain elected officers<sup>53</sup> with the aim of ensuring that public officers are not distracted from performing their statutory roles with frivolous litigations. The proceeding of the code of conduct tribunal is allergic to immunity. In *IMB Security PLC v Bola Tinubu*<sup>54</sup> where the court held that the defendant who was then a state governor was immune from legal proceedings.<sup>55</sup> In the case of *FRN v Kalu*<sup>56</sup> the accused was charged for breach of the code in his capacity as a serving governor of a state. The tribunal in her ruling dismissing the application held that the accused was not protected by the immunity clause in the constitution.<sup>57</sup>

Breach of code, abuse of office or corruption is a crime against the state like other criminal offences and the perpetrators deserve no discriminatory persecution. Many public officers have by abuse of power so massively enriched themselves that they wield enormous social and political power and have become threat to stability of the nation's polity.<sup>58</sup> For a country where the colour of her passport describes corruption<sup>59</sup> and constant as the Northern star on the world corruption index (Igbinoia .P. Edozor 2003). A frail understanding of the scope of code of conduct may culminate in miscarriage of justice as corruption is breach of code but breach of code is not exactly corruption.

### **Locus standi rule: Infraction on public interest litigation**

It is the Attorney-General of the Federation (AGF) or other officers in the ministry<sup>60</sup> that has the *locus standi* to prosecute a case of breach of code of conduct.<sup>61</sup> Prosecution for offences under the Act will be deemed to be done with the consent of the Attorney General.<sup>62</sup> The earliest case to establishing *locus standi* to institute action relating to code of conduct was in *Nwankwo v Nwankwo*.<sup>63</sup> The fact of this case is that the parties were divorced couple and one of the matters in dispute was the proprietorship of a registered firm. When dispute arose the wife contended that since the husband is a civil servant by *par. 2(b) of the 5<sup>th</sup> Schedule to the Constitution*, he should not engage or participate in the management and running of any private business, profession or trade. The Plaintiff (wife) asked for an

injunction restraining the husband from interfering in the management of the firm. The Supreme Court held that the constitution do not create a private right or interest for which the plaintiff could claim a relief.

The people's involvement in the fight against corruption has numberless legal and administrative bottleneck (*The Guardian*, Tuesday, August. 21, 2007). Any law that restricts the participation of the people in the process of judicial resolution aids corruption and judicial abuse.<sup>64</sup> It leaves adjudication in the hands of politically constrained public authorities which may be tempted to prioritize public interest litigation according to logistics and political selection. In *Nwankwo's case*, despite the justiceable claim, the plaintiff was restrained by statute.<sup>65</sup> The legal issue around conflict of interest was unanswered owing to want of standing. It is reiterated that by *par. 2(b) of the 5<sup>th</sup> Schedule to the Constitution* that no private citizen can enforce a right under the Act against a public officer. I am tempted to state assiduously that the plaintiff satisfied the traditional *standi* doctrine under the Act. There is no dispute as to the fact that there was mixed fund between the parties, also that the transaction between the parties was contractual and statutory<sup>66</sup> and lastly that the interest of the plaintiff was higher and greater above that of the general public.<sup>67</sup> Therefore the right of the plaintiff to sue to protect his interest is not only unassailable but the established injuries by the plaintiff also demand a remedy.<sup>68</sup> Seeing that the plaintiff raised issues which deserve judicial resolution, *par. 2(b) of the 5<sup>th</sup> Schedule to the constitution* is ultra vires as same made the private rights of the plaintiff vulnerable. Any statute or part of it that inhibit a legitimate interest in obtaining a decision against an adverse party in public law related proceedings can be declared unconstitutional by the court.<sup>69</sup>

The constitutional priority that citizens observe the law should require the tribunal to enforce the law whenever she is seized of proceedings which establish that a public officer has disregarded the code of conduct; because all citizens have unpliable interest in being loyal and promoting rule of law. To permit no one to claim is to simply allow possible illegality to continue. As far as *Nwankwo's case* is concerned, the option open to the tribunal was to strike out the paragraphs challenging proprietary rights of the claimant<sup>70</sup> and decide the constitutional issues bothering on the code of conduct for public officers.

### **RECOMMENDATION**

The Act bestowed the tribunal with the sole duty of determining the rights and duties of parties where the need arises. The law encourages the bureau to "cabalize" the process and effectively frustrate any interested party in code of conduct related proceedings. Enforcement of code of conduct for public officers in Nigeria has a

widespread anti-people status. Striking features of countries where assets declaration is a culture is that the tribunal or courts have become an important arena for the pursuit of economic rights for developmental outcomes with lenient criteria for *locus standi*. This scum provision is undemocratic, satanic and a threat to right of access to court in the constitution.

## CONCLUSION

The space should be widened to allow individuals file a case against a public officer in the code of conduct tribunal for cases relating to breach of the code. The right to access the tribunal should depend on the grant of leave by same upon the receipt of petition and disclosure of evidential proof. This will obviously sieve the wasteful petitions which could scoop the judicial process of its resources. The restriction of access to the tribunal at the detriment of individual with a cognizable interest is fatal to a regime committed to instilling discipline in public service. The constitutional priority that citizens should observe the law requires court or tribunal to enforce the law by ensuring adequate number of judicial officers in each tribunal in various states for effective and timely running of proceedings.

The onus of proof on a public officer knocks off the bottom out of natural justice in the Act. The Act should replace onus of "prove" with "disprove". The sublime effect of this adjustment is that even in the absence of the accused, the tribunal cannot come to the conclusion only on the evidence of the prosecution to confirm the guilt of the accused. To discharge this onus of "disprove" of moral uncertainty it will be sufficient that the accused deploy circumstantial evidence which may be slender but compellable. A measure of proof by the accused is inevitable for an anti-corruption effort to flounder noticeably. For the trial proceeding in the tribunal to be balance, the onus on the accused should be that of disprove which undoubtedly is canonical and will wear down the resistance of the accused but will not play down on its constitutional protection.

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- <sup>1</sup> Multiple forfeiture proceedings is not a breach of the constitution as forfeiture proceeding is not trial. See Abacha vs FRN (2006) 4 NWLR (pt. 970) 239 @ pp.300-301.
- Buhari v INEC (2008). 9 NWLR, Elemo v Omolade (1968) NWLR 359 p. 1190
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- <sup>1</sup> (1995) 5 SCNJ P.44
- <sup>2</sup> By the Constitution of Federal Republic of Nigeria 1999 and Code of Conduct Bureau and Tribunal Act LFN 2004 Cap C51
- <sup>3</sup> Sections 52 (1), 94(1) (2), 140 (1), 149(1), 172(1), 189(1) of the Constitution of Federal Republic of Nigeria 1999
- <sup>4</sup> A public officer is a person whose emolument is constitutionally provided for. See The Laws of Edo State of Nigeria, Vol. 5. Cap P 5, 2007. In Asogwa v Chukwu (2003) 4 NWLR (pt 811) the Supreme Court stated that politicians, civil or public servants are all public officers only for the purpose of the Code of Conduct Bureau. Note that for the purpose of dismissal, removal or compulsory retirement, a civil servant is a public servant but not every public servant is a civil servant. See Oloruntoba-Oju v Lawal (2003)17 NWLR (Pt. 848) 67
- <sup>5</sup> The rules and procedure of regular courts are mostly adopted in the tribunal including charges and evidences. See the procedure set out in the Code of Conduct Tribunal Rules of Procedure and 3<sup>rd</sup> Schedule, Cap C15 LFN 2004. In situation where the enabling rules of procedure are salient on any issue, the rules in the Criminal Procedure Act or Code are applied. See Cap. C.38 Laws of the Federation of Nigeria 2004 (applicable to the Southern part of Nigeria) and Cap 89, Laws of Northern Nigeria; 1964 (applicable to Northern states of Nigeria) are applied. See Par. 18(5) of the 5<sup>th</sup> Schedule of the Constitution of Federal Republic of Nigeria 1999.
- <sup>6</sup> The bureau studies the allegation and prepares their charge together with available evidence. The evidence the prosecution intends to use in proving the guilt of the accused is served on the accused and he/she is also given reasonable time to consider same and prepare a response. See Para 5 (1) of the 3<sup>rd</sup> Schedule to the CCB Act. It does not matter that the accused did not receive original copies of the charge sheet.
- <sup>7</sup> After the perusal of the application and the summary of evidence, affidavit or any further evidence in such form as the tribunal may consider necessary; the tribunal shall cause the person to be brought for trial. See Par 2 of the 3<sup>rd</sup> Schedule of the Act
- <sup>8</sup> The warrant is rightly issued by the Judge upon receiving a complaint on oath in compliance with section 23 of the CPA
- <sup>9</sup> Paragraph 2 of the Rules of Procedure of the 3<sup>rd</sup> schedule to the Act
- <sup>10</sup> Section 35 of the Constitution of Federal Republic of Nigeria 1999
- <sup>11</sup> See section 31 of CPA and section 64 of CPC
- <sup>12</sup> See Sections 34, 35, 36 and 41 of the Constitution of Federal Republic of Nigeria 1999
- <sup>13</sup> FRN v Atiku and 2 Ors; Charge No: CCT/NC/ABJ/06, pg 3. The use of the words like trial, accused, punishment, offence, prosecution, charge, guilty, etc may give an impression that the contravention of code of conduct constitutes the commission of a crime. Expression used in the Act may suggest criminal proceedings; the contravention cognizable by the tribunal is not criminal offence. See FRN v Orji Kalu Charge No. CCT/NC/ABJ/KW/03/3/05/MI p. 23

- <sup>14</sup> (1986) 2 NSCC 1130 @ 1145
- <sup>15</sup> Section 35 (2) of the Constitution of Federal Republic of Nigeria 1999
- <sup>16</sup> Agbedo Frank (Ibid) p. 184
- <sup>17</sup> *Esiaga v UNICAL* (2004) 7 NWLR (pt. 872) 366 where the Supreme Court held that since the appellant was not charged but only suspended pending a date he would be invited to appear before a disciplinary panel there was no breach of the right to fair hearing.
- <sup>18</sup> See section 33 of Constitution of Federal Republic of Nigeria 1999, Article 14 (1) of the International Convention on Civil and Political Rights, 6 (1) Of the European Convention on Human Rights (ECHR), 24 (1) Charter on Human Rights and Responsibility Act 2006, sec 21 (1) of the Human Rights Act 2004
- <sup>19</sup> (1986) 1 NWLR Pt. 18 P. 550
- <sup>20</sup> Ibid
- <sup>21</sup> See Order 2 Rule 3 of the Federal High Civil Procedure Rules 2009
- <sup>22</sup> No.20 (2008) VSC 80
- <sup>23</sup> See 3<sup>rd</sup> & 5<sup>th</sup> Schedule to the Constitution of Federal Republic of Nigeria 1999, and Code of Conduct Tribunal Act (2004)
- <sup>24</sup> See *Omware v Omisore* (Ibid)
- <sup>25</sup> Section 15 (1) of the Act
- <sup>26</sup> Section 43 of the Constitution of Federal of Nigeria 1999
- <sup>27</sup> Appropriate authority means the president or anyone authorized by him. See *Omware v Omisore* (Ibid). The tribunal being a creation of an appropriate authority can order a refund of the money stolen.
- <sup>28</sup> Under Independent Corrupt Practices Act 2000, Economic and Financial Crimes Commission Act 2004 and the Code of Conduct Bureau and Tribunal Act 2004
- <sup>29</sup> S. 44 Independent Corrupt Practices and Other Related Offences Act and section 15 (3) of Code of Conduct Bureau and Tribunal Act.
- <sup>30</sup> There is no obligation for a person arrested to make full disclosure of all his assets and liabilities or to complete assets declaration form. See section 27 of Economic Financial Crimes Commission (EFCC) Act
- <sup>31</sup> The tribunal do not have jurisdiction over family members of public officers
- <sup>32</sup> Actions against public officers for breach of the code can be made at the tribunal and subsequent against family members of the suspected public officers for feature at the Federal High Court, so that the law can be procedurally put to confiscate assets of public officers and his family members acquired in breach. See Par 18 (5) of the 5<sup>th</sup> Schedule to the Constitution and section 3 (2) 3<sup>rd</sup> Schedule of Code of Conduct Tribunal Rules of Procedure LFN 2004
- <sup>33</sup> See section 263 of the Code and Par 18(2) of the 5<sup>th</sup> Schedule of the 1999 Constitution. There is no procedural guidelines
- <sup>34</sup> s. 19 Criminal Code, Cap C77 LFN 1990.
- <sup>35</sup> By ss. 6 (4) and 75 of Proceeds of Crime Act 2002. In UK for the order of forfeiture to be invoked, the general crime record, accused lifestyle and conduct is sufficient.
- <sup>36</sup> See par. 18 (2) of the 5<sup>th</sup> Schedule of the Constitution 1999, Ss.119 (1) and 26 of EFCC Act.
- <sup>37</sup> (2009) 16 NWLR (pt. 1166) 169 @ 200-201
- <sup>38</sup> Multiple forfeiture proceedings is not a breach of the constitution as forfeiture proceeding is not trial. See *Abacha vs FRN* (2006) 4 NWLR (pt. 970) 239 @ pp.300-301
- <sup>39</sup> Akin Oyeboode; 'The Anti Corruption Act: A Necessary Instrument For Growth of our Nascent Democracy'. Essay in Honour of Chief OJC Okocha (SAN), NBA Ilorin Biennial Law Week 2002,pg 5
- <sup>40</sup> See Sec.15 (3) of the Act and Section 167 (A) of the Evidence Act 2011
- <sup>41</sup> CA/A/7/C/2006 delivered on 1<sup>st</sup> June 2010 cited as 2010 LPELR
- <sup>42</sup> By Sec.15 (3) of the Act (2011) as amended
- <sup>43</sup> Section 122 (2) of the Evidence Act. In *Buhari v Yabo* (2006)17 NWLR (pt.1007) 162, the court of appeal held that judicial notice taken of a fact dispenses with proof. The Court of Appeal decision is inconsistent with section 122 (1) of the evidence Act 2011 (as amended).
- <sup>44</sup> The mens rea is intention and omission. See section 206, 363 of the Penal Code
- <sup>45</sup> Section 140 of the Evidence Act 2011
- <sup>46</sup> It can be corroborated by the direct evidence of co- worker, auditing firm, petitioner or member of the code of conduct bureau that investigated the petition. By section 145 (1) of Evidence Act 2011 (as amended), the tribunal has the power to call for proof of presumed facts.
- <sup>47</sup> Supreme Court Judgment delivered on 18/12/1958
- <sup>48</sup> Fidelis Nwandialo 'Modern Nigeria Law of Evidence' Benin City: Ethiope Publishing, P.177
- <sup>49</sup> In considering the amount of knowledge necessary to shift the burden of proof; regard shall be made to the opportunity of knowledge with respect to the facts to be proved. See Section 136 (2) of the Evidence Act (as amended) 2011
- <sup>50</sup> Section 36(5) of the CFRN 1999.
- <sup>51</sup> The accused can even use evidence supplied by the prosecution. See J.A. Dada; *The Law and Evidence of Nigeria*, UNICAL Press: Calabar 2004: p.346
- <sup>52</sup> *Societe General Bank v Aina* (1997)6 NWLR Pt.509
- <sup>53</sup> President, vice president, Governor, deputy governor, see Section 308 of 1999 CFRN
- <sup>54</sup> (2001) 45 WRN1
- <sup>55</sup> *Jonathan v John Abiri & Anor* suit No: FCT/CU/505/07
- <sup>56</sup> CCT/NC/ABJ/KW/03/3/05/MI, delivered on 26<sup>th</sup> April 2006, his counsel filled a motion challenging the competence of the tribunal to issuing summons against the applicant. They argued that the constitution prohibits the courts from arresting, imprisoning or issuing any process on a serving Governor. The prosecuting counsel submits further that the immunity prohibition relates to proceedings and processes of courts and not of the tribunal. He argued further that the punishment which the tribunal imposes includes vacation of office which means that it is only a person in office, who would be penalized with removal from office.
- <sup>57</sup> Section. 308 do not avail in the proceedings in the Code of Conduct Tribunal. Immunity is meant to aid and encourage a breach of code of conduct or the oath of office with reckless abandon, impurity and impunity.
- <sup>58</sup> Justice Bola Ajibola SAN "Corruption and Leadership in Nigeria" a paper delivered at Law Week of Ikeja Branch of Nigeria Bar Association held at Airport Hotel Ikeja on 27<sup>th</sup> March 2008
- <sup>59</sup> Gasiokwu. M.O.U (ed), *Fighting Corruption Through Courts*, DELSU Law Review, Vol. 1, DLR 2005.
- <sup>60</sup> See Sec 24 (2) of Code of Conduct Tribunal Act, Cap C15, LFN 2004
- <sup>61</sup> Even a public officer under a state government. See *Nyame v FRN* (2010) 7 NWLR Pt. 1193
- <sup>62</sup> Section 24 (3) of the Act
- <sup>63</sup> (1995) 5 SCNJ P.44
- <sup>64</sup> It has been agued by scholars that the government existed so that corruption will strive. See *Gboyega, A. (Ed), Corruption and Democratization in Nigeria*. Ibadan: Friedrich Ebert Foundation and Agbo Areo Publishers, 1996.
- <sup>65</sup> A person without locus standi has access to court but not to justice as the court will strike out the action without hearing the merit of the case. See *Yusuf v Kode* (2002) 6 NWLR (PT. 762)231
- <sup>66</sup> *Adejumo v Ayantegbe* (1989)3 NWLR (pt. 110)417
- <sup>67</sup> *Owodunmi v Registered Trustee of C.C.C* (2000)
- <sup>68</sup> By section 299 of the Constitution, every dispute is qualified to be resolved by the court.
- <sup>69</sup> See *Lakanmi v State* (1970)NSCC 143
- <sup>70</sup> It is the High Court that has jurisdiction on the subject matter