



The Accuser, Prosecutor and Adjudicator: Critical Comment on Ediru V. F.R.S.C.

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ABSTRACT

This paper is a critique of the decision of the Court of Appeal in *Ediru v. F.R.S.C & Ors* wherein the appellate court held that the imposition of fines by the members of the Federal Road Safety Corps does not derogate from the judicial powers of the courts. It is part of the decision relating to the powers of the members of the Federal Road Safety Corps to impose fines on the alleged violators of offences created under the Federal Road Safety Commission (Establishment) Act that is being criticized in this work. The paper adopts the doctrinal method by analyzing the case and the principles of law relating to the exercise of judicial powers. It is the view of this writer that imposition of fine is an exercise of judicial function which is exclusively vested in the courts. Therefore, the imposition of fines by the members of the Federal Road Safety Corps, who are agents of the executive arm of government, amounts to a usurpation of the judicial powers of the courts.

Keywords: Imposition of fine, punishment, judicial powers

INTRODUCTION

The doctrine of separation of powers postulates that governmental powers in Nigeria are shared among the legislative arm, the executive arm and the judicial arm of the government. The governmental powers are shared in such a way that the legislative powers of the government are exclusively vested in the legislature. The executive powers are exclusively vested in the executive organ of the government while the judicial powers are exclusively vested in the courts.² It is on the premise of the doctrine of separation of powers that it becomes unconstitutional for any agent of the executive arm of government to exercise judicial powers exclusively vested in the courts. The decision of the Court of Appeal in *Ediru v. F.R.S.C & Ors*³ that the imposition of fines by the members of the Federal Road Safety Corps does not derogate from the judicial powers of the courts appears to be overtly in conflict with the doctrine of separation of governmental powers.

THE FACTS OF EDIRU V. F.R.S.C.

In *Ediru v. F.R.S.C* case, the appellant, who is a legal practitioner, was stopped on the road while driving, by the officers of the F.R.S.C. (the respondents). He was alleged to have committed the offences of Seat Belt violation (SBV) and Use of Phone while Driving (UPD). As a result of the alleged offences, the respondents confiscated the appellant's driving license and imposed a fine of N5,000.00 (Five Thousand Naira) on him *vide* a notice of offence sheet.

Aggrieved by the act of the respondents, the appellant instituted a fundamental right action against the Commission (1st respondent) and two of her officers on the ground that he was neither heard before the imposition of fine on him nor tried for the alleged offences by any court. At the conclusion of hearing, the trial court dismissed the action. The appellant, not being satisfied with the decision of the trial court, lodged an appeal against the decision of the trial court to the Court of Appeal, Makurdi Division.

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². The Constitution of the Federal Republic of Nigeria, 1999 (as amended) hereinafter refer to as the Constitution, SS.4, 5 and 6. However, there are accepted exceptions to the doctrine of separation of powers. That is, there are instances of overlap of governmental functions.

³. (2016) 4 NWLR (pt. 1502) 209.

The Court of Appeal heard the appeal and dismissed same. The Court of Appeal in its decision held inter alia:

The fines which the law gives the respondents the nod to enforce do not, in the least, derogate from the judicial powers of the court as enshrined in Section 10(7)-(9) of the Act and paragraphs 113 of the Regulations. Put the other way round, there is no confluence point where the powers of the respondents and the court meets. The powers of both are not coterminous. They are mutually exclusive such that the respondents' power of enforcement is not an (sic) usurpation of the judicial power of the court⁴.

MEANING AND NATURE OF FINE

Understanding the meaning of fine helps one to form an opinion as to whether the imposition of fine is an exercise of judicial powers/functions. Statutorily, fine is defined as including “any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction”⁵.

In **Bashiru v. F.R.N**,⁶ the Court of Appeal held that “a fine is pecuniary penalty imposed by a competent court upon a person convicted of a crime.”

In **Abdullahi v. State**⁷, the court shed light on the meaning and nature of fine as follows:

A fine is strictly restricted to crimes. By definition therefore, fine is a payment of money ordered by a court from a person who has been found guilty of violating law. It may be specified as the punishment for an offence, usually a minor offence, but could also be specified and used as an option to imprisonment to major crimes or a compliment to other punishments.

The word “penalty” is operational in the various legal meanings of fine highlighted above. The writer of Black’s Law Dictionary, 9th Edition defined the word penalty as:

Punishment imposed on a wrong doer, usu. in the form of imprisonment or fine; esp., a sum of money exacted as punishment for either a wrong to the state or civil wrong.⁸

In the light of the foregoing definitions of fine, it is undisputed that fine is imposed as a punishment for committing an offence.

CRITIQUE OF THE DECISION IN EDIRU V. F.R.S.C

It was undisputed that the fine of N5,000.00 imposed on the appellant by the respondents in Ediru’s case was imposed on him as punishment for offences created under the F.R.S.C (Establishment) Act.⁹ The questions begging for answers in respect of the case are: whose duty is it to determine whether or not the appellant actually violated the alleged offences? Is not a usurpation of judicial power of the court for the respondents who accused the appellant of violating the offences to impose fine on him as punishment for the alleged offences? Do the provisions of the F.R.S.C Act override the provisions of the Constitution which exclusively vest judicial powers on the courts?

⁴ Ediru v. F.R.S.C (Supra) at 245 paras.E-G.

⁵ Administration of Criminal Justice Law of Anambra State, 2010, S.2; Administration of Criminal Justices Act, 2015, S.494; see also the Criminal Procedure Act Cap C41 LFN, 2004, S. 2.

⁶ (2016) LPELR-40252 (CA), per Abba Aji, JCA.

⁷ (2015) LPELR-25928 (CA).

⁸ B A Garner, Black’s Law Dictionary, p.1247.

⁹ 2007.

There is no gainsaying the fact that the duty/act of making our highways/roads safe for motorists and other road users is laudable. However, the members of the Federal Road Safety Corps must discharge that duty and exercise their other functions in the manner permitted by the law so as to avoid abuse of their powers. No matter the intent of the legislature, any provision of the F.R.S.C Act which empowers the members of the Federal Road Safety Corps or the officers of the Commission to be accusers and judges in their own case is inconsistent with the Constitution of the Federal Republic of Nigeria and must be declared null and void to the extent of the inconsistency.¹⁰

The offences created by the F.R.S.C Act are not in any way different from the offences created in other statutes in Nigeria. Hence, for anybody to be validly punished, by imposition of fine or otherwise, for violating the offences created by the Act, the accused person must be subjected to the legal machinery provided by the state for ascertaining the truth or otherwise of the criminal allegation leveled against the person, that is, trial by a court of competent jurisdiction. Any form of punishment imposed for violating offences created under the Act without trial and conviction amounts to denial of fundamental right to fair hearing enshrined under section 36 of the Constitution. In **Garba v. University of Maiduguri**,¹¹ the Supreme Court captured the point thus:

Without subjecting any criminal allegation against any student to the machinery provided by the state for ascertaining the truth of the allegation, a very painful denial of fundamental right is inflicted on the student howbeit laudable or sympathetic the intention of the authorities might be.

In most of the cases where the officers of the F.R.S.C are of the firm view that certain motorists have violated offences created under the Act, the motorists on their own are of the firm belief that no offence has been violated by them. This underscores the importance of subjecting every criminal allegation to trial by a competent court. If the members of the Federal Road Safety Corps should be permitted to impose fine without trial, they would be very reluctant to try any accused motorist.

The pronouncement made in *Ediru v. F.R.S.C* that imposition of fine by the members of the Federal Road Safety Corps is not a usurpation of the judicial powers of the court cannot properly fit into the narrow confine of our criminal jurisprudence. If it is accepted that the fine was imposed as a punishment for the alleged offences, then it cannot be validly contended that the imposition of the fine was not an exercise of judicial function of the court. In **Action Congress v. INEC**¹², the Supreme Court while shedding light on the point that imposition of penalties/punishment is an exercise of judicial power held thus:

The trial and conviction by a court is the only constitutionally permitted way to prove guilt and therefore the only ground for the imposition of criminal punishment or penalty for the criminal offence of embezzlement or fraud. Clearly the imposition of the penalty of disqualification for embezzlement or fraud solely on the basis of an indictment for these offences by an administrative panel of enquiry implies a presumption of guilt, contrary to section 36(5) of the Federal Republic of Nigeria, 1999. I say again that convictions for offences and imposition of penalties and punishments are matters appertaining exclusively to judicial power.

¹⁰ The Constitution, S. 1(3).

¹¹ (1986) 1 NWLR (Pt18) 550 at 576

¹² (2007) 12 NWLR (Pt.1048) 222 at 260

In *Sofekun v. Akinyemi*¹³ the Supreme Court reiterated the point in the following words:

It seems to me that once a person is accused of a criminal offence, he must be tried in a court of law where the complaints of his accusers can be ventilated in public and where he would be sure of getting a fair hearing ... No other tribunal, investigating panel or committee will do ... If regulations such as those under attack in this appeal were valid, the judicial power could be wholly absorbed by the commission (one of the organs of the Executive branch of the State Government) and taken out of the hands of the Magistrates and Judges... Judicial power will certainly be eroded... The jurisdiction and authority of the courts of this country cannot be usurped by either the Executive or the Legislative branch of the Federal or State Government under any guise or pretext whatsoever.

The exercise of judicial powers, including the imposition of penalty/punishment, is exclusively vested in the courts. Any exercise of judicial power by the executive arm of government or its agents or the legislature or its agents amounts to denial of fair hearing. In **Garba v. University of Maiduguri**¹⁴, the apex court explained the point as follows:

Judicial Powers are not vested in private persons, administrative tribunal or other authorities. By the purported exercise of judicial powers, the person injured is denied the right to fair hearing under section 33(1) and (4) by the action of those persons or authorities.

If a person is accused of committing or having committed a criminal offence his civil obligation not to commit the offence is called into question. Similarly, his civil right to freedom from arrest, prosecution and punishment is called into question.

It is submitted that even if the offences created under the F.R.S.C Act are strict liability offences, the position of law remains that any criminal allegation for commission of any of the offences must pass the judicial tests of trial and conviction before any accused person can be punished for violating the offence. The only difference between strict liability offence and any other offence is that in the former, the prosecutor is relieved of the onus of proving the *mens rea* of the offence. However, he must in the course of trial establish the *actus reus* of the offence.¹⁵ In **Abeke v. State**,¹⁶ the Supreme Court highlighted the onus on the prosecution to establish the commission of strict liability in following words:

The offences created in sections 5 & 6 of the Federal High ways Act are strictly liability offences. In other words, the crime does not require proof of mens rea. Proof of the actus reus is sufficient to ground a conviction.

In other words, every criminal allegation must pass the tests of trial and conviction before any punishment can be validly meted on the accused person. Trial, conviction and imposition of punishment are all judicial functions. Any law or decision of court that permits the members of the executive arm of government to exercise judicial function portends serious danger to our legal system.

CONCLUSION

It is settled in an avalanche of judicial authorities in Nigeria that fine is imposed as punishment for violation of an offence. It is also settled that imposition of punishment is an exercise of judicial power exclusively vested in the courts. Therefore, it cannot be validly contested that imposition of fine as punishment by a person or body other than the court is not a usurpation of judicial powers of the court.

¹³ (1981) 1 NCLR 135 at 146 per Fatayi William

¹⁴ (supra) at 584, para B.

¹⁵ *Lamido v. FRN* (2015) LPELR-40763 (CA); *Abbah v. FRN* (2017) LPELR-43373

¹⁶ (2007) LPELR-31 (sc); *Adeyemo v. State* (2015) LPELR-24688(sc)