

WHY AM I UNDER ARREST WHEN I DID NOT COMMIT ANY OFFENCE?

A Legal Examination of the Legality of Arrest
and Detention by the Nigeria Police Force

“ The power to arrest is not an absolute power. It must be exercised in accordance with the law and for the purpose the law was made.



YOUR RIGHTS MATTER

- ☒ Right to Silence
- ☒ Right to Legal Representation
- ☒ Right to be Informed
- ☒ Right to Dignity
- ☒ Right to Fair Treatment

WHY AM I UNDER ARREST WHEN I DID NOT COMMIT ANY OFFENCE?

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INTRODUCTION

Law enforcement agencies are vested with powers to arrest persons who have committed or are reasonably suspected of having committed, an offence; but that power is not absolute. It must be exercised within the limits imposed by the Constitution and other applicable laws.

Unfortunately, the power of arrest is sometimes exercised as though it were unrestricted. Among other abuses, law enforcement agencies are increasingly being used as instruments for debt recovery and for converting essentially civil disputes into criminal matters, sometimes for pecuniary interests and to the detriment of persons who may have committed no offence. The courts have repeatedly expressed concern over this practice.

The situation has become so troubling that Nigerians and other residents have become wary of dealing with law enforcement agents for fear of arbitrary arrest and detention. This paper examines the legal framework governing arrest and detention in Nigeria, with particular emphasis on the circumstances in which a person may lawfully be arrested and detained despite maintaining that he or she has committed no offence. The Nigeria Police Force is used as the principal law enforcement institution for purposes of discussion.

WHAT IS ARREST AND HOW CAN IT BE CARRIED OUT?

An arrest is the lawful restraint or confinement of a person. It is also the seizure or forceful restraint of a person. Furthermore, it equally means the taking or keeping of a person in custody by legal authority, especially in response to a criminal charge; specifically, the apprehension of someone for the purpose of securing the administration of the law: bringing that person before a Court.¹

Legally speaking, for an arrest to be carried out, the person effecting the arrest is required to touch or confine the body of the suspect except there is submission by the suspect to the custody by word or action.² That is, where the suspect willingly submits himself to custody, the person effecting the arrest is not to confine. This is the mode of effecting an arrest as required by law. Does this really happen in practice? Not always.

I have noticed a malady from law enforcement agents, particularly men of the Nigeria Police Force: they are always quick to put handcuffs on suspect despite the submission of the suspect to the arrest. It is worthy of note that it is the intendment of the law that a suspect may only be handcuffed, bound or subjected to restraint when:

- a. There is reasonable apprehension or attempt to escape;
- b. The restraint is considered necessary for the safety of the suspect or defendant; or

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¹ See Black Law Dictionary, 9th Edition and EMODI v. Regd Trustees of Asaba Sports Club & ORS (2020) LPELR-52681(CA) and per Abimbola Osarugue Obaseki-Adejumo, JCA (p 40 - 43 paras D - A).

² S. 32 Police Act.

c. By order of a court.³

Law enforcement agents should therefore receive continuous training, to ensure that the power of arrest is exercised in accordance with the law, and in a manner consistent with the objectives of an effective policing and criminal justice system.

WHAT THE POLICE SHOULD TELL A SUSPECT DURING THE ARREST OR AT THE STATION.

The law imposes important obligations on the police in relation to an arrested suspect. These include informing the suspect of the following rights:

- a. The right to silence or avoid answering any question until after consultation with a legal practitioner or any other person of the suspect's choice.
- b. The right to consult a legal practitioner of the suspect's choice before making, endorsing or writing any statement or answering any question put to the suspect after arrest; and
- c. The right to free legal representation by the Legal Aid Council of Nigeria or other organization, where applicable.⁴
- d. Right to know the reason for the arrest.

I will proceed to speak briefly on each of the above rights.

Right to silence

The right to silence is a fundamental right and closely connected with the constitutional protection of personal liberty. The Constitution provides that a person who is arrested or detained has the right to remain silent or to avoid answering any question until after consultation with a legal practitioner or any other person of the person's choice.⁵

Unfortunately, this right exists more clearly in law than in practice. In many instances, persons who are arrested and taken to police stations or other places of detention are immediately questioned and pressured to make statements, sometimes on the assumption that the presence of a lawyer will impede effective interrogation. Consequently, by the time counsel gains access to a detained client, the client may already have been compelled or pressured into making a statement.

The courts have made copious pronouncements on this right by clearly stating that a defendant has a right to remain silent either during investigation or in court. In the very recent case of **Akalonu v. FRN**⁶, the Court held that,

"Now, a defendant facing a criminal trial is, under our Constitution, entitled to remain silent either during investigation or in Court, if he so wishes; Section 36(11) of the 1999 Constitution, as amended. This is an inviolable right. Whether or not the defence has called evidence in denial or refutation of the evidence

³ S. 34 Op cit.

⁴ S. 35(2) Op cit.

⁵ S. 35 (2) Constitution of the Federal Republic of Nigeria, 1999 as amended.

⁶ (2023) LPELR-60160(CA) per Onyekachi Aja Otisi, JCA (p 46 - 47 paras C - B).

presented by the prosecution, the presumption of innocence, also constitutionally grounded, speaks in favour of the defendant facing a criminal trial. He is presumed innocent until proven guilty; Section 36(5) of the 1999 Constitution, as amended. By virtue of these constitutional provisions, the defendant bears no duty to prove his innocence under our system of criminal justice. Therefore, the defendant facing a criminal trial may not utter a word as he is not bound to say anything; Ibrahim v. State (2022) LPELR-58001(SC); C.O.P v. Amuta (2017) LPELR-41386(SC); Williams v State (1992) LPELR-3492(SC). However, notwithstanding the decision or choice of the defendant, the onus rests on the prosecution to prove the charge against the defendant beyond reasonable doubt, whether or not he says anything; COP v Ogor & Ors (2022) LPELR-57558(SC)."

So, the act of compelling a suspect to make statement is clearly an infringement of his fundamental right to silence which he can seek redress in a court of competent jurisdiction.

Right to legal practitioner of choice and legal aid

Beyond the factual circumstances leading to an arrest, the treatment of an arrested person is governed by law. A suspect has the right to consult a legal practitioner of his or her choice before answering questions or making a statement and, where applicable, to free legal representation through the Legal Aid Council of Nigeria.

The Legal Aid Council is established to provide legal assistance to persons who qualify for its services.⁷ It is therefore important that law enforcement authorities facilitate the suspect's access to counsel. Where a detainee does not have a lawyer, the appropriate authorities should facilitate access to available legal aid services.

Access to legal representation is not a mere procedural courtesy. It is an important safeguard against involuntary statements, unlawful detention and other abuses of the criminal justice process. It also helps to ensure that justice is not only done but is manifestly seen to be done.

Right to know the reason for the arrest

Every suspect is entitled to be informed of the offence for which he is being arrested.⁸ If you have been arrested by the Nigeria Police or you know someone who has, were you or the person told of the offence for which you or the person was arrested at the point of the arrest? It does not always happen. Most often than not, this is the drama that plays out:

Police Officer: You are under arrest.

Suspect: For what?

Police Officer: You will know when you get to the station. (Exerting force) Move! Move!! My

⁷ See the Legal Aid Act.

⁸ S. 35(1) Police Act.

friend, move!!!

In most cases, this short drama is always laden with series of violence and verbal abuse from the Police Officer. It is necessary to point out that the circumstances under which a suspect does not need to be informed of the offence for which he is being arrested are⁹:

- a. When the suspect is in the actual course of committing the offence,
- b. When the suspect is pursued immediately after committing the offence, or
- c. Has escaped from lawful custody.

OTHER OBLIGATIONS OF THE ARRESTING AUTHORITY TO THE SUSPECT.

a. **Obligation to notify the relative of the suspect.**

The law imposes an obligation on the authority having custody of a suspect to notify the suspect's next of kin or relative of the arrest, at no cost to the suspect. Section 35(3) of the Police Act provides clearly that "*The authority having custody of the suspect shall notify the next-of-kin or relative of the suspect of the arrest, at no cost to the suspect.*" This safeguard is important because a person who is arrested should not simply disappear from contact with family or other responsible persons without notice.

Despite this clear obligation, there have been situations in which persons have allegedly been arrested and detained without their relatives or next of kin being informed. In some instances, concerns may also arise where the arrest or detention is not properly documented, making it difficult for relatives or counsel to ascertain the detainee's whereabouts. It is sad to say that the audacity, recklessness and lawlessness of the Nigeria Police Force is a clog in the wheel of the development of the criminal justice system.

b. **Obligation to inform the suspect in writing of the reason for the arrest.**

The law is trite that any person who is arrested or detained shall be informed in writing within twenty-four hours and in a language that the person understands, of the facts and grounds for his arrest or detention.¹⁰

c. **Obligation to produce the suspect in court within a reasonable time.**

It is the law that every person who is arrested for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of the person having committed an offence, or to such extent as may be reasonably necessary to prevent the person committing a criminal offence shall be brought before a court of law within a reasonable time.¹¹ Reasonable time has been defined¹² to mean:

- i. In the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and

⁹ S. 34 Police Act.

¹⁰ S. 35(3) CFRN.

¹¹ A combine reading of S. 35(1)(c) & 35 (4) CFRN.

¹² S. 35(4) CFRN.

- ii. In any other case, a period of two days or such longer period as the circumstances may be considered by the court to be reasonable.

WRONGFUL ARREST AND DETENTION

There are several factual circumstances that can give rise to or constitute a wrongful arrest and detention including:

1. Arresting a person in lieu of another.
2. Arresting in civil transaction.
3. Arresting and detaining beyond stipulated time frame.
4. Arresting before investigation.

Arresting a person in lieu of another

The law is crystal that a person shall not be arrested in lieu of another.¹³ Regardless of this clear and unambiguous provision, there are a litany of cases where law enforcement agencies arrest persons in lieu of another with the aim of baiting the person sought to be arrested to surrender. This approach has gradually become a standard and a veritable tool with an obvious total disregard to the human right of the innocent detainee. We see cases of children being arrested in place of parents and vice versa, siblings being arrested in place of siblings, and likewise spouses. In the case of **Madaki & Anor v. GTB & Anor**¹⁴, a man was arrested by the Economic and Financial Crimes Commission (EFCC) for the alleged offence of his wife. This is the fact of the case: the wife took a facility from GTB and GTB petitioned the wife to EFCC alleging that the loan was fraudulently obtained. EFCC raided the home, not finding the wife, they arrested the husband in lieu of her and detained him till the following day before he was released on administrative bail. This is what the court per **Ita George Mbaba, JCA** held in his dissenting judgment,

"I think that was a cross (sic) abuse of the powers of the 2nd Respondent, to arrest and detain the 2nd Appellant for alleged offence of the wife! We have depreciated this situation several times, that it is wrong to arrest a wife or husband in lieu of the other, or a father/mother to force the child (suspect) to come to the Police or law enforcement agency!"

The courts keep echoing and re-echoing the need for law enforcement agents to always conduct their affairs in compliance with the clear provisions of the law; unfortunately, some law enforcement agents are stiff-necked and unrepentant in their lawlessness.

¹³ S. 7 Administration of Criminal Justice Act 2015

¹⁴ (2022) LPELR-57419(CA) per Ita George Mbaba, JCA (p 24 - 26 paras B - A).

Arresting in civil transaction

Arrest in relation to purely civil transactions remains a recurring concern in Nigeria, particularly where the police are invited to intervene in disputes arising from debts, tenancy or contractual obligations.

It is not uncommon for a complainant to report that a person owes him/her money and has failed to pay. In response, the person complained against is arrested and taken to the police station, where an undertaking to pay is extracted. If the undertaking is not honoured, further criminal proceedings may be threatened or initiated.

The difficulty with this approach is that a failure to pay a debt, without more, does not automatically transform a civil dispute into an offence. I often wonder if the officers of the Nigeria Police have special training in transmuting a civil case into a criminal case because, I must say, they are very good at this. The situation is so deplorable that the Supreme Court held emphatically in the case of **Kure v COP**¹⁵ that

*“As I went through the facts of this case, I was wondering how a purely civil matter could easily metamorphose and transubstantiate into a purely criminal case. The end result now is that the Appellant has suffered irreparable damage, disgrace, shame, odiousness and untold hardship in the hand of the Police that is constitutionally and legally saddled with prosecution of criminal offences. The police have muzzled the rights and freedom of Nigerians even where cases are clearly outside their jurisdiction, power or corridor. If this is not curbed, everybody including the judicial officers will suffer always from floodgates of civil matters being hijacked by the police and transmuted into crimes. If this is not tackled, everybody would have suffered in the merciless hand of the police who has become a law unto itself in this country. The primary duty of the Police by Section 4 of the police Act is the prevention of crime, investigation and detection of crime and the prosecution of offenders. See **IBIYEE V. GOLD (2012) ALL FWLR (PT 659) 1074**. The Police is not a debt recovery agency and has no business to dabble into contractual disputes between parties arising from purely civil transactions. See **MCLAREN V. JENNINGS (2003) FWLR (PT 154) 528**. When, as in the circumstances of this action, a purely civil matter is reported to the Police, such a person cannot go scot-free as the report ought not to have been made at all since it is not within the purview of Police duties. It is a report made malafide and he will be equally liable for the action taken by the Police irrespective of whether he actively instigated them or not, since he had no business involving the Police in a purely civil matter in the first place. Such conduct which portrays disregard of the law and is aimed at using the coercive powers of the State to punish a contracting party in a purely civil matter ought*

¹⁵ LPELR-49378(SC) per Uwani Musa Abba Aji, JSC (p 32 - 33 paras A - E)

to be mulcted in exemplary damages. See OKAFOR & ANOR V. AIG POLICE ZONE II ONIKAN & ORS (2019) LPELR- 46505."

It is worthy of mention that the Nigeria Police Force are not alone in these unscrupulous acts. Other law enforcement agencies, including the EFCC have been tried and found wanting in this regard. Very recently, the EFCC came under the radar of the Supreme Court in the case of **Nwaoboshi v. FRN & Ors.**¹⁶ The Supreme Court wasted no time in cautioning the Commission. The Court held that,

"...The EFCC initiated this criminal process against the appellant and others in contemptuous disregard of the law that is settled by a long line of the decisions of this Court that the powers vested on the EFCC by the Economic & Financial Crimes Commission Act to prevent, control, investigate and prosecute financial crimes including money laundering does not extend to the investigation, resolution and prosecution contractual disputes and disputes arising from other civil transactions. See for example EFCC V Diamond Bank Plc & Ors (2018) LPELR-44217(SC) in which this Court Per Bage JSC held thusly - "It is important for me to pause and say here that the powers conferred on the Appellant, i.e the EFCC to receive complaints and prevent and/or fight the commission of financial crimes in Nigeria pursuant to Section 6(b) of the EFCC Act (Supra) does not extend to the investigation and/or resolution of disputes arising or resulting from simple contracts or civil transactions as in this case. The EFCC has an inherent duty to scrutinize all complaints that it receives carefully crafted by the complaining party, and be bold enough to counsel such complaints to seek appropriate/lawful mean to resolve their disputes. Alas! The EFCC is not a debt recovery agency and should refrain from being used as such ... The subsequent actions of reporting the matter to the police and to the Appellant were nothing but abuse of process of law. What is even more disturbing in recent times is the way and manner the Police and some other security agencies, rather than focus squarely on their statutory functions of investigation, preventing and prosecuting crimes, allow themselves to be used b overzealous and/or unscrupulous characters for the recovery of debts arising from simple contracts, loans or purely civil transactions. Our security agencies, particularly the police, must know that the citizenry's confidence in them ought to first be ensured by the agencies themselves by jealously guarding the integrity of the uniform and powers conferred on them. The beauty of salt is in its taste. Once salt loses its own taste, its value is irredeemably lost. I say this now and again, our security agencies, particularly the police, are not debt recovery agencies. The agencies

¹⁶ (2023) LPELR-60698(SC) per Emmanuel Akomaye Agim, JSC (p 30 - 32 paras E - E). see also Haruna v Sani & Ors. (2023) LPELR-61225(CA) per Uchechukwu Onyemenam, JCA (p 18 - 19 paras E - A).

themselves need to first come to this realization, shun all entreaties in this regard and they will see confidence gradually restored in them."

It is a fundamental principle of criminal law that *nullum crimen, nulla poena sine lege*¹⁷. A person cannot be held criminally liable for an act unless the law expressly defines and describes such act as an offence. Unrestrained and unlawful arrest and detention contribute to the congestion of police cells and correctional centres and undermine confidence in the criminal justice system. In another paper, I will speak of the pitfalls of awaiting trial.

Arresting and detaining beyond stipulated timeframe

The provision of the Constitution is clear on the length of time a suspect should be kept in custody before being produced before a court of competent jurisdiction. A combined reading of Section 35(1)(c) & 35 (4) CFRN is clear on the fact a person who is arrested shall be brought before a court of competent jurisdiction within one day if the court is within a forty-kilometer radius. Where a person is detained beyond the constitutionally permitted period without lawful justification, the detention may be declared unlawful.

So, in line with the age long and hallowed principle of *ubi jus ibi remedium*¹⁸, the Constitution provides expressly that any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person.¹⁹ In **Ejeh v Alai & Ors**²⁰, the issue of compensation for violation of fundamental right came up and the Court of Appeal held that,

"Once a person who is arrested or detained beyond the time or limit provided in the provisions of the aforesaid Constitution is able to discharge the onus of proof cast upon him he is automatically entitled to compensation as provided for under the Constitution... A victim of violation or infringements of Fundamental Rights by any authority or person does not need to plead or claim specifically an amount in general damages or exemplary damages or punitive damages before he could be given or awarded in his favour against the person or authority that is adjudged guilty of violating a person's fundamental rights. It is at the discretion of the trial Judge exercising his discretion judicially and judiciously to award to the victim of violation of human rights an amount of damages as compensation to assuage the damages suffered by the victim for the entire duration or time such a victim is detained or arrested by any authority or person. The compensation in terms of damages must be commensurate to the deprivation of personal liberty suffered which is contrary to the Constitution and not permitted by law. The victim is entitled to compensation in form of damages that will serve a deterrent."

¹⁷ No crime, no punishment without a law. It means that no action is punishable unless it is expressly defined/provided by law.

¹⁸ Where there is a right there is a remedy. It means that any person whose right has been violated is entitled to a remedy.

¹⁹ S. 35 (6) CFRN.

²⁰ (2022) LPELR-57593(CA) per Peter Olabisi Ige, JCA (p 63 - 66 paras E - A).

Arrest before investigation

A further problem arises where the police arrest and detain a person before conducting the investigation necessary to establish whether there is sufficient evidence linking the person to an alleged offence.

One justification sometimes offered for this practice is that conducting an investigation before arrest may alert the suspect and cause the suspect to abscond. That justification, however, cannot by itself displace the constitutional and statutory safeguards governing arrest. In **Fawehinmi v I.G.P & Ors.**²¹, the Supreme Court held that,

"I think I can say this that in a proper investigation procedure, it is unlawful to arrest until there is sufficient evidence upon which to charge and caution a suspect. It is completely wrong to arrest, let alone caution a suspect, before the police look for evidence implicating him. If this is well understood, then it will be easy to appreciate how a Governor (for example) can be investigated, evidence both analytical and forensic assembled, collated and weighed without breaching section 308(1) of the 1999 Constitution which puts restrictions on legal proceedings, arrest or imprisonment, or the compelling of appearance by process of court, as far as he is concerned. The dignity of that office and freedom from coercive personal harassment of the incumbent are not thereby breached."

Also, very recently, the Court of Appeal reiterated the above position of the law in the case of **NDLEA & Ors v. Bwala**²². The Court held that,

"It has been settled in a line of judicial authorities that it is unlawful to arrest a person until there is sufficient evidence to charge and caution him and that it is unconstitutional to arrest a person pending investigation. In other words, it is unlawful to arrest a person when investigation of the alleged crime is still on and there is no prima facie evidence that the suspect has committed the offence or reasonable suspicion that he has done so. Arrest and detention before investigation is unconstitutional. See FAWEHINMI VS. INSPECTOR-GENERAL OF POLICE (2002) 7 NWLR (PT. 767)606, DURUAKU VS. NWOKE (2015) 15 NWLR (PT. 1483) 417 AND OGOR VS. ROLAND & COMMISSIONER OF POLICE (1983) 1 NCR 343."

If the Police and other law enforcement agents adopt the above procedure which is in line with international best practices, the outcry of human right abuses will drastically reduce and they will not be under any form of pressure to gather evidence necessary for the prosecution of the suspect immediately after the arrest.

²¹ (2002) LPELR-1258(SC) per Samson Odemwingie Uwaifo, JSC (p 34 - 34 paras B - F).

²² (2022) LPELR-56566(CA) per Folasade Ayodeji Ojo, JCA (p 26 - 27 paras F - C). See also SEEPCO & Ors v. Godwin & Ors. (2024) LPELR-61960(CA) per Abimbola Osarugue Obaseki-Adejumo, JCA (p 22 - 23 paras F - A).

CONCLUSION

There is an urgent need for law enforcement agencies to operate strictly within the limits of the law. Their duty to enforce the law, prevent and investigate crime, and maintain public order is fundamental to the functioning of a democratic society. These duties cannot be effectively discharged through arbitrary arrests, unlawful detention, unnecessary restraint or the conversion of civil disputes into criminal proceedings.

Law enforcement powers are coercive powers entrusted to the State for the protection of society. They must therefore be exercised responsibly, transparently and in accordance with constitutional safeguards. Where officers exceed those powers, the courts should continue to provide effective remedies and where appropriate, impose consequences sufficient to deter future violations.

This paper is therefore a call on all law enforcement agencies in Nigeria to remain faithful to their statutory and constitutional duties and to resist attempts by private persons to use the machinery of criminal justice for improper purposes. I respectfully urge the courts to continue to exercise their disciplinary and remedial powers against erring law enforcement agencies and officers whenever the circumstances warrant.

Finally, in cases involving fundamental rights violations, counsel should ensure that the evidence is properly presented and that the applicable standard of proof is observed, thereby assisting the courts to determine the issues fairly and ensuring that justice is not only done but is manifestly seen to be done.