



**INSTITUTION OF PROCEEDINGS UNDER THE NIGERIAN CUSTOMS AND
EXCISE MANAGEMENT ACT (CEMA)**

BY

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Abstract

Just like other enactments the Nigerian customs and excise management Act¹ is not an exception, as breaches therein are punishable. This is undertaken by way of prosecuting the offenders of CEMA. This paper therefore focuses on the different proceedings as provided under the CEMA. The jurisdictional provisions in relation to the courts to try customs offences is considered, and it is found that the practice where the criminal cases under CEMA are only prosecuted at the Federal high court seems to be misapplied. The relevant sections of CEMA and the Federal High Court Act² is considered and we came to the conclusion that it is desirable that the criminal cases ought to at first instance be tried at the magistrate courts as in some other jurisdictions.

1.0 Jurisdiction of Customs Offences

The Nigeria Customs Service (NCS) as part of its enforcement measures can prosecute offenders of the provisions of the Customs and Excise Management Act (CEMA). Proceedings could be criminal or civil as the case may be. It is against this background that the officers are charged with the responsibility of arrest, detention and instituting criminal proceedings against offenders who break customs law as provided for in the CEMA.

Just like police officers the customs officers can institute proceeding in the magistrate courts and area courts as circumstances may warrant. To this end section 181 of CEMA

Provides –

181 (1)

Any offence under the customs and excise laws-

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¹ First made in 1958, but later published in cap. 84 laws of the federation of Nigeria (LFN), 1990 and presently in C. 45 LFN, 2004.

² Cap. F12, LFN 2004

(a) Where it is punishable with imprisonment of a term of two years or more with or without a fine, shall be punishable either on summary conviction or on conviction on indictment

(b) In any other case, shall be punishable on summary conviction

(2) Notwithstanding, anything in any enactment, every magistrate in any part of Nigeria shall have jurisdiction for the summary trial of any offence under the customs and excise laws, and may impose any fine or term of imprisonment provided by the customs and excise laws for that offence.

While, the police are still exercising this power at the magistrate courts the same cannot be said of customs. The effect of sub-section (2) of section 181³ becomes doubtful in view of the provision of section 7(1) (c) of the Federal High Court Act⁴, which removed the jurisdiction to try customs offences from the state High courts and magistrate courts. Prosecution therefore under this dispensation is done by the customs legal adviser or his assistants and they are law officers sent from the Federal Ministry of Justice. Section 180 (1) (2) of CEMA however permits any customs officers, provided he is a legal practitioner and with the consent of the Comptroller-General of customs, to conduct criminal or other proceedings in respect of matters relating to the CEMA.⁵

The effect of section 181 of CEMA *vis-à-vis* the provision of section 7 (1) (c) of the Federal High Court Act needs some comment. Section 181 (2) is saying that notwithstanding anything in an enactment every magistrate in Nigeria can try customs offences and that was the position until the Federal High Court Act removed the jurisdiction from the magistrate.

In practice, prosecution now goes to the Federal High Court. We submit that the former regime where the cases go to the magistrate first is preferable. The situation now is that all customs

³ CEMA op.cit

⁴ Cap F12. LFN 2004

⁵ See FRN v. Osahon (2006) WRN 1; Decree 14 of 1979

cases including those coming from the remote borders go to the Federal High Court and does not allow for quick dispensation of justice

An analysis of section 7 (1) (c) of the Federal High Court Act and section 251 of the constitution⁶ becomes relevant here.

Section 7 (1) (c) provides -

*7(1) The court shall to the exclusion of any other court have original jurisdiction to try **civil causes and matters**⁷*

(c) Connected with or pertaining to customs and excise duties and export duties, including any claim by or against the Nigeria Customs Service or any member or officer thereof, arising from the performance of any duty imposed under any regulation relating to customs and excise duties and export duties.

Section 251 (1) (c) provides -

*251 (1) Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the national assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in **civil cases and matters**⁸*

(c) Connected with or pertaining to customs and excise duties and export duties, including any claim by or against the Nigeria customs service or any member or officer thereof, arising from the performance of any duty imposed under any regulation relating to customs and excise duties and export duties

The above provisions seem to be misapplied, for the exclusive jurisdiction is only related to civil causes and matters. It does not exclude the jurisdiction of the other courts to try criminal causes and matters. It is therefore, submitted that the practice where all the customs offences are tried at the Federal High Court is not conforming to the constitutional provision.

⁶ Constitution of the Federal Republic of Nigeria, Cap. C23 LFN, 2004, as amended in constitution of the Federal Republic of Nigeria, (first alteration) Act, No.1, 2010 and constitution of the Federal Republic of Nigeria (second alteration) Acts No. 2, 2010, hereinafter, "1999 constitution as amended"

⁷ Emphasis mine

⁸ Emphasis mine

The Economic and Financial Crimes Commission (EFCC) appears to have a better understanding of the above provisions, as its cases goes to the other courts. This however, may be because of section 19 (1) of the EFCC Act,⁹ which provides:

The Federal High Court or High Court of a state or the Federal Capital Territory has jurisdiction to try offenders under this Act.

We conclude that since it is not reasonable for all customs offences to go to the Federal High court, and since the exclusive jurisdiction given to the federal high court is in civil matters, the criminal matters should go to the other courts.

The Criminal Procedure Code¹⁰ (CPC) also permits offences under any law other than the panel code to be tried by any court given jurisdiction.

Section 13 (1) CPC provides:

Any offence under any law other than the panel code may be tried by any court given jurisdiction in that behalf in that law or any court with greater powers.

Section 13 (2) further provides:

When no court is so mentioned such offences may be tried by the High court or any court constituted under this criminal procedure code

The CEMA in section 181 (2) provides

Notwithstanding, anything in any enactment, every magistrate in any part of Nigeria shall have jurisdiction for the summary trial of any offence under the customs and excise laws, and may impose any fine or term of imprisonment provided by the customs and excise laws for the offence.

⁹ No. 1 of 2004 which repealed the EFCC Act, cap. E1, LFN, 2004 that was made in 2002

¹⁰ Cap. C 42, LFN, 2004

This means that customs offence can still be tried in the magistrate courts.

Section 108 of the Brunei customs Act¹¹ provides that notwithstanding the provision of any written law to the contrary, a court of a magistrate shall have jurisdiction to try any offence under the Act and to award the full punishment for any offence.

This provision is fully in operation as all the cases go to the magistrate court first.

India too recognizes the importance of customs offences going to the magistrate courts when their Act¹² in section 138 provides for summary trials in the magistrate court. Another interesting feature under the India Act is the introduction of the commissioner appeals and the appellate tribunal where all matters relating to customs offences are disposed before if necessary the regular courts.¹³ The appellant tribunal which is called the customs, excise appellate tribunal consists of judicial and technical members who sees to the quick dispensation of the matters on fair and equitable grounds.

New Zealand following the position of India in section 244 of their Act¹⁴ provided for the establishment of customs appeal authorities where cases can be disposed of before the regular courts. Appeals may be filed. From the decisions of the appeal authorities to the High Court and appeal courts respectively.

There is no doubt therefore that under the CEMA, the NCS is empowered to initiate and control both civil and criminal proceedings, in respect of offences relating to its laws and such proceedings is brought in its name. section 176 (2) of the Act provides:

A court shall not, except with the consent of the person charged, proceed to hear any charge in respect of an offence under any

¹¹ Cap. 36. 1997

¹² Indian customs Act, 1962

¹³ Sections 128^A and 129

¹⁴ New Zealand Customs and Excise Act, 1996

provision of the customs and excise laws unless the continuation of such proceedings is sanctioned by the Board

The implication here is that the offender has to consent to this trial. The use of the word “unless” in the afore-stated section, however, seems to suggest that where the proceedings is sanctioned by the Board, then no consent is required.

The case of *Ifenacho v. Board of customs and Excise*¹⁵ attempted to illustrate this point. The accused came by boat from abroad and disembarked at Apapa. He went into the customs baggage hall with his non-dutiable baggage and said he had no cigarettes etc.¹⁶ He had left on board the dutiable goods and was found taking them away later. He was prosecuted by the Board on count one under section 66(3)¹⁷ of the Act for failure to declare dutiable goods and on count three under section 145(a)¹⁸, that he was concerned in carrying then in a car knowingly and with intent to defraud government of the duty payable on them.

It was held:

- (i) That the proceedings were instituted by order of the board*
- (ii) Apart from prosecution brought by or in the name of the Attorney-General of the Republic, when a prosecution for a customs offence is brought by the police or someone else, the court cannot, except with the consent of the accused, proceed to hear the charge unless the Board sanctions the continuation of the proceedings, but where the proceedings are instituted by the order of the Board there is no further need for the Board to authorize the continuation of the proceedings*¹⁹

¹⁵ (1966) 1 ANLR; 153

¹⁶ Cigarettes was a dutiable item

¹⁷ Act of 1958 now section 72(3) of the 2004, Act

¹⁸ Act of 1958 now section 164 (a) of the 2004, Act

¹⁹ See *Ebiri .v. B.O.C.E*; (1967) NMLR 35 SC. It was held that a criminal charge brought in the name of and signed by officer in the Department of customs and Excise with rubber stamp of the department is sufficient to show that the proceeding was sanctioned by the Board by virtue of section 176(2) CEMA

Our contention with regard to the issue of whether consent is necessary under sub-section 2 of section 176 is that consent should not be necessary in line with the intention expressed in sub-section 4, to the effect that:

Nothing in sub-section (2) of this section shall prevent the institution of proceedings for an offence under the customs and excise laws by or in the name of the Attorney General of the federation in accordance with the provisions of the constitution of the Federal Republic of Nigeria 1999 in any cases in which he thinks it proper that proceedings should be so instituted, or the continuation of proceedings so instituted

For prosecution in the federal high court the legal seat officer²⁰ under takes the preliminary investigation, makes the necessary arrest, obtains statement from the accused and potential witnesses which forms the bases for prosecution.

2.0 Criminal Proceedings

The role of the police and the NCS in the prevention and detection of crime cannot be over emphasized.

To this end, section 8 of CEMA gave the same powers, authorities and privileges that are given by law to police officers. The section provides:

For the purpose of carrying out or enforcing the provisions of the customs and excise laws, all officers shall have the same powers, authorities and privileges as given by law to police officers.

The police play very vital role in this regard. They detect, arrest, investigate and prosecute criminal case by virtue of section 4 and 23 of the police Act.²¹ The police collect all the available information for use as evidence at the trial. The police obtain statements from potential

²⁰ Legal seat is a unit within the enforcement section of the NCS

²¹ Police Act, 1967 amended by Police Amendment Decree (1987) now Cap. P. 19 LFN, 2004

witnesses, suspect and the actual offenders. This is simply referred to as institution of criminal proceedings.

Section 4 provides that:

The police shall be employed for the prevention and detection of crime, the apprehension of offender, the preservation of law and order the protection of life and property and the due enforcement of laws and regulations with which they are directly charged, and shall perform such military duties within or without Nigeria as may be required of them by or under the authority of this or any other Act

And section 23 thereof also provides that:

Subject to the provisions of section 174 and 211 of the constitution of Nigeria 1999 (which empowers the Attorney General of the Federation and of state to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria, any police officer may conduct in person all prosecutions before any court whether or not the information or complain is laid in his name

By these two sections above, a police officer can institute criminal proceedings in all courts of law in Nigeria. In practice and until the case of *FRN .v. Osahon*²² police officers institute criminal proceedings only in the magistrates courts and area courts. Criminal prosecutions in the high courts are instituted by law officers.²³ The decision in *Osahon's* case amplified section 4 and 23 of the police Act. It is however submitted that with regard to prosecution in the superior courts by the police, such an officer must be a legal practitioner.²⁴ It is pertinent to mention the view of Belgore JSC in the case to the effect that, it is desirable though not compulsory that the prosecuting police officer, ought to be legally qualified. In *Osahon's* case, the respondents, were arraigned before the federal high court, Lagos on a six count charge filed by the police. In the course of the proceedings, the respondents filed an application seeking to quash the charge on the

²² supra

²³ State counsel's from the Federal Ministry of Justice

²⁴ See also section 180 (1) (2) of CEMA which empowers a customs officer who is a legal practitioner

ground that by virtue of section 174 (1) of the 1999 constitution, it is only the Attorney General and officers of his department that can institute or undertake criminal proceeding against them on behalf of the government of the federation in that court. The police contended that they have power under section 23 of the police Act to prosecute the respondents before the federal high court. It was said that they did not require the fiat of the Attorney General of the federation to initiate and prosecute the charge. The federal high court in its ruling dismissed the application of the respondents and held that police officers had the power to prosecute the respondents on behalf of the government of the federation. On appeal, the court allowed the appeal and held that the police officers presently prosecuting the respondents before the federal high court lacked the competence under section 56(1) of the Federal High Court Act to do so. On further appeal against the court of appeal's decision, the supreme court allowed the appeal and held that, a police officer can by virtue of section 23 of the police Act, section 56 of the federal High Court Act, and section 174 of the 1999 constitution prosecute and undertake criminal proceedings at the Federal High Court, if such an officer is a legal practitioner.

Section 56 (1) provides:

In the case of a prosecution by or on behalf of the government of federation or by any public officer in his official capacity, the government of the federation or that officer may be represented by a law officer, state counsel, or by any legal practitioner duly authorized in that behalf by or on behalf of the Attorney General of federation.

Under the CEMA, section 186 legally empowers the NCS to compound proceedings in respect of offences against customs law. Also going by the provisions of section 8 of the Act,²⁵ customs officers have equal power as police officers. It then follows that all customs officers as police

²⁵ Supra

officer are charged with the arrest, detention and institution of criminal proceedings against offender who break customs law as provided under the CEMA.

The success of any customs case to a large extent depends on the preparation of a good case file. A case file in simple terms is a folder or cover for keeping relevant documents or papers which are very vital to the case.

Most of the cases in customs have to do with illegal importation, which often leads to the seizure of the goods, which is followed by prosecution.

If a case is reported or seizure is made the legal seat officer²⁶ will first open a fresh file jacket and write the seizure number or other relevant number in cases of non-seizure at the appropriate column at the back. For example, NCS/FOU'C'/19/1 OF 08/03/2019. The name of the defendant and sex is indicated, for example "AB Defendant" with the letters 'M' for male and 'F' for female. Care should be taken to prepare each document in the case file as they will be tendered in court. We shall now examine some of those relevant documents.

2.1 Index To The Case File

This is to be attached to the inside cover of the case file jacket.

For example:

| | <i>Documents</i> | <i>page</i> |
|-------|---------------------------------------|-------------|
| (i) | <i>Extract from the station diary</i> | <i>1</i> |
| (ii) | <i>Seizure Report</i> | <i>2</i> |
| (iii) | <i>Notice of seizure</i> | <i>3</i> |

The intention here is that it facilitates easy reference to the documents in the file.

²⁶ The legal seat officer may be a lawyer or not. It is however desirable that they should be officers who are lawyers.

2.1.1 Extract from the station diary

Whenever a seizure is reported at the station, all the particulars relating to the seizure will be entered in the station diary. Such particulars include names of the defendants, quantity and description of goods seized, place of seizure, time and date. At the end of the entry, the writer will sign and affix his or her index number. The entry may include certificate of ownership where a suspect agrees to claim ownership. Consequently, the extract from the station diary in respect of a seizure contained in any case file is an exact true copy of the entry made in the station diary copied out omitting nothing. While copying out the extract, the plain sheets to be used should be ruled out like a page of the station diary itself and the entry relating to the relevant seizure copied out. The date is quoted at the top of the extract. For example “Extract from the station diary of 09/03/2019.”

2.1.2 Seizure Report

This is contained in a special form known as form C. 220. It is numbered from 1 – 13 with such useful and exhaustive information about a particular seizure. Information like seizure number, date, place, time, manner of seizure, station diary entry number, names of seizing officers, transfer particulars, comments of the officer incharge and finally the superintendent report and recommendations.

2.1.3 Statements of Seizing Officers and that of Defendant

The seizing officers statement is the accurate and precise account of the manner in which the particular seizure was made as recorded by the seizing officers. They are not necessarily under caution. The statement must be signed with the officers index number and date affixed. The defendant’s statement is however made under caution on the prescribed form and must be signed

or thumb printed by the defendant and duly dated. The importance of taking statements cannot be overemphasized. It should be noted that it is related to evidence procedure in respect of admissibility of the accused statement in court. An officer in order to carry out his duties of arrest, detention and taking of statements from the offenders who break customs law must therefore study the judges rule thoroughly.²⁷ The judges rule is based on the law that a confession is not admissible in evidence unless made freely and voluntarily,²⁸ and that it will not be deemed to have been made freely or voluntarily, if there was any degree of coercion or inducement from a person in authority. The onus of establishing that a confession or statement was made freely is on the officers taking such statement. When taking a statement, special care should be taken so as to avoid any allegation that the statement was taken under duress. Such allegation is very easy to make but very difficult to rebut, particularly in case of persons in custody. It was as a result of this difficulty that the judges rule were formulated.

The first four rules²⁹ were formulated in 1912 by judges of the kings Bench Division³⁰ in England at the request of the Home secretary. The remaining ones were added in 1918³¹ to deal with the doubts created as to the proper interpretation of the law. According to Leigh, the Rules -

... were formulated in an endeavour to give advice to the police who were confused by conflicting decisions concerning the propriety of police questioning originally four in number, the rules were increased to eight in 1930 and accompanied by administrative direction concerning good interrogation practice³²

²⁷ There is no statutory authority in Nigeria for the application of the rules but officers are advised to apply it. see *R. v. Ugwuogo* (1943) 9 WACA 73 referred to in M. Omale; Nigeria Customs Service law and practice; (cinnamon press international, Shomolu, Lagos, 2000) pp. 19-24

²⁸ Section 27(2), cap E4, Evidence Act LFN, 2004

²⁹ With an additional five rules and another eight supplementary rules.

³⁰ Now Queens Bench division

³¹ Including the supplementary rules

³² L. H. Leigh; police powers in England and Wales (1979), p. 145 referred to in G.O.S Amadi; police powers in Nigeria; Afro-Obis publications Ltd; Nsukka, Nigeria 2000; p. 209

As argued by Amadi³³ judges rules are not principles of law but they are operated within the ambit of law. Even though they do not have the force of law, statement made in breach of the rules may be excluded at the discretion of the courts. The rules were revised in 1964 and still did not have any legal effects. In the *Queen .v. Omisade*,³⁴ it was held that a breach of the rules does not render a suspect's statement in admissible, unless in the mind of the court it is doubtful whether such statement was voluntarily made.

The same view was held in the English case of *R. v. Voisin*³⁵ where Lawrence J stated that the rules.

... are the administrative directions the observance of which the police authorities should enforce upon their subordinates as tending to the fair administration of justice. It is important that they should do so for statement obtained from prisoners contrary to the spirit of these rules may be rejected as evidence by the judge presiding at the trial.

We do not however agree with the above preposition. Since the rules is not different from the common law approach to interrogation of suspects, that whatever statement made should be voluntary, we submit that it ought to be given a prevailing effect and not left to the discretion of the courts. This is further hinged on the fact that the rules are preceded by a preamble containing a statement of legal principles.

2.1.4 Notice of Seizure (form C. 60)

The prescribed form is form C. 60. It notifies the defendant that the goods involved are being seized under CEMA. It in fact gives notice to the defendant to show cause within one calendar month from the date of issue why the goods should not be seized. Failing to show cause, such

³³ Op. cit, p. 210

³⁴ (1964) NMLR 67

³⁵ (1918) 1 KB 531 at p. 539

goods shall be deemed forfeited. Particulars of the goods are entered and it should be signed by the officer issuing it and dated. The defendant will then acknowledge the receipt of the original on the duplicate copy.

In practice notice is also given to the Nigeria Ports Authority (NPA) or the Federal Airport Authority of Nigeria (FAAN) as the case may be.³⁶ Since the goods are mostly in their custody, it is important that they be informed about the seizure so that they will not release the goods under any guise.

The procedure however, where the notice is given especially to the owner or his agent seems not to comply with paragraph 1 of the third schedule to the CEMA. The paragraph provides:

The Nigeria customs service board (NCSB) shall give notice of the seizure of anything as forfeited and of the ground therefore to any person who to its knowledge was at the time of the seizure the owner or one of the owners thereof

Provided that notice shall not be required to be given under this paragraph if the seizure was made in the presence of.

- (a) the person whose offence or suspected offence occasioned the seizure; or*
- (b) the owner or any of the owners of the thing seized or any servant or agent of his; or*
- (c) in the case of anything seized in any ship, aircraft or vehicle, the master of that ship, commander of that aircraft or person in-charge of that vehicle.*

The practice by the NCS without regard to this provision is that, even where the situation falls under sub-paragraphs a – c of paragraph 1 of the third schedule, they go ahead to give notice. Officers, though not in compliance with the paragraph but for one reason or the other failed to give such notice, which was not necessary, have been disciplined in the past.

³⁶ Notice could also be given to the Nigeria Aviation Handling company (NAHCO) and in recent time the various concessionaires operating at the ports e.g. AP Moller, Buaports and Terminals Ltd. and Ports Terminal Operations Ltd.

We submit that in view of the third schedule, notice of seizure is not required where it is made in the presence of the owner or his agent. The NCS should therefore apply the rules as provided and not creating unnecessary problems

2.1.5 A copy of Government Warehouse Dispatch Note (BK.C. 21)

This is another very important document to be attached in the case file. As most of the cases have to do with the issue of goods, it becomes paramount to secure the goods in proper custody pending the final determination of the case. To this end, the dispatch note is an evidence that the goods in contention is properly secured in the government warehouse.

2.1.6 Application for Bail/Bail Bond

A suspect must be arraigned in court, as soon as an arrest is made, unless where it is practically impossible to do so. Section 36(4) of the 1999 constitution provides that any person charged with a criminal offence shall be entitled to a fair hearing in public within a reasonable time by a court or tribunal.³⁷

Where it is practically impossible to arraign the person in court within the stipulated time, then bail must be granted. This is the crux of our discussion here and hence the need for an application for bail. Bail by the customs is often very difficult thereby making suspects to spend longer days in detention. In *customs service Board v. P. Eleke & 2 others*³⁸ where the accused persons had stayed in detention for a very long time, the charges were struck out when the case came up and the prosecution was not ready to call witnesses.

³⁷ Reasonable time has in line with section 35(5) of the constitution held to be within 24 and 48 hours respectively

³⁸ Unreported suit No. FHC/PH/9C/2005

The CEMA never made any provisions with regard to the issue of bail. This Lacuna clearly makes it, difficult for bail to be granted before prosecution commences in court. The legal seal officers cannot on his own grant bail. He can only recommend to the Customs Area Controller (CAC) upon an application made by a lawyer on behalf of the suspect. Some CACs because of no well-defined procedure, may want to seek for approval from the Headquarters, which often will take days.

Even where a particular CAC gives an approval, the kind of condition attached to it makes it difficult thereby, amounting to no approval. There is often the request for not only producing a certificate of occupancy, international passport but depositing same. The constitution did not specifically provide for the production of a certificate of occupancy or international passport before bail can be granted. The relevant constitutional provision with regard to bail is section 35(1) (c), 4 (a) (b) respectively.

35 (1) provides:

Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases in accordance with a procedure permitted by law

(c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

(4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of:

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date

The words “upon such conditions as are reasonably necessary” used in sub-section 4 (b) is not defined as the expression “a reasonable time” which is defined to be within 24 or 48 hours as the case may be.

Since there is no provision in the CEMA with regard to bail, relying on section 35 (4) (b) the words “upon such conditions as are reasonably necessary” often have been construed to be the production of a certificate of occupancy or international passport. And when such a condition cannot be met by the surety, the tendency is to stay in detention for longer periods before trial.³⁹ If however the condition is satisfied bail may be granted.

Bail may be granted on self-recognizance of the suspect subject to an undertaking that he will appear to stand trial. It is rarely granted on personal recognizance, except where the person to be admitted to bail is of high social standing in the community and will likely not abscond. Bail may also be granted by executing a bond for a fixed sum, that is bail bond and it is referred to as a criminal form 25. It states the conditions under which the suspect is released to the surety. In default of appearance the amount as bonded stands forfeited. The bond is signed by the suspect, the surety and the officer authorizing the release and it is properly dated.

Under the police Act where a person is arrested for a serious offence, he shall be brought before the court as soon as practicable.⁴⁰ The police Act unlike the CEMA makes provision for bail.

Section 27 of the police Act provides:

³⁹ See *Eda .v. Commissioner of Police Bendel State* (1982) 3 NCLR 219 where it was held that if a suspect remains in police custody after bail has been granted to him by the police because he is unable to fulfill the conditions of bail, then his continued detention in police custody is not in contravention of the constitutional provision, it is the duty of the suspect to comply with the conditions of bail

⁴⁰ In *Eda .v. C. op supra*, it was held that this is in consistent with section 32(4) and 32(5) of the CFRN 1979, which provides that an accused person shall be charged to court within 24 hours of the alledged commission of the offence. The section are now 35 (1) (c) 4 (a) (b) of the CFRN 1999

When a person is arrested without a warrant, he shall be taken before a magistrate who has jurisdiction with respect to the offence with which he is charged or is empowered to deal with him under section 484 of the CPA as soon as practicable after he is taken into custody.

Provided that any police officer for the time being in charge of a police station may inquire into the case and

- (a) except when the case appears to such officer to be a serious nature, may release such person upon his entering into a recognizance, with or without sureties, for a reasonable amount to appear before a magistrate at the day, time and place mentioned in the recognizance; or*
- (b) if it appears to such officer that such inquiry cannot be completed forthwith may release such person on his entering into recognizance, with or without sureties for a reasonable amount to appear at such police station and at such times as are named in the recognizance, unless he previously received notice in writing from the superior police officer in charge of that police station that his attendance is not required, and any such bond may be enforced as if it were a recognizance conditional for the appearance of the said person before a magistrate*

The above provisions make for a better access to bail unlike the CEMA that made no such provision. If going by the provision of section 8 of CEMA that customs officers are to have the same powers as police officers, then this power to grant bail should by necessary implication be adopted by the customs and not to create barriers in granting bail.

It should be noted however that from the provision of the police Act, it seems the police have no power to grant bail if it is a serious offence. What then amounts to serious offence? does it depends on the imagination of the officer? Although the section does not state what makes an offence serious, the classification of offences under the criminal code⁴¹ (CC) indicates that a felony is a serious offence⁴². It is however submitted by Amadi⁴³ that not all felonies fail on the

⁴¹ Cap. 77 LFN 1990; (now C 38, LFN 2004)

⁴² See *Emezue .v. Okolo* (1978) 1 LRN 236

⁴³ Amadi; op. cit, p.196

same footing of seriousness as in the stealing of a fowl⁴⁴ and a testamentary instrument.⁴⁵ Stealing a testamentary instrument is more serious attracting a jail term for life while stealing a fowl is punishable with three years imprisonment

Where it is intended to detain a suspect longer than 24 hours, then it becomes necessary to obtain a remand warrant from a magistrate. Where, however, there is no power to grant bail, then the suspect must be charged to court for it to decide the issue of bail, as it is very fundamental and should be seen as a right to the suspect.⁴⁶

2.1.7 Investigation Report

There is no hard and fast rule about the mode of writing investigation report. The following leads are however suggested for the guidance of investigation officers

- i). heading
- ii). Facts of the case
- iii). Action taken
- iv). Investigation
- v). Findings
- vi). Recommendations

The essence of the report is to enable the next superior officer to know the facts of the case so as to direct appropriate action. It is also for the guidance of the customs legal adviser in giving the necessary advice over the case.

⁴⁴ Section 390 CC

⁴⁵ Ibid section 390 (1) CC

⁴⁶ See *Obakpa .v. C.O.P* (1981) 2 NCLR 420; *Osuji & Anor .v. C.O.P* (1974) 4 ECS;R 445

All the contents of a case file must be serially paginated in red ink and it is usually in four copies. The original file which must contain the original copies of the documents relevant to the case, goes to the customs legal adviser, who is represented by assistant legal advisers in the zones.⁴⁷ The duplicate is sent to the enforcement, investigation and inspection headquarter Abuja. The triplicate is forwarded to the zonal office for their information. The quadruplicate is retained at the legal seat in the area command and it serves as the “station copy” in the case of “Abandoned seizure”⁴⁸ both the original and quadruplicate copies the retained at the station.

3.0 Condemnation Proceedings

This is the order of a court forfeiting any particular seizure that was made. The practical application of this process by the NCS however deserves some comments. Paragraphs 3 to 10 of the third schedule becomes very relevant. Paragraph 3 provides -

Any person claiming that anything seized as forfeited is not so liable shall, within one month of the date of the notice of seizure or, if no such notice has been served on him, within one month of the date of the seizure, give notice of his claim in writing to the board.

Provided that the Board may, at its discretion extend the period in which notice of a claim may be given

Paragraph 4 provides:

Any notice under paragraph 3 of this schedule shall specify the name and address of the claimant and in the case of a claimant who is outside Nigeria, shall specify the name and address of a legal practitioner in Nigeria who is authorized to accept the service of processes and to act on behalf of the claimant and service of process upon a legal practitioner in Nigeria who is authorized to accept the service of process and to act on behalf of the claimant and service of

⁴⁷ The NCS has a zonal arrangement viz; zone A with headquarter in Lagos, zone B with headquarter in Kaduna, zone C with headquarter in Port Harcourt and zone D with headquarter in Bauchi.

⁴⁸ This is a seizure made without a suspect hence there will be no prosecution

process upon legal practitioner so specified shall be deemed to be proper service upon the claimant

Paragraph 5 provides:

If on the expiration of the relevant period aforesaid for the giving of notice of claim no such notice has been given to the Board or if, in the case of any such notice given, any requirement of paragraph 4 is not complied with, the thing in question shall be deemed to have been duly condemned as forfeited

If you read paragraph 3-5 the necessary interpretation is that once there is no notice of claim from any body on the expiration of the one month or as the Board may prescribed the thing in question shall be deemed to have been duly condemned as forfeited.⁴⁹ The implication is that; there ought not to be any further condemnation proceeding.

In practice however, even where no such notice of claim is given, the NCS still goes to court by way of *ex parte* motion to get the goods condemned. It is only where there is a notice of claim that such condemnation and/or forfeiture proceedings become relevant.⁵⁰ In support of this contention paragraph 6 provides:

Where notice of claim is duly given in accordance with the following provision of this schedule, the board shall take proceedings for the condemnation of that thing by the court, and if the court finds that the thing was at the time of seizure liable to forfeiture, the court shall condemn it as forfeited

In this regard the proceedings shall not be *ex parte* but motion on notice so that the claimant can have the opportunity to state his case.⁵¹

⁴⁹ Paragraph 5 of third schedule to CEMA

⁵⁰ Forfeiture proceeding will be discussed in 4. infra

⁵¹ Paragraph 8 provides that proceedings for condemnation shall be civil proceedings and may be instituted in a court of summary jurisdiction. See *Celestine Opara v. NCS B*; suit No. CA/LA/13/208 where it was held that a claimant must be a party to and be served the originating process in every condemnation proceedings.

Where anything is condemned or deemed to have been condemned as forfeited then, without prejudice to any delivery by or sale of the thing by the Board under paragraph 15 of the schedule, the forfeiture shall have effect as from the date when the liability to forfeiture arose. It may be argued that the provision of paragraph 9 of the schedule may appear to have been made irrelevant by section 7(1)(c) of the Federal High Court Act, which removed the jurisdiction to try customs offences from other court to the Federal High Court.

Paragraph 9 provides:

Proceedings for condemnation of anything instituted in a court of summary jurisdiction may be so instituted

- (a) In any such court having jurisdiction in the place where any offence in connection with that thing was committed or where any proceedings for such an offence are instituted*
- (b) In any such court having jurisdiction in the place where the claimant resides or if the claimant has specified a legal practitioner under paragraph 4 of the schedule, in the place where that legal practitioner has his office*
- (c) In any such court having jurisdiction in the place where that thing was found, detained or seized or to which it is first brought after having been found, detained or seized*

A careful study of the sub-paragraphs a – c may however, make the paragraph relevant. The words “in any such court” used in the sub-paragraphs could be referring to any court having jurisdiction. Since it is the federal high court that has jurisdiction in customs matter, the reference there is to that court.

The power given by paragraph 15 to deal with seizures before condemnation seems not to have been fully exploited in practice by the NCS.

Paragraph 15 provides:

Where anything has been seized as forfeited, the Board may at anytime, at its discretion, and notwithstanding that the thing has not

yet been condemned or is not yet deemed to have been condemned as forfeited

- (a) Deliver it up to any claimant upon his paying to the board such sum as the board thinks proper, being a sum not exceeding that which, in its opinion, represents the value of the thing, including any duty chargeable there on which has not been paid; or*
- (b) If the thing seized is a living creature or is in the opinion of the Board of a perishable nature, sell or destroy it.*

With regard to sub-paragraph, (b), the NCS is fully applying the provision but the same cannot be said of paragraph (a). The contention of the NCS is that once a thing has been seized, it cannot be released unless if condemnation process is applied and thereby allocated. This, we submit is a wrong application of the rules. Since the paragraph gives the power to release before condemnation, the NCS should use the opportunity to consider some genuine cases and deal with them as such.⁵²

Another issue for consideration is the effect of a condemnation. After condemnation the NCS is authorized to dispose the item via auction/allocation as the case may be.⁵³ The question however is that can it exercise discretion by not auctioning, but by collecting duty from the owner and releasing same to him. The provision seems not to have this situation in contemplation, but we submit that it is desirable the NCS should be able to exercise that discretion. This is hinged on the fact deriving from the power to collect duty before condemnation, it is only reasonable to imply that condemnation is a further/stronger authority stamped by the court to deal with the item. It, therefore, becomes discretionary to either auction/allocate it out at a lower price, or collect maximum duty as provided in the seizure and detention code.⁵⁴

⁵² This is related to the concept of strict liability in smuggling offence which is unfair; see case of *B.O.C.E. v. Aro Olajide*; (1984) FHCLR. 1. See section 186 (b) CEMA on power to compound proceedings by NCS; *Infra*

⁵³ Paragraph 15, third schedule to CEMA

⁵⁴ This is a code of the NCS that provides for the management of seizure and detention in the customs.

In Brunei, all goods seized shall be liable to forfeiture.⁵⁵ Where there is no prosecution with regard to goods seized under the Brunei customs Act, such goods shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of seizure.⁵⁶ If however, there is a claim, then it is the order of a court that can direct forfeiture.⁵⁷

In Ghana, goods which are loaded on board an aircraft or ship in a port or place within Ghana and carried coast wise are unloaded in a port or place contrary to the Act, shall be forfeited.⁵⁸ Anything, including aircraft, ships and vehicles, made use of in the importation, attempted importation, landing, removal, conveyance, exportation or attempted exportation of any uncustomed, prohibited or restricted goods, or any other goods which may be forfeited under the Act, are liable to forfeiture⁵⁹ and an officer is empowered to seize it.⁶⁰

The powers to deal with the seizure is then automatically given to the commissioner.⁶¹ Where however there is a notice of claim, it is only a court order in a proceeding that can permit forfeiture.

In Kenya, anything liable to forfeiture may be seized by an officer.⁶² There is no direct provision as to what can be done with such goods. If however there is a notice of claim, then the

⁵⁵ Brunei customs Act; op.cit section 116

⁵⁶ Section 118 (1) Ibid

⁵⁷ Section 118 (3) Ibid

⁵⁸ Section 191, Ghana customs Act; 1993

⁵⁹ Section 288(1) Ibid

⁶⁰ Section 288 (2) Ibid

⁶¹ Section 288 (4) Ibid, item can be disposed of as directed by the commissioner. Compare with section 31 (9) CEMA which empowers the Board to sell any goods which are removed to a government warehouse and not cleared by the importer.

⁶² Section 1999 Kenya customs Act; cap, 472 laws of Kenya; Revised Edition, 2000 (1996)

commissioner can then apply for condemnation, which will give him the power to sell or otherwise dispose of the goods.⁶³

Section 225 of the New Zealand customs Act⁶⁴ listed a whole lot of goods that are subject to be forfeited to the crown. A customs officer or member of the police will then consequent upon section 225 seize any of the forfeited goods or any other goods that he or she has reasonable cause to suspect are liable to forfeiture.⁶⁵ Where there is an application for an order disallowing the seizure, then only a district court can then decide the matter.⁶⁶ If there is no such application, then automatically the goods are deemed to be condemned to the crown.⁶⁷ And the chief executive may direct disposal.⁶⁸

In India, the Act provides for confiscation of any goods improperly imported.⁶⁹ And any goods attempted to be improperly imported.⁷⁰ And any goods attempted to be improperly exported. Where any smuggled goods are sold by a person having reason to believe that the goods are smuggled goods, the sale proceeds shall be liable to confiscation.⁷¹ Adjudication of confiscation and penalties is purely done by the customs.⁷² On confiscation, such goods shall there upon vest in the central government.⁷³

⁶³ Section 202 Ibid

⁶⁴ 1996 op.cit

⁶⁵ Section 226 (1) Ibid

⁶⁶ Section 231 Ibid

⁶⁷ Section 234 Ibid

⁶⁸ Section 237 Ibid

⁶⁹ India Act; op. cit section 111

⁷⁰ Section 113 Ibid

⁷¹ Section 121 Ibid

⁷² Section 122 Ibid

⁷³ Section 126 (1) Ibid

The Act did not expressly provide for how to dispose same save that the officer adjudging confiscation shall take hold of possession of the confiscated goods.⁷⁴ One interesting section which is not in the other jurisdiction⁷⁵ is the provision of section 125 of the India Act which provides that, whenever confiscation of any goods is authorized by the Act, the officer adjudging it may give an option to pay fine in lieu of confiscation.⁷⁶

4.0 Forfeiture Proceeding

There seems to be no dividing line between condemnation proceedings and forfeiture proceedings. This is further hinged on the wordings “condemned as forfeited” used in paragraph 5 of the third schedule. It is against this background that the NCS even where there is no notice of claim go to the court by *ex parte* motion in a condemnation proceedings, wherein the goods are declared forfeited. This we submit is unnecessary in view of the provisions of paragraph 5 that automatically makes the goods duly condemned and forfeited where there is no notice of claim.

It is our contention therefore that forfeiture proceedings becomes relevant where notice of claim is duly given as provided in paragraph 6 of the third schedule. The court shall then consider in the circumstance whether the thing seized is liable to forfeiture. If it is, then it shall condemn it as forfeited.⁷⁷

This stance is further anchored on the provisions of section 167 of CEMA which provides that any officer or police officer, or any other person authorized in that behalf by the Board, may at any time seize or detain anything liable to forfeiture under the customs and excise laws or which such officer, police officer or other person has reasonable grounds to believe is liable to

⁷⁴ Section 126 (2) Ibid

⁷⁵ Ghana, New Zealand, Kenya, Nigeria and Brunei

⁷⁶ This shall be in addition to any duty and charges payable on the goods. section 125(2) of the Indian Act.

⁷⁷ Paragraph 6 of the third schedule to the CEMA

forfeiture has been seized and there is a notice of claim, the natural thing to do therefore is to seek for its forfeiture in a forfeiture proceeding. The essence is to perfect that forfeiture as provided,⁷⁸ and this becomes necessary because of the notice of claim.

This is clearly the situation in section 117 of the Brunei customs Act where any order of the forfeiture or for the release of anything liable to forfeiture shall be made by the court and it must be proved to the satisfaction of the court that an offence had been committed.

In some jurisdiction like Ireland, the difference between forfeiture and condemnation seems not to be there. The use of “and” in section 9 of the Ireland customs Act⁷⁹ tends to be conjunctive thereby providing for no such difference. The section provides:

Proceedings in any court of competent jurisdiction for the forfeiture and condemnation of goods may be brought in the name or at the suit of the Attorney General

In Nigeria the words “deemed to have been duly condemned as forfeiture” used in paragraph 5 of the third schedule to the CEMA tends to be the same as the provision of section 9 of the Ireland Act. This however we submit may not be correct, in view of the provision of paragraph 6 of the third schedule that makes for an order of a court in a proceeding if there is a notice of claim.

Another issue that needs consideration is the effect of a conviction on things liable to forfeiture. This contemplates where there is a prosecution and conviction is secured but no order is made as to the things liable to forfeiture. The question is, does one needs a further order to make the goods forfeited? Under section 47 of the CEMA the penalty for improper importation is imprisonment for five years. Section 47 (1) provides:

⁷⁸ See paragraph 6 of the third schedule to CEMA

⁷⁹ Section 9 of the Ireland customs Act 1956. The emphasis is on the use of “and” to qualify forfeiture and condemnation

If any person.

(a) Lands, or unloads in Nigeria, or removes from their place of importation or from any approved wharf, examination station, customs station or customs area.

(i) Any goods chargeable with a duty which has not been paid; or

(ii) Any goods imported contrary to any prohibition.

He shall be sentenced to imprisonment for five years without the option of a fine

If we rely on only this section, what then happens to the improperly imported goods? The practice tends to be conviction and then further order as to forfeiture is made. We are however saying that there is the need to be an express provision as in the case of Kenya. Section 201 of the Kenyan Act took care of such situation.

The section provides:

Where a person is prosecuted for an offence effect of under this Act (SIC) and anything is liable to forfeiture by reason of the commission of that offence, the conviction of that person of that offence shall, without further order, have effect as the condemnation of that thing.

The position in New Zealand in this regard relates to that of Kenya but raises a controversial situation. Section 236 (1) of the New Zealand Act provides that the conviction of any person for an offence has effect as a condemnation. The section provides:

Subject to subsection (2) of this section, where this act provides that on the commission of any offence any goods are forfeited, the conviction of any person for that offence has effect as a condemnation without suit or judgement, of any goods that has been seized in accordance with this Act and

(a) In respect of which the offence was committed

(2) where the court imposed a sentence to which sub-section (1) of this section applies, the court may, if it thinks fit order the restoration of the goods forfeited to the person from whom the goods were seized and, where such an order is made, the conviction does not have effect as a condemnation of those goods.

The issue however is the provision of section 236 (2) to the effect that where the court imposes a sentence on any person on the conviction of that person for an offence under sub-section (1), the court may, if it thinks fit, order the restoration of the goods forfeited to the person from whom the goods were seized and, where such an order is made, the conviction does not have effect as a condemnation of those goods.

The other arm of the issue is whether forfeiture of the thing is a bar to other punishment of imprisonment for smuggling, which is considered a crime. Section 46 of CEMA only provides for the forfeiture of goods improperly imported without reference to the person who committed the offence. If a charge is not brought under section 47 of CEMA, which specifically provides for penalty for improper importation, such cannot become applicable under section 46, which provides:

Where -

(a) Except as provided by or under this Act, any imported goods being goods chargeable with a duty of customs are without payment of that duty landed or unloaded in Nigeria, or removed from their place of importation or from any approved wharf, examination station or customs area those goods shall be forfeited.

In the case of *US .v. Hosepkrikor Bajakajin*⁸⁰ the issue was clearly considered. It was held that the concept of forfeiture as a criminal penalty which is embodied in the organized crime control Act of 1970 differs from other existing forfeiture provisions under the federal statutes where the proceedings in rem against the property and the thing which is declared unlawful under the statute, or which is used for an unlawful purpose, or in connection with the prohibited property

⁸⁰ US 1998, see also *Austin .v. U.S* 509 U.S

or transaction, is considered the offender, and forfeiture is no part of the punishment for the criminal offence.⁸¹

Under the Indian customs Act⁸² it is stated clearly that confiscation shall not prevent the infliction of any punishment. The person affected thereby is liable under the provisions of the Act or under any other law.⁸³

Even though it is not expressly stated as under the India Act, that confiscation shall not prevent the infliction of punishment, we submit that by necessary implication, that should be the position under the CEMA.

5.0 Compounding of Offences

This is the decision not to prosecute for one reason or the other.⁸⁴ It has been viewed as taking bribe to ignore crime. Others⁸⁵ see it as a legitimate way of dealing with the matter. This is based on the provision of the CEMA that gives the NCS the power to compound offences. Section 186 of CEMA provides”

The Board may:

(a) Without prejudice to the provisions of section 174 of the constitution of the Federal Republic of Nigeria 1999 (which relates to the power of the Attorney General of the Federation to institute, continue or discontinue criminal proceedings against any person in any court of law) and subject to such directions whether general or special, as may be given by the Attorney General of the Federation, stay or compound any proceedings for an offence or for the condemnation of anything forfeited under the customs and excise law.

⁸¹ See those contained in the customs Narcotics, and Revenue laws, S. Rep. No. 91-617, p.79 (1969)

⁸² Op. cit

⁸³ Section 127 India customs Act. Op.cit

⁸⁴ Section 226 of the NCS Bill, 2012 referred to it as “concession settlement” wherein there is an agreement under which the customs service agrees to wave prosecution of a customs offence subject to undertakings by the person or persons charged with the offence.

⁸⁵ Encarta Encyclopedia; 2004

(b) Without prejudice to the generality of section 5 of this Act⁸⁶ and subject to such directions, whether general or special as may be given by the minister, restore anything forfeited or seized under the customs and excise law

This section restricts the penalty to the forfeiture of the things liable to forfeiture. The advantage here is that being an economic crime the emphasis tends to be on the gains/revenue from the items so forfeited. The problem however is that after forfeiture and the subsequent allocation, which often the amount paid is nothing, compared to the value of the goods, makes the advantage a ruse.

It is in this light, that the provision of the EFCC Act on the same issue tend to be better. Section 14 of the Act provides:

(2) subject to the provisions of section 174 of the constitution of the Federal Republic of Nigeria (1999) which relates to the power of the Attorney-General of the Federation to institute, continue, take over or discontinue criminal proceedings against any person in any court of law). the commission may compound any offence punishable under this Act by accepting such sum of money as it thinks fit, not exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence
(3) All money received by the commission under the provisions of sub-section (2) of this section shall be paid into the consolidated revenue fund of the federation.

An issue for determination here is whether the NCS can compound offences rather than go to court. This may look extra legal, but this is allowed by virtue of section 186 of CEMA. This section should however, be invoked in extreme cases especially in cases of first offenders⁸⁷

Section 121 of the Brunei Act provides:

⁸⁶ The section that the Board is to be subject to the general control of the minister

⁸⁷ In advanced criminal Justice jurisdictions suspect might be considered as first time offenders whose punishment might be caution having confessed, and if however there is a conviction, the sentences might be suspended. We do not have such in the Nigeria statute book, but rather such matters can be compounded.

- (1) *Any senior officer of customs may compound any offence, which is prescribed to be a compoundable offence, by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding 500 dollars*
- (2) *In like manner, the proper officer of customs not being a senior officer of customs may compound any offence, which is prescribed to be compoundable by such officer, by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding 20 dollars*
- (3) *On the payment of such money (SIC) the person reasonably suspected of having committed an offence, if US custody (SIC) shall be discharged, any properties seized shall be released and without prejudice to civil proceedings for the recovery of any duty which has not been paid, no further proceedings shall be taken against such person or property in respect of such offence*

This power given to any senior officer and any junior officers as the circumstance warrants can lead to abuse if not effectively checked. The intention may have been to drive the maximum gain by receiving the money mentioned. The release of the property seized in sub-section 3 of the section is another difficult provision. Although there is provision to recover any duty on it, the fact of releasing the property will only encourage commission of crime.⁸⁸

In Kenya, it is the commissioner that reserves the power to compound an offence. Section 214

(1) of the Kenya Act provides:

*The commissioners may where he is satisfied commissioner (SIC) that a person has committed an offence under this Act in respect of which a penalty of a fine, or in respect of which anything is liable to forfeiture, compound the offence and may order that person to pay such sum of money, not exceeding the amount of the fine to which he would have been liable if he had been prosecuted and convicted for the offence, as he may think fit, and he may order anything liable to forfeiture in connection therewith to be condemned
Provided that the commissioner shall not exercise his powers under this section unless the person in writing admits that he has committed the offence and request the commissioner to deal with the offence under this section.*

⁸⁸ See section 236 (2) of the New Zealand and Act which provides that where the court imposes a sentence on any person on the conviction of the person, the court may, if it thinks fit, order the restoration of the goods forfeited

This provision is similar to section 14 (2) of the EFCC Act which we stated earlier⁸⁹ is better than the provision of section 186 of the CEMA. The Kenya Act further provides for the consent of the suspect, which must be in writing before the commissioner can exercise the power. The consent, which is in form of accepting liability for the commission of the offence is a welcome development. It confirms the guilt of the suspect and further expresses a kind of plea to be pardoned.

Apart from the disadvantage of encouraging commission of crime, compounding offences if not abused, is in line with civilized criminal justice and should therefore be practiced. The NCS apart from reducing the numerous litigations in court will stand to gain more in revenue if the penalty in compounding the offences can be made to be like that of the EFCC and Kenya.

6.0 Limitation Of Time For Prosecution

Generally speaking, when a person commits an offence, a cause of action arises against that person. The right therefore to prosecute the offender is a right in perpetuity, that is, the offender can be prosecuted at any time.

Under the CEMA there is a deviation from this general principle, that the offender can be prosecuted at anytime. The CEMA puts a time limit of seven years for any prosecution of any offence committed under it.

Section 176 (3) provides

No proceedings shall be instituted except within seven years of the date of the commission of the offence

⁸⁹ Op.cit

The above provision presupposes that all prosecution under the CEMA not instituted within the specified time period (seven years) shall become statute barred and thus the right of action would be extinguished. Section 260 (3) of the 2016 NCS Bill has however removed the limitation of time for criminal prosecution.

There are some other instances where time limit is set for prosecution in Nigeria.

- (i) Proceedings in respect of the offences of treason, must be instituted within two years of the alleged commission of the offences⁹⁰
- (ii) Proceedings for the offence of sedition must be instituted within six months of the alleged commission of the offence⁹¹
- (iii) Proceedings against any person alleged to have had unlawful carnal knowledge of a girl over 13 but under 16, and a person knowing a woman or girl to be an idiot or imbecile, who allegedly had or attempted to have unlawful carnal knowledge of her, must be instituted, within two months of the commission of the offence⁹²
- (iv) Prosecution against a public officer for an offence committed in the course of executing his duty must be instituted within three months of the commission of the offence⁹³

Criminal proceedings shall not be instituted under the Ghana customs Act in respect of an offence after four years from the date of the offence.⁹⁴ While in Kenya proceedings for an

⁹⁰ Op. cit section 43 CC

⁹¹ Ibid section 52 (1)

⁹² Ibid section 221

⁹³ Section 2 (a) public officers protection Act cap, p. 41 LFN 2004 see *Egbe .v. Alhaji & Other* (1990) 1 NWLR (part 128) 546. A person relying on this section must establish that he is a public officer. See *Apampa .v. The State* (1982)ALL NLR (PT.1) 122; *Aiyetan .v. Nigerian institute for oil palm Research* (1984) 6SC 36

⁹⁴ Section 301 Ghana Act; Ibid

offence under the customs Act may be commenced, and anything liable to forfeiture may be seized within five years of the date of the offence.⁹⁵

We submit in respect of the above provision that, though it is not unique in view of the other instances of exceptions to the general principle of no time limit to prosecution, there should have been no need to create the seven, five and four years time limit in Nigeria Kenya and Ghana respectively. This is because of the sophistication of the crime of smuggling, therefore there should be no bar to prosecution.

7.0 Conclusion

The importance of CEMA as the principal enactment that combat the crime of smuggling in Nigeria cannot be overemphasized. Smuggling is a crime and if not tackled is capable of destroying the economy of the nation. The broad role of the NCS is to enforce the customs and excise laws as contained in the CEMA. In the exercise of this role and as provided by the CEMA, any breach therein of the powers can lead to setting the law in motion for possible prosecution. The paper has shown that, the practice by virtue of the provision of section 181 (2) of CEMA was that every magistrate in any part of Nigeria had jurisdiction for the summary trial of any offence under CEMA. It found however, that by virtue of section 7(1) (c) of the Federal High court Act, such jurisdiction has been removed from the state high courts and magistrate courts to the federal high court. This position is also amplified by section 251 (1) (c) of the 1999 constitution that gave the federal high court exclusive jurisdiction on matters pertaining to customs. It is however our submission that the matters contemplated in the section are only civil matters and causes, hence holding that since it is not reasonable for all customs criminal case s to

⁹⁵ Section 207 Kenya Act; Ibid

go to the federal high court, they should go to the other courts. This will allow for quick dispensation of justice as practiced in other jurisdiction like Brunei, India and New Zealand. The paper postulates that even though the CEMA does not make provision for bail, the NCS should in line with section 35 (4) (b) of the 1999 constitution and section 27 of the police Act, treat the issue of bail as very fundamental and as a right to the suspect. With respect to condemnation and forfeiture proceedings wherein there seems to be no dividing line, because of the wordings “condemned as forfeited” used in paragraph 5 of the third schedule to the CEMA. It is therefore suggested that the NCS should desist from the practice of going to court *ex parte* to declare goods forfeited, even where there is no notice of claim. This we contend is not necessary as paragraph 5 aforementioned automatically makes the goods duly condemned and forfeited where there is no notice of claim. It is only in case of where there is a notice of claim, as held in the case of *Celestine Opara .v. NCSB*,⁹⁶ that a claimant must be a party to and be served the originating process in a condemnation proceeding. Under the CEMA there is a time limit of seven years for any prosecution. This however will not augur well in the fight against smuggling, hence the paper aligns itself to the modification in section 260 (3) of the 2016 NCS Bill that removed the limitation.

The paper hereby conclude that a proper application of the advocated solution to the issues as raised, will improve on the present enforcement machinery, thereby strengthening prosecution to cope with the growing wave of smuggling and its attendant results.

⁹⁶ Op. cit