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COURT JUDGEMENTS THAT IMPACT THE POLICE ACT AND REGULATIONS

Rule of Law & Empowerment Initiative –Partners West Africa-Nigeria
No. 46 Mike Akhigbe Way, Jabi District, FCT, Abuja, Nigeria.
Phone: +234 09 2904200; +234 09 2905797

Introduction <<

When Laws and Regulations are made it is vital to ensure that there are not incompatible with the 1999 Constitution of the Federal Republic of Nigeria (as amended) and other Laws in force. All court decisions on various provisions should be taken into account to ensure conformity.

In relation to the police, below are some of the decisions of the courts to guide their practice, procedure and duties:

COURT DECISION ON THE REQUIREMENT FOR FEMALE OFFICERS SEEKING PERMISSION BEFORE GETTING MARRIED

Regulation 124 of the Police Act 1968 states that: “A woman police officer who is desirous of marrying must first apply in writing to the Commissioner of Police for the State Command in which she is serving, requesting permission to marry and giving name, address and occupation of the person she intends to marry. Permission will be granted for the marriage if the intended husband is of good character and the woman police officer has served in the force for a period of not less than three years.”

This provision was challenged in ***Women Empowerment and Legal Aid v. Attorney General of the Federation***¹ where Mrs Falana proffered the argument that “it was not reasonably justifiable in a democratic state like Nigeria which has domesticated the African Charter on Human and Peoples Rights and ratified the Protocol to the African Charter on Human and People Rights on the Rights of Women in Africa and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)”. Countering this position, the Attorney General of the Federation through his counsel B. R. Ashiru stated that the regulation was “designed to protect women police officers from falling into the hands of criminals” and to prevent them from marrying men of bad character. He further stated that the 3 years bans was included to ensure that female police officers do not become pregnant “during the rigorous training she must undergo after her employment”.

Honourable Justice Steven Adah of the Federal High Court in Ikeja, Lagos State (as he then was) held as follows:

“The most fundamental issue is if this is the policy laid down for the police, does it apply too to the men folk. It is not, so it is only issued to women police officers

¹ (2015) 1 NHRLR 39 at 57.

because of their gender as women and this is very much unconstitutional”.

The judge rejected the arguments of the Attorney-General of the Federation and held that Regulation 124 was illegal, null and void due to its inconsistency with section 42 of the 1999 Constitution which forbids discrimination on the basis of sex. The court proceeded to annul the provision pursuant to Section 1(3) of the Constitution.

COURT DECISION POLICE CONSTABLE RECRUITMENT

In line with the direction of President Muhammadu Buhari to recruit 40,000 additional police officers into the Nigeria Police Force (NPF) over a period of four years, the Nigerian Police Force (NPF) through its Public Relations Officer announced the recruitment details of 10,000 police constables into the force on the 11th of July 2019. After completing the online recruitment registration exercise, all the candidates that had successfully registered were invited to attend a physical screening from the 24th of August to 6th of September at various venues across States in the Federation and the Federal Capital Territory (FCT).

In a bid to ensure transparency in the exercise the Public Relation Officer of the force in a statement released stated thus; “Meanwhile as part of conscious efforts to deepen the integrity of the recruitment process, observers and monitors from the Ministry of Police Affairs, the Police Service Commission, and the Federal Character Commission have been invited to provide oversights toward ensuring a credible exercise.”²

The Police Service Commission, in a superiority battle with the Inspector General of Police (IGP) and the NPF, in September 2019, instituted a suit before Federal High Court Abuja in a bid to gain the exclusive right to conduct the recruitment exercise of constables into the force which the NPF and the IGP had almost concluded. The commission in suit number FHC/ABJ/CS/1124/2019 challenged the

recruitment process by the NPF and urged the court to nullify the process and declare the commission as the body with the exclusive powers to carry out the process.

The Federal High Court, on the 2nd of December 2019 dismissed the case of PSC and passed its judgment in favour of the NPF holding that it was the duty of the IGP to carry out the recruitment exercise. The court further ruled that the law guiding the enlistment of constables into the NPF was the Nigeria Police Regulations of 1968 issued in accordance with the provisions of Section 46 of the Police Act 1967 (No 41) which provides for the organisation and administration of the police force. He noted that section 71 of the said Nigeria Police Service Regulations, 1968, gave the power to enlist constables to the Police Council and the NPF under the control of the IGP, and not the PSC. He further ruled that the PSC by its enabling law retained the exclusive powers to promote, demote, dismiss and discipline any police officer apart from the IGP and that it could only appoint constables after the recruitment exercise carried out by the NPF.³

Aggrieved by this decision, the PSC approached the Court of Appeal to review the pronouncement. On the 30th of September 2020, A three-man panel of the court of appeal led by Justice Olabisi Ige unanimously held that the IGP lacked the power to recruit constables for the police force, thereby overturning the lower court’s decision. The court held that the responsibility for recruitment into the NPF was exclusively that of the PSC, thereby nullifying the recruitment process initiated by the NPF.

COURT DECISION ON FREEDOM OF ASSOCIATION AND LAWFUL ASSEMBLY.

In the case of the Inspector-General of Police v All Nigeria Peoples Party and Others⁴ the IGP being aggrieved by the decision of the lower court approached the court of appeal in a bid to overturn it.

The scenario leading to instituting the action before the lower court was that the respondents being registered political parties requested the

² <https://thenigerialawyer.com/police-recruitment-statutory-entry-requirements-remain-sacrosant-says-igp>

³ <https://barristerng.com/igps-recruitment-of-10000-constables-is-void-appeal-court-rules/>

⁴ (2007) AHRLR 179

defendant/appellant, the Inspector-General by a letter dated 21 May 2004 to issue police permits to their members to hold unity rallies throughout the country to protest the rigging of the 2003 elections. The request was refused and there was a violent disruption of the rally organised in Kano on the 22nd of September 2003 on the grounds that no police permit was obtained. The police argued that the disruption was as a result of violence and breach of peace that may result during the rally. The court was called to determine whether the provisions of the Public Order Act particularly that which requires conveners of meetings or political rallies to obtain police permits in the exercise of their constitutional rights to freedom of assembly and expression guaranteed by sections 39 and 40 of the Constitution are not illegal and unconstitutional.

The learned counsel to the respondents argued that the requirement for a permit under the Public Order Act which ought to be administrative or procedural has become a substantial condition for the exercise of freedom of assembly and association. The court⁵ considered the submissions of counsels, the Public Order Act and the Constitution and decided that the right to demonstrate and the right to protest on matters of public concern are rights which are in the public interest and that which individuals must possess, and which they should exercise without impediment as long as no wrongful act is done. Honourable Justice Adekeye JCA (as she then was) stated that *“Freedom of speech and freedom of assembly are part of democratic rights of every citizen of the Republic; our legislature must guard these rights jealously as they are part of the foundation upon which the government itself rests.”* The court therefore held that it has no legally justifiable reason to interfere with the decision of the lower court and the appeal was dismissed for lack merit.

Way Forward

It is essential that pronouncements of the Courts are widely populated to ensure that everyone is

aware of the position of the Law and that they are obeyed by all parties.

In the drafting of regulations, it is vital that all Laws (Case Law and Statutes) are taken in cognizance to ensure conformity.

⁵ Quorum - Justice Mohammad JCA, Justice Adekeye JCA and Justice Aboki JCA