MONEY LAUNDERING AND INTERIM FORFEITURE OF ASSETS

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1. INTRODUCTION

Money laundering helps criminals enjoy the proceeds of crime and this makes money laundering a dangerous issue for any society. Money laundering clears evidence of crime, removes punishment for crime and makes crime a fruitful venture. Forfeiture of assets on the other hand tries to remedy this and guarantees that persons who engage in crime do not enjoy the proceeds of their criminal conduct. Interim forfeiture of assets makes it difficult for suspected criminals to hide the proceeds of crime pending investigation and prosecution.

In an effort to recover from being listed as a non-cooperative countries and territories (NCCTs) by the Financial Action Task Force (FATF)[3], and to avoid the stigma attached to such blacklist, Nigeria actively joined global efforts at combatting money laundering[4]. Nigeria's efforts gave rise to government agencies that specialized in the fight against corruption and money laundering. Nigeria also showed this effort by enacting several laws and making regulations to fight economic crimes and money laundering[5].

The Financial Action Task Force in pursuance of the global effort at fighting corruption and money laundering made recommendations and a sample local legislation each country of the world should enact to show its corporation in the fight against money laundering. In compliance with the these recommendations Nigeria has enacted the Money Laundering (Prohibition) Act (MLPA), the Economic and Financial Crimes Commission (EFCC) Act, the Independent Corrupt Practices Commissions Act and other laws and regulations.

One important recommendation of the FATF is that the specialized body with power to fight money laundering must be given the power to seize suspected money laundering assets to properly stop criminals from manoeuvring to achieve their intention of laundering money. Nigeria duly complied with this requirement and provided for this recommendation in the Economic and Financial Crimes Commission (EFCC) Act. Part V of the EFCC Act makes provisions for the forfeiture of assets of persons arrested for offences under the Act. Section 29 of the EFCC Act in that wise also makes provision for interim forfeiture of assets.

This paper therefore explains:

a. The meaning, import and incidence of money laundering
b. The global efforts at combating money laundering
c. Nigeria's efforts at combating money laundering
d. The Role of Lawyers in the Fight against Money Laundering
e. Provisions of forfeiture and its implication under Nigerian general law
f. Constitutional issues of fair hearing relating to interim forfeiture of assets.

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[3] An international taskforce set up to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system accessed from http://www.fatf-gafi.org/about/ on 18/05/16

[4] N. Ribadu *Show Me the Money: Leveraging Anti–Money Laundering Tools to Fight Corruption in Nigeria, An Insider Story* (Centre For Global Development, Washington DC 2010)

[5] N. Ribadu *Show Me the Money: Leveraging Anti–Money Laundering Tools to Fight Corruption in Nigeria, An Insider Story* (Centre For Global Development, Washington DC 2010)

2. MONEY LAUNDERING

The simplest way of explaining money laundering is "washing dirty money to make it appear clean". It involves investment of money obtained from illegal conduct into legitimate businesses to make it difficult to ascertain their origin.[6]
The court in *Kalu v FGN*[7] defined money laundering thus:

> Money laundering, according to Toby Graham, Evan Beil & Nicholas Elliot in their book: Money Laundering Butterworths Lexis-Nexis 2003 at page 3 paragraph 1.3, is the "varied means used by criminals to conceal the origin of their activities. The term "laundering" is used because these techniques are intended to turn "dirty" money into "clean" money, but laundering is not confined to cash.

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention) in article 3(1)(b) defines money laundering as:

> The conversion or transfer of property, knowing that such property is derived from any drug trafficking offense or offenses or from an act of participation in such offense or offenses, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offense or offenses to evade the legal consequences of his actions: the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences or from an act of participation in such an offense or offenses.

The Vienna Convention adds that money laundering also involves: "The acquisition, possession or use of property, knowing at the time of receipt that such property was derived from an offense or offenses … or from an act of participation in such offense or offenses."[8]

Similarly, the Financial Action Task Force (FATF) defined money laundering thus; "Money laundering is the processing of these criminal proceeds to disguise their illegal origin"[9]

Money Laundering is defined in the Dictionary of law as: "Legitimizing money from organized or other crime by paying it through normal business channels."[10]. Dictionary of Law Enforcement[11] defines it as "The process by which criminal proceeds are sanitized to disguise their illicit origins"

The Proceeds of Crimes Act 2002 of the United Kingdom defines money laundering as "a process by which the proceeds of crime are converted into assets which appear to have legitimate origin so that they can be retained permanently or recycled further into criminal enterprise". [12]

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[6] S. C. Onyeka *Anti-Money Laundering & Combating the Financing of Terrorism in Nigeria* (Transparent Prptection Ltd/Gte, Lagos, 2014)
[7] *Orji Uzor Kalu v Federal Republic of Nigeria & Ors*(2012) LPELR-9287(CA)
[8] Article 3(1)(c) The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention)
[9] Financial Action Task Force website accessed on 18/05/17 from http://www.fatf-gafi.org/faq/moneylaundering/
[10] J. Law(ed) *A Dictionary of Law (*Oxford University Press Print Publication Date: 2015 Print ISBN-13: 9780199664924 Published online: 2015 Current Online Version: 2015) Accessed on 18/05/17 from http://www.oxfordreference.com/view/10.1093/acref/9780199664924.001.0001/acref-9780199664924-e-2505?rskey=mbInfV&result=1
[11] G. Gooch and M. William *A Dictionary of Law Enforcement* (Oxford University Press Published online: 2nd Ed 2015 Current Online Version: 2015) Accessed on 18/05/17 from http://www.oxfordreference.com/view/10.1093/acref/9780191758256.001.0001/acref-9780191758256-e-2051?rskey=mbInfV&result=2
[12] Accessed on 18/05/17 from http://www.legislation.gov.uk/ukpga/2002/29/notes/division/2/3

According to the International Monetary Fund (IMF), "Money laundering requires an underlying, primary, profit-making crime (such as corruption, drug trafficking, market manipulation, fraud, tax evasion), along with the intent to conceal the proceeds of the crime or to further the criminal enterprise"[13]. The IMF warns that money laundering creates an outflow that encourages the removal of money from the economy of a state into less productive economical financial flows.[14]

Thus, the illegal origin of proceed of money is the thrust of money laundering[15]. The money laundered is intended to be concealed as a legitimate sum by successive transfers. The crime through which the money was gotten from is known as the 'predicate offence'. This can include a number of crimes. In Nigeria, the predicate offence for money laundering is all known offences.[16]

In Nigeria, The combined provisions of the Money Laundering (Prohibition) Act and Central Bank of Nigeria (Anti-money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria) Regulations 2013 provide a guide on what financial activity could constitute money laundering. The current Money Laundering (Prohibition) Act 2011[17], while providing for the offence of money laundering[18], defined money laundering in line with FATF recommendations following the global approach on money laundering. Section 15(2)-(6) defines the prohibited offence of money laundering as follows:

> (2)Any person or body corporate, in or outside Nigeria, who directly or indirectly
> (a) conceals or disguises the origin of;
> (b) converts or transfers;
> (c) removes from the jurisdiction; or
> (d) acquires, uses, retains or takes possession or control of;
> any fund or property, knowingly or reasonably ought to have known that such fund or property is, or forms part of the proceeds of an unlawful act; commits an offence of money laundering under this Act.
> (3) A person who contravenes the provisions of subsection (2) of this section is liable on conviction to a term of not less than 7 years but not more than 14 years imprisonment.
> (4) A body corporate who contravenes the provisions of subsection (2) of this section is liable on conviction to-
> (a)a fine of not less than 100% of the funds and properties acquired as a result of the offence committed; and
> (b)withdrawal of licence.
> (5) Where the body corporate persists in the commission of the offence for which it was convicted in the first instance, the Regulators may withdraw or revoke the certificate or licence of the body corporate.
> (6) The unlawful act referred to in subsection (2) of this section includes participation in an organized criminal group, racketeering, terrorism, terrorist financing, trafficking in persons, smuggling of migrants, sexual exploitation, sexual exploitation of children, illicit trafficking in narcotic drugs and psychotropic substances, illicit arms trafficking, illicit trafficking in stolen goods, corruption, bribery, fraud, currency counterfeiting, counterfeiting and piracy of products, environmental crimes, murder, grievous bodily injury, kidnapping, hostage taking, robbery or theft, smuggling (including in relation to customs and excise duties and taxes), tax crimes (related to direct taxes and indirect taxes), taxes crimes (related to direct taxes and

[13] Accessed on 18/05/17 from https://www.imf.org/external/np/leg/amlcft/eng/
[14] Accessed on 18/05/17 from https://www.imf.org/external/np/leg/amlcft/eng/
[15] *Federal Republic of Nigeria v James Ibori & ors* Unreported charge no. CHARGE NO.: FHC/ASB/IC/09 delivered on 17/12/2009
[16] *Orji Uzor Kalu v Federal Republic of Nigeria & Ors*(2012) LPELR-9287(CA)
[17] As amended in 2012 in section 15 of the Act
[18] Section 15(1) of the Money Laundering (Prohibition) Act

indirect taxes) extortion, forgery, piracy, insider trading and market manipulation or any other criminal act. [19]

These definitions show clearly that conversion, concealment and disguising are major attributes of money laundering. It is indeed a deliberate attempt to give impression of legitimacy to the illegitimate.

3. STAGES OF MONEY LAUNDERING

Experts have identified three distinct stages through which money is systematically laundered into the economic system.[20]

The first stage is known as *the placement* stage. This is the stage where money derived from crime is introduced into the legitimate financial system. This is done by purchasing assets or paying for services with the sum, or by depositing the sum in a financial institution. Huge amount of money is broken down into smaller less conspicuous amounts depending on the threshold for reporting in a jurisdiction. These smaller amounts are deposited over time in different branches of a single bank or financial institution. This strategy is known as smurfing or structuring.[21]

The EFCC recently reported that Senator Peter Nwaboshi has 20 accounts linked to him and has 23 accounts linked to his private companies[22]. The EFCC said that these accounts were used to launder 2.1 billion naira, the proceeds from the suspected contract fraud on Delta State Government.

Another method adopted by money launderers at this stage is the exchange of one currency to another as well as the conversion of smaller notes into larger denominations.[23] The laundered money may be used to purchase other assets too that will later be sold into monetary instruments. Senator Peter Nwaboshi is said to have purchased several buildings in Lagos with 2.1 billion naira proceeds from the suspected contract fraud on Delta State Government[24].

Placement can also be done directly into casinos or other gambling outfits, or the purchase of precious metals, automobile, airplanes or boats.

The second stage of money laundering is known as *layering;* at this stage, the launderer creates a space between the predicate offence and the laundered money by doing several layers of transactions or transferring the money several times. The money brought into the system by placement is transferred or otherwise moved from the financial institution or country of origin to other countries or financial institutions to distance the illegal money from the predicate offence.

This can also be done by selling the assets purchased or mortgaging such assets. The transfer can be done by using different forms of negotiable instruments such as bearer bonds, money orders etc or

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[19] Section 15 Money Laundering (Prohibition) Act, 2011

[20] See World Economic Forum – "Clean Business is Good Business" Accessed on 18/05/17 from https://members.weforum.org/pdf/paci/BusinessCaseAgainstCorruption.pdf, S. C. Onyeka *Anti-Money Laundering & Combating the Financing of Terrorism in Nigeria* (Transparent Protection Ltd/Gte, Lagos, 2014) see http://www.fatf-gafi.org/faq/moneylaundering/

[21] N. Mukhtar & I. A. Yusuf 'Money Laundering: An Appraisal of the Processes, Trends and Impacts on Nigeria as an Emerging Economy' Accessed on 18/05/17 from http://www.unimaid.edu.ng/Journals/Law/Private%20Law/13.pdf

[22] 'N1.5billion Fraud: Senator Peter Nwaoboshi Loses To Federal Gov't Property He Fraudulently Purchased From Delta State' see Saharareporters of APR 24, 2017 Accessed on 18/05/17 from HTTP://SAHARAREPORTERS.COM/2017/04/24/N15BILLION-FRAUD-SENATOR-PETER-NWAOBOSHI-LOSES-FEDERAL-GOV%E2%80%99T-PROPERTY-HE-FRAUDULENTLY

[23] 'War against money laundering: Banks, PDP kick against CBN's policy' See Vanguard News of August 3, 2015 By Gabriel Omoh, Accessed on 18/05/17 from http://www.vanguardngr.com/2015/08/war-against-money-laundering-banks-pdp-kick-against-cbns-policy/

[24] 'N2.1bn contract fraud: EFCC probes Senator Nwaoboshi, brother' See Vanguard News of March 31, 2017 Accessed on 18/05/17 from http://www.vanguardngr.com/2017/03/n2-1bn-contract-fraud-efcc-probes-senator-nwaoboshi-brother/

electronic transfer to other accounts[25]. The money may be disguised as legitimate payment for goods or services.

The sole objective of the layering stage is to make the funds as hard to trace as possible. The different bank-to-bank transfers are meant to obscure the trail by using different accounts, different names and different jurisdictions. This stage challenges the regulatory agencies and only becomes possible after the successful placement of the funds in the system.

The third stage of money laundering is known as *integration.* At this stage, the laundered money returns to the launderer in a seemingly legitimate transaction. Onyeka explains that at this stage, the launderer enjoys the proceeds of his crime and becomes wealthy[26]. It becomes difficult to differentiate between the illegal money and legitimate money. The laundered money becomes fully integrated into the financial system.

Front companies are also incorporated in countries with corporate secrecy laws in which criminals lend themselves their own laundered funds in an apparently legitimate transaction[27]. Another method employed here is trade over-invoicing which involves the use of false invoices by import/export companies[28]. In other words, the launderer over values goods received from exports to justify the funds later deposited in domestic banks. Looking at the above processes it is obvious that the efficacy of the fight against money laundering will inadvertently depend on the level of compliance with due diligence requirements by financial institutions and other designated non-financial institutions.

4. METHODS OF MONEY LAUNDERING

These are ways illegal proceeds are integrated into the legitimate economic system through clandestine manner to hide the original owner or its true source. As government find different ways of tackling traditional money laundering, criminals device new ways of laundering criminal proceeds of their crime. They have to be very smart and sophisticated about it. Government must also be sophisticated to understand the methods either to nip it in the bud or to punish its perpetrators.

Mukhtar and Yusuf[29] and other writers[30] categorised the methods of money laundering into three broad methods, namely:

1. Using Banks and other Depository Institutions
2. Using Non-Banks Financial Institutions
3. Using Non- Financial Businesses and Professions

[25] S. C. Onyeka *Anti-Money Laundering & Combating the Financing of Terrorism in Nigeria* (Transparent Prptection Ltd/Gte, Lagos, 2014)
[26] S. C. Onyeka *Anti-Money Laundering & Combating the Financing of Terrorism in Nigeria* (Transparent Protection Ltd/Gte, Lagos, 2014)
[27] A. I. Adegboyega, "A Review of the Legislative and Institutional Framework for Combating Money Laundering in Nigeria" NIALS Journal of Criminal and Justice, Vol. 1, 2011, pg 95 accessed on 18/05/17 from www.nials-nigeria.org>journals>Adegboyega
[28] N. Mukhtar & I. A. Yusuf Money Laundering: An Appraisal of the Processes, Trends and Impacts on Nigeria as an Emerging Economy Accessed on 18/05/17 from http://www.unimaid.edu.ng/Journals/Law/Private%20Law/13.pdf
[29] N. Mukhtar & I. A. Yusuf Money Laundering: An Appraisal of the Processes, Trends and Impacts on Nigeria as an Emerging Economy Accessed on 18/05/17 from http://www.unimaid.edu.ng/Journals/Law/Private%20Law/13.pdf
[30] S. C. Onyeka *Anti-Money Laundering & Combating the Financing of Terrorism in Nigeria* (Transparent Protection Ltd/Gte, Lagos, 2014)

USING BANKS AND OTHER DEPOSITORY INSTITUTIONS

A. Electronic and Mobile banking and transfer of illegal funds:

This involves the transfer of illegal funds through the internet. These transfers can be done through banks within a country or banks in different countries. The medium for this type of transaction include mobile banking, Automated teller Machine, Internet Banking, etc. This method of money laundering helps launderers in layering transactions on the ill-gotten funds to avoid tracing of the funds by law enforcement.

B. Correspondent Banking:

This involves the collaboration between banks in different jurisdictions for ease in banking for customers. The correspondent bank provides banking services to the respondent bank and its customers including cash management[31]. Corresponding banking can create a situation where a financial institution carries out banking services for customers it has no business with and who it does not know. This may make this manner of banking vulnerable for money launderers to abuse. Banks in countries with weak or no anti-money laundering controls will have direct access to the financial system of other countries[32]. This gives them the freedom to move money around the world. For example, in 1999, Bank of New York (BONY) as a corresponding bank was said to have been used by Russian mafia gangs to launder money through respondent banks in Russia.[33]

Nigeria's Anti Money Laundering/Combatting the Financing of Terrorism legislation allows correspondent banking. The Know Your Customer requirements of Nigerian law however makes it compulsory that Nigerian financial institutions must have details of respondent banks before commencing a correspondence banking relationship.[34] A shell account or numbered account cannot be operated in Nigeria[35]. A financial institution in Nigeria is prohibited from having correspondence banking relationship with a shell bank or a bank doing business with a shell bank.[36] The punishment for violating this rule is provided thus:

> Any person, Financial Institution or corporate body that contravenes the provisions of subsections (1) (2) and (3) of this section, commits an offence and is liable on conviction to:
>
> (a) in the case of an individual, a term of imprisonment of not less than 2 years but not more than 5 years; or
>
> (b) in the case of a financial institution or corporate body, a fine of not less than N10,000,000 but not more than N50,000,000, in addition to:
>
> i. the prosecution of the principal officers of the corporate body, and
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> ii. the winding up and prohibition of its constitution or incorporation under any form or guise

C. Payable Through Accounts (PTAs)

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[31] 'Risks and Methods of Money Laundering and Terrorist Financing " a publication of Association of Certified Anti- Money Laundering (ACAMs) study guide for certification examination, chapter two at Accessed on 18/05/17 from http://files.acams.org/pdfs/English_Study_Guide/Chapter_2.pdf

[32] Minority Staff of the Permanent Subcommittee on Investigations Report on Correspondent Banking: A Gateway For Money Laundering February 5, 2001 Accessed on 18/05/17 from http://www.taxjustice.net/cms/upload/pdf/Report_Corresp.Banking.pdf

[33] 'Russian mafia laundered $10bn at Bank of New York' The Independent of Thursday 19 August 1999 Accessed on 18/05/17 from http://www.independent.co.uk/news/world/russian-mafia-laundered-10bn-at-bank-of-new-york-p-1113796.html

[34] See Section 3 (4) (c) of the MLPA 2011 (as amended)

[35] See Section 11 of the MLPA 2011 (as amended)

[36] Section 11(2) MLPA

This banking style permits customers of the respondent bank to conduct their transactions through the respondent bank's correspondent accounts without needing to clear the transactions from the respondent bank.

While in correspondent banking the respondent bank sends instructions to the correspondent bank, in PTAs the customers go directly to the corresponding banks to transact their business. This banking style can be used by launderers to transfer money easily.

D. Concentration Accounts

A concentration account is opened by a financial institution in its name and is primarily used for internal administration and bank-to-bank transactions in which funds are transmitted without personally identifying the originators. Concentration accounts can be used to launder money with collaboration with bank officials. A bank official may put customer funds into the concentration account with the bank's funds, the sum is thereafter removed from an account in another country without a trace of accounts.

E. Private Banking

Private banking offers personal and discrete delivery of a wide variety of financial services and products to the affluent members of the society. A private banking operation usually offers its customers an all-inclusive money management relationship. Customers most often use private banks because of privacy and money laundering thrives on privacy. Money launderers may abuse the level of privacy offered by private banks and use it to launder money. In Nigeria, Politically Exposed Persons (PEPs) resort to private banking services to carry out financial transactions that will further protect proceeds of corruption[37]. This is because a private bank is usually involved in assisting the client to invest or protect his assets and therefore amenable to the privacy needs of the PEPs. Presently in Nigeria, financial institutions or designated non-financial institutions having any customer-relationship with a Politically Exposed Person (PEP) must adopt an appropriate risk management system in addition to the normal KYC requirements and senior management approval must be obtained[38].

The FATF defined Politically Exposed Persons (PEPs) as "natural persons who are or have been entrusted with prominent public functions in a foreign country for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of State –owned corporations, important political party officials" [39]

F. Structuring

This is an old method of money laundering that started with the commencement of anti-money laundering legislation and monitoring. By structuring, one transaction is divided into smaller multiple transactions to avoid hitting the legal threshold of mandatory reporting of transaction. This is a tedious but effective manner to transfer laundered money without creating suspicion.

G. Cuckoo[40] Smurfing

This is a type of money laundering scam in which money is paid into bank accounts of people doing genuine financial transaction to aid in money laundering. Proceeds of crime are transferred through the accounts of innocent persons who are expecting genuine funds or payments from overseas. Cuckoo Smurfing requires a collaboration of an insider with the financial institution.

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[37] N. Mukhtar & I. A. Yusuf 'Money Laundering: An Appraisal of the Processes, Trends and Impacts on Nigeria as an Emerging Economy' Accessed on 18/05/17 from http://www.unimaid.edu.ng/Journals/Law/Private%20Law/13.pdf

[38] See Section 3 (7) (a) and (b) of the MLPA 2011 (as amended)

[39] See'The Joint Money Laundering Steering Group' Accessed on 18/05/17 from http://www.jmlsg.org.uk/other-helpful-material/article/money-laundering-terrorist-financing-activities. See also Section 25 MLPA 2011

[40]The Cuckoo is a European bird that is a parasite because it lays its eggs in the nests of other birds which hatch them and rear the offspring.

For example, Ukaga & co, a Nigeria-based customer, attempts to send funds to an Israeli bank account, for the payment of legitimate invoices. The collaborator bank official informs a money laundering syndicate in Israel of the export company's bank account details and the amounts required to be deposited into the company's account in Israel. The Israeli syndicate members will make a number of cash deposits into the Israeli account of the export company equal in value to the expected payments from Nigeria. The cash deposits are made in structured amounts, intended to fall below the threshold for cash transaction reporting. Meanwhile, the money provided by Ukaga & co is paid into another account in Nigeria, to be later accessed by a member of the syndicate.

USING NON-BANKS FINANCIAL INSTITUTIONS

A. Credit Card Industry

A money launderer could put ill-gotten funds in accounts at banks offshore and then access this funds using his credit or debit card associated with the account to launder the funds. Credit cards are likely to be used in the layering stage of money laundering. Recently there have been arrests of persons with ridiculous amount of credit cards in Nigeria.[41]

B. Money Remittances and Money Exchange Houses

Money Remitters transfer funds for their customers and receive commission for doing so. They conduct their businesses by receiving cash from their clients and sending them to designated beneficiaries in any part of the world. Ordinarily this is a valid type of transaction but can be abused by money launderers. The remittance company may be an ordinary shop or broker who will enter an agreement with a correspondent business in another country. Most times, there is no movement of cash involved and there are usually no formal requirements needed or record keeping of the transaction. Money is simply transferred across borders through couriers or letters. A launderer can take advantage of this to provide such cash in the destination country while the funds in the originating country are used as legitimate funds.

C. Insurance Companies

There is a risk of using life insurance policy to launder money. Some life insurance policy creates cash value if the policy holder opts out of the policy[42]. The launderer can purchase an investment with illegal funds and then he will cancel or give-up the policy and retain the cash value. This method of laundering money can also be used in other types of high property insurance.[43]

In Nigeria, the National Insurance Commission (Anti Money Laundering and Combatting the Financing of Terrorism) (NICON AML/CFT) Regulation 2013 made pursuant to section 101 of the Insurance Act regulates the insurance industry against such money laundering tactics.

The object of the Regulation is "to promote, enhance and ensure compliance with subsisting legislation on anti-money laundering and countering terrorism by insurance industry in Nigeria"[44]

D. Securities Broker Dealers[45]

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[41] See 'NDLEA arrests man with 108 ATM cards' *Premium Times* of October 17, 2015 Accessed on 18/05/17 from http://www.premiumtimesng.com/news/headlines/191672-%E2%80%8Endlea-arrests-man-with-108-atm-cards.html , Debit cards smuggling latest money laundering technique — NDLEA *Premium Times* of October 24, 2015 Accessed on 18/05/17 from http://www.premiumtimesng.com/news/top-news/192095-debit-cards-smuggling-latest-money-laundering-technique-ndlea.html

[42] D. Rodeck 'Can a Life Insurance Policy Be Cashed in Any Time?' *The Nest* Accessed on 18/05/17 from http://budgeting.thenest.com/can-life-insurance-policy-cashed-time-26210.html

[43] 'The Joint Money Laundering Steering Group' Accessed on 18/05/17 from http://www.jmlsg.org.uk/other-helpful-material/article/moneylaundering-terrorist-financing-activities.

[44] Regulation 1 of the NICON(Anti-Money Laundering/Combating Financing Terrorism)Regulation 2013

[45] Report on Money Laundering Typologies 2002-2003 Financial Action Task Force on Money Laundering 14 February 2003 Accessed on 18/05/17 from http://www.fatf-gafi.org/moneylaundering/

Money launders may use the securities sector to launder ill-gotten funds. The ill-gotten money may be invested to hide its origin and to get double profit. Customer accounts used to hold funds may be used primarily to launder funds.[46]

Launderers may incorporate a public traded company in which they are directors. The shares of the incorporated company are sold to offshore shell companies whose real owners are the launderers. The money invested in the company is then used to pay allowances to the directors of the company. The launderers enjoy the lifestyles of the rich and famous, without paying any tax, and enjoy the legitimacy and benefits afforded to officers of public companies.[47]

Another example of such laundering is as described by Sgt. George Pemberton[48] thus:

> The criminal sets up a brokerage account in the name of a nominee corporation domiciled in a secrecy haven. The shares are sold from the criminal's own account to the offshore corporation at prices set by the manipulator. The shares trade back and forth repeatedly, at progressively higher prices. In the final round, the criminal sells the shares, originally worth pennies, to the offshore corporation for hundreds of times the original cost. The criminal has a huge stock market windfall, duly reported to tax authorities as a capital gain. The offshore corporation apparently suffers a catastrophic loss when the share price collapses. [49]

In Nigeria, Securities And Exchange Commission Nigeria's Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) Compliance Manual for Capital Market Operators 2010 regulates the securities market against such money laundering tactics

Using Non- Financial Businesses and Professions

A. Casinos and other Gambling Businesses

Casinos and other businesses associated with gambling, such as book-making, lotteries and horse- racing continues to be associated with money laundering because they provide a ready-made excuse for recently acquired wealth with no apparent legitimate source. Nigerians are said to spend about 1.8billion naira on sports betting daily[50]. This provides an avenue for a launderer to invest in such betting to make returns that mask the illegal source of income. Also, a launderer can buy chips with cash generated from a crime and then request repayment by a cheque drawn on the casino's account.[51]

B. Dealers of High Valued Items (Jewelry, Precious Metals, Art)

Gold and other high valued items provide advantages that may aid in money laundering. This is because of their high intrinsic value, convertibility, and potential anonymity in transfers. It can be used as source of illegal funds to be laundered through smuggling or illegal trade in such goods and as a vehicle for laundering through the purchase of such goods with illegal funds. The money launderer or someone acting on his behalf may purchase high valued items from a retail merchant with funds generated from criminal activities.[52]

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[46] N. Mukhtar & I. A. Yusuf Money Laundering: An Appraisal of the Processes, Trends and Impacts on Nigeria as an Emerging Economy Accessed on 18/05/17 from http://www.unimaid.edu.ng/Journals/Law/Private%20Law/13.pdf

[47] G. Pemberton 'Money Laundering in Securities Markets' *The Money Laundering Bulletin of* September 2000, London, England.

[48] Sgt Royal Canadian Mounted Police Vancouver Integrated Proceeds of Crime Section

[49] G. Pemberton 'Money Laundering in Securities Markets' *The Money Laundering Bulletin of* September 2000, London, England.

[50] 'Nigerians spend N1.8bn on sports betting daily – investigation, See Vanguard News of August 1, 2014 accessed on 18/05/17 from http://www.vanguardngr.com/2014/08/nigerians-spend-n1-8bn-sports-betting-daily-investigation/

[51] N. Mukhtar & I. A. Yusuf Money Laundering: An Appraisal of the Processes, Trends and Impacts on Nigeria as an Emerging Economy Accessed on 18/05/17 from http://www.unimaid.edu.ng/Journals/Law/Private%20Law/13.pdf

[52] Report on Money Laundering Typologies 2002-2003 Financial Action Task Force on Money Laundering 14 February 2003 Accessed on 18/05/17 from http://www.fatf-gafi.org/moneylaundering/

In certain instances, some of the supposed transactions of a particular scheme do not take place at all but are represented with false invoicing. The paperwork is then used to justify the transfer of funds to pay for these shipments.

C. Travel Agencies

This method is similar to cuckoo smurfing discussed earlier. Travel agencies may be used to launder money by purchasing high priced transportation cost for legitimate customers of travel agencies. The legitimate money is then transferred in structured form back to the money launderer in such a way that it is not reported to the regulators

D. Lawyers, Accountants/Auditors etc

Money can be laundered through high priced attorneys and other professionals who charge ridiculous high amounts of money for professional services and refund part of such funds in situations where such services are not completed. A lawyer who is paid in full when his service is retained is entitled only to some part of the money if the client, before completion of such service, debriefs him.[53]

These professionals also manage the finance and business of their clients and advice clients. Anti-money laundering laws are therefore used to make it a duty for these professionals to report transactions by their customers that they suspect are used for money laundering. In Nigeria and Canada, such duties to report have been removed from lawyers because they violate the traditional client-lawyer confidentiality.[54]

E. Ponzi schemes

Ponzi schemes may pose a threat to anti-money laundering efforts. Nigerian government have tried to stop such Ponzi schemes to protect Nigerians from financial loss.[55] Nobody seems to appreciate the potential for such schemes to be used by launderers to launder huge funds and double their money in seemingly legitimate ways. For example, Mavrodi Monrodi Moneybox scheme popularly known as MMM may be used to put in illegal money into the financial system in Nigeria. This is how the scheme works:

> How it works
>
> If a participant requests to Provide Help of N20, 000 today, he/she is expected to be matched within the next 14days with another participant or participants, and after payment, the donor gets back a full repayment of his loan (N20,000) and 30 percent (N6,000) within the next 15 days. This implies that the donor gets N26,000 from another participant or other participants after 30days.[56]

Cash deposit or bank transfer by other participants is the money paid as a return on the investment. Participants in the scheme pay in millions of naira and this payment may be structured to be paid into several accounts in bits. The Central Bank of Nigeria reported that 23 Banks in Nigeria got 28.7 Billion Naira inflows from dubious MMM transactions.[57]One Toyin, a participant in MMM paid in N3,000,000

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[53] This is known as quantum meruit. See Rule 21(4) of the Rules of Professional Conduct 2007

[54] See M. Otoideare 'Legal Practitioners Obliged To Comply With The Money Laundering (Prohibition) Act 2011?' accessed on 18/05/17 from http://www.alukooyebode.com/files/ARE%20LEGAL%20PRACTITIONERS%20OBLIGED%20TO%20COMPLY%20WITH%20THE%20MONEY%20LAUNDERING%20(PROHIBITION)%20ACT%202011.pdf

[55] 'MMM: EFCC, SEC jointly declare total war on ponzi schemes' Dailypost of January 19, 2017 accessed on 18/05/17 from http://dailypost.ng/2017/01/19/mmm-efcc-sec-jointly-declare-total-war-ponzi-schemes/
'FG orders EFCC to arrest MMM promoters, operators in Nigeria' Dailytrust Newspaper of Nov 10 2016 accessed on 18/05/17 from https://www.dailytrust.com.ng/news/general/fg-orders-efcc-to-arrest-mmm-promoters-operators-in-nigeria/171091.html
'Reps warn Nigerians against investing in MMM scheme' Vanguard News of November 10, 2016 accessed on 18/05/17 from http://www.vanguardngr.com/2016/11/reps-warn-nigerians-investing-mmm-scheme/

[56] 'MMM: How it affects the banks – Bankers' Vanguard News of December 10, 2016 accessed on 18/05/17 from http://www.vanguardngr.com/2016/12/mmm-affects-banks-bankers/

[57] See "23 Banks in Got N28.7bn inflows from dubious MMM transactions" *This Day Newspaper* of 31/05/17 accessed on 31/05/17b from https://www.thisdaylive.com/index.php/2017/05/31/23-banks-got-n28-7bn-inflows-from-dubious-mmm-transactions/

into the MMM system on October 18, 2016 and received in his account the sum of N4,179,000 on November 24, 2016.[58] Arinzechukwu, another Participant on MMM on 6th of April 2017 paid into several accounts the total sum of N3,200,000 and on 11th day of May 2017 several people paid in N4,346,000 into his account[59]. Nice, paid in N3,100,000 on 5th of April 2017 and on 11th day of May 2017 he got N4,284,000. Sarrimma, paid in N1,500,000 on 30/03/2017 and received N2,037,000 ON 04/05/2017.[60]

Argument against the scheme has been defeated on the ground that it is not illegal to pay legitimate money into the account of another person[61]. It is also not illegal to receive laundered money if the person receiving such money does not know that it is laundered.

A money launderer may request to provide help with illegally gotten money, he then pays this money into several accounts of persons who innocently involve themselves with the scheme. At maturity, the money paid into the MMM system is then transferred back to the launderer through several banking transaction in seemingly legitimate cash deposit or bank transfer; he also gets 30% of such laundered funds.

Other methods of laundering money include :

a. Investment and Commodity Adviser
b. Trusts and Company Service Providers
c. Real Estate Industry
d. Manipulation of Import and Export Prices

5. EFFORTS AT COMBATING MONEY LAUNDERING

It is traditional that criminals attempt to hide the proceeds of their crime to avoid detection. "Though the vice is old, the use of the term, "money laundering" is recent"[62]. It is believed that acts of money laundering were practiced in China about 2000 B.C[63]. The merchants of those days were said to have successfully hidden their wealth from despotic rulers that could have otherwise taken the money away from them through taxation. Adegboyega, suggests that since these acts were done to evade tax, they were money laundering[64].

The modern concept of money laundering is said to have commenced in the 19th century. Yusuf explains that a criminal lord in the United States laundered money through his Swiss Bank into the United States by taking advantage of the 1934 Swiss Bank Act, which created the principle of Bank Secrecy.[65] Jeffrey Robins, explained that the first use of the term money laundering was by a British Guardian newspaper while describing the illegal movement of ill-gotten wealth from the United States of America to Mexico

[58] See MMM website https://nigeria-mmm.net/testimonials/
[59] See MMM website https://nigeria-mmm.net/testimonials/
[60] See MMM website https://nigeria-mmm.net/testimonials/
[61] 'Reps warn Nigerians against investing in MMM scheme' Vanguard News of November 10, 2016 accessed on 18/05/17 from http://www.vanguardngr.com/2016/11/reps-warn-nigerians-investing-mmm-scheme/
[62] See generally A. I. Adegboyega, "A Review of the Legislative and Institutional Framework for Combating Money Laundering in Nigeria" NIALS Journal of Criminal and Justice, Vol. 1, 2011, pg 95 accessed on 18/05/17 from www.nials-nigeria.org>journals>Adegboyega
[63] See generally A. I. Adegboyega, "A Review of the Legislative and Institutional Framework for Combating Money Laundering in Nigeria" NIALS Journal of Criminal and Justice, Vol. 1, 2011, pg 95 accessed on 18/05/17 from www.nials-nigeria.org>journals>Adegboyega
[64] A. I. Adegboyega, "A Review of the Legislative and Institutional Framework for Combating Money Laundering in Nigeria" NIALS Journal of Criminal and Justice, Vol. 1, 2011, pg 95 accessed on 18/05/17 from www.nials-nigeria.org>journals>Adegboyega
[65] N. Mukhtar & I. A. Yusuf 'Money Laundering: An Appraisal of the Processes, Trends and Impacts on Nigeria as an Emerging Economy' Accessed on 18/05/17 from http://www.unimaid.edu.ng/Journals/Law/Private%20Law/13.pdf

and back to America.[66] This money was said to have been used to fund the campaign of President Nixon of America.[67]

Apart from laws criminalizing concealment of evidence, there was however no clear law that made money laundering a crime before 1984. By 1984, the international community renewed its efforts at fighting narcotics and psychotropic drugs by re-strategizing and going after the proceeds of the crime. This was done by encouraging the criminal laws of different countries to criminalise acts of production, extraction, preparation, sale and transportation of narcotic drugs and psychotropic substances and to criminalize the concealment of funds gotten from such criminal acts.

Money laundering is connected to all forms of criminal activities that give financial benefits to the criminal[68]. One major way of catching criminals is through the connection in money transfers that exposes the identity or/and assets of criminals[69]. When criminal funds are derived from robbery, extortion, embezzlement or fraud, money-laundering investigation is frequently the only way to locate the stolen funds and restore them to the victims. This means that operations of money laundering are globally involved. This is the idea behind the drive by the international community to tackle money laundering collectively. Without collective collaboration, the violators will take advantage of weak Anti Money Laundering (AML) regimes of different countries to perpetuate their wrongdoings[70].

The General Assembly of the United Nations (UN) by its Resolution 37/141 of 14th December, 1984 requested its Economic and Social Council to ask the UN Commission on Narcotic Drugs to draft a Convention against Illicit Traffic in Narcotic Drugs. Consequently, UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (Vienna Convention) came into being.

The Convention recommended, amongst other things, that each state party should by its domestic laws prohibit:

> …the conversion or transfer of property knowing that such property is derived from a drug related offence… for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions.[71]

State parties were also urged to prohibit:
"…the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from drug trafficking or an offence related to it."[72]

At the time, Nigeria was notorious for drug trafficking cases. Nigeria signed the Vienna Convention on March 1, 1989 and ratified it later in the same year on November 1, 1989.[73] Nigeria then enacted the Nigerian Drug Law Enforcement Agency (NDLEA) Decree 48 of 1989 which was the first statute to

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[66] Robinson, J.'The Laundrymen' (Simon & Schuster, London, 1998)P.3. cited in N. Mukhtar & I. A. Yusuf 'Money Laundering: An Appraisal of the Processes, Trends and Impacts on Nigeria as an Emerging Economy' Accessed on 18/05/17 from http://www.unimaid.edu.ng/Journals/Law/Private%20Law/13.pdf

[67] Robinson, J.'The Laundrymen' (Simon & Schuster, London, 1998)P.3. cited in N. Mukhtar & I. A. Yusuf 'Money Laundering: An Appraisal of the Processes, Trends and Impacts on Nigeria as an Emerging Economy' Accessed on 18/05/17 from http://www.unimaid.edu.ng/Journals/Law/Private%20Law/13.pdf

[68] N. M. Adeniyi, et el. 'Money Laundering: The Paradox Of Deterrence Mechanism' *International Journal of Business, Economics and Law*, Vol. 11, Issue 3 (Dec.) 2016 Accessed on 18/05/17 from www.ijbel.com>2017/01>ECON-125

[69] FATF website Accessed on 18/05/17 from http://www.fatf-gafi.org/faq/moneylaundering/

[70] The IMF and the Fight Against Money Laundering and the Financing of Terrorism October 6, 2016 Accessed on 18/05/17 from http://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism

[71] Article 3(1)(b) United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention)

[72] Article 3(1)(b) of the Vienna Convention

[73] UNTC Database, Accessed on 18/05/17 from http://treaties.un.org/pages/View Details.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&lang=en

criminalize some kind of money laundering in Nigeria. This law in following the UN Convention was not primarily made for the prohibition of money laundering but was made to prohibit drug trafficking and related offences. The law in Sec.3 (1) (c) and 3(1) (p) (ii) [74] criminalized the laundering of proceeds of hard drug.

The Nigerian anti-money laundering regime continues to follow the directions of the global effort against money laundering. The Money Laundering Decree is the first law in Nigeria to specifically target money laundering. The law however still restricted money laundering offences it created to the laundering of proceeds of illicit drug trafficking; hence its scope of operation and effect was still limited[75].

Towards the year 2000 it became obvious to the world that other types of crimes were also growing and if the proceeds are not checked, they will be used to undermine national and international peace and security[76]. Other crimes like human trafficking, sexual exploitation, illegal gambling, corruption and bribery were increasing in their impact and contributing to the laundering of illegal money. The proceeds of these crimes were not only put back into the economy as legitimate money, they were also used to fund other illegal activities like terrorism and other organised crime. The growth in size of organised crime threatened the economies of many countries because most times the money controlled by organised criminal gangs in some countries would exceed the money controlled by the government. In time, it became obvious to members of the United Nations that the Vienna Convention was not enough and that though drug trafficking was a crime of international concern at that time, it was not the only economic and financial crime that should be of concern[77].

Flowing from this realization, The United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000 in Palermo, Italy and this became the main international instrument in the fight against transnational organized crime. The Palermo Convention expanded the idea of money laundering. Although its definition of money laundering was similar to the definition in the Vienna Convention, the Palermo Convention increased the number of predicate offences for the offence of money laundering to include all crimes.

The Economic Community of West African States (ECOWAS) Authority of Heads of State in the year 2000 established the Inter-Governmental Action Group against Money Laundering (GIABA).[78] This is one of the major responses of the ECOWAS to the fight against money laundering[79]. GIABA is currently a specialized institution of ECOWAS responsible for the prevention and control of money laundering and terrorist financing in the region. The establishment of GIABA as a FATF style regional body is a demonstration of the strong political commitment of member states to combat money laundering and terrorist financing and to cooperate with concerned nations and international organizations to achieve this goal.

The events of September 11, 2001 also showed that money laundering is closely connected to terrorist financing because of its clandestine nature. George Bush the former President of the United States was said to have declared that "Money is the lifeblood of terrorist operations".[80] This motivated the International Monitory Fund to intensify its anti-money laundering activities and extended them to include combating the financing of terrorism (CFT).

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[74] National Drug Law Enforcement Agency, Decree 48 of 1989 (now Cap N30 LFN 2004)
[75] *FRN v Ibori & Ors* (2014) LPELR-23214(CA) Per Saulawa, J.C.A. (Pp. 65-67, paras. B-A)
[76] N. Mukhtar & I. A. Yusuf 'Money Laundering: An Appraisal of the Processes, Trends and Impacts on Nigeria as an Emerging Economy' Accessed on 18/05/17 from http://www.unimaid.edu.ng/Journals/Law/Private%20Law/13.pdf
[77] *Chief Rasheed Ladoja V. Federal Republic Of Nigeria & Anor* (2014) LPELR-22432(CA)
[78] Accessed on 18/05/17 from www.giaba.org.
[79] I. A. Abubakar 'An Appraisal of Legal and Administrative Framework for Combating Terrorist Financing and Money Laundering in Nigeria' *Journal of Law, Policy and Globalization* www.iiste.org ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.19, 2013 26
[80] J. Sima 'Countering terrorism financing through anti-money laundering measures' *Global Risk Insights: Know Your Right* of December 9, 2015 accessed on 18/05/17 from http://globalriskinsights.com/2015/12/countering-terrorism-financing-through-anti-money-laundering-measures/

Money launderers take advantage of the complex nature of the world financial system and the difference in the national laws of different countries and they are mainly drawn to countries with poor and ineffective controls where they can more easily move their funds without detection. This can undermine the integrity of a nation's financial institution and may discourage foreign investment, and distort international capital flows. They have negative consequences for a country's financial stability and macroeconomic performance. The effect may be loss of resources from more productive economic activities.

Following the new drive in 2001, the Financial Action Task Force(FATF), the International setter of standards for anti-money laundering efforts has expanded the definition to include "the processing of criminal proceeds to disguise their illegal origin in order to legitimize the illicit gains of the crime"[81]. It follows that terrorism and corruption, among so many other crimes are now recognised as major predicate offences for money laundering.

The FATF in 2001 blacklisted Nigeria as one of the non-cooperative countries and territories (NCCTs)[82]. Nigeria was blacklisted due to the following reasons[83]:

a. Lack of laws placing obligations on institutions to report suspicious transactions
b. Inadequate laws criminalizing money laundering and monitoring movement of assets
c. Corruption in government establishments including the judiciary and other authorities , and
d. Unwillingness to respond constructively to requests made by FATF.

In 2002, the U.S. Treasury also issued a statement warning its financial institutions to be careful while dealing in transactions affecting Nigeria.[84]

This negative perception was affecting Nigeria. Nigerian banks were having difficulties in trading with banks in other parts of the world and there were longer hurdles in doing any transaction at the international scene. More so, Nigeria's bid to access debt forgiveness from the Paris Club was being jeopardized by the negative image the FATF blacklist gave Nigeria[85].

The anti-money laundering standards that anti-corruption laws and agencies in Nigeria are expected to implement are the 40 recommendations of the Financial Action Task Force (FATF) against money laundering. These recommendations include: verification of identity of customers by financial institutions, retention of customers records including their passports for at least six years, reporting of suspicious transactions to appropriate Authorities, development of system sustaining programmes such as training and internal control, and indulgences in international cooperation within the context of the law, and interim seizure of suspected laundered assets among others[86].

These issues led Nigeria to quicken efforts to institute a framework for combating economic and financial crimes including money laundering. In an effort to remove the stigma of the blacklisting, the Money Laundering Decree of 1995 was repealed and replaced by the Money Laundering (Prohibition) Act of 2003 (MLA 2003). The 2003 Act was in operation for only ten months before it was again

[81] FATF website Accessed on 18/05/17 from http://www.fatf-gafi.org/faq/moneylaundering/
[82] A. Y. Shehu 'Anti-Money Laundering and Counter Financing of Terrorism in Nigeria : a Call for Rescue' *This Day News* of 11 November 2016 Accessed on 18/05/17 from https://www.thisdaylive.com/index.php/2016/11/20/anti-money-laundering-and-counter-financing-of-terrorism-mlcft-in-nigeria-a-call-for-rescue/
[83] N. Ribadu *Show Me the Money: Leveraging Anti–Money Laundering Tools to Fight Corruption in Nigeria, An Insider Story* (Centre For Global Development, Washington DC 2010)
[84] N. Ribadu *Show Me the Money: Leveraging Anti–Money Laundering Tools to Fight Corruption in Nigeria, An Insider Story* (Centre For Global Development, Washington DC 2010)
[85] N. Ribadu *Show Me the Money: Leveraging Anti–Money Laundering Tools to Fight Corruption in Nigeria, An Insider Story* (Centre For Global Development, Washington DC 2010)
[86] F. B. Okeshol 'Corruption as Impediment to Implementation of Anti -Money Laundering Standards in Nigeria' *American International Journal of Contemporary Research* Vol. 2 No. 7; July 2012 p 184

repealed and replaced with the Money Laundering (Prohibition) Act of 2004 (MLPA 2004) which was until recently the extant law on money laundering in Nigeria. In addition, to comply with the FATF recommendation the Economic and Financial Crimes Commission (EFCC) Act 2004 established the Economic and Financial Crimes Commission (EFCC). The Commission is invested with wide powers critical for combating money laundering, including the power to apply to court for interim forfeiture of assets suspected to have been derived from criminal conduct. The commission also has powers to place bank accounts under surveillance and carry out other actions designed to assist in identifying the proceeds or properties derived from crimes. This power to apply for interim forfeiture was only vested on the National Drug Law Enforcement Agency before the EFCC Act.

The Money Laundering (Prohibition) Act of 2003 empowered the EFCC, NDLEA, Central Bank of Nigeria (CBN) and 'other regulating Authorities' to place bank accounts under surveillance as part of measures to facilitate tracing the proceeds of crimes. Section 20 of the MLPA 2004 Act vested the power to inspect books and records of financial institutions in the NDLEA and the EFCC .Under the 2004 Act, the power to determine the flow of transactions and identify the beneficiaries of individual and corporate accounts was conferred on the EFCC alone.

The case of *Federal Republic of Nigeria v. James Ibori & 5 others*[87] exposed the deficiencies of the MLPA 2004. Chief James Onanefe Ibori was alleged to have embezzled huge sums of money from the Bayelsa State treasury, which he was accused of laundering through some of his associates and companies in Nigeria and the United Kingdom (UK) in contravention of the provisions of the Money Laundering (Prohibition) Act (2004) of Nigeria. One of the main issues considered by the court in the trial of the case was whether embezzlement or corruption is a predicate offence for money laundering under section 14 of the Money Laundering (Prohibition) Act of 2004. The court held thus:

> It is my view that if Section 14 (1) was as all encompassing.., the special words relating to narcotic drugs and psychotropic substances would not have been mentioned before the words "any other crime or illegal act". Perhaps the drafters of the Act would have criminalized all movement of money derived from "crime or illegal acts" in the said section…
>
> For a charge under Section 14(1) of the Money Laundering (Prohibition) Act, 2004 to be sustained, the Prosecution must first and foremost establish that, or at least link such funds to those directly or remotely made or obtained in the course of illicit traffic or narcotic drugs and psychotropic substances[88]

The legislature sought to cure this defect in the Money Laundering (Prohibiting) Act, 2011.

6. MONEY LAUNDERING (PROHIBITING) ACT, 2011

The objectives of the Money Laundering (Prohibiting) Act, 2011 is

a. repeal the Money Laundering Act 2004 and enact the Money Laundering (prohibition) Act, 2011;
b. make comprehensive provisions to prohibit the financing of terrorism, the laundering of the proceeds of a crime, or an illegal act; and
c. provide for appropriate penalties and expand the scope of supervisory and regulatory authorities so as to address the challenges faced in the implementation of the anti-money laundering regime in Nigeria[89].

The main highlights of the Money Laundering (Prohibition) Act 2011(As amended) include the following:

[87] Charge No. FHC/ASB/IC/09) (Unreported) delivered on Thursday 17th December, 2007 at the Federal High Court sitting in Asaba, Delta State by Justice Marcel Awokulehin

[88] Charge No. FHC/ASB/IC/09) (Unreported) delivered on Thursday 17th December, 2007 at the Federal High Court sitting in Asaba, Delta State by Justice Marcel Awokulehin

[89]See the Explanatory Memorandum of the Money Laundering (Prohibition) Act, No. 11, 2011.

A. Part II of the 2011 Act has expanded the predicate crime for the offence of money laundering offences to prevalent financial crimes, and equally raised the bar of liability regime higher than what obtained in 2004.

Section 15 of the Act provides thus:

> 15(1) Money laundering is prohibited in Nigeria.
> (2) Any person or body corporate, in or outside Nigeria, who directly or indirectly (a) conceals or disguises the origin of; (b) converts or transfers; (c) removes from the jurisdiction; or (d) acquires, uses, retains or takes possession or control of; any fund or property, knowingly or reasonably ought to have known that such fund or property is, or forms part of the proceeds of an unlawful act; commits an offence of money laundering under this Act.
> (3) A person who contravenes the provisions of subsection (2) of this section is liable on conviction to a term of not less than 7 years but not more than 14 years imprisonment.
> (4) A body corporate who contravenes the provisions of subsection (2) of this section is liable on conviction to- (a) a fine of not less than 100% of the funds and properties acquired as a result of the offence committed; and (b) withdrawal of licence.
> (5) Where the body corporate persists in the commission of the offence for which it was convicted in the first instance, the Regulators may withdraw or revoke the certificate or licence of the body corporate.
> (6) The unlawful act referred to in subsection (2) of this section includes participation in an organized criminal group, racketeering, terrorism, terrorist financing, trafficking in persons, smuggling of migrants, sexual exploitation, sexual exploitation of children, illicit trafficking in narcotic drugs and psychotropic substances, illicit arms trafficking, illicit trafficking in stolen goods, corruption, bribery, fraud, currency counterfeiting, counterfeiting and piracy of products, environmental crimes, murder, grievous bodily injury, kidnapping, hostage taking, robbery or theft, smuggling (including in relation to customs and excise duties and taxes), tax crimes (related to direct taxes and indirect taxes), taxes crimes (related to direct taxes and indirect taxes) extortion, forgery, piracy, insider trading and market manipulation or any other criminal act
> (7) A person who commits an offence under subsection (2) of this section shall be subject to the penalties specified in this section notwithstanding that the various acts constituting the offence were committed in different countries or places.´

In *Ude Jones Udeogu v Federal Republic Of Nigeria & Ors*[90] the Supreme Court listed the ingredients for the offence of money laundering to include:

(i) the accused converted or transferred resources or property;
(ii) the resource or property must have been derived directly or indirectly from drugs related offences or any other crimes or illegal acts;
(iii) the conversion or transfer of the resources must be with the aim of:
(a) concealing or disguising the illicit origin of the resources or Property; or
(b) aiding any person involved in any of the acts of drug related offences or any other crime or illegal act so as to evade the illegal consequences of his action

B. There was increase in the threshold for cash transaction. The MLPA 2011 increased the amount of cash that an individual or company can transact with from five hundred thousand naira (N500,000) to five million naira (N5,000,000) in the case of an individual; and from two million naira (N2,000,000) to ten million naira (N10,000,000) in the case of a company.[91]

[90] (2016) LPELR-40102(SC)
[91] Section 1(a)-(b) MLPA 2011

C. Section 2 of the MLPA 2011 makes it a duty for a financial institution or a designated non-financial institution[92]to report to the Central Bank of Nigeria (CBN), Securities and Exchange Commission or the Economic and Financial Crimes Commission (EFCC) a transfer of funds or security to or from a foreign country exceeding ten thousand dollars. This report is to be made in writing to the EFCC within seven days of any single transaction.

Financial Institution is defined under Section 25 of the MLPA to mean:

> banks, body association or group of persons, whether corporate or incorporate which carries on the business of investment and securities, a discount house, insurance institutions, debt factorization and conversion firms, bureau de change, finance company, money brokerage firm whose principal business includes factoring, project financing, equipment leasing, debt administration, fund management, private ledger service, investment management, local purchase order financing export finance, project consultancy, financial consultancy, pension funds management and such other business as the Central Bank, or other appropriate regulatory authorities may from time to time designate"

Designated Non-Financial Institution is defined under Section 25 MLPA to mean:

> Dealers in jewellery, cars and luxury goods, chartered account, audit firm, tax consultants, clearing and settlement companies, legal practitioners, hotels, casinos, supermarkets, or such other businesses as the Federal Ministry of Commerce or appropriate regulatory authorities may from time to time designate

The Federal High Court had in *Nigerian Bar Association v. Attorney General of the Federation & Anor*[93] ordered that the name of legal practitioners be removed as designated non-financial institutions because it violates the constitutional right to privacy of individuals.[94].

D. MLPA 2011 makes it an offence for a person to falsely declare or fail to make a declaration to the Nigerian Customs Service of the amount he is traveling with as required by law. The person shall be liable on conviction to forfeit not less than 25% of the undeclared funds or negotiable instrument or to imprisonment of not less than 2 years or to both.

The Federal High Court sitting in Kano on 12 July applied this law in 2013 when it convicted Aminu Sule Lamido, son of the Jigawa State Governor, over money laundering[95]. The defendant was arrested at the Mallam Aminu Kano International Airport in December 2012 for failing to declare the total amount he was carrying on his way to Egypt. He was arraigned and convicted under Section 5(2) of the Money Laundering Act, 2011. The defendant was therefore made to forfeit 25% of the total amount he was carrying at the time of the arrest without jail time.

Section 2 of MLPA Act No. 1, 2012, deleted the words "not less than 25%" from the provision of Section 2(5) of the 2011 Act. The current punishment for this crime is forfeiture of the undeclared funds or negotiable instrument or imprisonment for a term of not less than 2 years or both.

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[92] See Section 25 MLPA 2011

[93] Unreported, Suit No. FHC/ABJ/CS/173/2013, Delivered on Wednesday, 17 December 2014 appeal on this matter is currently pending at the Court of Appeal, Abuja Division.

[94] See the decision of a Canadian court in *Attorney General of Canada v Federation of Law Soceities of Canada* 2015 SCC 7 cited in M. Otoideare 'Legal Practitioners Obliged To Comply With The Money Laundering (Prohibition) Act 2011?' April 2015 Accessed on 18/05/17 from http://www.aluko-oyebode.com/files/ARE%20LEGAL%20PRACTITIONERS%20OBLIGED%20TO%20COMPLY%20WITH%20THE%20MONEY%20LAUNDERING%20(PROHIBITION)%20ACT%202011.pdf

[95] Y. Alli 'Money laundering: Court convicts Governor Lamido's son' See *the Nation* of July 13, 2013 accessed on 18/05/17 from http://thenationonlineng.net/money-laundering-court-convicts-governor-lamidos-son/

E. Section 3 of the MLPA Act 2011 provides for a better legal regime in identifying customers by a Financial or a non-Designated Financial Institution. A person who transacts with any amount above one thousand dollars or its equivalent must provide proper identity to the institution he is dealing with. Also even if the person deals in an amount that is less than the threshold, the institution can also demand for proper identification if it suspects the transaction to be a money laundering transaction. Designated non-financial institution and financial institutions have a responsibility to put in place measures that will expose illegal transactions. This provision aims at reducing structuring or smurfing, that is, the act of breaking down the laundered funds into small amounts that are below the reporting threshold in order to avoid suspicion of or surveillance by Financial Institutions and Designated non-Financial Institutions.
Also, the fine imposable on designated non -financial institution that fail to comply with the customer identification and submission of returns procedure prescribed by law has been increased from N25,000 (Twenty five thousand Naira) to N250,000 naira (Two hundred and Fifty Naira) under the new Act.
Section 6 (10) of the 2011 Act gives directors, officers and employees of Financial Institutions and designated non-financial institutions immunity from any civil or criminal liability in suits that might be brought against them by customers for performing their duties under the Act. This gives the operators safety in complying with the provisions of the law.

F. Designated Non-Financial Institutions ("DNFIs") involved in cash transactions have an obligation under section 5 of the 2011 Act to identify their customers and report cash transactions with a customer that exceeds US$1000 to the Federal Ministry of Commerce (now Federal Ministry of Trade and Investment), which in turn sends the report to the Economic and Financial Crimes Commission.

G. Recommendation 6 of the FATF 40 recommendations[96] provides that financial institutions should follow certain procedures when transacting business with Politically Exposed Persons (PEPs). Section 3(8) MLPA 2011 provides that where the customer is a PEP, the Financial Institution or Designated Non-Financial Institution shall in addition to other requirements put in place appropriate risk management systems; and obtain senior management approval before establishing and during any business relationship with the PEP.

"Politically Exposed Persons" is defined as:

(a) individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or government, senior politicians; senior government, judicial or military officials; senior executives of State owned corporations and important political party officials,
(b) individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians; senior government, judicial or military officials; senior executives of State owned corporations and important political party officials,
(c) persons who are or have been entrusted with a prominent function by an international organization and includes members of senior management such as directors, deputy directors and members of the board or equivalent functions other than middle ranking or more junior individuals;

H. Section 4 of the Money Laundering (Prohibition) Act 2011 provides that a casino must verify the identity of its customers and record all transactions, including the nature and amount involved in each transaction, and this information shall be kept in a register and preserved for a period of at least 5 years after the last transaction recorded in the register.

I. Section 11 of the MLPA 2011 prohibits operating or maintaining of Numbered/ Anonymous Accounts or shell accounts by any person, financial institution or corporate body.

[96] FATF (2012), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, updated October 2016, FATF, Paris, France(FATF Recommendations), Accessed on 18/05/17 from www.fatf-gafi.org/recommendations.html

"A numbered bank account is a type of bank account where the name of the account holder is kept secret, and they identify themselves to the bank by means of a code word known only by the account holder and a restricted number of bank employees, thus providing account holders with anonymity in their financial transactions".[97]
A "Shell bank" means "a bank that is not physically located in the country in which it is incorporated and licensed and which is unaffiliated with a regulated financial group that is subject to effective consolidated supervision, and, "physical presence" in relation to shell banks, means having structure and management located within a country and not merely the existence of a local agent or low level staff;[98]

A financial institution cannot enter into or continue correspondent banking relationships with shell banks and must satisfy itself that a respondent financial institution in a foreign country does not permit its accounts to be used by shell banks[99].

Any person, Financial Institution or corporate body that contravenes this law commits an offence and is liable on conviction to:
(a) in the case of an individual, a term of imprisonment of not less than 2 years but not more than 5 years;
(b) in the case of a financial institution or corporate body, a fine of not less than N10,000,000 but not more than N50,000,000, in addition to the prosecution of the principal officers of the corporate body, and the winding up and prohibition of its constitution or incorporation under any form or guise

J. Section 16 MLPA also criminalizes informing the launderer of the report against him, failure to report suspicious transactions and destroying of evidence of money laundering.

K. Section 19 MLPA Act provides for liability for corporate offenders. Corporate bodies charged with the offence of money laundering may upon conviction, be ordered by a court of law, to be wound up and all its assets and properties forfeited to the federal government.

L. Under Part III of the MLPA, Section 20 vests exclusive jurisdiction on the Federal High Court to try money laundering and terrorism financing offences. The section also states that stay of proceedings cannot be entertained in money laundering cases.

M. Section 21 of the MLPA vests in the designated officer to the relevant Ministry, Agency or commission as defined, the power to demand, obtain and inspect the books and records of the Financial Institution or Designated Non-Financial Institution to confirm compliance with the provision of the Act.

N. Section 22 of the MLPA provides for a liability for the obstruction of the EFCC or authorized officers in the exercise of their powers. Punishment for such offence is at least 2 years imprisonment for individuals and one million naira (N1,000,000.00) for corporate bodies or financial institutions.

O. Section 23 of the MLPA gives the Attorney-General of the Federation power to make rules, guidelines and regulations for the enforcement of the MLPA. The regulation includes procedure for freezing, unfreezing and providing access to frozen funds or other assets.

7. THE GLOBAL ROLE OF LAWYERS IN THE FIGHT AGAINST MONEY LAUNDERING

The FATF recommends that Lawyers, notaries, other independent legal professionals and accountants (Designated Non-Financial Businesses and Professions (DNFBPs), shall have responsibilities stated in

[97] http://www.offshore-specialists.com/product/numbered-bank-account/
[98] 25 MLPA 2011(as amended)
[99] Section 11(3) MLPA

recommendation 10, 11, 12, 15, 18, 19, 20 and 21[100] when they prepare for or carry out transactions for their client concerning the following activities:

- "buying and selling of real estate;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organisation of contributions for the creation, operation or management of companies;
- creation, operation or management of legal persons or arrangements, and buying and selling of business entities. "[101]

These responsibilities include:

A. FATF recommendation 10 provides that DNFBPs should be required to verify the identity of a customer and beneficial owner of a business when:
   a. establishing business relations;
   b. carrying out occasional transactions: (i) above the applicable designated threshold[102]; or (ii) that are wire transfers in stated instances; (iii) there is a suspicion of money laundering or terrorist financing; or (iv) the DNFBPs has doubts about the veracity or adequacy of previously obtained customer identification data.

   It recommends that each country may determine how it imposes specific customer due diligence (CDD) obligations, and the CDD measures to be taken may include:

   a. Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information.
   b. Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner, such that the DNFBP is satisfied that it knows who the beneficial owner is.
   c. Understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship.
   d. Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of a relationship to ensure that the transactions being conducted are consistent with the DNFBP's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.

B. Recommendation 11 provides that DNFBPs should be required to maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests from the competent authorities. Such records will include information gotten from recommendation 10 and the records must be sufficient to provide, if necessary, evidence for prosecution of criminal activity.

C. Recommendation 12 provides that DNFBPs should be required, in addition to performing normal customer due diligence measures, to:
   a. have appropriate risk-management systems to determine whether the customer or the beneficial owner is a politically exposed person(PEP) or a family member or close associate of a PEP;
   b. obtain senior management approval for establishing (or continuing, for existing customers) such business relationships with a PEP;
   c. take reasonable measures to establish the source of wealth and source of funds; and
   d. conduct enhanced ongoing monitoring of the business relationship.

[100] See recommendation 22 and 23 of the FATF (2012), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, updated October 2016, FATF, Paris, France, Accessed on 18/05/17 from www.fatf-gafi.org/recommendations.html
[101] Recommendation 22(d) of the FATF Recommendations
[102] USD/EUR 15,000

D. Recommendation 15 provides that DNFBPs should identify and assess the money laundering or terrorist financing risks that may arise in relation to
   a. the development of new products and new business practices, including new delivery mechanisms, and
   b. the use of new or developing technologies for both new and pre-existing products.

E. Recommendation 18 provides that DNFBPs should be required to implement programmes against money laundering and terrorist financing.

F. Recommendations 19 provides that DNFBPs should be required to apply enhanced due diligence measures to business relationships and transactions with natural and legal persons from high risk countries, That is countries that do not have adequate AML/CFT systems.

G. Recommendation 20 makes it a duty for DNFBPs to report promptly to the financial intelligence unit (FIU) if it suspects or has reasonable grounds to suspect that funds used by its customers are the proceeds of a criminal activity or are related to terrorist financing.

H. Recommendation 21 provides that DNFBPs and its officers should be:
   a. protected by law from criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred; and
   b. prohibited by law from disclosing ("tipping-off") the fact that a suspicious transaction report (STR) or related information is being filed with the FIU.

Many jurisdictions have adopted the FATF 40 recommendations in full[103]. One Hundred and thirteen (113) countries have implemented these recommendations on the duties and obligations of lawyers, thirty-five (35) countries have partially implemented these recommendations and have indirectly given these duties to lawyers[104]. Seven (7) countries have failed to implement these recommendations and fifty (50) countries currently have no data showing whether they have implemented these recommendations or not[105].

The European Union Fourth Anti-Money Laundering Directive[106] in preamble 9 provides thus:

> Legal professionals, as defined by the Member States, should be subject to this Directive when participating in financial or corporate transactions, including when providing tax advice, where there is the greatest risk of the services of those legal professionals being misused for the purpose of laundering the proceeds of criminal activity or for the purpose of terrorist financing. There should, however, be exemptions from any obligation to report information obtained before, during or after judicial proceedings, or in the course of ascertaining the legal position of a client. Therefore, legal advice should remain subject to the obligation of professional secrecy, except where the legal professional is taking part in money laundering or terrorist financing, the legal advice is provided for the purposes of

[103] See International Bar Association(IBA) Anti-Money Laundering Forum's Lawyers and Money Laundering FATF Recommendations on Lawyers accessed on 23/05/17 from https://www.anti-moneylaundering.org/Lawyers_and_Money_Laundering.aspx#

[104] See International Bar Association(IBA) Anti-Money Laundering Forum's Global Chart accessed on 23/05/17 from https://www.anti-moneylaundering.org/globalchart.aspx

[105] See International Bar Association(IBA) Anti-Money Laundering Forum's Global Chart accessed on 23/05/17 from https://www.anti-moneylaundering.org/globalchart.aspx

[106] Directive **(EU) 2015/849** enacted on 25 June 2015 to be fully implemented by 26 June 2017. Preamble 4 of the directive says that the purpose of this directive is to align EU laws with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by the FATF in February 2012 (FATF Recommendations). See Official Journal of the European Union accessed on 18/05/17 from http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:JOL_2015_141_R_0003&from=EN

money laundering or terrorist financing, or the legal professional knows that the client is seeking legal advice for the purposes of money laundering or terrorist financing.[107]

In United Kingdom, Money Laundering Regulations 2007 (MLR2007); Proceeds of Crime Act 2002, as amended (POCA); and Terrorism Act 2000 are legislation on money laundering. Regulation 5, 7 and 8 of the 2007 Money Laundering Regulations, enforces Recommendation 10 of the FATF recommendations. Regulation 14 of the 2007 Money Laundering Regulations implements recommendations 12 of the FATF Recommendation and provides for enhanced due diligence by lawyers where the client has not been physically present for identification purposes or any other situation which by its nature presents a heightened risk of money laundering or terrorist financing.

Section 330 POCA makes it an offence for a lawyer to fail to report knowledge or suspicion, based on objective evidence, of money laundering. The only possible defence for a lawyer in this instance is if the information came in a 'privileged circumstance' or where there is a reasonable excuse for failure to report. "Privileged circumstances" covers information communicated to a lawyer by a client in connection with the lawyer providing legal advice, by a person seeking legal advice, or in connection with legal proceedings or contemplated legal proceedings[108]. Communications cannot be subject to legal professional privilege if they are created with the intention of furthering a criminal purpose[109]. It is irrelevant whether the intention is that of the lawyer, client, or any other third party.

According to section 333A of POCA, it is an offence for a person who knows or suspects that an authorised disclosure has been made to tip off the customer or to make any disclosure likely to prejudice any investigation into the matter.

The UK's financial intelligence unit lies within the National Crime Agency (NCA)[110]. The NCA is a national law enforcement agency in the UK[111]. However, the anti-money laundering regulator(s) for lawyers in England & Wales is Solicitors Regulation Authority, the regulatory body of the Law Society of England & Wales[112]. For Lawyers in Scotland, it is the Law Society of Scotland. Solicitors Regulation Authority enforces the obligations in England and Wales while Law Society of Scotland enforces the obligations in Scotland. The Regulators issued the following regulations to regulate lawyers:

- The Solicitors Regulation Authority Code of Conduct 2011.
- The UK Law Society maintains an anti-money laundering practice note (Practice Note) to assist solicitors in complying with UK anti-money laundering laws. It was last updated on 22 October 2013.[113]
- The Law Society of Scotland has adopted the Revised Guidance Notes of the Joint Money Laundering Steering Group.[114]

In USA lawyers have no specific legal anti-money laundering obligation or duties. The Bank Secrecy Act[115] and the International Money Laundering Abatement and Financial Terrorism Act of 2001 (US Patriot Act) gives lawyers no legal anti-money laundering obligations. However, criminal laws prohibiting the laundering of money or terrorist financing apply to all individuals, including lawyers.

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[107] http://www.acams.org/aml-resources/eu-fourth-aml-directive/
[108] See 330(6) POCA
[109] See 330(6) POCA
[110] See http://www.nationalcrimeagency.gov.uk/crime-threats/money-laundering accessed on 23/05/17
[111] See http://www.nationalcrimeagency.gov.uk/about-us accessed on 23/05/17
[112] See IBA Anti-Money Laundering Forum accessed on 23/05/17 from https://www.anti-moneylaundering.org/Introduction_to_AML.aspx
[113] http://www.lawsociety.org.uk/support-services/advice/practice-notes/aml/ accessed on 23/05/17
[114] See Guidance related to rule B6.23: Anti-Money Laundering (Subject to final ministerial approval of additional material) the LSS has decided to adopt the Law Society of England & Wales (LSEW) AML Practice Note. https://www.lawscot.org.uk/rules-and-guidance/section-b/rule-b6-accounts,-accounts-certificates,-professional-practice-guarantee-fund/guidance/b623-anti-money-laundering/ accessed on 23/05/17
[115] The Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act of 1970 (31 U.S.C. 5311 et seq., codified in 31 U.S.C. §§ 5311 accessed on https://www.ffiec.gov/bsa_aml_infobase/documents/fdic_docs/bsa_manual.pdf accessed on 23/05/17

Regulations issued by the Office of Foreign Assets Control (OFAC)[116] in US prohibits all U.S. persons (individuals and entities) from engaging in transactions with certain specified persons (terrorists, drug traffickers and certain former foreign leaders) and countries (Cuba, Syria, Iran).

Because of the lack of specific anti-money laundering legislation applicable to lawyers, the American Bar Association (ABA) and other bar and specialty law associations developed and adopted the Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing (Good Practices Guidance)[117] in 2010. The Good Practices Guidance lays out a risk-based approach based on FATF's Recommendations. Good Practices Guidance recommend that lawyers first perform a standard level of due diligence on all clients before establishing relationship. The ABA believes that the Good Practices Guidance would encourage lawyers to be more vigilant about combating money laundering; and therefore make gatekeeper legislation regulating the legal profession unnecessary[118].

Lawyers are also subject to ethical considerations contained in the ABA's Model Rules of Professional Conduct (Model Rules)[119]. Under the Model Rules, lawyers may withdraw from representation and/or disclose confidential information when a client uses the lawyer's advice in furtherance of a crime, including a financial crime[120]. According to the Model Rule 1.6(b)(2), attorneys *may* reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another. Attorneys may also reveal confidential information to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services.[121]

In Canada, Court of Appeal for British Columbia in *Federation of Law Societies of Canada v Canada (Attorney General)*[122]affirmed the decision of the Supreme Court of British Columbia[123]. The decision ordered that "legal counsel or legal firm" should be struck out from list of businesses required to comply with part one of Proceeds of Crime (Money Laundering) and Terrorist Financing Act[124] (PCMLTFA). The provisions in compliance with the FATF recommendation on reporting and customer due diligence provided for the reporting regime for lawyers in Canada under the anti-money laundering regime. The court held that the provisions are unconstitutional because of the following:

a. Impugn the liberty interests of both lawyers and clients in a manner which does not accord with principles of fundamental justice. The court held that "It is well settled law that solicitor-client privilege is a principle of fundamental justice"[125].
b. Infringe on the principle of independence of the Bar.

In 2004, the Federation of Law Societies of Canada (Federation) adopted a model "No Cash Rule" restricting lawyers from receiving cash in amounts over $7,500[126]. The new "know-your-client" model

[116] See U.S. Department of the Treasury website accessed on 23/05/17 from https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx
[117] Retrieved from https://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_taskforce_gtfgoodpracticesguidance.authcheckdam.pdf on 23/05/17
[118] See IBA Anti-Money Laundering Forum accessed on 23/05/17 from https://www.anti-moneylaundering.org/Introduction_to_AML.aspx
[119] Accessed from http://www.americanbar.org/resources_for_lawyers/model-rules-of-professional-conduct.html on 23/05/17
[120] Model Rule 1.16(b)(3)Accessed from http://www.americanbar.org/resources_for_lawyers/model-rules-of-professional-conduct.html on 23/05/17
[121] Model Rule 1.6(b)(3)
[122] 2013 BCCA 147 (CanLII), <http://canlii.ca/t/fwvfk>, retrieved on 2017-05-23
[123] *2011 BCSC 1270 (CanLII)*
[124] 2000, c. 17 accessed on 23/05/17 from http://www.fintrac-canafe.gc.ca/act-loi/1-eng.asp
[125] 2013 BCCA 147 (CanLII), <http://canlii.ca/t/fwvfk>, retrieved on 2017-05-23
[126] See the Federation of Law Societies of Canada news archive accessed from https://flsc.ca/archive/federation-news/2011/ on 23/05/17

rule was also adopted by the Federation in March 2008[127]. The new rule describes the measures lawyers and Quebec notaries must take, and the records they must keep, to verify a client's identity. The purpose of this rule is to help lawyers determine whether clients are attempting to use them as an intermediary for money laundering and terrorist financing.

The International Bar Association (IBA) has taken steps towards negotiation with FATF to a worldwide legal regime for lawyers that will be acceptable to all or most jurisdiction in combating money laundering[128]. The IBA suggests that the structure of any anti-money laundering obligations covering lawyers cannot simply take the form of a simple "tick box" procedural list[129]. The IBA aims to adopt a risk-based approach to any anti-money laundering obligations imposed[130]. By applying this approach, anti-money laundering and counter-terrorist financing measures adopted by jurisdictions would be proportionate to the risks identified within particular areas. This approach would allow valuable resources, allocated to combat money laundering and terrorist financing, to be distributed in a more cost effective manner. The highest attention and resources would be invested in areas where the threat of money laundering or terrorist financing is at its most prominent[131].

The active involvement and dialogue by FATF with the IBA's Anti-Money Laundering Legislation Implementation Group, in consultation with other lawyers, including members of the American Bar Association and The Council of Bars and Law Societies of Europe led to the formulation of a risk based approach to fight money laundering[132]. The FATF released the Risk Based Approach Guidance for Legal Professionals 2008[133]. According to the Guidance, example of high-risk transactions may include transactions with Politically Exposed Persons. In such instances, the customer Due Diligence will be increased by a legal professional in carrying out the transactions for his client.

8. THE ROLE OF LAWYERS IN THE FIGHT AGAINST MONEY LAUNDERING IN NIGERIA.

Section 25 of the Money Laundering (Prohibition) Act 2011 defines Designated Non-Financial Institutions (DNFI) to include lawyers.

DNFIs have the following duties according to the Money Laundering (Prohibition) Act 2011:

A. Duty to identify clients(recommendation 10 FATF Recommendation

Section 3 of the Money Laundering (Prohibition) Act 2011 provides that DNFIs have a duty to identify customers before entering into a business relationship and update all relevant information during the course of such relationship by undertaking customer due diligence measures. Section 3(6) of the Money Laundering (Prohibition) Act 2011 provides further that the DNFI may require identification of a customer even if the amount transacted with is below the stated threshold if the DNFI suspects that the amount involved in a transaction is the proceeds of a crime or any illegal act. Where the customer is a Politically Exposed Person, the DNFI must take additional risk management steps and obtain senior management permission before dealing with the Politically Exposed person[134].

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[127] See the Federation of Law Societies of Canada news archive accessed from https://flsc.ca/archive/federation-news/2011/ on 23/05/17

[128] See IBA Anti-Money Laundering Forum accessed on 23/05/17 from https://www.anti-moneylaundering.org/Introduction_to_AML.aspx

[129] See IBA Anti-Money Laundering Forum accessed on 23/05/17 from https://www.anti-moneylaundering.org/Introduction_to_AML.aspx

[130] See IBA Anti-Money Laundering Forum accessed on 23/05/17 from https://www.anti-moneylaundering.org/Introduction_to_AML.aspx

[131] See IBA Anti-Money Laundering Forum accessed on 23/05/17 from https://www.anti-moneylaundering.org/Introduction_to_AML.aspx

[132] See IBA Anti-Money Laundering Forum accessed on 23/05/17 from https://www.anti-moneylaundering.org/Introduction_to_AML.aspx

[133] on 23 October 2008

[134] Section 3(7) MLPA 2011 as amended. See Recommendation 12 FATF

Section 5 of the Money Laundering (Prohibition) Act 2011 provides that where a transaction exceeds the value of US$1,000 or its equivalent, the DNFI must ensure that the customer fills out a standard data form and confirms his/her identity by presenting his/her international passport, driving licence, national identity card or other document containing his/her photo and personal details, as may be prescribed by the Ministry of Commerce. DFNIs that fail to comply with the requirement of the MLPA with regard to identification and submission of returns on transaction commit an offence and can be liable to a fine upon conviction.

B. Duty to scrutinize

Section 3(1)(b) of the Money Laundering (Prohibition) Act 2011 provides that DNFIs are obliged to scrutinize all ongoing transactions to ensure that the customer's transaction is consistent with the business and risk profile.

C. Duty to record

By virtue of Section 5 of the Money Laundering (Prohibition) Act 2011, DNFIs whose business involves cash transactions must submit to the Minister a declaration of their activities. The section also provides that a DNFI must record all cash transactions in a chronological order indicating each customer's surname, fore names, and address in a register numbered and forwarded to the Ministry of Commerce. Sections 5 & 7 of the Money Laundering (Prohibition) Act 2011 provide that records must be preserved for at least five (5) years.

D. Duty to investigate and report

Section 10 of the Money Laundering (Prohibition) Act 2011 provides that DNFIs must report to the EFCC within 7 days any single lodgement or transfer of N5,000,000.00 (Five Million Naira) or above by an individual or N10,000,000.00 or above in the case of a body corporate.

E. Duty to create awareness amongst employees

DNFIs have a duty to develop programmes for their employees that would help create awareness and combat the laundering of proceeds of crimes or other illegal acts[135]. The Central Bank of Nigeria may impose sanctions on DNFIs that fail to develop such programmes.[136]

It should be noted that the Federal High Court has however removed 'Legal Practitioners' from the list of Designated Non-Financial institutions in *Registered Trustees Nigerian Bar Association v Attorney General of the Federation & Central Bank of Nigeria(CBN).*[137]

In the above stated case, the Nigerian Bar Association (NBA) through its registered trustees sued the Attorney General of the Federation and the CBN[138] challenging the designation of legal practitioners as Designated Non-Financial Institutions in section 25 of the MLPA with duty to report "customer's" transactions to the Minister of Commerce under section 5 MLPA.

The NBA Challenged the provisions on the ground that the provision breached the constitutional right to privacy enjoyed by Clients seeking legal services, and the lawyer/ client privilege and confidentiality guaranteed by section 192 of the Evidence Act.

[135] Section 9 MLPA 2011 as amended. Recommendation 18 FATF
[136] Section 9(2) MLPA 2011 as amended.
[137] (Unreported) suit no. FHC/ABJ/CS/173/2013 delivered on 16/5/2014, coram Kolawole J.
[138] *Registered Trustees NBA v. AG, Federation & Ors. FHC/ABJ/CS/173/2013, 16/5/2014, coram Kolawole*

The case of the NBA as plaintiff was that legal practitioners are sufficiently regulated by the Legal Practitioner's Act and that the provisions of the Legal Practitioners Act (LPA)[139], which lists regulatory bodies and persons performing one form of oversight function and exercising disciplinary jurisdiction over legal practitioners, must take precedence over the general provision of the MLP Act. Some of such regulatory bodies and persons listed include the Bar Council, the Chief Justice of Nigeria, the Appeal Committee of the Body of Benchers and the Legal Practitioners Disciplinary Committee.

The NBA explained that section 192 of the Evidence Act, a specific provision protecting a lawyer and his client's communication, should prevail over section 5 of the MLP Act which is a general legislation for categories of persons referred to as DNFI listed in section 25 of the MLP Act. The NBA argued that the privileged communication and confidentiality between a lawyer and his client is protected under section 37 of the Constitution.

The NBA contended that although section 45(1) of the Constitution provides that the provisions of certain sections shall not invalidate any law reasonably justifiable in a democratic society, section 45(1) of the Nigerian Constitution cannot validate section 5 and 25 of the MLP Act. This is because section 5 and 25 of MLP Act breached the confidentiality and privilege shared between a lawyer and his client.

The Attorney-General of the Federation (AGF) as first Defendant argued that the MLP Act was in consonance with the Nigerian Constitution because it was enacted in line with section 45(1) of the Constitution, to prohibit the financing of terrorism, the laundering of proceeds of crime, or an illegal act. The AGF contended that the Evidence Act and MLP Act were both of general application, and that MLP Act, created an exception to the general protection or privilege conferred by section 192 of the Evidence Act. The AGF further contended that section 5 (1) of the Money Laundering Act only applied to situations when a lawyer's relationship with his client involved a cash transaction in excess of U.S. $1, 000 and thus, did not apply to all lawyers.

The CBN as second defendants made similar arguments with the AGF. The CBN also argued that the SCUML checks the compliance by DNFI with anti-money laundering laws and for combating the financing of terrorism.

In its judgement, the court agreed that the MLP Act was a general legislative provision but the court disagreed with the classification of lawyers in the same category with car dealers, estate agents, etc, to be regulated by SCUML's protocol under section 5 and 25 of the MLP Act. The court stated that the elaborate legal regime regulating legal practitioners was non-existent in these other trades.

The court found that section 192 of the Evidence Act imposes an obligation on legal practitioners upon a suspicion of crime, which is similar to the provisions of section 5 of the MLP Act. The Court held that the regulatory and oversight function of SCML is alien to the LPA. The court agreed that regulation by SCML violates elaborate statutory procedure already provided for legal practitioners under the LPA and the Rules of Professional Conduct (RPC).

The Court agreed with the defendants that sections 5 and 25 of the MLP Act is valid by virtue of section 45 of the Nigerian Constitution. The court however stated that the sections which impose additional oversight/regulatory body on the practice of law in Nigeria, contradicted with Sections 10(1), 11, 12(1), 13 and 21 of the LPA; and Rules 19(1), (2), and (3) of the RPC. Therefore, the court held that "Section 25 of MLP Act, shall be read so as to have "Legal Practitioners" deleted as one of the DNFIs listed therein"[140]. The Federal Minister of Commerce (now Minister of Trade and Investment) was also held to have no power to make rules regulating or guiding the operations of legal practice and legal practitioners in Nigeria.

[139] The principal Act regulating admission to practice law in Nigeria

[140] *Rgd. Trustees NBA v. AG, Federation & Ors. FHC/ABJ/CS/173/2013, 16/5/2014, coram Kolawole*

The argument and reasoning in *Registered Trustees of NBA v. AG, Federation & Anor*[141] is the same reasoning that was used to exempt lawyers from reporting obligations in *Federation of Law Societies of Canada v Canada (Attorney General)*[142]decided by the Canadian Appeal Court.

This decision means that the current regime of anti-money laundering obligations for lawyers in Nigeria is as obtainable in the United States of America. A lawyer in Nigeria has no obligation to report a suspicious transaction but may break the client's confidence to report or prevent the commission of a crime[143]. A lawyer in Nigeria can also withdraw from an employment where the client insists on an unjust or immoral course in the conduct of his case[144].

The Federation of Law Societies of Canada (Federation) has tried to self-regulate itself through the adoption of the "No Cash Rule" and the "know-your-client" model rule. In United States of America, American Bar Association (ABA) and other bar and specialty law associations have also developed and adopted the Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing (Good Practices Guidance) in 2010.

Unlike their American and Canadian counterparts however, The Nigerian Bar Association has not adopted any guidance or directive to combat money laundering. The Nigerian Bar Association at its National Executive Committee [NEC] Meeting[145] resolved that the NBA "shall put in place anti-money laundering and anti-terrorism financing guidelines to be observed by law firms and lawyers in Nigeria which shall be known as The NBA Anti-Money Laundering and Anti-Terrorism Financing Guidelines."[146]

The NBA should make use of the recently inaugurated committee for the review of the legal profession in Nigeria[147] to achieve this aim to avoid external regulation of the legal profession.

9. THE ECONOMIC AND FINANCIAL CRIMES COMMISSION (ESTABLISHMENT) ACT

Regulations 26, 27 and 28 of the FATF Recommendations[148] provides for the establishment of a Commission that will act as supervisor and regulator for the prevention, dictation and prosecution of money laundering. Recommendation 4 of the FATF Recommendations recommended that countries should make laws that will give the commission established to coordinate the fight against money laundering power to seize properties even without conviction.

Following this recommendations, Nigeria enacted the Economic and Financial Crimes Commission (EFCC) Act. The EFCC Act made the EFCC the overall coordinating agency for all economic crimes in Nigeria, with powers to prevent money laundering, enforce the law on money laundering and recover assets laundered[149]. The EFCC is responsible for the investigation of all financial crimes, including money laundering, bribery, fraud, drug and human trafficking, illegal arms dealing, smuggling, oil bunkering, illegal mining, tax evasion, counterfeiting, piracy, etc.[150]

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[141] *Rgd. Trustees NBA v. AG, Federation & Ors. FHC/ABJ/CS/173/2013, 16/5/2014, coram Kolawole*
[142] 2013 BCCA 147 (CanLII), <http://canlii.ca/t/fwvfk>, accessed on 2017-05-23
[143] Rule 19(3) (c) Rules of Professional Conduct 2007
[144] Rule 22(2) (b) Rules of Professional Conduct 2007
[145] Held at The Crest Hotels & Garden, Jonah Jang Way (formerly old Airport Road), Jos, Plateau State, on Thursday 18th of February, 2016. Accessed on 23/05/17 from http://www.nigerianbar.org.ng/index.php/news1/165-communique-issued-at-the-end-of-the-meeting-of-the-national-executive-committee
[146] Communique Issued at the End of the Meeting of the National Executive Committee issued at the end of the meeting paragraph 2.2.
[147] See http://www.lawyard.ng/nba-inaugurates-legal-profession-review-committee/ accessed on 18/05/17
[148] FATF (2012), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, updated October 2016, FATF, Paris, France, Accessed on 18/05/17 from www.fatf-gafi.org/recommendations.html
[149] S. 6 EFCC Act
[150] S. 7 EFCC Act, N. Ribadu *Show Me the Money: Leveraging Anti–Money Laundering Tools to Fight Corruption in Nigeria, An Insider Story* (Centre For Global Development, Washington DC 2010)

The commission is also authorized to apply for forfeiture of assets, seize assets and require banks to freeze bank accounts and share all required information with the commission[151]. It may initiate investigations into the financial affairs of anyone suspected to enjoy a lifestyle or own assets that seem out of line with their legitimate income[152]. The commission, after authorization from the High Court, may place bank accounts under surveillance, tap phone lines, and obtain access to computer systems to carry out its investigations. All EFCC investigators have the powers, authorities, and privileges granted to the police.

In *Amaechi v INEC & 2 Ors*[153], the Supreme Court, per Oguntade JSC held - "The EFCC is a statutory body created under the laws of Nigeria. Its duties include the investigation and prosecution of a class of criminal offences. In essence; once its investigation has shown prima facie that a person has committed a criminal offence, the duty of EFCC is to have such offender prosecuted in a court of law..."

The legality of the provisions in the EFCC Act have been judicially tested in certain instances. In *Jolly Tevoru Nyame v F.R.N*[154] it was argued that the EFCC cannot prosecute financial offences for issues within the exclusive powers of a state or in instances where the state's funds are in issue. The Supreme Court, per Adekeye JSC, cleared this argument and states:-

> The Federal Government created the Economic and Financial Crimes Commission by an Act of the National Assembly in 2004. Section 6 of the Act provides that the Economic and Financial Crimes Commission shall be responsible for- (1) Enforcement and due administration of the provisions of the Act. (2) The investigation of all financial crimes including advanced fee fraud, money laundering, counterfeiting, illegal charge transfers future market fraud, fraudulent encashment of negotiating instruments, computer credit card fraud, contract scam etc..
> The claim that the money exclusively belongs to Taraba State and that the State has exclusive claim on it to the exclusion of any other authority by virtue of section 120 of the 1999 Constitution can not stand in the face of the pronouncement of this Court in the case of A.G., ONDO STATE v. A.G., FEDERATION (2002) 9 NWLR [pt.772] page 222 at page 308 where this Court stated as follows: - It has been pointed out that the provisions of the Act impinge on the cardinal principle of federalism, namely, the requirement of equality and autonomy of the State Government and non-inter-ference with the functions of State Government. This is true, but as seen above, both the Federal and state Government share the power to legislate in order to abolish corruption and abuse of office. If this is a breach of the principle of Federalism, then, I am afraid, it is the constitution that makes the provisions that have facilitated the breach of the principle. As far as the aberration is supported by the provision of the constitution, I think it can not rightly be argued that an illegality has occurred by the failure of the constitution to adhere to the cardinal principles which are at best ideals to follow or guidance for an ideal situation. And let me add: each country enacts its constitution and statues according to its peculiar circumstances. Section 15 (5) of the Constitution is intended to instigate the Federal and State Governments to embark on, and wage, total war on corruption that has become endemic in this country. As Shakespeare would put it, desperate malady deserves desperate remedy. I am sure, this is what has informed the enactment of this constitutional provision that is apparently an aberration on the ideals of federalism

The Supreme Court in *Orji Uzor Kalu v Federal Republic of Nigeria & Ors*[155] has recently affirmed this earlier decision. The court said:

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[151] Part V EFCC Act
[152] N. Ribadu *Show Me the Money: Leveraging Anti–Money Laundering Tools to Fight Corruption in Nigeria, An Insider Story* (Centre For Global Development, Washington DC 2010)
[153] (2008) 1SCM 26
[154] (2010) 4SCM per Adekeye JSC 99-100
[155] On Friday, the 18th day of March, 2016 SC. 215/2012

"Sections 6 (m) and 46 of the Economic and Financial Crimes Commission (Establishment) Act vest in EFCC the function and duty of investigating and prosecuting persons reasonably suspected to have committed economic and financial crimes."

The most relevant issue with respect to the powers of EFCC in this paper however is the power of the EFCC to apply for the interim forfeiture of assets under sections 28 and 29 of the EFCC Act.[156]

10. INTERIM FORFEITURE OF ASSETS

FATF Recommendation 4 provides thus:

> Countries should consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction (non-conviction based confiscation), or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law.[157]

By virtue of the provisions of Section 43 and 44(1) of the Constitution, every citizen of Nigeria has the right to acquire immovable property and no moveable or immovable property shall be taken compulsorily except in the manner and for purposes prescribed by law. The exceptions to this constitutional provisions are as contained in subsection 2(a)-(m) of Section 44 of the 1999 Constitution

Section 44(2) of the Constitution provides that "Nothing in subsection (1) of this section shall be construed as affecting any general law for the imposition of penalties or forfeitures for the breach of any law, whether under civil process or after conviction for an offence"

The literal interpretation of this constitutional provision is that in a criminal trial, forfeiture can only be ordered after conviction. The court however has the inherent powers to make interim orders for the protection of the res or subject matter of litigation.[158]This power of the court is an equitable power exercised at the discretion of the court.[159]

In addition, this means that a law competently made by a legislative body in Nigeria will not be unconstitutional if it deviates from section 44(1), as long as it is a general law for the imposition of penalties or forfeitures for the breach of any law. Such legislation is however interpreted strictly, because it tends to deprive individuals rights conferred by the Constitution. According to the Court of Appeal in *Bendex Engineering Corporation & Anor v Efficient Petroleum Nigeria Ltd*[160], "Particularly instructive is the principle that, any legislative provision which seeks to deprive the citizenry of his rights, be they personal or proprietary rights, must be interpreted fortissime contra-preferentes, i.e. strict construction against the person relying on the power of deprivation"

In compliance with the FATF recommendation, the EFCC Act provides for forfeiture after conviction[161] and forfeiture to the Federal Government[162]. Sections 28, 29 and 30 in part V of the EFCC Act and Section 36 of the NDLEA Act provide for interim forfeiture of assets.

SECTION 36(a) and (b) of the NDLEA ACT[163] provides thus:-

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[156] Section 36 of the National Drug Law Enforcement Agency (NDLEA) Act gives the NDLEA similar powers.
[157] FATF (2012), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, updated October 2016, FATF, Paris, France, Accessed on 18/05/17 from www.fatf-gafi.org/recommendations.html
[158] *Azuh v UBN PLC* (2014) LPELR-22913(SC) p.30, paras B-G. see also section 6(6)(a) of the Constitution
[159] *Aliyu & Ors v Intercontinental Bank Plc & Anor* (2013)LPELR-20716 (CA)
[160] (2000) LPELR-10143(CA)
[161] Sec. 20 EFCC Act
[162] Sec. 21 EFCC Act
[163] CAP. N30, Laws of the Federation of Nigeria, 2004,

> Where (a) the assets or properties of any person arrested for an offence under this Act have been seized; or (b) any asset or property has been seized by the Agency under this Act, the Agency shall cause an application to be made to the Federal High Court for an interim order forfeiting the property concerned to the Federal Government and the Federal High Court shall, if satisfied that there is prima facie evidence that the property concerned is liable to forfeiture make an interim order forfeiting the property to the Federal Government.

Sections 28, 29 and 30 of the EFCC Act provide thus:

> 28. Where a person is arrested for an offence under this Act, the Commission shall immediately trace and attach all the assets and properties of the person acquired as a result of such economic or financial crime and shall thereafter cause to be obtained an interim attachment order from the Court.
>
> 29. Where- (a) the assets or properties of any person arrested for an offence under this Act has been seized ; or (b) any assets or property has been seized by the Commission under this Act, the Commission shall cause an ex-parte application to be made to the Court for an interim order forfeiting the property concerned to the Federal Government and the Court shall, if satisfied that there is prima facie evidence that the property concerned is liable to forfeiture, make an interim order forfeiting the property to the Federal Government.
>
> 30. Where a person is convicted of an offence under this Act, the Commission or any authorised officer shall apply to the Court for the order of confiscation and forfeiture of the convicted person's assets and properties acquired or obtained as a result of the crime subject to an interim order under this Act.

The provisions of these sections are meant to protect the proceeds of crime pending the decision of the court to avoid any tampering with the property. In *Francis Atuche vs. Chairman, Economic & Financial Crimes Commission* [164]the court explained thus:

> The interim seizure allowed by section 25 and 26 of the EFCC Act is to prevent the dissipation or disposing of assets reasonably suspected to be proceeds of economic/financial crime before the determination of the criminal trial against an accused implicated in the crime. Although section 44 (2)(b) of the 1999 Constitution, as amended, referred to by the appellant states that the impossibility of forfeitures for breach of any law should be enforced after conviction for an offence, Section 44(2)(k) of the same constitution which comes after Section 44 (2) (c) thereof qualifies it that the temporary taking of possession of property for the purpose of examination, investigation or enquiry is proper and constitutional..

This power must however be exercised in line with the law and cannot be exercised arbitrarily. In *George Chigbu v Economic and Financial Crimes Commission & 3 Ors*[165], the court explained this when it said thus:

> I have carefully read the EFCC Act and no where can they exercise the power of forfeiture in an arbitrary manner as done in this case. Section 20 of the EFCC Act talks about forfeiture upon conviction. Sections 26 and 28 of the EFCC Act deals with interim forfeiture and this orders are always made upon a proper application which the High Court or Federal High considers on the merit exercising its powers under Section 19 of the EFCC Act.

[164] Ikyegh JCA in *Francis Atuche vs. Chairman, Economic & Financial Crimes Commission* (unreported) Appeal No: CA/L/830/10; delivered on the 28th of June, 2013.
[165] (Unreported) suit no: FCT/HC/M/5678/10 delivered on 31 May, 2011 by Hon. Justice A. I. Kutigi

The order of forfeiture under the EFCC Act is also granted at the discretion of the court and the court is not bound to make such order. In *Federal Republic Of Nigeria V Prince Abubakar Audu*[166] the court explained thus: "reliefs available to an applicant in an *ex parte* application made pursuant to any of the relevant provisions of sections 26, 27 (4), 28 and 29 of the EFCC Act, are not granted by the Court as a matter of course or just for the asking. As specifically provided in section 29 (b) of the Act, the Court must be satisfied that there is prima facie evidence that the property concerned is liable to forfeiture, before granting the interim Order sought"

The constitutionality of the provision for interim forfeiture of assets under the EFCC Act has been questioned several times. The gravamen of the objection to its constitutional status is the fact that the sections shut out the defendant in the determination of the order for interim forfeiture. The Court of Appeal has explained that Section 28 & 29 of the EFCC Act does not violate the constitutional provisions of fair hearing. The court in *Dangabar v FRN*[167] held thus:

> I have to point it out at this stage that the power conferred on the Court under Sections 28 and 29 of the EFCC Act is a special jurisdiction. It is a statutory power which is superior to the Rules of the lower Court. The interim order of attachment made by the lower Court pursuant to Sections 28 and 29 of the EFCC Act was not meant to be indefinite but only to last till the final determination of Charge No: FCT/CR/64/2012 preferred against the Appellant which is pending at the High Court of Federal Capital Territory, Abuja. Therefore I do not see how the ex-parte order granted by the lower Court violated the Appellant's right to fair hearing because the order was in the nature of a preservatory order. The order is in my view in the interest of both parties. This is because it will prevent dealing with the properties in such a way that could render the final Judgment of the Court nugatory. The order therefore operates until the determination of the civil rights and obligations of the parties with regard to the properties under consideration. See the case of:- -Nwude v. Chairman EFCC (2005) All FWLR Part 276 Page 740. I have said earlier that the order made by the lower Court is preservatory (sic). This is consistent with the intendment of Section 44(2)(k) of the Constitution of the Federal Republic of Nigeria 1999 which provides as follows:- "Nothing in Sub-section (1) of this Section shall be construed as affecting any general law; (k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or inquiry." The lower Court made the order in issue in order to preserve the properties suspected of being proceeds of crime in view of the fact that the Appellant may take steps to defeat the purpose of the relevant provisions of the EFCC Act which deals with forfeiture. In Chief Constable of Kent v. V. & another (1982) 3 All E.R. page 36 one of the issues for consideration was the extent of the Court's power to grant an interlocutory injunction to the police for the preservation of the proceeds of crime in the public interest. Lord Denning M. R. expounded the legal position as follows at page 41:- "I turn therefore to the crucial question in this case, has the Chief Constable sufficient interest to apply for an injunction? We considered the position of the Police in R v. Metropolitan Police Commissioner Ex-Parte Blackburn (1968) 1 All E. R. Page 760 at 763 where I said- "I hold it to be the duty the Commissioner of Police as it is of every Chief Constable to enforce the law of the land. He must take steps so as to post his men that crimes may be detected, and that honest citizens may go about their affairs in peace." To this I would now add that it is the duty once he knows or has reason to believe that goods have been stolen or unlawfully obtained to do his best to discover and apprehend the thief and to recover the goods. Corresponding to that duty, he has a right or at any rates an interest on behalf of the public to seize that goods and detain them pending the trial of the offender and to restore them in due course to the true owner. In pursuance of that duty and of that right and interest, he can apply to the magistrate for a search warrant and to a High Court for an injunction." In 7up

[166] (Unreported) Suit no CV/4071/13 MOTION NO: M/805/13 by His Lordship Hon. Justice O. A. Adeniyi of FCT High Court on 13 November 2013
[167] (2012) LPELR-19732(CA)

> Bottling Company Ltd. vs. Abiola & Sons Ltd (Supra) Page 257 Adio JSC at Page 277 stated as follows:- "In the present case, the motion ex-parte was for an interim injunction restraining the Appellants from doing certain things to the properties of the Respondents..... If as it was in this case, the learned trial Judge could not properly determine any contentious issue when the motion ex-parte for an order of interim injunction came before him, the question of giving an opportunity of being heard to the Appellant before determining the application could not arise and the Provisions of Section 33(1) of the Constitution were not applicable and were not violated." In his own contribution Uwais JSC (as he then was) elaborated at page 280 as follows:- "In both criminal and civil proceedings, there are certain steps to be taken which are incidental or preliminary to the substantive case such steps include motion for direction, interim or interlocutory injunctions..... It is in respect of such cases that provisions are made in Court Rules to enable the party affected or likely to be affected to make ex-parte applications. The orders to be made by the Court, unlike final decisions, are temporary in nature, so that they do not determine the "civil rights and obligations of the parties in the proceedings as envisaged by the Constitution." It is therefore my view that mere granting of an ex-parte application to preserve the properties of the Appellant pending the final determination of the criminal case filed against him cannot violate the Appellant's fundamental right to fair hearing. Another important thing to note is the final order which the Court can make after the trial of the appellant, if found guilty.

One may be tempted to argue that a defendant who an interim order of forfeiture against his assets has been made by a court can apply to the court for variation of such order or discharge of such order[168]. The court in *Dangabar v FRN*[169] held thus: "It must not be forgotten that the Appellant has failed to apply to the lower Court to discharge the ex parte order."
However, the Court of Appeal in *Felimon Enterprises Nigeria Limited v The Chairman, EFCC & Anor*[170] stated that "The provisions of the Economic and Financial Crimes Commission [Establishment) Act does not provide for the discharge and or setting aside of interim attachment of properties of culprits".

Even if this discharge were possible, the Supreme Court stated in *Kotoye v CBN*[171] that it will still be unconstitutional. It stated thus:

> The right to apply to vary or discharge an order of interlocutory injunction made ex parte lacks one of the attributes of fair hearing which I have enunciated above, to wit: equality of opportunity to both sides to the contest. It, therefore, falls short of the expectations of section 33(1) of the 1979 Constitution. This is why in this country an application to set aside an order made ex parte should arise only in the case of interim orders which should not cause serious detriment to the person affected and where there is a case of real urgency and it is impracticable to afford an antecedent hearing."[172]

Moreso, these decisions imply that the defendant has no say and cannot be heard with regards to the forfeited properties until the termination of his criminal trial. This is despite the fact that the court have stated that the defendant has the onus to prove that the assets being forfeited is not the proceed of the crime charged. In *Francis Atuche vs. Chairman, Economic & Financial Crimes Commission*[173], the Court of Appeal placed this burden on the defendant thus:

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[168] 'Yakubu asks court to set aside forfeiture order on seized N3bn' See *Punch News* of February 20, 2017 accessed on 18/05/17 from http://punchng.com/yakubu-asks-court-to-set-aside-forfeiture-order-on-seized-n3bn/ see also EFCC website accessed on 18/05/17 from http://www.efccnigeria.org/efcc/news/2356-efcc-asks-court-to-preserve-interim-forfeiture-order-on-malabu-oil ,
[169] (2012) LPELR-19732(CA)
[170] (2013) LPELR-20366(CA)
[171] (1989) LPELR-1707(SC)
[172] (1989) LPELR-1707(SC)
[173] Ikyegh JCA in *Francis Atuche vs. Chairman, Economic & Financial Crimes Commission* (unreported) Appeal No: CA/L/830/10; delivered on the 28th of June, 2013.

> What the EFCC is required to do under Section 27 of the Act is to investigate the declaration of assets linked to alleged economic/financial crimes and seize the affected assets leaving intact the assets acquired by honest means for interim attachment of the former only. The onus is thus on an accused to establish on the balance of probability that the assets submitted by the EFCC for interim order of attachment are not afflicted with economic/financial crimes and; upon such satisfactory account or explanation the innocent assets would be released to the accused. All that the respondents are bound to establish is the reasonable suspicion of linkage of the assets with the alleged commission of economic/financial crimes which the respondents were able to establish at a glance … I need to add that the tracing and attachment of assets by the respondents are based on either an arrest or search pursuant to section 25 (1)(a) of the EFCC Act… The said attachment of assets would therefore not appear to depend necessarily on the pendency of a charge or an amended charge.

One important question to ask therefore is how the defendant will discharge this onus on him without participating in the determination of the order for interim forfeiture of assets. In addition, it seems from this decision of the Court of Appeal that the court may order for interim forfeiture of assets pending determination of a criminal case that has not commenced. Since EFCC has the discretion to file a charge whenever it likes, this interpretation will mean hardship for the defendant. Abuse of these provisions has led to the current situation where there are several seizures of property without conviction[174].

This decision of the court in *Dangabar v FRN*[175]seems to deviate from laid down principles of law relating to fair hearing and interim orders. The Constitution is the main basis for the legality of any law and all laws must pass constitutional muster to be applicable.

11. REVIEW OF INTERIM FORFEITURE ORDER AGAINST CONSTITUTIONAL PROVISIONS

"Interim" means something made or done to occur "for an intervening time, temporary or provisional"[176]. Interlocutory on the other hand means, "Not constituting a final resolution of the whole controversy"[177] The court differentiated between an interim and interlocutory injunction in *Sabru Nigeria Ltd. v. Jezco Nigeria Ltd*.[178] thus:

> An interlocutory injunction such as the one sought for by the respondent has been defined as one made pending the final determination of pending suit. See Obeya Memorial Specialist Hospital v. Attorney-General of the Federation (1987) 3 NWLR (pt.60) at 325; Ojukwu v. Governor of Lagos State (1986) 3 NWLR (Pt.26) 39, Kotoye and C.B.N. (1989) 1 NWLR (Pt.98) 419 at 422. An Interim injunction on the other hand is one made or granted to last until a named or definite date or until further order or pending the hearing of motion on notice between the parties. See Kotoye v. C.B.N (1989) 1 NWLR (Pt.98) 419 at 422; Globe Fishing Industries v. Coker (1990) 7 NWLR (Pt.162) 265, (1990) 11 SCNJ 56 at 57"[179]

In *Dangabar v. FRN* [180] the Court of Appeal likened interim forfeiture under the EFCC Act to *mareva* injunction issued by courts by its inherent jurisdiction even under common law. The court held that such

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[174] See "Anti-graft war: Many seizures, few convictions" *Punch Newspaper* of May 29, 2017 accessed from http://punchng.com/anti-graft-war-many-seizures-few-convictions/ on 30/05/2017
[175] (2012) LPELR-19732(CA)
[176] A. G. Garner(ed) *Blacks Law Dictionary* (Thompson West Publishing Company 2004 eight Edition p. 832)
[177] A. G. Garner(ed) *Blacks Law Dictionary* (Thompson West Publishing Company 2004 eight Edition p. 832)
[178] (2000) LPELR-6082(CA)
[179] Per Umorem, J.C.A. (P. 8, paras. D-G)"
[180] (2012) LPELR-19732(CA)

injunctions can also be made against a third party "if it can be established that those assets are beneficially issued by a Defendant"[181].

In the locus classicus of *Nathaniel Adedamola Babalola Kotoye v Central Bank of Nigeria & Ors*[182] Nnaemeka-Agu, JSC, gave a detailed explanation as to the constitutionality of laws or rules of court concerning interim and interlocutory injunction. In differentiating between *ex parte* injunction and injunction on notice, his lordship had this to say:

> I think it is correct to say that "ex parte" in relation to injunctions is properly used in contradistinction to "on notice" - and both expressions, which are mutually exclusive, more strictly rather refer to the manner in which the application is brought and the order procured. An applicant for a non injunction may bring the application ex parte, that is without notice to the other side or with notice to the other side, is appropriate. By their very nature, injunctions granted on ex parte applications can only be properly interim in nature. They are made, without notice to the other side, to keep matters in status quo to a named date, usually not more than a few days, or until the Respondent can be put on notice… On the other hand, even though the word interlocutory comes from two Latin words "inter" (meaning between or among) and "locutus" (meaning spoken) and strictly means an injunction granted after due contest inter partes (sic), yet when used in contradistinction to "interim" in relation to injunctions, it means an injunction not only ordered after a full contest between the parties but also ordered to last "until the determination of the main suit"….
>
> I think Professor A. B. Kasunmu, S.A.N., with whom Chief F. R. A. Williams, S.A.N., agrees is right in his submission that once the application is one "until the final determination of the suit" as was prayed for by the appellant in this case it is an interlocutory injunction which ought not to be heard or granted ex parte - See Ojukwu Vs. Governor of Lagos State & anor. [1986] 3 NWLR (Pt. 26) 39 @ 44…
>
> Applications for interlocutory injunctions are properly made on notice to the other side to keep matters in status quo until the determination of the suit. Evidence is by affidavit. (emphasis supplied)[183]

In *Obidiagwu Onyesoh v Nze Christopher Nnebedum & Ors.*, Karibi-Whyte, JSC, observed thus: "The remedy by interlocutory injunction as its name implies is temporary. Being an equitable remedy it is also discretionary. Hence the central objective of the court granting an interlocutory injunction is to exercise its discretion to keep the parties in status quo pending the determination of the substantive action".[184](underline supplied for emphasis)

The Court of Appeal following the above decision stated thus in *Anisu v Osayomi & Ors*[185]: "My understanding of the above judgments is that an interlocutory injunction is an interim order which lasts till the suit on which it is predicated is disposed of." (Underline supplied for emphasis)
In *Felimon Enterprises Nigeria Limited v The Chairman, EFCC & Anor*[186] the Court of Appeal explained the word 'interim' in section 29 of EFCC Act. The court said this:

> An ordinary order of Interim Injunction ex-parte, which is normally made until a named date, or pronouncement of a decision on an interlocutory application for injunction, is in my view distinct from the use of the word "interim" in Section 28 of the EFCC Act. I agree with the argument of learned counsel for the 1st Respondent that the word "interim" as used in the provisions of the Act is not the same as used in an application for injunction, but an order of

[181] (2012) LPELR-19732(CA) Per Bada, J.C.A. (Pp. 20-21, Paras. E-D
[182] (1989) LPELR-1707(SC)
[183] (1989) LPELR-1707(SC)
[184] (1992) 3 NWLR (Pt.229) page 315 cited in *Anisu v Osayomi & Ors* (2000) LPELR-11974(CA)
[185] (2000) LPELR-11974(CA)Per Amaizu, J.C.A. (Pp. 11-12, paras. G-G)
[186] (2013) LPELR-20366(CA)

> attachment made until the end of the case, when the Court will either finalize the order of forfeiture, or finally discharge it.[187]

By the provisions of sections 28, 29 and 30 of the EFCC Act, the order for interim forfeiture of assets has the nature of an interlocutory injunction because it lasts until the determination of the case against the defendant. This means that in a situation where the trial of the defendant lasts for years, the defendant will suffer the disadvantage or punishment of not using his properties for years for a crime he is accused of committing. This seems to punish a defendant even when the presumption is that he is innocent.[188] For example, the case of *Ude Jones Udeogu V. Federal Republic of Nigeria & Ors*[189] was commenced by the EFCC in 2008 and up till 2017 the parties are still at the early stage of trial. If all the assets of the defendant in this case were seized, it would mean that the defendant would have been deprived of his properties for close to 10 years while being presumed innocent.

In *Federal Republic of Nigeria v Prince Abubakar Audu,*[190]the court said thus: "one cannot pretend to be oblivious of the prevailing trend that the trial of a Charge of the nature pending against the Applicant could last for an indeterminable period. Therefore, it is only fair, just, reasonable and proper to permit him to make a contribution, one way or the other, to an application that seeks to take away his rights for such an anticipated indeterminate period of time"
In *Deduwa v Okorodudu*[191] the court explained that the only bases of making an *exparte* order is that they are made for a limited period pending the hearing of motion on notice.

On the issue of fair hearing in granting order of interim and interlocutory injunctions, Hon. Justice Nnaemeka-Agu (Rtd) of the Supreme Court said this:

> Griffith, C.J. in Thomas Edison Ltd. v. Bullock (1912) 15 C.L.R. 679, at p. 681 which Chief Williams has cited in argument. The learned C.J. said:
> "There is a primary precept governing the administration of justice, that no man is to be condemned unheard; and therefore, as a general rule, no order should be made to the prejudice of a party unless he has the opportunity of being heard in defence. But instances occur where justice could not be done unless the subject matter of the suit were preserved, and, if that is in danger of destruction by one party, or if irremediable or serious damage be imminent, the other may come to the court, and ask for its interposition even in the absence of his opponent, on the ground that delay would involve greater injustice than instant action."
> I entirely agree with him. But there is nothing in the above dicta or in the case itself to warrant the hearing of an interlocutory application for injunction ex parte. Indeed this court sounded much the same caveat, per Ibekwe, J.S.C. (as he then was) when he stated in Woluchem v. Wokoma (1974) 1 All N.L.R. (Part 1) 605, at p. 607. "An interlocutory injunction has a binding effect until it is discharged. Failure to comply with it could lead to disastrous consequences, such as having to commit the offending party to prison for contempt. It is a well settled rule of practice in civil proceedings that the party to be affected by the order sought should normally be put on notice." See on the above: Daniel's Chancery Practice (7th Edn.) pp. 1363-1364, Snell's Principles of Equity (28th Edn.) pp. 639-644 and 646; vol. 24 Hals. Laws of Eng. para. 1052.[192]

Chief F. R. A. Williams in his submission in the matter said this:

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[187] Per Pemu, J.C.A. (P. 8, paras. A-F). See also *Skye Bank Plc V. David & Ors* (2014) LPELR-23731(CA
[188] Section 36(5) of the Constitution
[189] (2016) LPELR-40102(SC)
[190] (Unreported) Suit no CV/4071/13 Motion no: M/805/13 by His Lordship Hon. Justice O. A. Adeniyi of FCT High Court on 13 November 2013
[191] *Deduwa v Okorodudu* (1976) NMLR 236
[192] *Kotoye v CBN* (1989) LPELR-1707(SC)

> In this country, he submitted, we must read whatever section 13 of the Federal High Court Act and Orders 20 and 33 say with the provision of section 33(1) of the Constitution in view. He pointed out that 0r.33 r. 10 gives three options to a court before whom such an application comes: but those options must be exercised with the constitutional provision in view.[193]

Nnaemeka Agu JSC approved the above stated view and said thus:

> I am of the clear view that, once it is conceded that what is involved is an order for interlocutory injunction and not a mere interim order to keep matters in status quo pending the hearing of the application for interlocutory injunction on notice to both sides or until a near named date, then the procedure runs counter to the letters and spirit of section 33 of the Constitution of 1979 and ought not be entertained.[194]

From the decision in *Kotoye v CBN*[195], it is clear that an application for an injunction or an order that will affect the defendant until the determination of the case is properly an interlocutory order and is best made on notice. Also, from the above decision, any law that states that such interlocutory decision should be made *exparte* on the defendant is unconstitutional and violates the defendant's right to fair hearing.

The recent decision of the FCT High Court in *Federal Republic of Nigeria V Prince Abubakar Audu*[196] however, seems to have followed the Supreme Court's opinion instead of the Court of Appeal's decision in *Dangabar v FRN*[197]. The court explained thus:

> I am therefore of the firm view, in the overall context of the instant case, where it is shown that the orders sought by the pending ex parte Summons have every feature of an interlocutory Orders, that to hear and determine the same without giving the Applicant a hearing would run counter to the letters and spirit of his right to fair hearing preserved by section 36 (1) of the Constitution. I so hold."

The FCT High Court Judge then gave a brilliant solution to this issue when he held thus:

> There is nothing in the EFCC Act that precludes a Court, in the determination of an ex parte application for interim Orders brought pursuant to the relevant sections thereof, from converting such an application to be heard on notice where the justice of the case so demands[198]

12. CONCLUSION

The current drive by government at fighting corruption is laudable. This is because if we truly fail to kill corruption, corruption will kill us[199]. Also, the drive to tackle other crimes like kidnapping, armed robbery, trafficking in person, internet fraud etc is also laudable. This current drive means that issues of money laundering and legislation prohibiting money laundering will be taken more serious. Investigation and prosecution of these crimes will undoubtedly lead to the order of forfeiture of assets whether in the interim or as a final order of the court.

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[193] *Kotoye v CBN* (1989) LPELR-1707(SC)
[194] *Kotoye v CBN* (1989) LPELR-1707(SC)
[195] (1989) LPELR-1707(SC)
[196] (Unreported) Suit no CV/4071/13 Motion no: M/805/13 by His Lordship Hon. Justice O. A. Adeniyi of FCT High Court on 13 November 2013
[197] (2012) LPELR-19732(CA)
[198] (Unreported) Suit no CV/4071/13 Motion no: M/805/13 by His Lordship Hon. Justice O. A. Adeniyi of FCT High Court on 13 November 2013
[199] Z. Adaramola 'Buhari: Corruption will kill Nigeria if not defeated' Published in *Daily Trust Newspaper of* Nov 7 2016 accessed on 18/05/17 from https://www.dailytrust.com.ng/news/general/buhari-corruption-will-kill-nigeria-if-not-defeated/170522.html.

There used to be a dearth of judicial decisions on the proper manner of applying for an order of interim forfeiture of assets. The law in this area is still developing and there are currently diverse decisions and opinions on the proper manner to apply for an order of interim forfeiture of assets. There is also no clear decision on the true import of such order. The diverse decisions of courts in *Federal Republic of Nigeria V Prince Abubakar Audu*[200]and *Dangabar v FRN*[201] have made it imperative for the Supreme Court to state the true position of the law with respect to application for this order behind the defendant.

This has placed a duty on the EFCC and other investigative and enforcement bodies to know the extent of its powers and work within those powers. The agencies must also understand the proper manner of exercising such powers to avoid working in futility. This paper has explained the procedures and the important elements in an application for an interim order. The paper also explained the import of the decision of the court in *Kotoye v CBN*[202] and the application of section 28 and 29 of the EFCC Act. The EFCC must therefore maximize the use of its powers to fight crime and respect the constitutional provisions in Nigerian law.

Nigerian legislature must take advantage of the current Money Laundering Bill[203] and Proceeds of Crimes Bill[204] pending at the National Assembly to cure the issues discovered in implementing the MLPA 2011 including the constitutional challenge of fair hearing in interim forfeiture proceedings.

We must remember that such powers to seize or order forfeiture of the property of another does not translate to the competence to act without due process. The courts must always watch for infractions of the Constitution, especially constitutional provisions of fair hearing and right to own properties. There is certainly no harm in allowing the defendant to respond to the application before an 'interlocutory' order of interim forfeiture is finally made against him[205]. The courts must also be alive to its responsibility and guide its proceedings against abuse by law enforcement agencies.

[200] (Unreported) Suit no CV/4071/13 Motion no: M/805/13 by His Lordship Hon. Justice O. A. Adeniyi of FCT High Court on 13 November 2013
[201] (2012) LPELR-19732(CA)
[202] (1989) LPELR-1707(SC)
[203] See "Buhari's new money laundering laws" *the Punch* of February 25, 2016 assessed on 30/05/17 from http://punchng.com/buharis-new-money-laundering-laws/
[204]http://www.justice.gov.ng/documents/PROCEEDS%20OF%20CRIME%20BILL,%202017%20FINAL%20%20%20040417.pdf accessed on 18/05/17
[205] *Federal Republic of Nigeria V Prince Abubakar Audu*(Unreported) Suit no CV/4071/13 Motion no: M/805/13 by His Lordship Hon. Justice O. A. Adeniyi of FCT High Court on 13 November 2013