UNDERSTANDING THE CONCEPT OF MONEY LAUNDERING

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ABSTRACT:

Money Laundering is a problem of the Past, Present and the Future because it breathes life to organized crimes. Upon acquiring ill-gotten money, criminals employ the technique of money laundering to make it seem like their proceeds of crime was obtained via legitimate means in order to retain and enjoy the fruits of their crime. Although, this offence could be regarded as a victimless crime, because it is not a crime that directly and specifically harm another person, but in reality, it is a crime against nations because, it affects economies, government, rule of law, and the world at large. Therefore, we should not allow this filthy water to flood our cooking stones, as such an act must be curtailed. This paper thus seek to examine the meaning of money laundering, what amounts to the offence of money laundering, stages of money laundering, who has the burden of proof in respect of the offence of money laundering, the necessity of obtaining fiat before prosecuting the offence of money laundering, the concurrent jurisdiction of both the National Drug Law Enforcement Agency (NDLEA) and the Economic and Financial Crimes Commission (EFCC) in prosecuting the offence of money laundering and the effect of charging a defendant under a wrong or repealed law with respect to the offence of money laundering.

INTRODUCTION

> ***"Corruption is thus a malignant tumor, a cancer that eats its hosts to death. In Nigeria it has brought about too much blood and tears. The Struggle against corruption in our national landscape is one for the survival of the nation itself. The choice before Nigerians is very clear: we either go to war against corruption in all its ramifications, or we shall be consumed by this hydra-headed dragon."***[1]

The very phrase "Money Laundering" is said to have originated from **Al- Capone**'s scheme, a notorious Italian-American gangster and mobster who made large sums of cash from extortion, prostitution, drug trafficking, selling alcohol and gambling. Al-Capone was later convicted in 1931 of tax evasion.[2] In the wake of Al-Capone's conviction, a reality set in for the criminal underworld-if the legendary Alphonso Capone could be brought down by a simple tax case, then no one was safe. Criminals began to realize that they needed to find ways to conceal their wealth, to make it appear as if their money had come from legitimate sources. They thus began to route their money through a series of shell companies and offshore accounts, making it nearly impossible for authorities to trace the funds back to their original source.

The rise of drug trafficking in the 1970s and 1980s brought money laundering to new heights. The vast sums of cash generated by the drug trade required increasingly sophisticated laundering techniques. Criminals started to infiltrate legitimate businesses thereby using them as fronts to wash their dirty money. As a result, governments decided to introduce new Anti-Money Laundering Regulations to combat this growing threat.[3] The predominant legislation in this moment was The Vienna Convention of 1988 which led to the harmonization of a global Anti-Money Laundering regime wherein Nations implemented the recommendation from the Vienna Convention and developed a framework to combat money laundering within their respective jurisdictions. The United States of America (USA) was among the first nations to criminalize money laundering in their jurisdiction.

Like many other African countries, Nigeria has enacted various regulations to prevent, detect and report money laundering activities. Among these measures is Nigeria's adoption of guidelines and strategies of the Financial Action Task Force (FATF) and the International Framework of Anti-money Laundering Standards.[4] It is worthy of note that the first Nigerian statute that prohibited the offence of money laundering was the National Drug Law Enforcement Agency (Decree 48 of 1989). The decree established the National Drug Law

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[1] *Prof. Yusuf Ali, SAN, FCIArb: Restraining the Monster: Practical Ways of Fighting Corruption in Nigeria. A keynote Address delivered by Yusuf Ali SAN at the Interactive Session with Stakeholders on Corruption Issues in Nigeria organized by the Nigeria Bar Association Anti-Corruption Commission on 24th May, 2016.*

[2] *How Al Capone became the Godfather of Money Laundering, by the Market Detectives://youtu.be/KMvdLIIMSS8?si=4uNdARcUVOBYidQr*

[3] *Ibid.*

[4] *MONEY LAUNDERING AND UNDERDEVELOPMENT IN NIGERIA: A CRIMINOLOGICAL RE-APPRAISAL by Oluyinka Olutola Olajire: Redeemer's University Journal of Management and Social Sciences, Vol. 6 (1) 2023*

Enforcement Agency (hereinafter refers to as NDLEA) and is vested with the responsibility of coordinating all drug laws and enforcement functions.[5]It was also responsible for adopting measures to identify, trace, freeze, confiscate or seize proceeds derived from drug trafficking and drug related offences.[6] The next statute was the Money Laundering (Decree 3 of 1995) and like the previous statute, the NDLEA was also charged with the responsibility of enforcing the provisions of this statute. However, these two statutes are restrictive in its reach and effectiveness in the sense that the NDLEA was vested with the jurisdiction to prosecute for the offence of Money Laundering solely in relation to drug trafficking and drug offences.

In realization of the restrictive nature of these statutes and the undesirable consequences of such crimes on the economy, as advanced techniques were being utilized to legalize dirty money by involving financial institutions such as banks, fund management companies and even non-financial entities such as real estate traders, financial advisors and white-collar workers, gave rise to the establishment of the Economic and Financial Crimes Commission (hereinafter refers to as EFCC) by an Act of National Assembly on the 12th December, 2002 by the administration of Former President Olusegun Obasanjo. The operational activities of the Commission commenced on 13th April, 2003.[7]

The establishment of the EFCC Act[8] necessitated the amendment of the Money Laundering Decree of 1995 and the enactment of the Money Laundering Act (Amendment) 2002 No.9 A 169. This was also followed by two Anti-Money Laundering (AML) legislations in 2003 and 2004 which had very similar provisions and in 2011, the Money Laundering Act of 2004 was repealed and replaced with the Money Laundering (Prohibition) Act 2011.

By the EFCC Act, the Commission was bestowed with the responsibility of investigating economic and financial crimes in the country and bringing the perpetrators to face the full wrath of the law. In point of fact, **section 6 (b) of the EFCC Act** empowers the Commission to conduct the investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract sum, etc. **Subsection d** of the aforementioned section goes further to include the adoption of further measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crimes related offences or the properties the value of which corresponds to such proceeds.

In the same dimension, on the 13th May 2022, President Muhammadu Buhari assented to the Money Laundering (Prevention and Prohibition) Act, 2022 making it the 4th era where Nigerians witnessed the amendment of the Money Laundering Act. The Act provides the statutory backing for the establishment of the Special Control Unit Against Money Laundering under the Economic and Financial Crimes Commission.

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[5] *Adegboyega A. Ige: Legal Framework for Combating Money Laundering in Nigeria: A Historical Perspective dated 13th December, 2021.*
[6] *Section 3 (c) to (q) of the National Drug Law Enforcement Agency Decree of 1989.*
[7] *History of Efcc: https://www.efcc.gov.ng/efcc/about-us-new/history-of -efcc.*
[8] *Cap. E1, LFN 2004*

1. WHAT IS MONEY LAUNDERING?

Money Laundering is the washing of illegitimate money in a bid to make it appear clear, clean or legitimate. Money Laundering is not when you accidentally wash your money along with your clothes. It involves the process of transforming the proceeds of crime into ostensibly legitimate money or other asset.[9] It can also be defined as the process of making illegally obtained returns appear legal in which the illegitimate assets are secretly introduced into a legitimate financial system.[10]

Money Laundering begins with dirty money or illegal process of making money generated by criminal activity. Money can get dirty in two ways-firstly, through tax evasion whereby people make money legally but they make more than they report to the government and secondly through illegal generation, where the common techniques employed include drug sales, gambling, and bribery. Money thus made illegally is a poisoned chalice which needs to be laundered and invested in a clean business before it can be refined and safely used.[11] Some of the crimes such as illegal arms sales, smuggling, corruption, drug trafficking and the activities of organized crime, including tax evasion generate huge sums. Insider trading, bribery and computer fraud schemes also produce large profits and create the incentive to legitimize the ill-gotten gains through money laundering.[12]

Money laundering is called what it is because it perfectly describes what takes place. Illegal or dirty money being put through a cycle of transactions or washed, so that it comes out the other end as legal, or clean money. In other words, the source of illegally obtained funds is obscured through a succession of transfers and deals in order that those same funds can eventually be made to appear as legitimate income.[13] It plays a fundamental role in facilitating the ambitions of the drug trafficker, the terrorist, the organized criminal, the insider dealer, the tax evader, as well as many others, who need to avoid the kind of attention gotten from the authorities as a result of sudden wealth from illegal activities.[14]

In Nigeria, Money laundering is a felony offence, and it is outrightly prohibited.[15] Thus, any person or body corporate in or outside Nigeria, who directly or indirectly conceal or disguise the origin of, converts or transfers, removes money intentionally, knowingly or reasonably ought to have known that such fund or property is or forms part of the proceeds of an unlawful act, and commits the offence of money Laundering under the **Money Laundering Prevention and Prohibition Act, 2022**.[16] For the purpose of elucidation, the Act[17] further expounds the meaning of unlawful act in respect of money to include; *participation in an*

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[9] *Daudu v. Federal Republic of Nigeria (2018) 10 NWLR Part 1626 P. 182 Para H.*

[10] *Concept, Definition and Characteristics of the Money Laundering Phenomenon: by Natasha Georgieva, University MIT, Faculty of Security, skopie, North Macedonia*

[11] *Dr. Olumide Obayemi: No Orchid for Miss Blandish and Property Law Nigerian Anti Money Laundering Statues and Nigerian Lawyers. The Gravitas Review of Business: Journal June 2017 Vol. 8 No 2.*

[12] *Vandana Ajay Kumar: Money Laundering: Concept, Significance and its Impact: European Journal of Business and Management ISSN 2222-1905 (Paper) ISSN 2222-2839 (Online) Vol 4, No.2, 2012.*

[13] *Ibid.*

[14] *Ibid.*

[15] *Section 18 (1) Money Laundering (Prevention and Prohibition) Act, 2022.*

[16] *Section 18 (2) Money Laundering (Prevention and Prohibition) Act, 2022.*

[17] *Section 18 (6) Money Laundering (Prevention and Prohibition) Act, 2022.*

organised 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); extortion, forgery, piracy; insider trading and market manipulation; and any other criminal act specified in this Act or any other law in Nigeria including any act, wherever committed in so far as such act would be an unlawful act if committed in Nigeria.

Consequently, any person that contravenes the provision of this law[18] is liable on conviction to imprisonment for a term of not less than four (4) years but not more than fourteen (14) years or a fine not less than five (5) times the value of the proceeds of the crime or both.[19]

However, if it is a body corporate that contravenes the provisions of the law, such body corporate would be liable on conviction to a fine of not less than five (5) times the value of the funds or the properties acquired as a result of the offence committed.[20] If the body corporate persists in the commission of the offence for which it was convicted in the first instance, then the regulators may withdraw or revoke the certificate or license of the body corporate.[21]

At this juncture, it is important to note that ordinarily being in possession of a huge amount of money in any currency does not amount to money laundering, as the law enforcement agency has the onus of proving that such sum was indeed a proceed of money laundering. In the case of **EFCC v. Dr Martins Oluwafemi Thomas[22]** in which one Mr. Ibiteye John Bamidele was arrested by the **NDLEA** at the local wing of the Murtala Mohammed International Airport, when he was trying to board a flight to Abuja, for being in possession of $2.198,900.00 cash. Being such a pot of gold, the case was referred to the **EFCC** by the **NDLEA** and in the course of investigations, Dr. Martins Thomas showed up to claim the money and confirmed that he had given the money to Mr. Bamidele to be taken to Abuja. He made a statement and he was granted administrative bail. He proceeded to file an application before the Federal High Court (Lagos Judicial Division) seeking for the following reliefs against the EFCC;

a. ***A declaration that the sum and his international passport seized is illegal and ultra vires the power of the Economic and Financial Crime Commission.***
b. ***A declaration that the Economic and Financial Crime Commission had no right to arrest or detain or declare the applicant as a wanted person.***
c. ***A declaration that the Economic and Financial Crime Commission has no right to restrict the applicant's movement in or outside Nigeria on the basis of the unlawful seizure of the Applicant's money in the sum of $2.200.000.00.***

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[18] *Ibid.*
[19] *Section 18 (3) Money Laundering (Prevention and Prohibition) Act, 2022.*
[20] *Section 18 (4) Money Laundering (Prevention and Prohibition) Act, 2022.*
[21] *Section 18 (5) Money Laundering (Prevention and Prohibition) Act, 2022.*
[22] *(2018) LPELR-45547 (CA)*

d. A declaration that the Economic and Financial Crime Commission was in breach of the applicant's Fundamental Human Rights.[23]

The EFCC argued otherwise that there was a prima facie case against the Plaintiff because of the sole reason that he gave huge sum of money to Mr. Bamidele without passing through a financial institution, which was in contravention to ***Section 1 of the Money Laundering (Prohibition) Act, 2011***. After studious consideration of parties' case by the trial Court, the trial Court acceded to the Applicant's reliefs and resolved all issues in his favour. The EFCC was dissatisfied with decision of the trial court and appealed to the Court of Appeal as a result. However, in specie, the Court of Appeal held thus;

> ***"is there any legal provision against the keeping of money being it local or foreign currency in the house, on your person and outside the bank? None was cited and I also found none in my research. That was the finding of the trial judge too that none was established before him. How then can the keeping money at home or moving same transform to money laundering?..... it is trite that there cannot be a charge for an offence not named in a law. The act of keeping money at home or other places of choice is not a named offence in any law in this Country. The Anti-Money Laundering Act does not have such provision and the EFCC Act also has nothing in that direction. Furthermore, there is also no offence for travelling with money legitimately earned within the Country. The requirement of declaring sums beyond a threshold is only when you are traveling outside the Country. Travelling from Lagos to Abuja is still within the territorial jurisdiction of the Country known as Nigeria."***

Considering the forgoing, it is thus safe to posit that being in possession of pecuniary resources within Nigeria does not fall under the ambit of the offence of money laundering, and neither does the act of keeping money at home or other places of choice an offence in any law in Nigeria. The 1999 Constitution of the Federal Republic of Nigeria (as amended) is very clear on the fact that a person can only be tried upon an offence known to law. This is contained in ***Section 38 (12)***[24] which provides thus:

> ***Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law:***

Flowing from the above, it is therefore settled that money laundering must be accompanied by a predicate offence which is an illegal act, that yields the funds sought to be laundered as clean money.[25] It is difficult or near impossible to prove money laundering without a predicate offence. In this afore cited case, the EFCC failed to prove that the funds were generated from an unlawful act, which prompted the court to emphasize that the source of funds must be illegitimate before an accused can be convicted for the offence of money laundering. Although, the relevant law then was the **Money Laundering (Prohibition) Act**

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[23] *https://www.resolutionlawng.com/appraisal-of-money-laundering-cases-in-nigeria/*
[24] *1999 Constitution of the Federal Republic of Nigeria (as amended)*
[25] *Ibid.*

2011 wherein **section 1 of the Act**[26] relating to limitation to make or accept cash payment specified that;

> ***No person or body corporate shall, except in a transaction through a financial institution, make or accept cash payment of a sum exceeding-***
>
> ***a. N 5,000,000.00 or its equivalent, in the case of an individual; or***
> ***b. N 10,000,000.00 or its equivalent, in the case of a body corporate.***

From the above provision, it means payments in respect of commercial transaction that will require the exchange of goods or services for cash payment should be done through financial institutions. **Clayborne & Wagner LLP**[27] defined a commercial transaction as some sort of payment for a good or service. And also gives forms of commercial transactions which includes, those transaction that occur between two separate businesses, consumers and businesses, businesses and government entities and between internal divisions of a company to name a few. The court defined "Payment" in consonance with **Black Law Dictionary 9th Edition** as *a performance of an obligation by delivery of money or some other valuable thing accepted in partial or full discharge of the obligation.* Payment is made in exchange for goods or services. In the instant case, while the cash remains in the control or possession of the Dr Martins Oluwafemi Thomas, it cannot be rightly said that he was making any payment outside a financial institution. In addition, this aforementioned section[28] of the repealed law also resurrected in **section 2** of **the new Act.**[29]

Going forward, it has long been acknowledged that there are stages of the money laundering process and they are;

a. **Placement:** This is the stage where the dirty money or ill-gotten funds is deposited at a place where the cleansing will begin. It is a stage where the illegally obtained money is converted into assets that seem legitimate and is often done by depositing funds into a bank account registered to an anonymous corporation or a professional middleman.[30]
b. **Layering:** This is the stage where the illicit money is put together with legitimate money or placed in constant motion.[31] It involves using multiple transactions to further distance the funds from their origin.[32] It usually takes the form of multiple transfers of funds or by purchasing traceable properties using the ill-gotten money so that such money will disappear into them. The purpose of layering stage is to make the dirty money difficult to trace or to make it even difficult for a skilled accountant to differentiate between the money that was derived from legitimate transactions and the ill-gotten ones.
c. **Integration:** This is the last stage where the money re-enters the legitimate economy[33] or financial system in order to benefit the perpetrators. The ill-gotten money can be placed

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[26] *Money Laundering (Prohibition) Act 2011.*
[27] *Clayborne & Wagner LLP: https: //www.cswlawllp.com/commercial-transaction.*
[28] *Ibid*
[29] *Money Laundering (Prevention and Prohibition) Act, 2022*
[30] *TED.Ed: How does Money Laundering work? By Delena D. Spann: https://youtu.be/257wv-Abkae?si=X7PtS7K_RyJZywyx*
[31] *Art of Money Laundering (Mini-Documentary) by Game the System: https://youtu.be/i5ez7Ciwwyg?si=Kipq4v-01xglsGGo*
[32] *Ibid.*
[33] *Ibid*

into luxurious assets, properties, long term investments, new businesses or put into properties while the owner conceal their ownership.

It is, however, pertinent to note here that these three stages aforementioned are not stereotyped. In other words, the money laundering process may not follow through with all these stages as one or more of the stages may either be omitted, combined or repeated depending on the circumstances.[34]

2. BETWEEN THE PROSECUTION AND THE DEFENDANT, WHO HAS THE BURDEN OF PROOF FOR THE OFFENCE OF MONEY LAUNDERING IN NIGERIA?

Customarily, there is a legal aphorism that was coined from the Old Latin jurisprudence that says ***incumbi probatio qui dicit non qui negut*** (**He who asserts must prove**). With respect to civil proceedings, this aphorism has been integrated in the Nigerian Jurisprudence and can be found in **Section 131 (1) of the Evidence Act, 2011** which provides thus;

> ***''Whosever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist.''***

The burden of proving a fact rest on the party who asserts the affirmative of the issue and not on the party who denies it.[35]

Then on whom lies the burden of proof in criminal matter? In the case of **Emmanuel Egwumi v. The State[36],** the Supreme Court, **Per Ogunbiyi JSC** (as he then was) held thus;

> ***The general principle of law which is settled and well founded in our judicial system is, the prosecution in a criminal matter has the onus always to prove the accused guilty beyond reasonable doubt before his conviction can be sustained. This burden as a general rule does not shift. The reason behind this proposition is very well founded in our constitutional provision of presumption of innocence of the accused until proved otherwise. Section 135 (2) of the Evidence Act 2011 and section 36 (5) of the Constitution of the Federal Republic of Nigeria 1999 have placed the burden of proof in criminal cases squarely on the prosecution, who must prove its case beyond reasonable doubt and a general duty to rebut the presumption of innocence constitutionally guaranteed the accused person. This burden does not shift.[37]***

There is no doubt that in criminal trials, the burden of proving the guilt of an accused person rests on the prosecution and does not shift. It is static throughout the trial.[38] However, where

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[34] The Menace of Money Laundering in Nigeria: Issues, Challenges and Way Forward. By Dr. Okoye Victor O., Dr. Okoye Chinasa R., Nwisienyi Kenechukwu J.

[35] Omisore v. Aregbesola (2015) NWLR (Pt.1482) 205 pages 272-273 paras. H-B Per Nweze JSC.

[36] (2013) NWLR (Pt. 1327) 525.

[37] Alabi v State (1993) 7 NWLR (Pt. 307) 511 at 531 paras A-C

the prosecution has led credible evidence before the court which established a prima facie case against the accused, it is the duty of the accused thereafter to lead evidence to explain to the court why the prosecution's evidence should not be believed.

On the burden of proof of offence of Money laundering, the court held thus **Per Aka'Ahs JSC** (as he then was) in the case of **Gabriel Daudu v. FRN**[39];

> ***If an accused person is in possession of pecuniary resources or property which is disproportion to his known source of income, or he obtained an accretion to his pecuniary resources or property, the burden of giving a satisfactory account of how he made the money or obtained the accretion shifts to him. The Prosecution is relieved of the burden of having to prove that the money so found in his account or in his possession is proceeds from illicit traffic in narcotic.***

For the purpose of elucidation, **Per Aka'Ahs JSC** explained his point further that;

> ***Where A is a fixed salary earner and suddenly his account credited with an amount beyond his income or has property which his legitimate income cannot afford, the burden of proof shifts to him to explain how he got the money with which he bought the property or the legitimate transaction he was engaged in for which the accused was credited.***[40]

The Appellant counsel in this case argued that none of the witnesses called by the prosecution established anything close to money laundering against the Appellant and so the Prosecution failed in its primary duty to prove the ingredients of the offence of money laundering against the Appellant. Conversely, the Counsel for the Prosecution/Respondent submitted that the lower Court did not reverse the onus of proof placed on the prosecution to prove its case beyond reasonable doubt. He argued that a distinction should be drawn between the legal burden of proof beyond reasonable doubt which vests and stays with the Prosecution in the criminal trial process, as opposed to the **evidential burden of proof which constantly shifts from the Prosecution to the Defendant depending on where the pendulum of evidence swings in the proceedings** (Whether in civil or criminal).

He postulated further that if the totality of the evidence led in the proceedings before the trial Court is examined, the prosecution has placed sufficient evidence to prove the charge against the Appellant beyond the reasonable doubt, as required by law and the onus shifted to the Appellant to rebut the evidence presented by the prosecution and this did not translate to mean shifting of the burden of proof to the Appellant. In addition, he gave an analogy that if in a given situation, a huge lodgment of **N5,000,000,000,000.00 (Five Billion Naira Only**) is found in the private account of a public officer, whose total emoluments and entitlements during the period under reference should not exceed **N1,000,000.00 (One Million Naira**

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[38] *Adeyeye v. The State (2013) 11 NWLR (Pt. 1364) 47 SC*
[39] *Supra.*
[40] Supra. Page 183 para-G.

Only), it is the duty of the Prosecution to show that the **N5,000,000,000,000.00** was found in the private account of the said public officer, within the given period and also tender relevant statement of account of the public officer in proof of the said questionable lodgments, using that premise to hold that the public officer had come about the huge difference in his account from laundered funds or dirty money arising from illicit transactions. It is then the duty of the affected public officer to provide explanation to show that the said amount lawfully came into his possession through his legitimate earnings and emoluments. This duty of explanation will not translate to shifting of the burden of proof from the Prosecution to the Defendant but it will only mean the shifting of the evidential burden as opposed to the legal burden on the Defendant to satisfactorily explain how he came about the humongous amount found in his private account.[41]

In fact, ***section 18 (8) of the Money Laundering (Prevention and Prohibition) Act, 2022*** gives it credence that it shall not be necessary for the prosecution to prove or established that the money was gotten from unlawful act for the purpose of proving a money laundering offence under the Act. It makes the burden of proof shift or swings to the Defendant's side. Once it has been established that the Defendant is in possession of pecuniary possession it is the duty of the Defendant to proof that the said pecuniary resources was derived from lawful source. In addition, **section 23 (6) of the Act[42]** provides thus;

> ***in any trial for the offence of Money Laundering where a defendant is in possession of pecuniary resources or property for which he cannot satisfactorily account, which is disproportionate to his known sources of income, or that he had at or about the time of the alleged offence obtained an increase to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and taken into consideration by the Court as corroborating the testimony of any witness in the trial.***

Considering the foregoing, it is safe to postulate that in prosecuting for the offence of Money laundering, the onus of proof rests on the defendant to explain how the said amount of money found in his pocket came via legitimate means. What is only required from the Prosecution is to show that the Defendant has colossal amount of money in his account. The difference between this case and **EFCC v Dr. Martins Thomas[43]** is that the Appellant failed to give a satisfactory account of the monies which were lodged in his account during his tenure as a local government chairman, but the Respondent in the latter case was able to prove the sources of the money found in his possession.

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[41] Supra. Page 181 para. E-H
[42] *Money Laundering (Prevention and Prohibition) Act, 2022.*
[43] *Ibid.*

3. DOES SPECIAL PROSECUTORS NEED FIAT FROM THE ATTORNEY GENERAL OF THE FEDERATION TO PROSECUTE A SUSPECT / DEFENDANT IN COURT? AND WHEN IS FIAT NEEDED?

The word *fiat* is a Latin word which means ''**Let it be done**''. It is a binding edict issued by a person in command.

In Nigeria, the power of prosecution of offences is constitutionally vested on the Attorney General of the Federation and the Attorney General of the State respectively by virtue of sections **174** and **211 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).** However, the power of prosecution is also conferred on other agencies and private persons.[44] **Section 174 (1) (a)**[45]provides thus;

> ***The Attorney General of the Federation shall have power to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a Court Martial, in respect of any offence created by or under any Act of the National Assembly.***

Therefore, it is without gainsaying that public prosecution is the primary constitutional responsibility bestowed on the Attorney General by the provision of the Constitution of the Federal Republic of Nigeria.[46] Thus, all prosecution by persons other than the Attorney General must emanate from the office of the Attorney General.[47]

Generally, those who can lawfully or legally institute criminal proceedings in Courts in Nigeria are as follows;

a. **Attorney General of the Federation and State**[48]
b. **Police**[49]
c. **Private Persons and**
d. **Special Prosecutors**

By virtue of ***Sections 174 and 211 of the Constitution***[50] which stipulate or provide the responsibilities and powers of the Attorney General particularly ***Section 174 (2) of the Constitution***[51] states thus;

> ***The powers conferred upon the Attorney General under sub section 1 of this section may be exercised by him in person or through officer in his department.***

Let us bear it in minds, that in the absence of an incumbent Attorney General, the law officers in the Ministry of Justice are empowered by law to institute proceedings.[52] This principle was

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[44] *Fiat, Private Prosecution and the Power of the Attorney General: Dissenting the decision of the Supreme Court in Obijiaku v Obijiaku (2022) 17 NWLR (Part. 1859) 377 by Nasiru Tijani, Ugochuckwu Charles Kanu, Tobi Ololu Salisu.*

[45] *Constitution of the Federal Republic of Nigeria, 1999 (as amended)*

[46] *See Section 174 and 211 of the Constitution of Federal Republic of Nigeria, 1999 (as amended)*

[47] *Ameh v. The Federal Republic of Nigeria (2019) 6 NWLR (Pt. 1667) 160.*

[48] *Section 150 and 195 the Constitution of Federal Republic of Nigeria, 1999 (as amended)*

[49] *Section 66 of the Police Act, 2020.*

[50] *Constitution of Federal Republic of Nigeria, 1999 (as amended)*

[51] *Ibid.*

[52] *Section. 174 (2) & section 211 (2) Constitution of Federal Republic of Nigeria, 1999 (as amended).*

acceded to by the apex Court in the case of ***Saraki v. Federal Republic of Nigeria***[53] where it was held that it is immaterial that when the action was instituted there was no Attorney General in office.

The Attorney General is conferred with an unlimited and unfettered power to take over and continue criminal proceedings.[54] As a matter of course, it is immaterial that the proceedings were not commenced by the Attorney General. In ***Amadi v. Federal Republic of Nigeria***[55] the Supreme Court held that the Attorney General of Federation or State as the case may be is clothed with power to take over and continue any criminal proceedings instituted by any other authority or persons in Nigeria or in the state[56] and it does not matter whether or not the prosecutorial agency is the only agency statutorily empowered to prosecute such offence. For example, the National Drug Law Enforcement Agency[57] is among the specific class of persons conferred with the power to prosecute specifically for the offences listed under the Nigeria Drug Law Enforcement Agency Act[58] but this does not preclude the Attorney General as the chief law officer from taking over the proceedings or having to proffer reason to any judicial officer or authority as to his motivation in doing so.[59]

It is also instructive to note that upon the taking over of the case from any other authority hitherto prosecuting the Attorney General reserves the right to elect whether or not to continue with the case or to re assign the case to a Private Legal Practitioner[60]. Therefore, no action can be maintained against the Attorney General to compel him to continue with the prosecution of the case.[61] The Attorney General is clothed with radical powers in relation to criminal prosecution in Nigeria above any other authority or agency. Recently, the Supreme Court held in the case of ***Sani v. President of the Federal Republic of Nigeria***[62] that the Attorney General is the ultimate authority and custodian of powers of the state to prosecute. The prosecutorial agencies or authorities like Nigeria Police[63], National Drug Law Enforcement Agency, Economic and Financial Crimes Commission[64], Independent Corrupt Practices Commission[65], the officer of the Nigerian Customs and Private Persons[66], are subject to the overriding power of the Attorney General.[67]

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[53] (2016) 3 NWLR (Pt.1500) 531 @ 581.

[54] Section 174 (1) (b) & section 211 (1) (b) Constitution of Federal Republic of Nigeria, 1999 (as amended)
[55] Section (2008) 18 NWLR (Pt.1119) 259 @ 276

[56] Also see Amaefule v. State (1988) 2 NWLR (Pt.75) 156.

[57] Cap N30, LFN, Vol.10, 2004
[58]Section 7 (1) and 8 (2) (a) of the Nigeria Drug Law Enforcement Agency Act.

[59] Section 174 (1) (b) & 211 (1) (b) Constitution of Federal Republic of Nigeria, 1999 (as amended)
[60]Section 268 (1) of Administration of Criminal Justice Act, 2015.

[61] Fiat, Private Prosecution and the Power of the Attorney General: Dissenting the decision of the Supreme Court in Obijiaku v Obijiaku (2022) 17 NWLR (Part. 1859) 377 by Nasiru Tijani, Ugochuckwu Charles Kanu, Tobi Ololu Salisu.

[62] (2020) 15 NWLR (Pt.1746) 151.
[63] Section 66 Police Act, 2020.
[64] Alao v. Federal Republic of Nigeria (2018) 10 NWLR (Pt.1627) 284.
[65] Commissioner of Police v. Tobin (2009) 10 NWLR (Pt.1148) 62 at 85.
[66] Section 104 (2) & 106 (b) Administration of criminal Justice Act, 2015.
[67] Section 174 (1) (b) of the Constitution of Federal Republic of Nigeria, 1999 (as amended)

The phrase "subject to" has been interpreted by the courts in a plethora of cases, for example the case of ***Oloruntoba-Oju & ors v. Abdulraheem & ors***[68] where **Per Adekeye J.S.C** interpreted the phrase "subject to" as follows;

> "***Whenever the phrase subject to is used in a statute the intention, purpose and legal effect is to make the provisions of the section inferior, dependent on, limited and restricted in application to the section to which they are made subject to. In other words, the provision of the latter section shall govern, control and prevail over the provision of the section made subject to it. It renders the provision of the subject section subservient, liable, subordinate, and inferior to the provisions of the other enactment."***

The word "subject to" is conditional or dependent on sequential statement or hinging on a sequential provision.

In a nutshell, excluding the Attorney General, no other authority, body or agency has a radical and untrammeled power over criminal prosecutions in Nigeria without seeking for an approval or fiat from the office of the Attorney General. The exercise of such prosecutorial power is subject to the power donated to him by the Attorney General under the Constitution and such approval or fiat can be withdrawn at any time during the pendency of a proceeding.[69] Therefore, for the National Drug Law Enforcement Agency to institute a criminal proceeding in any competent court of jurisdiction, it must obtain a fiat or an approval from the office of Attorney General of Federation.[70]

4. DOES THE NATIONAL DRUG LAW ENFORCEMENT AGENCY AND THE ECONOMIC AND FINANCIAL CRIMES COMMISSION HAVE CONCURRENT PROSECUTORIAL AUTHORITY TO PROSECUTE THE OFFENCE OF MONEY LAUNDERING?

The courts vested with the jurisdiction to try offences are equally required by the relevant law to entertain only criminal matters that are properly brought before them. Before any criminal matter can be said to be properly brought before a court, it must have been instituted by the appropriate individual or authority. This implies, as earlier observed, that the law recognizes certain individuals and authorities as the only competent entities, that are legally empowered to initiate criminal actions in the Nigerian Courts. In the same vein, it also means that these individuals and authorities can only commence criminal litigation by adopting the mode specified under the relevant law for commencing the action in the particular court.[71]

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[68] *(2009) LPELR- 2596 (SC) at page 60, Paras B-E*

[69] *See section 174 (3), section 211 (3) of the Constitution of Federal Republic of Nigeria, 1999 (as amended)*

[70] *Section 4 (3) National Drug Law Enforcement Agency Act. Cap N Law of the Federation of Nigeria, 2004.*

[71] *Practice and Procedure of Criminal Litigation in Nigeria by Y.D.U Hambali at page 187.*

The question then is, does the National Drug Law Enforcement Agency have jurisdiction to try the offence of Money Laundering? In answering this question, one would have to first examine the functions of the Agency as provided by the NDLEA Act.

On the one hand, the NDLEA Act was aimed at exterminating illicit drug trafficking and consumption in the Nigerian society. Some of the functions of the Agency[72]are to adopts measures to identify, trace, freeze, confiscate or seize proceeds[73], adopt all measures to eradicate illicit cultivation of narcotics plants and to eliminate illicit demand for narcotic drugs and psychotropic substances, with a view to reduce human suffering and eliminating financial incentives for illicit traffic in narcotic drugs, and psychotropic substances[74].

We should not lose sight of the fact that ***Section 18 (2) of Money Laundering (Prevention and Prohibition) Act, 2022*** defines Money Laundering offences to mean *any person or body corporate, in or outside Nigeria, who directly or indirectly conceals or disguises the origin of, converts or transfers, remove from the jurisdiction or acquires, uses, retains or take possession or control of any fund or property, intentionally, knowingly, or reasonably ought to have known that such fund or property is or forms part of the proceeds of an unlawful act to commit an offence of money laundering.*

Section 18 (6) (d)[75] of the aforementioned Act explicitly explained unlawful act to include illicit trafficking in narcotic drugs and psychotropic substances.

Accordingly, since the purpose of the establishment of the National Drug Law Enforcement Agency was aimed at combating illicit trafficking, it is thus safe to say that to engage in illicit trafficking in narcotic drugs and psychotropic substances of any kind by implication means to engage in money laundering. This thus empowers the Agency with prosecutorial function with respect to the offence of money laundering.

In examining whether the EFCC has prosecutorial authority in relation to the offence of money laundering, just like with the NDLEA, one would also have to appraise its functions as provided by the EFCC Act. ***Section 6 of the Economic and Financial Crimes Commission Act*** provides for the functions of the Commission especially ***subsection (b)*** to investigate all financial crimes, including advance fee fraud, money laundering counterfeiting, illegal charge transfers, future market fraud, fraudulent encashment of negotiable instruments, computer credit card, contract, scam etc. and also autonomy to adopt all measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities economic and financial crimes related offences or the properties the value of which corresponds to such proceeds.[76]

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[72] *Section 3 National Drug Law Enforcement Agency Act. Cap N Law of the Federation of Nigeria, 2004.*

[73] *Section 3 (c) National Drug Law Enforcement Agency Act. Cap N Law of the Federation of Nigeria, 2004.*

[74] *Section 3 (d) National Drug Law Enforcement Agency Act. Cap N Law of the Federation of Nigeria, 2004.*

[75] *Money Laundering (Prevention and Prohibition) Act, 2022.*

[76] *Section 6 (c) of the Economic and Financial Crimes Commission Act.* [53] *Economic and Financial Crimes Commission Act. 2004.*

Furthermore, ***Section 6 (0) of the Act***[77] pressurizes or compels the EFCC to maintain a liaison with the office of the Attorney General of the Federation, the Nigerian Customs Service, the Immigration and Prison Service Board, the Central Bank of Nigeria, the Nigerian Deposit Insurance Corporation, the National Drug Law Enforcement Agency, all government security and law enforcement agencies and such other financial supervisory institutions in the eradication of economic and financial crimes.

In addition, ***Section 17 (1) (2) of the Money Laundering (Prevention and Prohibition) Act, 2022*** established a Special Control Unit against money laundering and functions under the umbrella of Economic and Financial Crimes Commission to take necessary enforcement actions in ensuring compliance with the Act. In ***Daudu v Federal Republic of Nigeria*** **Per. Aka'Ahs J.S.C** in delivering his leading judgment with respect to the function of the EFCC explained thus;

> "***The EFCC was established in 2004 one of its primary functions is to investigate allegation of money laundering. It was to strengthen the EFCC to fulfil its mandate that the 2004 Money Laundering (Prohibition) Act was passed. The commission is invested with wide powers critical for carrying out this mandate including the power place bank accounts under surveillance and carry out other actions designed to assist investigators to identify the owner and locate the proceeds or properties derives from crimes a power hitherto vested only in the National Drug Enforcement Agency (NDLEA)."***

Therefore, both the National Drug Law Enforcement Agency and the Economic and Financial Crimes Commission possesses concurrent prosecutorial authority to prosecute the offence of money laundering, especially when the *fons et origo* (source) of the pecuniary resources or property is derived directly or indirectly from illicit traffic in narcotic drugs or psychotropic substances or any illegal act, with the aim of either concealing or disguising the illicit origin of the resources or property.

Upon the determination of the prosecutorial authority of these two Agencies, the question that comes to mind is which of the courts then have jurisdiction to try the offence of money laundering. As it is the law that breathes life to the jurisdiction of court not otherwise, both ***Section 26 National Drug Law Enforcement Agency and Section 19 Economic and Financial Crimes Commission Act***[78] have answered this question by conferring exclusive jurisdiction on the Federal High Court to try the offence of illicit trafficking in narcotic drugs and psychotropic substances and that of money laundering.

On this account, it is my firm view that the National Drug Law Enforcement Agency should be allowed to prosecute the offence of money laundering since it has jurisdiction to prosecute for the offences relating to drug trafficking and narcotics and unlawful proceeds derived from these crimes.

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[77] *Ecomonic and Financial Crimes Commission Act. 2004.*
[78] *Ibid.*

5. WHAT IS THE EFFECT OF CHARGING A DEFENDANT UNDER A WRONG OR REPEALED LAW

Firstly, it has been settled or laid to rest by the Courts that are the interpreters of the law and, that charging a Defendant under a wrong law should not have any implications in the trial and conviction provided that the offence that the Defendant was charged under was an existing offence under an existing law. What the law frowns at is charging a Defendant under retrospective law; which means backdated law, or the offence/law that was not in existence at the time the Defendant committed the offence. In the case of **Egunjobi v. Federal Republic of Nigeria**[79] **per Peter- Odili JSC (**as she then was**)** held thus;

> ***"For emphasis, no matter how defective the section of law or even the legislation itself is, an accused cannot be heard to say that because he was charged under wrong law, the infraction upon which he is held is covered by an existing law, the prosecution and conviction will stand based on the proper law different from that under which he has taken plea. The is the law and the appellant is not in the position to change it."***

The above excerpt means that when a Defendant is charged under a wrong law, his trial and conviction will stand so long as the offence that he was charged with was an existing offence under an existing law as mandated by the 1999 constitution of the Federal Republic of Nigeria (as amended).[80]

To buttress this point, in ***Samuel Ayo v. Federal Republic of Nigeria***[81] when **Per Niki Tobi** of blessed memory, intervened with his pearls of wisdom when it was contended by the Appellant Counsel that the trial court convicted the Appellant under non-existing law. The trial Court held that "it finds the accused guilty as charged by virtue of section 10 (b) of the Nigerian Drug Law Enforcement Act and convicts him accordingly" rather than section 10 (b) of the National Drug Law Enforcement Agency Act." [underline mine for emphasis]

Per Niki Tobi in his leading judgment explained thus;

> *"Nigerian Drug Law Enforcement Act" is a misnomer and the difference between the word "Nigerian" and "National" is much more than the difference between a dozen and 12. The appellant did not suffer any injustice as there was no miscarriage of justice. Law is not a game of chess which players win by technicalities and craftiness. The court of law have long moved away from the domain or terrain of doing technical justice to doing substantial justice. This is because technical justice in reality is not justice but a caricature of it.*[82]

Justice is no longer anchored on technicalities as the practice of the court is to approach justice from the substance of each case.[83]

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[79] *(2013) 3 NWLR (Pt. 1342) 534 at 579 paras D-E*
[80] ***section 36 (12) of the Constitution of the Federal of Nigeria***
[81] *(2008) 7 NWLR (Pt.1085) 138.*
[82] *Supra.*
[83] *Osarumhense v. Agboro (2005) 16 NWLR (Pt.951) 204.*

Furthermore, in the case of ***Victor Anozie v. Inspector General of Police & 3 ors***[84] where the Appellant applied for the leave of the Federal High Court, Lagos Division to enforce his Fundamental Human Rights, his motion was brought pursuant to ***Order 1 Rule 2 (1)(2)(3)(4)(6)*** *and* ***Order 4 Rule (1)(2)(3)(4)(6) of the Fundamental Human Rights Enforcement Procedure Rules 1979*** which was accompanied with a statement as required by the Rules. The Appellant was granted leave on the 4th June 2009 but before the application could be heard, the Rules were repealed and another came into effect on the 1st December, 2009. The trial court suo motu struck out the application on the ground that he failed to meet the criteria provided under the new rules particularly ***Order 11, Rule 2 and 3 of the Fundamental Rights Enforcement Procedure Rules 2009*** which required an application for enforcement of Fundamental Human Rights to be accompanied by an affidavit and not a statement. The Appellant was dissatisfied, and applied to the trial court to have its decision set aside for want of jurisdiction. The trial court in its ruling on the application, refused to set aside the decision. Afterward the Appellant, appealed to the Court of Appeal and the Court of Appeal held thus;

> ***"The law that governs such an action is the law at the time of filling such an action and not the extant law prevailing after the commencement of such an action……"***

Moreover, ***Section 4 of the Interpretation Act***[85] provides that where an enactment is repealed and another enactment is substituted for it, then any subsidiary instrument in force by virtue of the repealed enactment shall so far as the instrument is not inconsistent with the substituted enactment, continue in force as if made in pursuance of the substituted enactment.

In attunement with the foregoing, the fact that a Defendant was charged for the offence of money laundering under the old law after the law has been repealed, will not affect the proceeding because; firstly, he was charged under the existing law at the time he allegedly committed the offence, and secondly, by ***Section 29 (2) of the Money Laundering (Prevention and Prohibition) Act, 2022*** this law gives this standpoint a statutory backing by establishing that all regulations, orders, reports, ongoing investigations, prosecutions and other proceedings, action taken and things done under the repealed law ***shall*** continue and have effect as if made, issued, carried on, taken or done under the existing Act.

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[84] *(2017) All FWLR (Pt. 898) page 76.*

[85] *Law of the Federation of Nigeria 1990*

CONCLUSION

Money laundering is a global scourge that affects countries worldwide, it affects not only the economy of the countries, in fact, it is one of the economic-financial crimes that have eaten deep into the fabric of many nations. It has an adverse impact on not only the economy, but also affects the social and political stability of a country as it creates an environment steeped in financial dishonesty, e.g, tax evasion, which results in loss of government revenue, thus affecting the potential of the government to spend on development schemes. In fact, it is one of the *fons et origo mali* of corruption and bad governance, it contributes to injustice and disillusionment among the citizens and so on.