

**NIGERIAN CRIMINAL LAW AND PROCEDURE, EVIDENCE: ANNUAL SURVEY OF
APPELLATE COURT DECISIONS – THE OFFENCE OF WANDERING
(ABU V. STATE (2025) 7 NWLR (PT. 1989) 299).
BEING A PAPER PRESENTED BY AUDREY CHINELO OFOEGBUNAM
AT THE RULE OF LAW DEVELOPMENT FOUNDATION ANNUAL LECTURE SERIES
HELD AT ABUJA ON 20TH NOVEMBER, 2025..**



THE OFFENCE OF WANDERING

Definition: Moving about without a clear purpose or destination, often raising suspicions about one's intentions.

In **Abu v. State (2025) 7 NWLR (Pt. 1989) 299. P. 325, paras. D-E**, Wandering was defined as to ramble without a definite purpose or objective, roam, rove or stray or to go aimlessly, indirectly or casually to meander- Relevant Legislation.

Also, on page 327, para A-D, it was held that “At common law, wandering is the freedom to roam or “everyman’s” right is the general public’s right to access certain public or privately owned land, lakes and rivers for recreation and exercise.

The right is sometimes called the right of public access to the wilderness or the “right to roam.

Now, in modern times, the offence has been criticized for being overly broad and susceptible to abuse, potentially infringing on individuals' rights to freedom of movement and association.

Again, our Constitution guarantees these rights, and courts are increasingly expected to balance public interest with individual liberties.

Given the evolving nature of societal values and human rights, it's possible that the courts may reassess the relevance and application of the offence of wandering, considering factors like personal freedom, public safety, and the need for clear definitions of criminal conduct.

The offence of “wandering” in common law is the same as vagrancy.

The vagrancy law in this jurisdiction and some jurisdictions was created to criminalize the act of wandering from place to place with no evidence of employment or a way to support oneself. Prostitution, professional gambling and disorderly conduct, loitering, public intoxication and public defecation or urination were regarded as acts of vagrancy.

“Vagrancy” or “wandering” was originally a crime targeted at homelessness and unemployment that was, overreachingly and subjectively used to arrest those seen as political opponents or trouble makers. **Most crimes which were covered by the law of vagrancy now have individual charges targeted at the specific offence.**

Sections 167-169 Nigerian Criminal Code; Sections 140-142 and *Section 306, Penal Code of Northern Nigeria*.

Key Legal Considerations

Vagueness and Due Process: Generic "wandering" statutes are often found unconstitutional because they fail to provide clear notice of what conduct is prohibited and allow for arbitrary enforcement by police.

- **Status vs. Conduct:** Modern laws generally must criminalize specific *conduct* with a criminal *intent* (*mens rea* and *actus reus*), rather than a person's *status* (e.g., being unemployed or homeless).
- **Protected Activities:** Laws cannot prohibit legal behaviour, such as window shopping, waiting for a friend, or engaging in political speech, which may involve "wandering" or "remaining" in a public place.
- In summary, the "offence of wandering" is best understood in the context of these specific, narrowly defined modern statutes that require proof of a specific criminal intent and related actions, rather than the simple act of moving about without a clear destination.

Case Summary:

Issue: Whether the Court of Appeal was right in affirming the conviction and sentence of the appellant for the two counts offences of criminal conspiracy to commit armed robbery and belonging to a wandering gang of persons associated for the purpose of habitually committing armed robbery

Facts: The appellant alongside five others were arraigned at the High Court of Gombe State on three counts charge of Criminal conspiracy to commit armed robbery contrary to section 5(b) and punishable under section 1(2)(b) of the Robbery and Firearms(Special Provisions) Act; Illegal possession of firearms punishable under section 3 of the Robber and Firearms (Special Provisions) Act and Belonging to a wandering gang of persons associated with the purpose of habitually committing armed robbery punishable under section 306 of the Penal Code Law. The appellant and others were alleged to have conspired to rob at Tudun Hatsi Market, Gombe whilst in possession of pistol with 4 rounds of live ammunition without a licence.

The appellant pleaded not guilty to the three count charges preferred against him. The respondent in proof of its case called six witnesses whilst the appellant testified in his defence as DW4. At the end of the trial, the appellant was convicted on two of the three counts. He was discharged and acquitted on the second count charge of illegal possession of firearms.

Dissatisfied with the judgment of the trial court, the appellant appealed to the Court of Appeal which dismissed the appeal and affirmed the judgment of the trial court.

Still dissatisfied with the decision of the Court of Appeal, the appellant appealed to the Supreme Court.

In determining the appeal, the Supreme Court considered the provisions of Section 2(3) of the Robbery and Firearms (Special Provisions) Act, Section 218 of the Criminal Procedure Code and section 306 of the Penal Code.

Section 2(3) of the Robbery and Firearms (Special Provisions)Act provides:

“Any person found in any public place in possession of any firearms whether real or imitation and in circumstances reasonably indicating that the possession of the firearm is with intent to immediate or eventual commission by that person or any other person of any offence under section 1 of this Act or under the foregoing provisions of this section shall upon conviction under this Act be sentenced to imprisonment for not less than fourteen years but not more than twenty years.”

Section 218 of the Criminal Procedure Code provides:

“When a person is charged with an offence consisting of several particulars a combination of some only of which constitutes a complete lesser offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the lesser offence though he was not charged with it.”

Section 306 of the Penal Code provides:

“Whoever belongs to a wandering or other gang of persons associated for the purpose of habitually committing theft or robbery and not being a gang of brigands, shall be punished with imprisonment for term which may extend to seven years and shall also be liable to fine.”

It was Held (*Allowing the appeal in part by a majority decision of 4 to 1, Agim, J.S.C. Dissenting*): defining wandering as to ramble around.

The court's reasoning on the offence of wandering

NOTABLE PRONOUNCEMENT

On Need to expunge wandering as an offence from Penal Code and Criminal Code .Per OGUNWUMIJU, J.S.C. at pages 327-328, paras. F-C held;

“By way of obiter, I think the law against wandering has lost its relevance and is against the spirit and letters of the 1999 CFRN (as altered). However, I will not go as far as to hold the law unconstitutional and to strike it down or expunge it from the Penal Code of Northern Nigeria or the Criminal Code of Southern Nigeria. Most states still have this law in their criminal law codes. This is principally because this court has not been asked to do by the appellant’s counsel and the court will not gratuitously strike out a criminal legislation. Apart from that, the whole essence of society is to set limits to the rights of individuals if and when they infringe on the rights of the corporate unit. Thus, Chapter LV of the 1999 Constitution in setting out these fundamental rights makes them subordinate to the over all good of the society and accordingly enables laws that are necessary for democracy, security and the general well being of the entire society. It appears that as William Pitt stated at that House of Commons speech in 1783; “Necessity is the plea for every infringement of human freedom. It is the arguments of tyrants, it is the creed of slaves.” The courts have the unique duty to deal with of human rights when infringed by government or the executive or another private individual. It is the reconciliation of liberty with authority that is thus the bounden duty of the Judges.”

IMPLICATIONS FOR NIGERIAN LAW

Being found in a **public place** is a key ingredient of this offence...

Since the available evidence, the appellant’s confessional statement show that they were found in an uncompleted building and not a public place the ingredient of **being found in a public place is not proved.**

RELEVANCE IN PRESENT SOCIETY

- Overly broad definition raises concerns about abuse of power.
- Infringes on rights to freedom of movement (CFRN 1999, s.41).
- **To prove the commission of the offence in S.2(3) of the Robbery and Firearms (Special Provisions Act), evidence must exist showing that where the appellants were found is a public place.**
- Modern perspectives: The offense of "wandering" or vagrancy is largely considered irrelevant in modern society because most forms have been repealed or invalidated by courts as unconstitutional.
- Historically used to criminalize poverty, homelessness, and other "undesirable" populations, current laws generally focus on specific criminal acts rather than a person's economic status or transient status. Instead of vagrancy laws, societies now rely on laws against loitering, trespassing, or public order offenses, while addressing homelessness through social services and mental health initiatives.
- Balancing public interest with individual liberties.
- Need for clear definitions of criminal conduct because if we look at **Criminalization vs. Social Issue**: The consensus today is that wandering due to homelessness is not a crime itself, but a social issue that requires social solutions. Criminalizing it is seen as counterproductive, leading to a cycle of arrests, fines, and increased barriers to employment and housing for the individuals involved.

IMPLICATIONS

- Need for clearer definitions and stricter proof requirements
- Courts must balance public safety with individual liberties

CONCLUSION

- Wandering offence requires reassessment in light of modern human rights and societal values
- Abu v State highlights need for careful application
- Law reform and clarity are essential to ensure just application

However, in discussing the lead preseners paper, to lend my voice and further emphasise that the recent trends and key cases in **Nigerian Criminal Law And Procedure And Evidence-appellate Court Are:**

1. **Proof of Intent:** The Court of Appeal in **Abu v State_ [2025] 7 NWLR (Pt. 1989) 299** emphasized the importance of proving intent in criminal cases, highlighting the need for clear evidence to establish mens rea.
2. **Hearsay Evidence:** The Supreme Court in **State v. Ibrahim_ [2024] 18 NWLR (Pt. 1985) 123** reaffirmed the principles governing hearsay evidence, stressing the importance of adhering to the Evidence Act's provisions. See also **Isa vs. State (2025) 10 NWLR (Pt. 1996) 283 at 305 SC.**
3. **Confessional Statements:** In **Okonkwo v. State [2024] 15 NWLR (Pt. 1978) 456**, the Court of Appeal provided guidance on the admissibility and weight of confessional statements, emphasizing the need for voluntariness and corroboration. But for the exception as rightly stated by per Uwa, **JSC Halilu vs. Katsina State(2025) 6 NWLR (Pt. 1986) 289 at 329 SC.**
4. **Synthetic media evidence:** I also believe that cases should be treated on a case by case bases because sadly, we as a country are not equipped to handle the intricacies of AI. We are a work in progress but until we have all the angles in place, we may get swamped in it.

Emerging Issues:

1. **Digital Evidence:** The increasing use of digital evidence in criminal trials has raised questions about admissibility and authentication. Recent decisions, such as **State v. Adewale [2025] 8 NWLR (Pt. 1992) 321**, have begun to address these issues.
2. **Plea Bargaining:** The Court of Appeal in **State v. Uche_ [2024] 17 NWLR (Pt. 1982) 234** explored the role of plea bargaining in Nigerian criminal justice, highlighting the need for transparency and fairness.
3. **Admissibility of facts not otherwise relevant:** Sections 4 and 5 of the Evidence Act 2011 stipulates what is relevant and cases abound for example- **Diamond bank v. Opara (2018) 7 NWLR (Pt. 1617) P. 113, paras. E-H) 10**, and **EFCC v. Diamond Bank Plc (2018) 8 NWLR (Pt. 1620) 61 (P. 79, paras. A-C)**.

Also, in *Ayaka v. State (2020) 3 NWLR (Pt. 1712) 538 (P. 576, paras. B-C)*. *Facts not otherwise relevant are relevant if they are inconsistent with any fact in issue or relevant fact; or if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact probable or improbable.*

See also, *Section 9(a) of the Evidence Act 2011*.

Takeaways: I recommend

1. **Strict Adherence to Procedure:** Recent decisions emphasize the importance of following established procedures and rules of evidence.
2. **Evidence-Based Prosecution:** The prosecution must rely on credible, admissible evidence to secure convictions.
3. **Judicial Activism:** Appellate courts are increasingly taking a more proactive role in ensuring justice is served, while maintaining the rule of law.

I can confirm that there has been an improvement from the last conference to this time.

REFERENCES

- Abu v State [2025] 7 NWLR (Pt. 1989) 299
- Ayaka v. State (2020) 3 NWLR (Pt. 1712) 538 (*P. 576, paras. B-C*).
- Diamond Bank v. Opara (2018) 7 NWLR (Pt. 1617) P. 113, paras. E-H) 10.
- EFCC v. Diamond Bank Plc (2018) 8 NWLR (Pt. 1620) 61 (P. 79, paras. A-C).
- State v. Adewale_ [2025] 8 NWLR (Pt. 1992) 321,
- State v. Uche_ [2024] 17 NWLR (Pt. 1982) 234
- Nigerian Constitution 1999
- Criminal Code/Penal Code
- Evidence Act



Professional Highlights

- ### Leadership Roles

- ### Academic Credentials

- ## Memberships & Affiliations

- **Alternative Dispute Resolution:** Certified Associate, Nigerian Institute of Chartered Arbitrators (NICArb); Certified Mediator (Associate), Chartered Institute of Arbitrators-UK and Nigeria (CIArb); Certified Mediator, Institute of Chartered Mediation and Conciliation (ICMC); Certified Registrar, Institute of Alternative Dispute Resolution Registrars.

- ### Awards & Recognition

- ### Personal Interests

- ## Contact

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Thank You