

# Analysis of the Right of a Private Person to Initiate and Prosecute Criminal Proceedings in Northern States of Nigeria

By

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## Abstract

*The legal framework and the procedure for instituting or commencing criminal proceedings in Nigeria vary from one jurisdiction to another. For instance, the practice in the Magistrate Courts in the Southern states of Nigeria is not the same with the practice in the Northern states. While a private person in the south is required to lay his complaint through the police or file information after being endorsed by the Director of Public Prosecutions (D.P.P.) to initiate criminal proceedings, a private person in the North may file a direct complaint in the Magistrate Court or Area Court without going through the police or the Director of Public Prosecutions. However, there appears to be controversy in some parts of the Northern Nigeria particularly, Ilorin in Kwara State on the validity or otherwise of instituting a criminal trial via direct complaint by private individuals in Magistrate and Area Courts among legal practitioners, judges and members of the public. The controversy became more intense sometime in March 2016 and continues to escalate. As of June 2018, there were conflicting decisions of both High Courts and Magistrate Courts<sup>1</sup> on the locus standi of a private person to file a direct complaint and the competence of a direct complaint filed in the Magistrate and Area courts in Ilorin. The Court of Appeal, of Nigeria holden in Jos and Ilorin Judicial Divisions have had the opportunity of resolving this controversy one way or the other.<sup>2</sup> This article examines the right of private person to institute criminal proceedings in Northern Nigerian Courts particularly in Ilorin, Kwara State. The article analyses the provisions of the Criminal Procedure Code (CPC), the newly enacted Kwara State Administration of Criminal Justice Law, (KACJL) 2018 viz a viz the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended), other statutory provisions, judicial decisions as well as*

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<sup>1</sup>See the ruling of S.M. Akanbi, J. delivered on 31/05/2017 in the case of *Mr. Yinka Adebisi v. Mrs. Salmat Adebisi & Anor*, Suit No: KWS/178M/2016 p. 11; the ruling of E.B. Mohammed, J. delivered on 16/12/2016 in the case of *Mr. Abdul- Rahman Ishola Salami v. Mr. Sunday Aremu & 2 ors*, Suit No's KWS/37M/2016 and the ruling of Magistrate A.M. Ibrahim delivered on 17/07/2017 in the case of *H.R.H. Oba R.S. Are Asolo of Isolo Opin vs. Alhaji Musa Adewale Lawal & 5 ors*; Suit No: MCIA/360<sup>c</sup>/2017.

<sup>2</sup>See *Orji Vs. Amara* (2016) 14 NWLR (pt. 1531) 21 at 59 paras C-F, *Oniyide v. Oniyide* (2018) LPELR

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*opinion of legal practitioners, Judges/Justices with a view to ascertaining the correct position of law.*

## Introduction

Generally, in legal profession, controversy involving issues that affect the interpretation and/or implementation of statutes and application of same are bound to arise among the stakeholders. So, the controversy is bound to be resolved one way or the other either through amicable understanding of the persons concerned or through judicial intervention. Indeed, one of the basic duties of the judiciary apart from settlement of disputes is to interpret, construe, apply and enforce the law.<sup>3</sup> The judiciary represented by the courts is saddled with the responsibility of interpreting the constitution and other statutory enactments to ensure the protection of the rights of people and resolve conflicting interests in order to maintain peaceful co-existence in the society.<sup>4</sup> Thus, in the case of *Olawoyin v Attorney General of Northern Nigeria*,<sup>5</sup> the court held that it has inherent power to safeguard the fundamental rights of Nigerians and guard against any infringement of those rights.<sup>6</sup> Therefore, a person whose right was violated, being contravene and or likely to be contravene can seek remedy in a court of law.<sup>7</sup>

This article examines the controversy emanating from the decisions of court on the validity or otherwise of a direct complaint filed in the magistrate and area courts in Northern Nigeria using Kwara State as a case study. The article also discusses the legal regime of the right of a private person to institute criminal proceedings in magistrate and area courts in Northern parts of Nigeria, the efficacy of such criminal proceedings, its legal effects on the stakeholders and the way forward.

## The Procedure for Initiation of Criminal Proceedings in Northern Nigeria

Criminal proceedings in Nigeria were formerly governed by two principal legislations namely: The Criminal Procedure Act (CPA)<sup>8</sup> and the Criminal Procedure Code (CPC)<sup>9</sup> applicable in the Nigeria Southern and Northern States respectively.<sup>10</sup> Upon the creation of states from the former

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3. Daibu A. A. "The Judiciary, the Press and the Doctrine of Subjudice in Nigeria" Ahmadu Bello University Journal of Public and International Law (2014) vol.1 No. 6 p. 75.

4. Daibu A.A., and Abdulrazaq F.F. "Legal and Practical Challenges to the Enforcement of the Right to Freedom of Expression in Nigeria" Yonsei Law Journal (2016) vol. 7 No.1 p.103; *Olawoyin v. Attorney General of Northern Nigeria* (1961) NLR 269.

5. (1961) NLR 269.

6. See also *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo* (2001) 85 LRCN 908.

7. Abubakar, S.A.T., Olatoke, J.O. "Access to Justice through Legal Aid Service in Nigeria: A Road with Potholes" (2017), Vol.1, No.1, Al-Hikmah University Journal of Public and International Law, p.148. See also section 46(1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended); Section 1 and 37 Fundamental Right (Enforcement Procedure Rules) 2009; *Ladejobi v. A.G of the Federation* (1982) 3. N.C.L.R. 563; *Balley v. President of Nigeria* (1982) 3 N.C.L.R 658.

8. Cap. C. 41 Laws of the Federation of Nigeria, 2004.

9. Criminal Procedure Code (Northern States) Act, Cap. C. 42 Laws of the Federation of Nigeria, 2004.

10. Daibu A.A. Ayinla L.A. Daramola A.T, "An Analysis of the Application of Alternative Dispute Resolution Mechanisms in the Nigeria Criminal Justice System" (2017) Vol. 8 Ekiti State University Law Journal, p. 192; Hambali Y.D.U., Practice and Procedure of Criminal Litigation in Nigeria (Feat Print and Publish Limited, Lagos 2012) pp. 4-6; Agaba J. A., Practical Approach to Criminal Legislation (Pre-Trial and Trial Proceedings) (Abuja: Panaf Press, 2011) pp. 10-11.

regions, each state adopted either adopted the CPA or CPC.<sup>11</sup> These legislations have been applied for many years in the states created out of the former regions until recently when most of them started enacting Administration of Criminal Justice Laws (ACJL) for effective and speedy administration of justice.<sup>12</sup> It should be noted that criminal proceedings can be initiated in the courts in any part of the Northern Nigeria based on the relevant provisions of the Criminal Procedure Code<sup>13</sup> and the Administration of Criminal Justice Law of various states in Northern Nigeria.<sup>14</sup> The various ways by which criminal proceedings can be instituted as laid down by section 143 of the CPC are as follows:

**Section 143:-** *subject to the provisions of chapters XIII and XIV and to any limitations on the powers of the court, a court may take cognizance of an offence:-*

- (a) *When an arrested person is brought before it under section 40 or 41;*
- (b) *Upon receiving a First Information Report under section 118;*
- (c) *Upon receiving a complaint in writing from the Attorney General;*
- (d) *Upon receiving a complaint of facts which constitute the offence;*
- (e) *If from information received from any person other than a police officer it has reason to believe or suspect that an offence has been committed.*

The above provision of the law has laid down five distinct ways by which criminal proceedings may be initiated or instituted under the CPC which is applicable to all states in the Northern Nigeria.<sup>15</sup> The CPC has defined “court” to include any court of civil or criminal jurisdiction established by law or deemed to be so established.<sup>16</sup>

In practice, in Northern Nigeria, criminal proceedings are usually initiated or instituted in the area courts, magistrate courts; High Courts of a State and, or Federal High Courts. All the aforementioned courts fall within the meaning of the term “court” envisaged by the CPC and KACJL.<sup>17</sup> Therefore, it appears that criminal proceedings can be initiated in any of the courts listed above in Northern Nigeria through any of the procedure set out under section 143(a) – (e) of the CPC but not otherwise.

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<sup>11</sup>Hambali Y.D.U., Practice and Procedure of Criminal Litigation in Nigeria (Feat Print and Publish Limited, Lagos 2012) pp. 4-6; Agaba J. A., Practical Approach to Criminal Legislation (Pre-Trial and Trial Proceedings) (Abuja: Panaf Press, 2011) pp. 10-11.

<sup>12</sup>Daibu A.A. Ayinla L.A. Daramola A.T, “An Analysis of the Application of Alternative Dispute Resolution Mechanisms in the Nigeria Criminal Justice System (2017) vol. 8 Ekiti State University Law Journal, p. 192,211.

<sup>13</sup>Section 143, Criminal Procedure Code.

<sup>14</sup>In this article, reference will be made to the Kwara State Administration of Criminal Justice Law, 2018.

<sup>15</sup>The preamble to the Criminal Procedure Code states that “A Law to establish a Code of Criminal Procedure for Northern Nigeria”.

<sup>16</sup>Part 1, Chapter 1, paragraph 1 of the CPC.

<sup>17</sup>Ibid

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However, in Kwara State, apart from the procedure laid down by the CPC in section 143, Criminal proceeding may also be instituted in the following ways:

- (a) *In the Magistrate's Court, by a complaint whether or not on oath or upon receiving a First Information Report;*<sup>18</sup>
- (b) *In the High Court, by a charge filed by or on behalf of the Attorney General subject to section 111;*<sup>19</sup>
- (c) *By a charge filed in the court after the defendant has been summarily committed for perjury by a court under the provisions of this Law;*<sup>20</sup>
- (d) *By a charge filed in the court by any other prosecuting authority;*<sup>21</sup> or
- (e) *By a charge filed by a private prosecutor subject to the provisions of this law.*<sup>22</sup>

From the above it is clear and one can say without any equivocation that private persons are clothed with the requisite *locus standi* to initiate and prosecute criminal proceedings in the courts of competent jurisdiction in any part of the Northern Nigeria based on the relevant provisions of the CPC, particularly, section 143(d) and (e) respectively. By virtue of the said section of the CPC, a private person can institute criminal proceedings against any person alleged to have committed an offence(s) against him by laying a complaint before a court. This position is also in tandem with the provision of section 116(e) and section 122(1)(b) of the Kwara State Administration of Criminal Justice Law, 2018 (hereinafter called "KACJL").

At the risk of repetition but for the purpose of clarity, section 143 of the CPC states that:

*Subject to the provisions of chapter XIII and XIV and to any limitations on the powers of the court, a court may take cognizance of an offence-*

- (a) *Not Applicable*
- (b) *Not Applicable*
- (c) *Not Applicable*
- (d) *Upon receiving a complaint of facts which constitute the offence.*
- (e) *If from information received from any person other than a Police Officer, it has reason to believe or suspect that an offence has been committed*<sup>23</sup> (Underlining is supplied for emphasis).

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<sup>18</sup>See section 116 (a), Kwara State Administration of Criminal Justice Law, 2018.

<sup>19</sup>Ibid, section 116 (b).

<sup>20</sup>Ibid, section 116 (c)

<sup>21</sup>Ibid, Section 116 (c)

<sup>22</sup>Ibid Section 116 (e)

<sup>23</sup>See also section 116 (e) of KACJL which says: "by a charge filed by a private prosecutor subject to the provisions of this Law".

If we apply the literal rule of interpretation to the above provisions of the law, it will be obvious that the right of a private individual to initiate/institute criminal proceedings has been statutorily sanctioned. It is trite law that where the words of a statute are clear and unambiguous, their plain meaning should be given to them, because it is not the business of the court to make the law but just to interpret it as it is.<sup>24</sup> In the case of *INEC v. PDP*,<sup>25</sup> Coomassie, J.C.A. (as he then was) held that:

*“It is well settled that in construing and interpreting the words of the Decree or any other statute, grammatical and plain meaning be accorded them provided the language used is clear and unambiguous. Consequently, it is not the business of the court to bring in, chip in or even interpose any language and or words which tend to alter or change the intention and meaning of statutory provisions”.*

### **Analysis of The Decisions of Kwara State High Court of Justice on The Right of a Private Person to Initiate and Prosecute Criminal Proceedings in Northern Nigeria.**

Between December 2016 and May 2017, the Kwara State High Court of Justice, Ilorin judicial division delivers at least two decisions on the right of private persons to initiate and prosecute criminal proceedings in the northern Nigeria. The position of the court on this vex issue was whether or not a private person has the right to initiate or institute and prosecute criminal proceedings in courts within Northern Nigeria as provided by the CPC albeit before the coming into force of the KACJL in 2018 was made known to the world. His Lordship, Honourable Justice *E.B. Mohammed* of the Kwara State High Court, Ilorin had the opportunity to pronounce on the propriety or otherwise of the right of an individual person to initiate criminal proceedings in Northern Nigerian courts in the unreported suit number KWS/37M/2016 between *Mr. Abdul Rahman Ishola Salami v. Mr. Aremu & 2 Ors.* In his considered ruling delivered on 16<sup>th</sup> December 2016, his Lordship held that:

*“There is no doubt that section 143(e) of the Criminal Procedure Code Law confers courts in Northern Nigeria with power to receive direct criminal complaint from the public while section 117 of the same Law deal with complaints or information brought before the court through the police say by way of First Information report (FIR). Be that as it may, by virtue of the provisions of section 143(e) of the Criminal Procedure Code Law, Private Persons are authorized to institute criminal proceedings in courts in this state, including the Lower Court but the question is can a private person prosecute such criminal case before without the authority, consent or fiat of the Attorney-General of the state? My answer to the question posed above is in the negative since it will run counter to violate or breach the spirit and clear provisions of one of twin pillars of the rules of natural justice, nemo iudex in causa sua i.e. one can not be judge in his cause ....But then, it seems that section 152 of the Criminal Procedure Code Law only confers or empowers*

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<sup>24</sup>*Nimanteks Associates v. Marco Construction Company Limited* (1991) 2 NWLR (Pt.174) 411.

<sup>25</sup>(1999) 11 NWLR (pt.626) 174 at 175 paras B-C. See also *Kotoye v. Saraki* (1994)7 NWLR (pt.357)414 at 460-461, paras G-C (S/C); *Gafar v. Government of Kwara State* (2007) 4 NWLR (pt.1024) 375 at 408, paras B-C and *Adetayo v. Ademola* (2010) 15 NWLR (pt.1215) 169 at 198 paras B-D; 205 paras B-D; 190-191 paras G-A and 205 paras D-F; *C.B.N. v. Maiwada* (2013) 5 NWLR (pt.1348) 444 at 485 paras F-G.

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the lower court to hold enquiry into the offences alleged in the complaint or try them, in my view, it does not confer any power or right on a private person(s) to prosecute criminal proceedings before that court as done in the instant case”. (Emphasis Supplied).

Similarly, in Suit No. KWS/178m/2016 between *Mr. Yinka Adebisi v. Mrs. Salmat Adebisi & Anor*, his Lordship, Honourable Justice S.M. AKANBI of the Kwara State High Court of Justice, Ilorin in his considered ruling delivered on 31<sup>st</sup> May 2017 stated thus:

“My understanding of the sections under the Criminal Procedure Code, is to give powers to court to take proceeding or judicial notice of complaints by Police or A.G. where a complaint is received by an individual, all that the court does, is to take cognizance simpliciter and nothing more, the power to investigate is given through the direction of the court to the police... There is no gainsaying the fact that the proceedings conducted by Upper Area Court, Pake is a gross violation on rules of Natural Justice as section 143, 144 of the CPC only allow them to take cognizance after investigation by who?...”. (Underlining is supplied for emphasis).

Going by the above two decisions of the High Courts of Kwara State, Ilorin Judicial Division presided over by E. B Mohammed J. and S. M. Akanbi J. respectively, there is no doubt that a private person has the requisite *locus standi* to initiate and/or institute criminal proceedings in courts in Kwara state in particular and in Northern Nigeria at large. But it appears that the two courts are of the opinion that the right confers on the private individual to institute or initiate criminal proceedings does not extend to prosecution of criminal proceedings in court. According to *E.B. Muhammed, J.*, a private person cannot prosecute any criminal proceedings in court without the authority, consent, or fiat of the Attorney General of the state. In addition, his Lordship is of the opinion that, allowing a private individual to initiate and prosecute criminal proceedings will amount to breach of the spirit and clear provisions of one of the twin pillars of the rule of natural justice, *nemojudez in causa sua*, i.e. one cannot be a judge in his own cause.

With greatest respect to his lordship, we do not concede to the position stated by his lordship on the ground that, a private person does not require the authority, consent or fiat of the Attorney-General to institute and/or prosecute criminal proceedings in Northern Nigeria unlike in the Southern Nigeria where such private individual is required to obtain the consent or fiat of the Attorney-General of the state before he can do so.<sup>26</sup> It is not stated under section 143 of the CPC or under any law that before a private person can initiate or prosecute criminal proceedings in Northern Nigeria, he must obtain the authority, consent or fiat of the Attorney-General of the state.<sup>27</sup> Furthermore, the two High Courts of Kwara State, Ilorin Judicial Division stated in their considered ruling that allowing a private person to prosecute criminal proceedings will amount to a breach or violation of the rules natural justice, that is, *nemojudez in causa sua* meaning that a person cannot be a judge in his own cause. With due respect to the noble law lords, the principle of *nemojudez in causa sua* is inapplicable to the situation under consideration because of the following reasons:

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<sup>26</sup>*Fawehinmi v. Akilu* (1987) 11-12 SCNJ 151; A.G., *Anambra State v. Nwobodo* (1997) 7 NWLR (pt.256); *Atake v. Afejuku* (1994) 9 NWLR (pt.368) 879. See also section 213 the Criminal Procedure Act.

<sup>27</sup>Section 116 (e), Kwara State Administration of Criminal Justice Law, 2018.

First, the right of a private person to initiate criminal proceedings in Northern Nigeria does not extend to hearing and determination of the proceedings as a judge/magistrate by the said private person himself.<sup>28</sup> Secondly, a private person who initiates proceedings under section 143(d) and (e) of the CPC or under section 116 (e), KACJL has no right or power to pronounce any judgment in the case.

Furthermore, it is only the court who is an impartial umpire who has the requisite jurisdiction to hear, determine and to pronounce judgment in such a criminal proceeding and any other civil or criminal proceedings. Hence, the issue of *nemo judex in causa sua* does not arise at all as the private individual who has chosen to initiate and prosecute criminal proceedings pursuant to section 143(d) & (e) of the CPC or section 116 (e) of the KACJL cannot prevent the suspect/accused person from putting forward his defence before the court and he has no right or power over the court on how the proceedings should be conducted apart from the one stated by the law, when and what the judgment of the court should be etc. Therefore, a private person who initiates and prosecutes criminal proceedings in Northern Nigeria cannot be said to have breached or violated the rules of natural justice of *nemo judex in causa sua* or any rule or principle at all.

In addition, his law lord, S. M. Akanbi, J. held in his considered ruling held that the court can only take cognizance of the criminal proceedings initiated by a private person and nothing more. The term cognizance has been defined to mean a court's right and power to try and to determine cases.<sup>29</sup> Hence if it is agreed that a court can take cognizance of any criminal proceedings initiated by a private person, invariably, the court has the right and/or power to hear and determine the said criminal proceedings from the beginning to the end. This submission is in *tandem* with the decision of the Court of Appeal, Jos Judicial Division in the case of *Orji v. Amara*<sup>30</sup> where the court held that:

*“To prosecute means, in essence, to set in motion the law whereby an application is made to some person with judicial authority with regard to the matter in question...”*

The court further held that:

*“The case is brought under section 143(e) CPC, which allows a private person to institute direct criminal proceedings.. Therefore, the initiating of the complaint before the Upper Area Court cannot be malicious having been done under the provisions of the law. The circumstances in which the appellants initiated the case before the Upper Area Courts are justifiable in law having due regard to the definition of “prosecute and “malice” referred to hereinbefore in this judgment”.*<sup>31</sup>

Similarly, the court stated further that:

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<sup>28</sup>Abubakar, S.A.T., Ismael, F.Y., Daibu, A. A., Zakariyya, O., “*Protection of Citizen from Malicious Prosecution in Nigeria*” (2017), vol.1, No.1, Al-Hikmah University Journal of Public and International Law, pp.232-233.

<sup>29</sup>Bryan, A.G. Black's Law Dictionary 8<sup>th</sup> edition (Thomson West, USA 2004) p.1241.

<sup>30</sup>(2016) 14 NWLR (pt.1531)21 at 60 para F.

<sup>31</sup>Ibid p. 61 paras C-D.

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*“The conclusion and the decision arrived at by the learned trial Judge of the Lower Court on page 202 of the record of appeal that the appellants acted maliciously in the institution of the case by private criminal prosecution cannot be sustained for the reasons adumbrated herein.”<sup>32</sup>*

Similarly, in the case of *Mrs. Tolulope Oniyide v. Mr. Taiye Ayotunde Oniyide*,<sup>33</sup> the Court of Appeal, Ilorin held that:

*“It must not be forgotten, too, that clear aim of section 143 of Criminal Procedure Code Law of Kwara State in issue and similar provisions in the Criminal Procedure Code Laws of all the states constituting the old Northern Region of Nigeria is to make the initiation of criminal complaints simple so that any member of the general public who has any genuine criminal complaint can approach the courts directly to lay it. It is something suggestive of an all hands on deck on the fight against crimes approach. That laudable objective ought not to be and should not be allowed to be defeated by dry technical objections like the instant one of the means by which a person chose to notify the court of his/her criminal complaint. Technical justice is an ill wind that blows no one any good and should be avoided like the plague”*

The fear that some people may abuse the institution of criminal prosecution by way of criminal direct complaint does not take away the right to institute same. One of the learned authors has this to say:

*“Meanwhile, because a complaint can be instituted by private individuals, it has been subjected to various abuses. More often than not, it is maliciously instituted by certain individual requiring a criminal summons or a warrant to be issued against his perceived enemy without any clear offence disclosed in the complaint. Therefore, Magistrates are advised to always avail themselves of sections 148 and 149 of the Criminal Procedure Code to send a complaint brought to their notice for an investigation by the police whenever they are doubtful as to whether the complaint discloses any offence.”<sup>34</sup>*

It should be noted that the constitution of the Federal Republic of Nigeria, 1999 (as amended) recognizes the right of a private person to initiate criminal proceedings. The constitution provides that:

*“The Attorney-General of a state shall have power*

(a) *Not applicable here*

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<sup>32</sup>Ibid, p 62, para D. also the case of *Ademola Bakare v. Segun Oladipo* Unreported, Suit No.CA/IL/C.59/2014 delivered on 7/7/2017.

<sup>33</sup>(2018) LPELR-444240 (CA).

<sup>34</sup>Celestine, O., 'The Trial Procedure in Magistrates' Courts Under the Criminal Procedure Code'(Siddwell International Limited, 2013) p.129.

- (b) *To take over and continue any such criminal proceedings that may have been instituted by any other authority or person.*<sup>35</sup> (Underlining supplied for emphasis)

From the above provision of the constitution, it is logically deduced that the Attorney-General of the state does not have exclusive right or power to initiate criminal proceedings. The constitution recognizes the right of private individual to initiate and prosecute criminal proceedings as rightly stated under section 143(d) & (e) of the Criminal Procedure Code and section 116 (e) of the KACJL respectively.

By implication, section 211 (1) (b) and (c) of the constitution states that:

*“...instituted by any other authority or person.”*

It appears that the authority referred to in S.211 (1) of the Constitution includes but not limited to Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices Commission (ICPC), Nigeria Civil Defence and Security Corpse (NSDSC) etc whereas, the word person mentioned therein could mean individual person.<sup>36</sup>

It is therefore submitted that a private individual has the right to initiate and prosecute criminal complaint/proceedings in the court of competent jurisdiction in Northern Nigeria. However, upon arraignment, the court will have the power to refer the case to the police for investigation or further investigation as the case may be.<sup>37</sup>

## Conclusion

This article examined the various provisions of the law, particularly, the constitution of the Federal Republic of Nigeria 1999, the Criminal Procedure Code and KACJL in relation to the right of private person to initiate and prosecute Criminal Proceedings in courts in Northern Nigeria. It is worthy of note that, the right of a private individual to initiate and prosecute criminal proceedings as analysed in this article and has strengthened by judicial authorities does not affect the right and power of the Attorney-General of the state as clearly expressed in the constitution. The Constitution States that:

*“The Attorney – General of a state shall have power*

- (a) *To institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court of law in Nigeria other than<sup>38</sup> court martial in respect of any offence created by or under any law of the House of Assembly.*
- (b) *To take over and discontinue any such criminal proceedings that may have been instituted by any other authority or person;<sup>39</sup> and*

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<sup>35</sup>Section 211 (1)(b), Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>36</sup>Magistrate A.M. Ibrahim; Suit No MCIA/360/2017, 17/07/2017.

<sup>37</sup>Section 148, Criminal Procedure Code. See also Olusewo VS. C.O.P.C (1998) NWLR (pt.578) 547 at 563 and *F.R.N. v. Osahon* (2006) 5 NWLR (pt.973)361 at 410-411, per Kutigi, J.S.C. (as he then was). see also section 97 (5), Kwara State Administration of Criminal Justice Law, 2018.

<sup>38</sup>Section 211 (1) (a) 1999 Constitution of the Federal Republic of Nigeria (as altered).

<sup>39</sup>Ibid, Section 211 (1) (b).

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(c) *To discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other person.*<sup>40</sup>

It appears to be a misconception of the law to suggest that like in the Southern Nigeria, Private Individual must obtain the consent or fiat of the Attorney – General to initiate or prosecute criminal proceedings in the Northern Nigeria. Although, the Attorney General is constitutionally vested with the power to take over or discontinue such criminal case/proceedings that may be instituted by any private person based on the provisions of section 211 (1) (a) (b) and (c) of the constitution, but such power of the Attorney – General does not rob the private individual his right to institute/initiate criminal proceedings, Section 143 (d) (e) of the CPC and section 116 (e), KACJL are existing law by virtue of the relevant provision of the constitution.<sup>41</sup>

Be that as it may, section 143 (d) (e) of the CPC and section 116 (e), KACJL remain a subsisting law with necessary statutory flavour until and unless they are amended or repealed. The sections confer on the court the power and inherent jurisdiction to hear and determine criminal proceedings initiated by private individual.<sup>42</sup> It is, therefore, safe to allow individual person to initiate and prosecute criminal proceedings in the entire country without limiting it to Northern Nigeria alone. This will go a long way to reducing the use and application of self-help in this country which has been the order of the day. It will also allay the fear of some individuals who believe that police officers are not diligent prosecutors or that police officers may compromise their (private persons) cases for one reason or the other. After all, if a person makes a false statement or information maliciously and cause a judicial action to be taken against another person, the former can be liable for malicious prosecution or tort of defamation of character or both.<sup>43</sup>

The courts always emphasis on the need to do away from self-help because it is strange and unacceptable to any civilized society.<sup>44</sup>

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<sup>40</sup>Ibid, Section 211 (1) (c). See also the Supreme Court decision in the case of *Comptroller N.P.S. v. Adekanye* (2002) 7 S.C.182 at 186 where Belgore, J.S.C (as he then was) held that the Attorney-General has the power under the Constitution to institute and undertake criminal proceedings in any court in Nigeria, other than a court-martial in respect of any offence and can take over or discontinue any such proceedings instituted by any other authority or person. See also *A.G., Ondo State v. A.G., Fed. & 35 Ors.* (2002) 6 S.C. 1 at 87-88.

<sup>41</sup>Section 315, 1999 Constitution of the Federal Republic of Nigeria (as altered).

<sup>42</sup>Kehinde M. M, *Constitutional Law in Nigeria*” (Malthouse Press Limited, Lagos) P.180. The author is of the opinion that the inherent power of the court complements the jurisdiction conferred on a court by the constitution of a statute.

<sup>43</sup>Abubakar, S.A.T., Ismael, F.Y., Daibu, A.A., Zakariyya, O., “*Protection of Citizen from Malicious Prosecution In Nigeria*” (2017), vol.1, No.1, Al-Hikmah University Journal of Public and International Law, pp.232-233; Abubakar, S.A.T.’ Olatoke, J.O., “*Accrual of Cause of Action in Torts of Defamation of Character and The Available Defences*” (2016) vol.2, No.1, Lead City University Law Journal (LCULJ), pp. 34-39.

<sup>44</sup>Melami E., *The Nigeria Constitutional*’ (Princeton Publishing Company, Lagos, 2015) p. 133. See also the case of (2001) 6 NWLR (pt.710 *Nkpa v. Nkume*)543 at 560 paras F-H, and *Anigbogu v. Uchejigbo* (2002) 10 NWLR (pt.776) 472 at 487 paras A-H.