Judicial Discretion and The Right to Fair Trial in Nigeria: An Analysis of Federal Republic of Nigeria v Nnamdi Kanu (No. Fhc/Abj.Cr/383/2015)

By

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Abstract

Judicial discretion occupies a central place in criminal adjudication, particularly in cases with implications for national security and fundamental human rights. Against this background, this paper examines how the trial court exercised judicial discretion in Federal Republic of Nigeria v Nnamdi Kanu, a high-profile terrorism prosecution, and addresses the specific research question whether that exercise of discretion was consistent with the right to fair trial guaranteed under section 36 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended). The paper adopts a doctrinal legal research method, relying on the trial judgment, appellate decisions, and relevant statutes as primary sources, supplemented by scholarly commentary as secondary sources. Applying this method, the paper analyses the trial court's exercise of discretion across the principal stages of the trial, including the legality of arrest, the effect of extraordinary rendition on jurisdiction, arraignment, fitness to stand trial, exclusion from proceedings, self-representation, trial under a repealed statute, and sentencing. The paper finds that the trial court's exercise of discretion was, in most respects, doctrinally defensible, but that its treatment of extraordinary rendition as extraneous to jurisdiction, together with the limited safeguards attending self-representation and sentencing, exposes gaps that call for doctrinal clarification and institutional reform. The paper contributes to Nigerian criminal procedure and constitutional law scholarship by developing a framework for evaluating judicial discretion in terrorism prosecutions and by proposing concrete reforms to strengthen fair trial protection without compromising national security imperatives. It concludes that, while the trial court operated largely within constitutional bounds, judicial discretion in Nigeria's terrorism trials should be treated as a systemic feature of the criminal justice system requiring clearer doctrinal guidance, rather than as a case-specific anomaly.

KEYWORDS: *Criminal justice, Extraordinary Rendition, Fair trial, Judicial discretion, Terrorism.*

1. INTRODUCTION

The judgment in *Federal Republic of Nigeria v Nnamdi Kanu*[3] was delivered on 20th day of November, 2025 by Hon. Justice J.K. Omotosho. Beyond its political undertones, the trial of Nnamdi Kanu, leader of the proscribed Indigenous People of Biafra (IPOB) presents one of the most controversial and legally significant criminal proceedings in contemporary Nigerian jurisprudence. Instituted by the Federal Republic of Nigeria on allegations bordering on

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[3] FHC/ABJ.CR/383/2015.

terrorism and threats to national security, the case offers a fertile ground for examining how Nigerian courts exercise of discretion within the framework of constitutional criminal procedure. The significance lies in the divergent judicial reasoning exhibited at different appellate levels, especially on the effect of extraordinary rendition on jurisdiction and the validity of criminal proceedings.

This paper advances the argument that although the trial court's exercise of judicial discretion in *FRN v Nnamdi Kanu*[4] was, on most procedural issues, doctrinally defensible, its cumulative treatment of extraordinary rendition, self-representation, and sentencing reveals structural gaps in the protection of fair trial rights in Nigeria's terrorism prosecutions. The paper pursues this argument through two related aims. First is a descriptive aim which analyse how judicial discretion was exercised at the trial stage and evaluated on appeal, and secondly, a normative aim which assess the implications of the exercise of constitutional guarantee to fair trial under section 36 CFRN and the identification of where reform is required.

The paper's contribution is threefold. First, it contributes to Nigerian criminal procedure scholarship by offering a systematic, issue-by-issue account of judicial discretion across the full arc of a major terrorism trial, from arrest to sentencing. Second, it contributes to constitutional law scholarship by evaluating the Supreme Court's jurisdictional resolution of extraordinary rendition against the substantive content of section 36 CFRN. Third, it contributes to the developing literature on terrorism prosecution in Nigeria by translating the case's doctrinal lessons into concrete recommendations for courts, the legislature, and trial management practice.

2. CONCEPTUAL FRAMEWORK AND LITERATURE REVIEW: JUDICIAL DISCRETION AND FAIR TRIAL IN NIGERIA

Discretion has been defined as a leeway within a legal framework that allows a judge or a court a choice between legal alternatives.[5] This definition enables the judge to make a choice among the lawful choices available within a legal context, where the law itself does not provide a single answer. Judicial discretion has also been defined as referring to the authority vested in judges to make choices between legally permissible alternatives in the interpretation, application, and enforcement of the law.[6] The definition aptly describes the primary role of a judge in situations where there are uncertainties, deficiencies, or other means available within a statutory context. Within the legal system of Nigeria, this principle has been held to reconcile the intent of legislation with actual practice and in that regard, the Supreme Court in *Owners of the MT Marigold v NNPC*[7] established that discretion should consider the facts and circumstances surrounding the case. This arises most prominently where legal rules are open-textured, where procedural statutes confer latitude, or where the interests of justice demand flexibility in adjudication. Therefore, is settled law that when the judge makes a decision from personal

[4] Ibid.
[5] RE Badejogbin, 'Judicial Discretion: Problematizing the Ascertainment and Application of Customary Law by Formal Courts and Relevant Theories (Nigeria and South Africa)' *Legal Pluralism and Critical Social Analysi* (2022) 54(2-3) *s* 252–277.
[6] F Rilwan, 'An Examination of the Judicial Control of Administrative/Legislative Discretion in Nigeria', [2020] 11 (1) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence (NAUJILJ)* 149.
[7] [2022] 7 NWLR (Pt. 1828) 165 (SC).

whims, partiality, or from beyond the law, it will be an abuse of discretion and therefore is likely to be set aside by a higher court on appeal.[8]

In criminal proceedings, judicial discretion manifests in decisions relating to arraignment, admissibility of evidence, conduct of trial, grant or refusal of adjournments, management of courtroom proceedings, sentencing, and the overall control of the trial process. The application of judicial discretion leaves no doubt that it enables courts to tailor justice to the circumstances of individual cases.[9] Nigerian courts have consistently held that judicial discretion must be exercised judiciously and judicially on sound legal principles, relevant considerations, and the interests of justice, rather than on extraneous factors.[10] Section 36 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) enshrines a cluster of procedural guarantees as guiding principles for the exercise of judicial discretion in criminal adjudication.[11] These guarantees operate not merely as mere requirements but as substantive conditions against which judicial conduct and discretionary decision-making must be assessed. However, its misapplication also carries the risk of arbitrariness if exercised without principled restraint. This is well articulated in the case of *Sirros v Moore*,[12] where Lord Denning observed thus:

> *... The reason is not because the Judge has any privilege to make mistakes or to do wrong. It is so that he should be able to do his duty with complete independence and free from fears*.

This position reflects an understanding that discretion is not antithetical to the rule of law, but rather an integral component of it when properly constrained. Therefore, where the exercise of discretion undermines the substance of fair hearing rights, such discretion becomes constitutionally suspect and liable to appellate intervention.[13]

From a theoretical perspective, judicial discretion has long occupied a central place in legal scholarship. Legal Interpretivism theory posit that the law is seamless and contains no gaps.[14] The theorists contended that even if a clear rule does not exist, legal principles always point to a single legally correct answer. However, legal positivism and legal realism theories agreed that discretion holds an intermediate place between choices dictated by purely personal or momentary whim and those which are made to conform to rules whose application to the particular case is obvious.[15] As a result, legal positivists believe law is a system of rules created by human

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[8] See *Onyekwere v EFCC* [2024] 8 NWLR (Pt. 1940) 313 (CA): See also, See *DHL Int'l Nig. Ltd. v Eze-Uzoamaka* (2020) 16 NWLR (Pt. 1751) 377-571 @ 496, paras. F-G (CA).

[9] See *Abdul v State* [2024] 18 NWLR (Pt. 1969) 127 (CA); A Abhulimhen-Iyoha 'Judicial Discretion of Judges in Criminal Cases in Nigeria: Prospects and Challenges' (PhD thesis, Walden University 2015).

[10] See *Ikomi & Ors v State* [1986] 3 NWLR (PT. 28) at 340 (SC); *Francis v FRN* [2021] 5 NWLR (Pt. 1769) 209-418 @ 414, paras. B-C (SC).

[11] Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended); see, CQ Umeobika and NE Ejimofor, 'Problems and Challenges Facing a Defendant in Criminal Trials in Nigeria', (2024) 8 (2) *African Journal of Law and Human Rights (AJLHR)* 127-128.

[12] (1974) 3 All ER 776.

[13] See *Abacha v FRN* [2014] LPELR-22014 (SC), where the court defined judicial power as the court's authority to decide to decide cases brought before it.

[14] VV Novitskyi, 'Judicial discretion in legal theory through the prism of the Anglo-Saxon legal system' [2026] 17 *Al'manah prava* 382-390.

[15] HLA Hart, 'Discretion' [2013] 127 *HarvLRev*, 658

authorities.[16] The theorists argued that judges must apply valid, textually authoritative laws but must acknowledge the inevitability of discretion in routine and hard cases. Therefore, when a case falls outside these rules, a judge must use discretion. The analogy of this theory has famously described as the hole in a doughnut.[17] The doughnut itself represents the established legal rules, while the empty hole is the area of open discretion where a judge operates freely. However, legal realists have postulated that judicial decision-making should be guided by principles that best fit and justify the legal system as a whole, rather than by unfettered choice.[18] Also, comparative constitutional practice similarly recognises discretion as a necessary feature of adjudication,[19] but one that must be balanced against procedural fairness, equality of arms, and proportionality, especially in criminal trials involving serious offences or national security concerns. An analysis of *FRN v Nnamdi Kanu*[20] through the lens of these legal theories reveals how the Nigerian judiciary balances rule-bound adjudication against discretionary pragmatism. This case represents an excellent example of the application of Realist theory of law, as it takes into consideration the political realities of the process of making decisions by judges.

Existing Nigerian scholarship on this subject clusters around four broad themes. First is the doctrinal content of judicial discretion and its limits.[21] Secondly, the substantive guarantees of fair trial under section 36 CFRN.[22] Thirdly, the special pressures that national security and terrorism prosecutions place on ordinary criminal procedure.[23] Finally, more narrowly, the jurisdictional consequences of extraordinary rendition and the exercise of sentencing discretion.[24]

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[16] P Mascini, 'Discretion from a Legal Perspective' in Evans T, Hupe P (eds), *Discretion and Quest for Controlled Freedom* (Palgrave Macmillian, Cham, Switzerland 2019), 121-142. <https://doi.org/10.1007/978-3-030-19566-3_9> accessed February 9, 2026.

[17] Badejogbin (n 3).

[18] P Mahi, 'Critical Analysis of Judicial Discretion in Application of Various Modes of Interpretation in Liberal State (2023) *SSRN*. <https://doi.org/10.2139/ssrn.4676810> accessed February 9, 2026; O A Aso, 'A Doctrinal Analysis of Judicial Review in Nigeria – Balancing Activism and Restraint in Constitutional Adjudication', [2025] 16 (1) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence (NAUJILJ)* 17.

[19] Rilwan (n 4).

[20] ibid .

[21] See H U Obi-Obiorah, 'Rule Of Law And Administrative Discretion In Nigeria: A Jurisprudential And Comparative Appraisal' [2025] 13(3) *International Journal of Business & Law Research* 285-289; A M Tijah, 'Articulating Sentencing Guidelines to Structure Judicial Sentencing Discretion in Nigeria' (2021) 11(1) *UI Law Journal* 159-190; Rilwan (n 4) 149–160; A A Kana, 'Perspectives and Limits of Judicial Discretion in Nigerian Courts' [2014] 29 *Journal of Law, Policy and Globalization* 157-167.

[22] RA Uzoech, 'Application of the Principles of Fair Hearing in Administrative (Disciplinary) Proceedings in Nigeria: Scope and Limitations' [2025] 6(1) *Law and Social Justice Review (LASJURE)* 52-57; C Ojumu, A Emeje and P O Nwajah, 'Jurisprudential Examination of the Constituent Kernels of Fair Hearing' [2022] 10(1) *ABUAD Law Journal (ALJ*) 1-25; K J Bielu, 'Fair Hearing in Judicial Adjudication in Nigeria' [2018] 14 *UNIZIK Law Journal* 1-18; E M Akpambang, 'Fair Hearing: Sine Qua Non Under Nigerian Criminal Justice Jurisprudence'[2016] 52 *Journal of Law, Policy and Globalization* 34-44.

[23] T Oyelade, T O Awotoye, and Y Fatoki, 'Assessing the Efficiency of Judicial Response to Terrorism in Nigeria' [2025] 2(1) *NAUJOPL* 1-16; I I Wada and R D Mann, 'Balancing National Security and Civil Liberties: The Role of the Nigerian Judiciary' [2025] 8(3) *African Journal of Law, Ethics, & Education [AJLEE]*, 43-66; B O Kalu, 'The Integration of Human Rights Principles in Nigeria's Counterterrorism Framework: A Pathway to Sustainable Security' [2025] 13(2) *Jurnal Ilmu Sosiologi Dialektika Kontemporer (Journal of Contemporary Dialectical Sociology)* 194-205.

[24] H Okorie,'Extraordinary Rendition and the Reconceptualization of State Responsibility: A Critical Analysis of the Nnamdi Kanu Case' [2026] 3(1) *Nnamdi Azikiwe University Journal of Human Rights Law (UNIZIK-JHRL)* 44-55; C Osisioma, 'Extraordinary rendition and obligations of Nigeria under International Law: The Trial of Mazi Nnamdi Kanu'.[2025] 9 *African Human Rights Yearbook* 690-712; C Okosa, 'Extraordinary Renditions: Nigeria Finally

Across these themes, commentators broadly agree that discretion is an inescapable feature of adjudication and that its legitimacy depends on principled, rather than arbitrary, exercise.[25] They, however, diverge, on how far procedural irregularities preceding trial, such as unlawful arrest or rendition, should be permitted to affect the trial itself, and on how much weight security considerations should carry in that balance.[26] What this literature leaves comparatively underexplored is a sustained, issue-by-issue evaluation of how these unresolved tensions actually played out across the successive stages of a single, high-profile terrorism trial. It is this gap, rather than the general proposition that discretion requires constraint, that the present paper addresses. Its novelty lies not in restating the doctrinal content of judicial discretion or fair trial rights, but in tracing how that doctrine was applied, tested, and in places strained across the full course of *FRN v Nnamdi Kanu*,[27] and in using that case-specific analysis to develop a proportionality-oriented account of how courts should treat pre-trial irregularities within the criminal process itself.

This paper places reliance on how right to fair trial operates as unavoidable consideration in the exercise of judicial discretion in criminal proceedings.[28] It assesses how the courts navigates not only the compliance with procedural formalities, but also how it ensure that the overall conduct of proceedings meets standards of fairness, equality, and rational justification. Thus, in the context of terrorism-related prosecutions where courts may be tempted to accord greater weight to security considerations, the fair trial guarantee serves as a constitutional counterweight, ensuring that discretion is exercised in a manner consistent with the rule of law. This conceptual framework therefore provides the analytical lens through which the exercise of judicial discretion in *FRN v Nnamdi Kanu*[29] is examined in this paper.

3. ANALYSIS OF MAJOR PROCEDURAL ISSUES ARISING FROM THE TRIAL

It is against the foregoing conceptual framework that this section analyses the principal procedural and constitutional issues that arose in the instant case. Through this issue-based analysis, this section seeks to demonstrate how judicial discretion functioned both as a mechanism for maintaining procedural order and as a potent constraint on the substantive enjoyment of rights to fair trial. Each issue is examined through the same four-step structure: the applicable legal rule, the facts of the case as found by the trial court, the court's reasoning, the fair trial implications of that reasoning, and the analytical evaluation. The issues are analysed below.

Joins the Elite League' [2021] *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3967130> accessed 15August 2026; B M Chalawa, 'An Appraisal of Extraition Laws: Challenges and Reform of the Nigeria Experience' (2024) 2 *Extradition Laws in Nigeria* 167-199.

[25] J Allen, 'Cerberus at the Gate: The Fundamental Connection between Prosecutorial Discretion and Justice' (2026) 45(1) *Criminal Justice Ethics*, 23–49; T Riesthuis, 'The Legitimacy of Judicial Decision-Making: Towards Empirical Scrutiny of Theories of Adjudication' [2023] 19(2) *Utrecht Law Review* 75–86; D Harris, 'Judges as Agents of the Law' [2020] 41(2) *Mitchell Hamline Law Journal of Public Policy and Practice* 2-19.

[26] CQ Umeobika and NE Ejimofor, 'Problems and Challenges Facing a Defendant in Criminal Trials in Nigeria' [2024] 8 (2) *African Journal of Law and Human Rights (AJLHR)* 126-132; D T A Eyongndi, 'The Administration of Criminal Justice Act, 2015 as a Harbinger for the Elimination of Unlawful Detention in Nigeria' [2021] 21(1) *African Human Rights Law Journal* 441-468.

[27] ibid.

[28] Abhulimhen-Iyoha (n7).

[29] ibid.

3.1 Search and Arrest of Warrant

The general rule under Nigerian criminal procedure is that a search or arrest must be carried out pursuant to a valid warrant issued by a court of competent jurisdiction.[30] The rationale behind this principle of law is to safeguard the constitutional right to privacy as preserved under sections 37 of the CFRN, 1999 (as amended), which provides that 'The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected'. This provision prevents arbitrary interference by law enforcement authorities and lays the foundation for the requirement of a warrant as a condition for search of premises and arrest of any person in Nigeria.[31] This ensures prior judicial oversight and reflects the constitutional commitment to due process in the investigation and prosecution of criminal offences.

However, notwithstanding this general rule, Nigerian law recognises limited circumstances in which a search or arrest may lawfully be conducted without a warrant.[32] The statutory foundation for these exceptions is principally found in the Administration of Criminal Justice Act (ACJA) 2015[33] and other relevant enactments.[34] The law permits the arrest where a person is reasonably suspected of having committed a felony, where an offence is committed in the presence of a law enforcement officer, or where delay in obtaining a warrant would defeat the ends of justice.[35] In the context of the case of Nnamdi Kanu, the facts leading to his arrest on the 14th October 2015 at Essential Airport Hotel in Lagos are succinctly captured at page 10-11 of the Judgment as follows:

> *On arrival at the hotel, they introduced themselves and informed the hotel workers that they were there to arrest the Defendant. Pw1 even showed the receptionist the photograph of the Defendant, but he was told that the Defendant was not in the hotel. He then asked for the guest manifest but the name of the Defendant was not on it. So Pw1 reverted to his commander who then ordered that they conduct a room-to-room search. Shortly after Bolaji called Pw1 who was downstairs with his director informing him that he had found the Defendant in room 303. Thereafter, they proceeded to arrest the Defendant, who resisted arrest.*

In the circumstance of this case, the trial court was required to determine whether the arrest of the defendant fell within the permissible statutory exceptions.

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[30] D Tarh-Akong Eyongdi 'The Administration of Criminal Justice Act, 2015 as a Harbinger for the Elimination of Unlawful Detention in Nigeria' [2021] 21 *African Human Rights Law Journal* 442. <https://doi.org/10.17159/1996-2096/2021/v211a19> accessed February 9, 2026.

[31] See, Administration of Criminal Justice Act 2015 (ACJA), Ss 143-157 (Form Part 18, which govern the rules, issuance, execution, and handling of search warrants and recovered items during criminal investigations in Nigeria); Police Act 2020, Ss 48, 52, 55 and 56 (Part of Part VII, which governs the specific powers of police officers regarding searches, seizures, and entering premises during investigations); See Criminal Procedure Act (CPA), Ss 25-27 (form part of the provisions governing warrants of arrest); Criminal Procedure Code (CPC), s 58 (1).

[32] D Abdulazeez, 'Illegal Searches and Seizures and the Admissibility of Its Fruits in Nigeria: Implications for Fundamental Rights and Proposal for Reform', [2024] *SSRN*. <https://doi.org/10.2139/ssrn.4998050> accessed February 9, 2026. See ACJA 2015, s 12 which governs the search of premises/places entered by a suspect whom a police officer or authorized person is seeking to arrest.

[33] ACJA 2015, s 143-157.

[34] See CPA, s 7 (1); CPC, Ss 78 (1) and 34 (1), and Police Act 2020, Ss 52 and 53.

[35] *Benson v John* [2024] 5 NWLR (Pt. 1932) 531 (CA).

In the exercise of judicial discretion to adequately preserve constitutional safeguards, the question before the court is what would happen if the arresting officers would need to go back to secure a search warrant before the room-to-room search could be conducted. This assessment is central to evaluating the propriety of the arrest and the extent to which judicial discretion was exercised in a manner consistent with fair trial safeguards. From the evidence on record, the trial court found that without the immediate room-to-room search of the hotel, it would not have been possible for the arresting officers to arrest Nnamdi Kanu in room 303. Judicial authorities have consistently emphasised that irregularity in issuing or execution of warrant will not vitiate the trial[36] but, that the irregularity attaches to the executing officer who may be sued by the occupier of the premises for damages in civil action.[37]

It must be pointed out that the legality of search of premises and arrest of a person depends on strict compliance with statutory conditions and the existence of reasonable suspicion based on objective facts. The seriousness of the alleged offence, standing alone, does not justify departure from the warrant requirement. Where law enforcement actions fall outside the recognised statutory exceptions, any judicial validation of such actions raises constitutional concerns and implicates the right to fair trial guaranteed under section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Having established that the legality of the defendant's arrest turned on discretionary compliance with statutory exceptions to the warrant requirement, the analysis now turns to the more contested question of how the defendant was ultimately brought before the court, and what consequences, if any, attached to the manner of his rendition.

3.2 Compelling Attendance of the Defendant and the Effect of His Illegal Arrest

It is common knowledge that in the course of his trial, the defendant had earlier jumped the bail that was granted to him by Hon. Justice Nyako. In order to ensure that the defendant appears in court to answer to the charges against him, he was subsequently arrested in Kenya and brought to Nigeria. At trial, the defendant contended that he was kidnapped in Kenya and extraordinarily renditioned to Nigeria. This issue is worthy of consideration.

3.2.1 Extraordinary Rendition and the Trial Court's Position on Jurisdiction

Flowing from above, the defendant challenged the jurisdiction of the trial court on the basis that his extraordinary rendition is a violation of international law, domestic due process requirements, and his fundamental rights. The argument was that such illegality vitiated the entire proceedings and deprived the court of jurisdiction to entertain the charges against him. This contention required the courts to confront the difficult question of whether grave irregularities in the process of securing the attendance of an accused person could invalidate an otherwise competent criminal trial. In determining this, the trial court considered the seriousness of forcible transfer of an accused person across national borders without recourse to formal extradition procedures or compliance with international and domestic legal safeguards, particularly in relation to personal liberty, due process, and the legitimacy of the court's jurisdiction.

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[36] See *Okotie v Police* (1959) 4 FSC 125; *Musa Sadau v The State* (1968) 1 All NLR 124; *Onuorah v Commissioner of Police* (1960) W.N.L.R. 10, and *Sunday John v The State* [2013] LPELR-20536 (CA), PP.29-30. See also, ACJA, s 136.

[37] See *Ojo v Lasisi* (2003) FWLR (Pt.107) 18; *Esther Adefunmilayo v. Omolara Oduntan* (1958) W.R.N.L.R. 31; *UAC Plc v Sobodu* (2006) FWLR (Pt. 329) 876.

The trial court rejected the argument, holding that its jurisdiction was not affected by the manner in which the defendant was brought before it, once a valid charge had been filed and the defendant properly arraigned. This position reflects a long-standing approach in Nigerian criminal jurisprudence that issues relating to arrest and detention is distinct from the jurisdiction of the court to try an offence. Thus, extraordinary rendition, though potentially unlawful, is regarded as extraneous to the determination of jurisdiction.

3.2.2 The Appellate and Supreme Court Resolution

The defendant subsequently challenged the decision of the trial court at the Court of Appeal in *FRN v Kanu.*[38] The appellate court adopted a markedly different approach. It held that:

> *….. the Respondent is prohibited from being detained, tried or otherwise dealt with in Nigeria for or in respect of any offence allegedly committed by him before his extraordinary rendition to Nigeria. The lower court thus has no Jurisdiction, I further hold, to try the Appellants on count 1, 2, 3, 4, 5, 8 and 15 which were retained by it, being charges allegedly committed by the appellant Prior to his extraordinary rendition.*
>
> *In addition, by the forcible abduction and extraordinary rendition of the Appellant from Kenya to this country on the 27th day of June 2021 in violation of international and state laws, the lower court or indeed any court in this country is divested of Jurisdiction to entertain charges against the appellant and I so hold.*

The Court of Appeal reasoned that to permit the prosecution to proceed in the face of such illegality would amount to judicial endorsement of executive lawlessness and would undermine the integrity of the criminal justice system. The decision of appellate court was hinged on constitutional accountability that placed significant weight on the protection of fair trial rights.
However, when this issue came up before the Supreme Court in *FRN v Kanu*.[39] The apex court overturned this decision of the Court of Appeal and reaffirmed that:

> *…The procedure, mode, or manner by which the Respondent was produced before the trial court is in law, extraneous to the statutory jurisdiction vested or conferred on the trial court to try or adjudicate over the offence in question particularly after the valid arraignment of the Respondent and his plea thereto. The procedure used in producing the Respondent to face his trial after the arraignment and plea to the offences and after jumping the bail granted to him by the trial court, cannot reasonably be said to deprive or rob that court of the requisite Statutory Jurisdiction to adjudicate over the offences in question.*
>
> *In the above premises, the lower court, with the respect due to it, took its eyes off the ball when it veered off the statutory jurisdiction vested or conferred on the trial court, to subject it to procedural laws dealing with the procedure for the arrest, extradition, or rendition of run-away fugitive offenders to and from foreign countries.*

[38] CA/ABJ/CR/2022.
[39] SC/CR/1361/2022.

The apex court emphasised the distinction between the legality of arrest and the competence of the court, holding that any violations arising from extraordinary rendition may give rise to civil remedies or diplomatic consequences, but do not automatically invalidate criminal proceedings. In doing so, the court prioritised certainty and continuity in jurisdictional principles.

It is worthy to state that the defendant subsequently raised the same objection ten years later, when he was re-arraigned before Hon. Justice Omotosho. In arguing the objection, he relied on the decision of the Court of Appeal[40] that the trial court had no Jurisdiction to try him because his extraordinary rendition from Kenya vitiates his trial. The trial court while placing reliance on the decision of the Supreme Court in *FRN v Kanu*[41] at pages 68 and 69 of its judgment said:

> *The effect of the holding of the supreme court is that notwithstanding the legality or otherwise of how the Defendant was brought back from Kenya, it does not invalidate his trial.*
>
> *This court will kowtow the line set by the Supreme Court. As the apex court of the land, its decisions are final and overrides all other courts including the Court of Appeal which the Defendant has erroneously relied heavily on.*

The trial court while commenting on the effect of the illegality of the extraordinary rendition of the defendant at page 70 of its judgment said:

> *Even if the extraordinary rendition was wrongful, the remedy for it is at best monetary damages in a Civil proceeding. This court is aware that a court in Kenya had ruled on this and awarded monetary damages to the Defendant…the Defendant cannot benefit from Monetary damages awarded to him and seek a further relief of his trial being vitiated particularly seeing the nature of the offences which borders on terrorism.*

This resolution restored consistency to Nigerian criminal procedure but simultaneously narrowed the remedial scope of fair trial protections. By insulating jurisdiction from the manner in which an accused person is brought before the court, the Supreme Court effectively confined the consequences of extraordinary rendition to the periphery of criminal adjudication.

3.2.3 Evaluative Perspective: Fair Trial Implications of Treating Rendition as Extraneous

The Supreme Court's approach raises critical questions about the adequacy of fair trial safeguard in cases involving extraordinary rendition. While the distinction between arrest irregularities and jurisdiction promotes procedural stability, it risks reducing serious violations of due process to technicalities devoid of meaningful consequence within the criminal trial itself. Treating extraordinary rendition as merely "extraneous" may inadvertently signal judicial tolerance for executive misconduct, particularly in politically sensitive or national security prosecutions.

One danger of this approach is that it weakens the deterrent function of constitutional safeguards by allowing the state to benefit from unlawful conduct without facing procedural consequences in the criminal process. It also risks undermining public confidence in the administration of justice, as courts may be perceived as prioritising efficiency and finality over constitutional accountability. From a fair trial perspective, the cumulative effect of grave pre-trial violations

[40] *FRN v Kanu* (supra) (CA).
[41] *FRN v Kanu* [2024] 11 NWLR (Pt. 1949) 231 (SC).

may compromise the overall integrity of the proceedings, even where formal arraignment requirements are satisfied.

While the Supreme Court's reasoning preserves orthodoxy, it arguably falls short of fully engaging with the substantive content of the right to fair trial under section 36 of the Constitution. A more balanced approach would acknowledge that, in exceptional circumstances, the manner in which an accused person is brought before the court may so fundamentally offend constitutional values that it warrants remedial consequences within the criminal process itself. The failure to draw this distinction leaves unresolved tensions between judicial discretion, executive power, and the effective protection of fair trial rights in Nigeria's criminal justice system.

Having considered the jurisdictional consequences of the defendant's rendition, the analysis now turns to arraignment, the procedural stage at which the trial court's jurisdiction to try the charges was formally activated.

3.3 Arraignment of the Defendant

Arraignment constitutes a foundational stage in criminal proceedings and occupies a central position in Nigerian fair trial jurisprudence.[42] It is the procedural mechanism through which an accused person is formally informed of the charge against him and called upon to plead thereto. Arraignment is said to be concluded when the charge has been read and explained to the accused in the language he understands and he pleaded to the charge.[43] In the instant case, the procedures of arraignment is captured at page 46 of the judgment thus:

> *When the charge was to be read to him, the court asked him if he understood English Language and he responded that he did. When count 1 was read to him, he at first stated that he did not understand. The court ordered the Registrar of court to re-read the count to him and he understood and took his plea.*[44]

The constitutional significance of arraignment is anchored in section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), particularly the guarantees of fair hearing, presumption of innocence, and the right of an accused person to be informed promptly and in detail of the nature of the offence alleged against him.

Arraignment is sacrosanct as every step necessary for a valid arraignment must comply with. Where compliance is not satisfied, any trial so conducted shall be a nullity.[45] Thus, Nigerian courts have consistently held that a valid arraignment is a jurisdictional prerequisite to the conduct of a criminal trial. For an arraignment to be legally effective, the charge must be read and explained to the accused in a language he understands, and the accused must be called upon to plead in open court. This strict approach reflects the understanding that jurisdiction in criminal matters is not merely conferred by statute, but is activated through procedural compliance that respects constitutional safeguards.

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[42] O Olugasa, 'Utilising Technology in Making the Nigerian Administration of Criminal Justice Act Effective for Criminal Trials [2020] 11 (2) *International Journal for Court Administration* 5. <https://doi.org/10.36745/ijca.332.> accessed February 10, 2026.
[43] *Emenuwe v State* [2024] 14 NWLR (pt. 1959) 385 at 395-396 (SC).
[44] *FRN v Kanu* (Supra) (FHC).
[45] See *FRN v Kanu* [supra] (SC) at 337-338 paras F-A.

The centrality of proper arraignment to the right to fair trial lies in its role as the gateway through which all subsequent proceedings derive legitimacy. Arraignment ensures that the accused is fully aware of the case he is required to meet and is afforded the opportunity to prepare an adequate defence. Without proper arraignment, the accused is effectively denied meaningful participation in the trial process, thereby undermining the equality of arms and the integrity of the adjudicatory process. In this sense, arraignment is not a technical formality, but a substantive constitutional requirement that gives practical effect to section 36 of the Constitution. This approach is consistent with settled Nigerian jurisprudence, which draws a clear distinction between defects in arrest or detention and the validity of arraignment as the foundation of jurisdiction.

Once a valid arraignment has been conducted, the court is empowered to adjudicate on the charge, and alleged pre-trial irregularities do not, without more, vitiate the proceedings. However, this position also underscores the heightened responsibility placed on courts to ensure strict compliance with arraignment requirements, given their decisive role in legitimising the trial process. Therefore, proper arraignment serves a dual function in Nigerian criminal justice by confering jurisdiction on the court and operationalising the constitutional right to fair trial. Any dilution of arraignment standards would therefore not only undermine procedural regularity but also erode the substantive protections guaranteed under section 36 CFRN.

In the context of sensitive national security prosecutions such as this instant case, adherence to strict arraignment requirements assumes even greater importance as a safeguard against the erosion of constitutional rights through expansive judicial discretion. In this case, the issue of arraignment assumed particular importance in light of the defendant's broader challenge to the jurisdiction of the trial court. The trial court found that the defendant was properly arraigned in accordance with established legal requirements, and that the charge was read and explained to him before he entered a plea. On this basis, the court held that it had requisite jurisdiction to proceed with the trial, notwithstanding allegations of irregularities in the defendant's arrest and rendition.

3.4 Fitness of the Defendant to Stand Trial

The question of an accused person's fitness to stand trial is a fundamental aspect of the right to fair hearing under section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). It is rooted in the principle that a criminal trial must be meaningful, participatory, and rational, and that an accused person must possess the mental and physical capacity to understand the nature of the proceedings and effectively engage in his defence.[46] Under Nigerian law, the legal test for determining fitness to stand trial is whether the accused person is capable of understanding the charge against him, following the proceedings, instructing counsel, and making a rational defence.[47] The focus of the inquiry is not on the existence of illness *per se*, but on whether any mental or physical condition substantially impairs the accused's ability to participate meaningfully in the trial.

This test has been affirmed in judicial authorities such as *Mboho v State*[48] and *Ukpi v State*,[49] where the courts emphasised that fitness to stand trial depends on functional capacity rather than medical diagnosis alone. Once the issue of fitness is raised, the trial court is under a duty to

[46] See *Mboho v State* [1966] LPELR-25378 (SC).
[47] See *Ukpi v State* [1976] LPELR-3348(SC).
[48] ibid.
[49] ibid.

inquire into the matter, either by ordering a medical examination or by evaluating available evidence to determine whether the accused is capable of standing trial. The discretion of the court in this regard must be exercised judiciously, having regard to the constitutional imperative of fair hearing and the need to avoid subjecting an unfit accused person to criminal proceedings.

In the instant case, issue of fitness to stand trial arose from the defendant's conduct and representations made by his counsel regarding his mental and physical state. The defence contended that the defendant was unfit to stand trial and urged the court to suspend proceedings pending proper medical evaluation. Upon the receipt of the report of the medical panel, the court had this say:

> *On the 16th of October, 2025, the court ruled on the medical report issued by the panel set up by the president of the Nigeria Medical Association and determined that the Defendant is indeed fit to stand trial after no opposition from the Defendant and the prosecution.*

His lordship, at page 41-42 of the Judgment, went further that:

> *The court had carefully observed the Defendant during the entire trial and the sprightly nature of the Defendant, his unruly behavior and his agility in defending himself shows without doubt that he is indeed fit to stand trial, thus corroborating the conclusion reached in the report by the panel set up by the President of the Nigeria Medical Association ...He is healthy, fit and abreast of all the happenings in this trial and demonstrated full understanding and fitness after taking over his defence himself from his counsel.*

The trial court's approach reflects the orthodox application of the legal test for fitness to stand trial. Rather than treating allegations of unfitness as conclusive, the court assessed whether the defendant's condition actually impaired his functional capacity to engage with the proceedings. By focusing on observable conduct and the defendant's ability to communicate and take decisions relating to his defence, the court exercised its discretion within recognised limits. Nevertheless, the determination of fitness to stand trial in high-profile and politically sensitive cases demands particular caution. While the court's conclusion in this case was grounded in established legal principles, the absence of an independent medical evaluation may raise concerns about the adequacy of safeguards in cases where allegations of unfitness are contested.

Given the centrality of fitness to the integrity of the trial process, courts must ensure that discretionary judgments in this area err on the side of protecting the accused's fair trial rights. Ultimately, the issue of fitness to stand trial illustrates the delicate balance between judicial discretion and constitutional obligation. While courts must guard against tactical abuse of unfitness claims, they must also ensure that criminal proceedings are not conducted in a manner that undermines the substantive guarantees of section 36 CFRN. In this respect, the treatment of fitness to stand trial in *FRN v. Nnamdi Kanu* underscores both the utility and the limits of judicial discretion in safeguarding the right to fair trial

3.5 Presence of the Defendant Throughout His Trial

The right of an accused person to be present throughout his trial is a core component of the constitutional guarantee of fair hearing under section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). This right ensures that the accused is able to hear the case against him, observe the proceedings, instruct counsel, and effectively participate in his defence. The presence of the defendant also serves a symbolic function, reinforcing the transparency and legitimacy of the adjudicatory process. In the case of *R v Lawrence*,[50] the trial magistrate in the absence of the appellant altered the sentence after realizing that he had exceeded the maximum punishment he can impose under the law. On appeal, it was held that the magistrate erred in altering sentence in the absence of the appellant.

Nigerian law recognises, however, that the right to be present at trial is not absolute.[51] A court may, in limited circumstances, exclude a defendant whose conduct disrupts proceedings or undermines the orderly administration of justice.[52] Such exclusion constitutes a significant restriction on fair trial rights and must therefore satisfy constitutional standards of proportionality.[53] First, the proportionality is based on justification. In the instant case, the trial court excluded the defendant from parts of the proceedings on the basis of persistent disruptive conduct, including refusal to comply with courtroom protocol and actions perceived as undermining the authority of the court. Secondly, the proportionality is grounded on necessity. Even where a legitimate aim exists, exclusion must be shown to be necessary in the circumstances, meaning that less restrictive alternatives would not have sufficed. Finally, the proportionality relates to fairness. Exclusion must not impair the accused's ability to receive a fair trial or substantially prejudice his defence.

In this context, proportionality requires that the exclusion be justified by a legitimate aim, necessary to achieve that aim, and fair in its impact on the accused's ability to defend himself. Maintaining order and decorum in the courtroom constitutes a legitimate judicial objective, and courts are entitled to take reasonable measures to ensure that proceedings are not rendered ineffective by the conduct of an accused person. Also, measures such as warnings, temporary adjournments, or the imposition of contempt sanctions may, in appropriate cases, achieve the desired objective without resorting to exclusion. In the present case, the trial court concluded that the defendant's conduct left no reasonable alternative to exclusion. However, the necessity of this conclusion depends on whether such alternative measures were adequately considered and exhausted before exclusion was ordered. This requires that adequate safeguards be put in place to mitigate the impact of exclusion, such as ensuring continued legal representation, access to the proceedings through counsel, and the opportunity to rejoin the trial upon compliance with court rules. Where exclusion results in the effective silencing of the accused or denies him meaningful participation in the trial, it risks violating the substantive content of section 36 CFRN.

The trial court sought to justify exclusion as a necessary response to persistent disruption. While this approach aligns with established judicial authority recognising the power of courts to control their proceedings, it raises important questions about the adequacy of proportionality safeguards in high-profile criminal trials. The exclusion of an accused person, particularly in a terrorism-

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[50] (1933) AC 699.
[51] OC Aduma and NE Nwafor, 'Trial in Absentia and the Right to a Fair Hearing Under the Nigerian Criminal Justice System', [2021] 2 (1) *Awka Capital Bar Journal* 115.
[52] ibid.
[53] ibid.

related prosecution, must be approached with heightened caution to avoid the perception that disciplinary measures are being used to curtail fair trial rights. Ultimately, the issue of the defendant's presence at trial underscores the delicate balance between judicial authority and constitutional protection. While courts must retain the power to maintain order and dignity in proceedings, such power must be exercised in a manner that is justified, necessary, and fair. In this respect, the treatment of the defendant's exclusion in the instant case illustrates both the legitimacy of judicial control over proceedings and the continuing need for proportionality as a guiding principle in the exercise of judicial discretion.

3.6 Right to Adequate Facilities for Defence and Self-Representation

The right of an accused person to be given adequate facilities for the preparation of his defence is a distinct and substantive component of the constitutional guarantee of fair hearing under Section 36 (6)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). In the case of *Innocent Nweke v The State*,[54] the Supreme Court in interpreting section 36 (6)(b) of the 1999 Constitution as follows:

> *The facilities that must be afforded the accused person are the "resources" or "anything" which would "aid" the accused person in preparing his defence to the crimes for which he is charged. Those, no doubt includes the statements of witnesses interviewed by the police in the course of their investigation which might have absolved the accused of any blame or which may assist the accused to subpoena such favorable witnesses that the prosecution counsel may not want to put forward to testify.*

This right is conceptually separate from, though closely related to, the right to legal representation. While the right to counsel concerns who conducts the defence, the right to adequate facilities concerns the material and procedural conditions that enable an accused person to effectively respond to the case against him. Adequate facilities include access to legal documents, sufficient time to prepare a defence, the opportunity to consult privately with counsel, and reasonable conditions for participation in proceedings. Nigerian courts have recognised that the determination of what constitutes "adequate facilities" is context-specific and lies largely within the discretion of the trial court.[55] However, such discretion must be exercised in a manner that ensures the accused is not placed at a substantial disadvantage in the conduct of his defence, particularly in complex criminal proceedings.

In the instant case, the defendant alleged that he was denied adequate facilities to prepare his defence, citing restrictions on access to counsel and case materials. The court in considering this allegation at page 53 of this judgment stated as follows:

> *The defendant did not provide any credible evidence as to this allegation of eavesdropping. The court however in order to do justice to him and suspecting that he was looking for another way to delay his trial allowed him to consult with his lawyer on the 22nd of October, 2025 in the court room. Thus, the court had to vacate the court room for him and his lawyers to use. Despite this magnanimity by the court, the Defendant did not make use of this opportunity.*

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[54] [2017] LPELR-42103 (SC).

[55] See *Nweke v State* [supra]; *Okoye & Ors v COP & Ors* [2015] LPELR-24675 (SC) 69-70; *FRN v Wabara* [2013] 5 NWLR (Pt. 1347) 331; *Uwazurike v AG, Federation* (2013) All FWLR (Pt. 691) 1520; *Gaji v State* (1975) 5 SC 61, 83; *Layonu & Ors v State* (1967) 1 All NLR 198, and R v *Adebanjo* (1935) 2 WACA 315.

> *On the following date, his counsel withdrew their appearance and the Defendant decided to defend himself making the opportunity given to him to use the court room to be useless and of no purpose. Despite the fact that he is not a legal practitioner, he began using some of his counsel who he had earlier disengaged to act as legal consultants to him. The court even kindly ordered the DSS to allow these consultants have free access to him…There is nothing to show that he was denied adequate facilities.*

In reaching this conclusion, the court relied on factual findings regarding access to legal representation and the opportunities available to the defendant to engage with the proceedings. While this approach aligns with established judicial practice, it underscores the breadth of discretion vested in trial courts and the need for careful scrutiny of how such discretion impacts substantive fair trial rights.

Closely related to the issue of adequate facilities is the right of an accused person to defend himself in person or by counsel of his choice. Section 36 (6) (c) of the Nigeria constitution, 1999 (as amended) provides that:

> *Every person who is charged with a criminal offence shall be entitled to defend himself in person or by legal practitioners of his own choice.*

These principles of law were reiterated in *Marcel Nnakwe v The State*[56] that:

> *With reference to section 36 of the Constitution of the Federal Republic of Nigeria, 1999, the law is well settled that every party to a case has an unfettered right of representation by counsel of his choice.*

However, the exercise of this right does not absolve the court of its responsibility to ensure that the overall proceedings remain fair.[57] Self-representation carries inherent risks, particularly in complex criminal trials involving terrorism-related charges, voluminous evidence, and intricate questions of law and procedure. An accused person acting without legal expertise may be ill-equipped to navigate procedural rules, challenge evidence effectively, or appreciate the strategic implications of legal decisions.

In terrorism prosecutions, these risks are amplified by the seriousness of the charges, the technical nature of the applicable legal framework, and the broader public interest considerations at stake. In the instant case, the defendant exercised this constitutional right at various stages of the proceedings including engaging Ezekhome, SAN, Kanu Agabi, SAN, Ikpeazu, SAN, Erokoro, SAN and many others. In the exercise of the right to defend himself, the learned trial judge has this to say:

> *On the 23rd of October, 2025, the learned silks representing the Defendant including chief Kanu Agabi SAN, Onyechi Ikpeazu SAN and Paul Erokoro SAN announced to the court that they wish to withdraw their appearance as the Defendant had indicated that he wanted to defend himself. The Defendant confirmed that development and informed the court that he wishes to represent himself at the trial*

[56] (2014) All FWLR (Pt. 716) 44.
[57] See ACJA 2015, Ss 267 and 349.

While respect for the autonomy of the accused requires that the choice of self-representation be honoured, judicial discretion must be exercised to prevent such choice from resulting in a fundamentally unfair trial. Autonomy and fairness are therefore particularly acute in this context. Thus, the appointment of standby counsel emerges as a prudent judicial safeguard. Standby counsel can assist the accused, when necessary, ensure continuity of proceedings, and intervene where self-representation threatens to derail the trial or compromise its fairness, without undermining the accused's constitutional right to conduct his own defence. Although Nigerian law does not expressly mandate the appointment of standby counsel, its adoption as a judicial best practice would enhance the protection of fair trial rights while preserving judicial control over proceedings.

Therefore, the treatment of adequate facilities and self-representation in the instant case highlights the expansive scope of judicial discretion in criminal trials and the corresponding need for principled restraint. In adhering to the rule of fair hearing and the opportunity to defend himself, the court at page 44 of its judgment had this to say:

> *The court has been extremely patient and lenient with the Defendant. He is only entitled to be given opportunity to defend himself as part of his right to fair bearing. Failure to use the opportunity granted by the court will be entirely his fault and he cannot complain thereafter. The right to defend himself/herself is a fundamental right provided under the section 36 of the constitution of the Federal Republic of Nigeria, 1999 (as amended). Such right cannot be taken from a Defendant except where a Defendant expressly or by conduct waives same.*

While the trial court's decisions may be defensible within existing doctrine, the case illustrates the importance of developing clearer standards to guide the exercise of discretion where the accused elects to represent himself in complex and politically sensitive prosecutions.

Having considered the procedural safeguards attending the defendant's conduct of his own defence, the analysis now turns to a distinct legality question that arose from the trial: whether the defendant could lawfully be tried under statutory provisions repealed after proceedings had already commenced.

3.7 Trial of the Defendant Under a Repealed Law

A central issue in the instant case concerned whether the defendant could lawfully be tried under statutory provisions that had been repealed prior to the continuation of proceedings. By section 36 (12) of the Nigeria Constitution, 1999 (as amended), a person shall not be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written law. In *IGP v Ogundimu & Ors*[58] where it was held that:

> *A trial conducted under a repealed law no matter how well the proceeding was conducted and no matter how sound the decision is, it is a nullity.*

The Supreme Court reiterated this position of the law when it held in the case of *State v Egigia* [59] that:

[58] [2022] LPELR-57151 (CA).
[59] [2004] LPELR-62009 (SC).

The law is settled that a repealed law no more has legal life, thus, it cannot be cited as if it still exists.

The resolution of this issue turns on the operation of savings clauses, which are designed to preserve accrued rights, liabilities, and pending proceedings notwithstanding the repeal or amendment of a statute. In Nigerian law, savings clauses perform a stabilising function by ensuring legal continuity and preventing the disruption of ongoing judicial processes.[60] For the pain of emphasis, section 98(3) of the Terrorism Prevention Amendment Act, 2022 which repealed the Terrorism Prevention Amendment Act, 2013 reads:

> *Any proceeding, prosecution, sentence, judgment, charge, or cause of action pending or existing immediately before the commencement of this Act under any of the repealed Act in respect of any right, interest, obligation, or liability, may be continued or commenced, as the case may be, and any determination of a court of law, tribunal or other authorities or person may be enforced to the same extent that such proceeding, prosecution, sentence, judgment, charge, cause of action or determination might have been continued, commenced or enforced as if this Act had not been made."* (underlining for emphasis).

Statutory savings provisions typically preserve investigations, charges, and proceedings initiated under a repealed enactment, unless a contrary intention is expressly stated. This principle is reinforced by general interpretation statutes and has been consistently upheld in Nigerian jurisprudence, which recognises that the repeal of a law does not, without more, extinguish liabilities incurred or proceedings lawfully commenced under the repealed regime.[61] The constitutional rationale for this approach lies in the need to balance legal certainty with fairness, ensuring that accused persons are not retrospectively subjected to harsher criminal liability while also preventing impunity arising from legislative change.

The critical inquiry is not whether the law under which proceedings were initiated has been repealed, but whether the repealing statute contains a savings clause preserving pending proceedings, and whether the continued application of the repealed law offends constitutional prohibitions against retroactive criminal legislation. Where a savings clause exists, the continued prosecution under the repealed statute is generally permissible, provided that the accused is not subjected to a penalty greater than that which was applicable at the time the offence was allegedly committed. Applying this to the instant case, the trial court was mindful of this provision when, at pages 78 and 79 of its Judgment, and while commenting on section 98 of the Terrorism prevention (Amendment) Act, 2022 which repealed the 2013 Act said:

> *The import of this provision particularly section 98 (3) is it serves as a savings provision which ensure that the amendment of the Act does not affect the validity of trial begun under the repealed Act. This saving clause or preservation provision is aimed at ensuring that pending proceedings or orders of the court are not washed away as a result of the commencement of the Amendment Act,*

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[60] See *FRN v Kanu* [supra] (SC).

[61] See *Lagos State Bulk Purchase Corporation v Purification Techniques (Nig.) LTD* (2012) 12 CLRN 1 at p. 17 lines 27-37; *Alase v Aladetuyi* (1995) 7 SCNJ 40 @ p.52; *Mustapha v Governor of Lagos State* [1987] 2 NWLR (Pt. 58) 539; *Alao v Akano* [1988] 1 NWLR (Pt. 71) 431 (SC), and *Uwaifo v Attorney General of Bendel State* (1982) 75 SC. 124.

> *2022 but to ensure a smooth transition from the repealed Act to the Amended Act. The sum total of this is that the enactment of the Terrorism Prevention Amendment Act, 2022 does not vitiate the trial of the Defendant rightly commenced under the Terrorism Prevention Amendment Act, 2013.*

The court reasoned that the offences were allegedly committed while the repealed law was still in force and that the continuation of the trial did not amount to retrospective criminalisation or punishment. The trial court at page 72 of its judgment stated:

> *This argument by the Defendant is quite interesting. It is interesting because it shows the stark misunderstanding of the law by the Defendant as well as his willful disregard of facts culminating in his trial.*

On this basis, the court concluded that it retained jurisdiction to proceed with the trial. The trial court's reasoning reflects a faithful application of orthodox principles governing statutory repeal and savings clauses. By situating its analysis within the established legal framework, the court avoided conflating repeal with extinguishment of liability and demonstrated restraint in the exercise of judicial discretion. Importantly, the court also recognised the constitutional limitation imposed by section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which prohibits retroactive criminal liability and punishment.

Nevertheless, the reliance on savings clauses does not absolve courts of the responsibility to scrutinise the fairness of continuing proceedings under a repealed law. While the trial court correctly identified the existence and effect of the relevant savings provisions, a more explicit engagement with the fair trial implications of prosecuting under a defunct legal regime would have strengthened the analysis. In particular, courts must ensure that accused persons are afforded clear notice of the applicable legal framework and that procedural adaptations do not prejudice the preparation or conduct of the defence.

Overall, the treatment of issue of the repealed law in the instant case illustrates a disciplined exercise of judicial discretion grounded in statutory interpretation and constitutional principle. It demonstrates how savings clauses function as an important mechanism for preserving legal continuity while safeguarding against retroactive injustice. At the same time, the case underscores the need for courts to remain attentive to the fair trial implications of applying repealed statutes, especially in complex and high-profile criminal prosecutions.

With the trial court's jurisdiction to proceed under the repealed statute established, the analysis now turns to how the defendant chose to conduct his defence once the prosecution's case had closed.

3.8 Resting the Defence on the Prosecution's Case

In criminal trial, at the close of the case of the prosecution a defendant has three options in defence of the allegations against him:

i. He has the option of making a no case submission by arguing that from the evidence adduced by the prosecution, the prosecution has not made out a prima facie case against him to warrant him entering his defence or that the evidence led by the prosecution has been so discredited under cross-examination that it would be unsafe for the court to convict him.

ii. He has the option to put in his defence by stating his side of the story and adduce evidence in his favour in person and may call other witness thereto.
iii. He may elect to rest his case on the prosecution.

In *Ajibade v State*[62] the Supreme Court faced with similar issue where the appellant elected to rest his case on the Prosecution held:

> *…The election is within his right under the law, but the legal effect of the said election is to leave the court of trial free to accept the un-contradicted evidence of the prosecution in proof of the charge, which the court rightly, in my view did.*

Where an accused person elects to rest his defence on the case presented by the prosecution, the immediate legal consequence is that the court is required to determine the charge solely on the strength or weakness of the prosecution's evidence. By making a no-case submission or declining to call evidence after the close of the prosecution's case, the accused assumes the risk that any gaps in the defence will not be remedied, while the prosecution bears the continuing burden of proving the offence beyond reasonable doubt. This procedural choice is recognised under Nigerian criminal procedure and falls within the autonomy of the defence, subject to the overriding requirement that the decision be informed and voluntary.

The decision to rest on the prosecution's case does not shift the burden of proof from the prosecution, nor does it absolve the court of its duty to evaluate the evidence rigorously. Rather, it places a heightened responsibility on the trial court to assess whether the prosecution has established a prima facie case and, ultimately, whether the elements of the offence have been proved to the requisite standard. Any conviction entered in such circumstances must be firmly anchored in credible, admissible, and sufficient evidence adduced by the prosecution.

In the instant case, the defendant elected to rest his defence on the prosecution's case following the close of the prosecution's evidence. This was revealed at pages 80-81 of the judgment:

> *The Defendant in this case chose to make a no case submission and this court overruled the no case submission on 28th September, 2025 and order him to put in his defence as it is his constitutional right to do so. He however refused to do so. He rather consented to the withdrawal of the Learned Senior Advocates representing him…As a minister in the temple of Justice passionate about Justice and as an apostle of Jesus Christ, I begged the Defendant passionately and severally but the Defendant was obstinate and refused and the court had no choice than to foreclose him. The effect of this is that the Defendant has chosen to rest his case on the prosecution.*

In assessing the implications of this decision, the trial court emphasised that the defendant had been afforded the opportunity to present a defence and had knowingly declined to do so. The trial court in Nnamdi Kanu's case mindful of this gamble and the effect it may have on the case of Nnamdi Kanu warned the Defendant about the consequence of his action when at page 44 stated as follows:

> *At a point, the defendant informed the court that he wanted to call about 28 persons some of whom he claimed are foreigners as witnesses in his case and he applied for witness summons. The court graciously approved the witness*

[62] [2012] LPELR-15531 (SC).

> *summons. However, the defendant abandoned the said witness summons and began claiming that he had gone through his case file and found that there was no law providing for the offences he is being charged with. That he could not defend a charge not founded on any law. (underlining for emphasis).*

The approach aligns with settled Nigerian jurisprudence recognising the right of an accused person to rest on the prosecution's case, while affirming the court's obligation to independently evaluate the evidence.[63] However, in the context of a complex terrorism prosecution, the exercise of this procedural right raises important fair trial considerations.

While resting on the prosecution's case is a legitimate tactical choice, it may also reflect deeper procedural tensions or breakdowns in the trial process. In such circumstances, judicial discretion assumes a heightened significance. Courts must ensure that the decision is not the product of coercion, frustration, or misunderstanding, and that the accused fully appreciates the legal consequences of forgoing the opportunity to call evidence. The assurance for this was reiterated by court when it stated:

> *…The court in discharging its duty to do Justice, calmly and patiently advised the Defendant to be cautious of the path he intended to take as it was tantamount to resting his case on that of the prosecution which means that he admits the facts and evidence against him but believes that it is in sufficient to secure a conviction against him.*

Therefore, the treatment of the defendant's decision to rest on the prosecution's case illustrates the interaction between procedural autonomy and judicial responsibility. While the trial court was entitled to proceed on the basis of the prosecution's evidence, the case underscores the importance of careful judicial oversight to ensure that such procedural choices do not undermine the substantive guarantees of fair trial under section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Finally, having examined how guilt was established on the strength of the uncontroverted prosecution evidence, the analysis turns to the exercise of judicial discretion at the last stage of the trial: the determination of an appropriate sentence.

3.9 Sentencing Discretion of the Trial Court

Sentencing represents one of the most consequential expressions of judicial discretion in criminal adjudication. Once guilt has been established, the trial court is vested with the authority to determine the appropriate punishment within the limits prescribed by statute.[64] By section 1 (2) of the Terrorism Prevention Amendment Act, 2013, a person who commits an offence under the act is liable on conviction to a maximum of death sentence. In exercising this discretion, the court must balance the objectives of punishment with constitutional guarantees of fairness, legality, and proportionality. Although sentencing is traditionally regarded as an area where appellate courts accord considerable deference to trial judges, such discretion is not unfettered and must be exercised judiciously and judicially.[65]

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[63] See *Emmanuel Egharevba v FRN* (2016) Legalpedia (SC) 11950; *Akindipe v The State* [2012] 16 NWLR (Pt. 1325) 94 at p.116, paras. B-D and at p.125, paras C-E (SC); *Abiodun v The State* [2012] 7 NWLR (Pt. 1299) 394 at 414, paras. G-H (CA).
[64] *Maina v FRN* [2022] LPELR-58942 (CA).
[65] ibid.

Under Nigerian law, where a statute prescribes a maximum penalty, the trial court retains discretion to impose a lesser sentence, having regard to the circumstances of the offence and the offender.[66] In the case of *Ekpo v The State*,[67] the accused was convicted and sentenced to 21 years imprisonment for being in possession of counterfeit bank notes. On appeal, he contended that the sentence of 21 years imprisonment was too severe being the maximum sentence. It was held that the phase "shall be liable to 21 years imprisonment" used in the counterfeit Act did not make the sentence obligatory and that the court has a discretion to impose a lesser punishment within that range and that the sentence of 21 years imposed was too severe. This discretion is subject to the constitutional prohibition against arbitrary punishment and is informed by factors such as the gravity of the offence, the conduct of the accused, and any mitigating or aggravating circumstances disclosed by the evidence. A sentence that is manifestly excessive, disproportionate, or imposed without due regard to relevant considerations may be set aside on appeal.

From a theoretical perspective, sentencing discretion is informed by multiple and sometimes competing objectives. The principle of proportionality requires that punishment correspond to the gravity of the offence and the culpability of the offender, thereby preventing excessive or arbitrary sanctions. Deterrence seeks to discourage future offending by the convicted person and by others who may be inclined to commit similar offences. Judicial mercy, on the other hand, recognises the human dimension of criminal justice and allows courts to temper punishment in appropriate cases, without undermining the rule of law. Effective sentencing requires a careful reconciliation of these objectives rather than the mechanical application of statutory limits. However, the absence of a detailed articulation of sentencing rationale limits the transparency of the decision and underscores the importance of reasoned sentencing judgments.

In the instant case, the trial court exercised its sentencing discretion by imposing a term of imprisonment that was less than the statutory maximum prescribed for the offences of which the defendant was convicted. The court justified this decision on the basis that sentencing should reflect both the seriousness of the offences and the need for measured judicial response. By opting for a sentence below the maximum threshold, the court demonstrated an awareness of the discretionary space afforded by law and the necessity of calibrating punishment to the particular circumstances of the case. This reflects a restrained exercise of discretion consistent with orthodox sentencing principles. The court neither imposed the harshest possible penalty nor treated sentencing as a purely symbolic response to national security concerns.

Ultimately, sentencing discretion must operate as an extension of the right to fair trial under section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Punishment imposed after conviction must not only be lawful but also justifiable by reference to principled considerations. In terrorism-related prosecutions, where public pressure may favour severe penalties, judicial discretion plays a critical role in ensuring that sentencing remains anchored in constitutional values rather than retributive excess.

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[66] MN Umenweke, and C P Ogboji, 'An Appraisal of the Role of the Judiciary as the Sole Driver of Non-Custodial Measures in Nigeria', [2024] 9 *African Journal of Criminal Law and Jurisprudence (AFJCLJ)* 170.
[67] (1982) 1 NCR 34.

4. BROADER IMPLICATIONS OF THE CASE ON CRIMINAL JUSTICE ADMINISTRATION IN NIGERIA

The proceedings in the instant case present a rich illustration of the ambivalent role of judicial discretion in criminal adjudication. On the one hand, the trial court's exercise of discretion advanced the cause of justice by anchoring several procedural decisions in settled principles. The court's treatment of arraignment, jurisdiction, trial under a repealed law, and sentencing discretion reflected a consistent adherence to rules of criminal procedure and statutory interpretation. In these respects, judicial discretion functioned as a stabilising mechanism, preserving legal certainty and ensuring continuity in the administration of criminal justice despite the political sensitivity of the case.

Judicial discretion also advanced justice by resisting attempts to collapse the criminal process into executive conduct alone. By maintaining the distinction between defects in arrest or rendition and the competence of the court, the trial court affirmed the principle that criminal responsibility should ordinarily be determined on the merits of the charge and the evidence adduced. This approach safeguarded the institutional role of the judiciary as an adjudicatory, rather than purely supervisory, body and prevented the criminal trial from being derailed by preliminary irregularities.

At the same time, the case exposes the limits of discretion when exercised in a manner that prioritises procedural order and efficiency over the substantive conformity with fair trial rights. Certain discretionary choices, particularly those relating to extraordinary rendition, the exclusion of the defendant from proceedings, and the management of self-representation risked constraining the effective enjoyment of the right to fair trial under section 36 of the Constitution. By treating extraordinary rendition as extraneous to jurisdiction and largely peripheral to the criminal process, the courts limited the remedial force of constitutional safeguards and narrowed the space for accountability for serious pre-trial violations.

Similarly, the discretionary handling of courtroom control and self-representation, while defensible, illustrates how fair trial rights may be weakened in practice when judicial authority is exercised without sufficient engagement with proportionality and equality of arms. In complex terrorism prosecutions, where the imbalance between the prosecuting authority and the accused is often pronounced, expansive discretion may inadvertently operate to the detriment of the accused's ability to participate meaningfully in the proceedings.

Taken together, these demonstrate that judicial discretion is neither inherently protective nor inherently threatening to fair trial rights. Its impact depends on the perspective from which it is analysed. The instant case reveals judicial discretion as a double-edged instrument that is capable of advancing justice through discipline, yet equally capable of constraining constitutional protections where security imperatives dominate judicial reasoning.

5. RECOMMENDATIONS

Building on the foregoing analysis, this section sets out recommendations addressed respectively to courts, the legislature, and those responsible for the management of high-profile criminal trials. Each recommendation is linked to a specific difficulty identified in the analysis above, and the recommendations are grouped according to the institution best placed to act on them.

5.1 Doctrinal Recommendations for Courts

First, in response to the gap identified in the treatment of extraordinary rendition as wholly extraneous to jurisdiction, courts should develop a clearer doctrinal test identifying the narrow class of cases in which grave pre-trial irregularities, such as the forcible abduction of an accused person across international borders, may warrant remedial consequences within the criminal process itself, rather than being confined to civil damages. Second, in response to the limited safeguards observed around self-representation, courts hearing complex terrorism-related trials should, as a matter of settled practice rather than case-by-case discretion, consider the appointment of standby counsel where an accused elects to conduct his own defence, so as to safeguard the fairness of proceedings without displacing the accused's constitutional autonomy. Third, in response to the absence of an independent medical evaluation in this case, courts should treat an independent medical assessment, rather than reliance on courtroom observation alone, as the ordinary standard for resolving a contested claim of unfitness to stand trial.

5.2 Legislative Recommendations for Reform

The National Assembly should consider amending the Administration of Criminal Justice Act 2015 and applicable terrorism legislation to make express statutory provision for the appointment of standby counsel in cases involving self-representation, and to prescribe minimum procedural safeguards, including independent medical evaluation, before a finding of fitness to stand trial is made in a contested case. Legislative clarification of the remedial consequences of extraordinary rendition, distinguishing it in clear terms from ordinary irregularities in arrest, would similarly reduce the doctrinal uncertainty identified in this paper and give trial courts a clearer statutory basis for addressing the issue.

5.3 Practical Recommendations for Trial Management

Trial courts handling high-profile national security prosecutions should maintain a clear record of the less restrictive alternatives considered before excluding a defendant from proceedings, so that the proportionality of any exclusion can be meaningfully reviewed on appeal. Sentencing decisions in terrorism-related cases should similarly be accompanied by a reasoned account of the aggravating and mitigating factors considered, to enhance transparency and facilitate appellate scrutiny, consistent with the sentencing discretion doctrine discussed above. Finally, where an accused person indicates an intention to rest his case on the prosecution's evidence or to decline legal representation, the trial court should ensure that this election is placed on record in terms that make clear it was informed and voluntary, so as to avoid later disputes as to the fairness of the process.

6. CONCLUSION

This paper set out to answer a specific research question on whether the trial court's exercise of judicial discretion in *FRN v Nnamdi Kanu* is consistent with the right to fair trial guaranteed under section 36 of the CFRN 1999 (as amended). The analysis demonstrates that, on most of the procedural issues examined, arraignment, trial under a repealed statute, and sentencing, the trial court's exercise of discretion was doctrinally defensible and preserved procedural regularity and coherence. At the same time, the treatment of extraordinary rendition as extraneous to jurisdiction, and the limited safeguards attending the defendant's exclusion from proceedings, self-representation, and sentencing transparency, reveal that discretion, when exercised without adequate proportionality safeguards, can constrain the substantive enjoyment of fair trial rights. The paper's final position is accordingly is the trial court operated largely within constitutional

bounds, but the case exposes specific doctrinal gaps, rather than a wholesale failure of fair trial protection, that call for the targeted reforms set out in the preceding section. As Nigeria continues to prosecute terrorism and national security offences, the instant case is likely to serve as a reference point for future trials. This paper therefore contends that judicial discretion should be understood as a systemic feature of Nigeria's criminal justice system, rather than a case-specific anomaly, and that strengthening the doctrinal and institutional safeguards identified above is essential not only for protecting the rights of accused persons, but also for reinforcing public confidence in the judiciary as an institution capable of upholding the rule of law in the face of political pressure and security challenges. In this respect, the paper's central contribution is to show that the constitutional guarantee of fair trial under section 36 CFRN is best protected in terrorism prosecutions not by displacing judicial discretion, but by disciplining it through clearer doctrine, legislative guidance, and transparent trial management.