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The Use of Language in Criminal Procedures Code (CPC) and The Nigeria Police Act and Regulations: A Critical Perspective

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Abstract

This paper examines issues that pertain to the use of language in law, with particular reference to the wordings of the Criminal Procedures Code (CPC) and the Police Act and Regulations. The major thrust of the study is that since law directly affects the lives of all the citizens of a particular country, the interpretations of statutes, bills and acts should not generate uncertainties in scope, meaning and effects. The paper concludes that certain mechanisms should be put in place to minimize incidents of vagueness and indeterminacy of reference in the interpretations of such statutes and acts.

Introduction

The language of law or legalese has attracted wide criticisms for its archaism, verbosity, and non-communicativeness. These criticisms are predicated in courts' discretional and often contradictory pronouncements and interpretations of wordings of statutes. It is intuitively evident that, unlike other spheres of human life, judicial pronouncements have far reaching effects on the administration of justice and ultimately, on the lives of the citizens. It is to be noted that non-legal practitioners have adopted a myriad of attitudes to legalese: disdain, respect and, sometimes, indifference. The language of law consists of many Latin maxims: *caveat emptor* (buyers beware), *amicus curie* (friend of the court), *suo motu* (on its own), *de novo* (begin anew), among others. The use of repetitions, more often than not, is meant to place emphasis or to underscore importance. However, this seems not the case with legalese which prides itself in mere grandiloquent expressions.

Broadly speaking, there exists a symbiotic relationship between language and law. The biblical account recalls the history (of course, genesis) of creation. The first instrument was language: "and God said. Let there be light" (Genesis 1 vs 3). In other words, the whole gamut of that creation is the consequential effect of the power of language. Man was created last. And soon after the creation of man. (Adam), God handed him law: "you may freely eat any fruit in the garden except the fruit from the tree of knowledge of good and evil. If you eat of its fruits, you will surely die" (Genesis 2 vs 16).

The preponderant effect of the use of language in human interaction and social intercourse cannot be over emphasized. Such effect is a hydra-headed phenomenon that can both be pleasant (as in jokes, comedy, music and good news) and unpleasant (as in death sentence, obituary and announcements of natural disasters). Law on the other hand, is a form of social control. Virtually all aspects of human endeavour are regulated through the mechanisms of law. Put succinctly, there exists a nexus between human activities and the legal framework operative in any society.

But, quite unlike other varieties of language, the language of law is unique. It is coloured with archaic, heavily-Latinized expressions and terminologies that make it less intangible to non-legal practitioners. This is the contention of Abocol (2008: 5) in his remarks on language of law:

> To speak of legal language as communicative is rather misleading. Of all varieties of language, it is perhaps the least communicative in that it is designed not so much as to enlighten language users at large as to allow one expert to register information for scrutiny by another, Abocol (2008:5)

It is worthy of note that the use of language in legal matters has far-reaching consequences. For example, the fate of an accused person is precariously tied to "the exact wordings" of the judge's pronouncement on him. According to **Section 367(2) of the Criminal Procedures Act (CPA)** and **Section 273, Criminal Procedures Code (CPC)**, in passing a death sentences which is mandatory for capital offences, the recommended "expression" is: "*the sentence of this court upon you is that you be hanged by the neck until you be dead and may the Lord have mercy on your soul*". Therefore, the manner of the interpretation of a particular statute or an act goes to the root of a case in court. If one takes cognizance of the assertion of Stageberg (1991) that languages, generally, are dynamic and productive, then one is bound to conclude that interpretations of statutes have far-reaching implications on the administration of justice.

According to Imhanobe (2007:4), the differences in the meanings attributed to words are usually "the cause of most legal issues seeking judicial determination". He further asserts that words are capable of being vague and ambiguous, that is "having one meaning in one sense and another meaning in another sense". For example, the learned author cites the American case of **Towne V. Eismer (Us 2.45, US 418 at 425 (1918)** where the issue for determination was the meaning of the word "income for tax purpose". The court held:

> But it is not true that income means the same thing in the constitution and the Act. A word is not crystal, transparent and unchanged. It is the skin of a living thought and many vary greatly in colour and content according to the circumstance and the time in which it is used (Imhanobe 2007:4).

Semantic Analysis of Section 341 (CPC)

The courts' discretion under **Section 341 of the Criminal Procedure Code** to release on bail an accused person charged with an imprisonment for a term exceeding three years is not to be exercised unless all the three conditions prescribed by paragraphs (a), (b) and (c) of subsection (2) of that section exist (Imhanobe, 2007:32). The import of this assertion is that unless all the

three conditions stipulated in **Section 341 (2)** paragraphs (a), (b) and (c) are met, admittance to bail is impossible. In the case of **Towne V. Eismer**, "*or*" is read or used in "a conjunctive (rather than disjunctive) sense". On the other hand, "*and*" which is normally used in conjunctive sense to connote togetherness may "where, the context admits" be construed disjunctively. For example, (and as cited in Imhanobe 2007:30), in the case of **Associated Artistes Ltd. V. Inland Revenue Commissioner (1956) I WLR 752**, the issue for determination was the interpretation of the memorandum and articles of association of a company. The memorandum and articles of the plaintiff provide: "to present classical, artistic, cultural and educational dramatic works" Imhanobe 2007:30. The appellant, according to the learned author, argued that the use of "*and*" should be read conjunctively. But, Uphjohn I. the presiding judge, (as he then was), dismissing the appeal, held that "*and*" should be construed disjunctively. **Section 341 (2) of the CPC** provides: *persons accused of an offence punishable with death or imprisonment for a time exceeding three years shall not ordinarily be released on bail. Nevertheless, the court may, upon application, release on bail a person accused as aforesaid if it considers.*

(a) That by reason of the granting of the bails the proper investigation of the offence would not be prejudiced: or
(b) That no serious risk of the accused escaping justice would be occasioned, or
(c) That no ground exists for believing that the accused, if released would commit and offence.

Also, in **Ndoma Egba V. Chukwu Ogor (2004) 117 LRCN,** the Supreme Court of Nigeria held:

> In ordinary usage, the word "*or*" is disjunctive and the word "*and*" is conjunctive. However, there are situations which make it necessary to read "*and*" in place of "*or*" and vice versa. This may occur in order to carry out the intention of the legislature. Such interpretation may also be quite useful in order to avoid absurd or impracticable results. Short of such circumstances, the words "*and*" and "*or*" being unambiguous words should be given their ordinary plain meaning notwithstanding the fact that such interpretation will lead to an unreasonable or unfair result.

The expressed position on the law se. ns to be at variance with that of Osamor (2004:97). In his analysis of the provisions of **Section 341 (3) of the CPC**, the learned author argues that while the first condition contained in the section is of "independent consideration", the last three conditions are cumulative" (Osamor 2004:97). He further asserts that all the three prescribed conditions must exist "before the court can exercise its discretion to grant or withhold bail". Even though one agrees with the learned author that the three conditions apply only to persons who are accused of offences punishable with imprisonment for a term exceeding three years, it is to be noted that Osamor's assertion is somewhat simplistic. This is even more so when one considers the Supreme Court decision in **Ndoma Egba V. Chukwu Ogoro (2004) 117 LRNC**. The major thrust of the argument, here, is that, generally, the interpretations by the courts of

"*and*" and "*or*" have been discretionary. Thus, the resulting indeterminacy of reference has the tendency to impact negatively on law and administration of justice.

For example, in **J.S. Tarka & Ors V. Director of public prosecution (1961) NNLR63**, the appellants were charged with offences which were punishable with imprisonment for terms exceeding three years. The respondent opposed the application for bail on the ground that the courts' discretion was not exercisable unless the three conditions stipulated under **section 341 (2) of the CPC** existed. However, the appellants contended that if any one of the conditions existed, the court was entitled to exercise its discretion in their favour since the conditions are expressed disjunctively in the section and the word "*or*" as used at the end of each of the first two conditions should be given its strict grammatical meaning. The court held that the word "*or*" which appears at the end of paragraphs (a) and (b) of **section 341 (2) CPC** should be read as "*and*" that is, as a conjunct.

By virtue of these interpretations, it is crystal clear that on the one hand, the court may decide that a citizen's liberty will be curtailed if all three conditions are not met. It may, on the other hand, decide that if any one of the conditions is met, the citizen (whose liberty has been curtailed) should be set free.

Semantic Analysis of Section 140 Police Act and Regulations

Arguably, many writers including, of course, legislative drafters have paid little attention to the proper placing of the modifier *only* in English sentences. This misplacement is actually the major sources of ambiguity in most of the legal documentations. In the account of Metcalfe and Astle (1995:70-71), "*only*" is a word frequently misused as a result of its wrong placement in certain constructions. The authors cite this sentence as an example: *I only arrived here three hours ago*, to illustrate their viewpoint. The modifier "only" place before *arrived*, strictly speaking, "is a belittlement of the act of arriving as if arriving was of no importance" Metcalfe and Astle (1995:70-71). However, in actual fact, what the speaker meant to say is: *I arrived here only three hours ago".*

Also, Imhamobe (2008), while analyzing the following sentence; *the Secretary of the Council of Legal Education may only authorize expenditure exceeding ₦100,000:00.*, observes that the sentence is capable of two interpretations:

(a) Only the Secretary of the Council of Legal Education may authorize expenditure exceeding ₦100,000 or

(b) The secretary of the Council of Legal Education may only authorize expenditure exceeding ₦100,000.00.

For this he argues further that:

> The practical implication of the placement of "*only*" near secretary in the first sentence is that no one except the "secretary" (not even the chairman) may approve expenditure exceeding ₦100,000.00" But in the second sentence where *only* is placed near "authorize expenditure exceeding ₦100,000.00.', it means that others (perhaps the chairman) may approve whatever amount. But in the case of the

secretary, he is involved in approval when the amount exceeds ₦100,000.00. If the amount is not exceeding ₦100,000.00, then approval should be by another.

Not only that, **Section 140 of the Police Act and Regulations** is also ambiguous because of the improper placement of the modifier "only". The act provides:

A member of the rank and file may **only** *be re-engaged for further service in the force if:*

(a) He has completed his enlistment period or has completed a first or second period of re-engagement
(b) His standard of work and conduct has been satisfactory; and
(c) His physically and mentally fit for a further period of service.

The modifier as used here "squints" toward "be re-engaged for further service" whereas the real import of the modifier is on the conditionality attached to "engagement for further service" therefore, the modifier ***only*** should be placed thus: "A member of the rank and file may be re-engaged for further service in the force only if..., instead of "a member of rank and file may only be re-engaged for further service in the force if..." as stated in the act. The semantic interpretation ascribable to the section, as it were, is that of "belittlement" of the "engagement for further service" instead of the restriction which the modifier "only" seeks to impose.

Another example of misplacement could be found in **Section 7 (3) of Magistrate Courts Law of Lagos State, Nigeria,** which provides that:

The refusal to entertain a plaint under this rule shall not by reason only of such refusal preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

To reflect restrictiveness, the section should have been couched thus:

The refusal to entertain a plaint under this rule shall not by reason of such refusal "only" preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

On the contrary, proper placement of the modifier "only" was what aided the court in reaching a fair decision in the case of **Tweddle V. Atkinson** where the court held that the plaintiff was not entitled to sue as he was a stranger to the contract. The operative word in the **Law of Privity of Contract**, on which this decision was made, is in the modifier *only*. "*Only* those who are proper parties to a contract can enjoy the rights of the contracts." The modifier "only" also becomes the operative word commuting the offence of murder to manslaughter under **Section 318 of the Criminal Code Act**. It provides that:

When a person who unlawfully ***kills*** *another in circumstances which, but for the provision of this section, would constitute murder, does the act which cause death in the heat of passion caused by grave and sudden provocation, and before there is time for his passion to cool, he is guilty of manslaughter* ***only***.

It was this placement that came in force in the **Order of Mandamus** which provides thus:

The power to grant an order of mandamus is discretionary and will ***only*** *be granted against whom it is sought if the person is bound to perform the duty, which must be of public nature.*

In **Okoro V. Nigeria Army Council,** an appellate court set aside the decision of a Court-Martial constituted by members who included two captains because, by virtue of **Section 131 of the Armed Forces Act of 1993**, ***only*** an appropriate superior authority may convene a Court-Martial. In the instant case, a Major Okoro was tried and convicted by members junior to him in rank.

A further proof of the strict restrictiveness of the modifier "*only*" becomes evident in the case of **Attorney-General (Kaduna State) V. Hassan** where the Supreme Court, inter alia, held that:

i. The powers of the Attorney-General are personal to him
ii. The power can only be exercised by another person if the Attorney-General delegates them to that other person, and
iii. Before such delegation can take place, there must be an incumbent Attorney-General who can be the donor of the powers (Osamor 2004:119).

A careful reading of the three facts laid bare by the apex court further illustrates the restrictive use of the modifier *only* In (i) it is intuitively evident that only the Attorney-General can exercise his constitutional powers . It is expressly stated in (ii) that the powers can only be exercised by another if the Attorney General so delegates, and it is trite law that scuh a person can not further delegate the powers- (delegatus non delegari). The third fact stipulates that *only* an incumbent Attorney-General can delegate his powers.

Conclusion and Recommendations

This paper examines the use of language in law, with particular reference to **Section 341 Criminal Procedures Code (CPC)** and **Section 140 of the Police Act and Regulations**. The inferences for the study are that indeterminacy of references of certain statutory provisions has made a ruse of many judicial pronouncements. Also, such pronouncements, occasioned by inferences from semantic interpretations have far-reaching consequences on the lives of the citizens, especially where issues of liberty are involved. Based on these findings; the following recommendations are made:

i. Legal draftsmen should introduce interpretation classes to guide judges in their tasks
ii. Language experts should be co-opted into the drafting of Bills, Acts and Statutes
iii. Draftsmen should embark on rigorous editing of bills, acts and statutes to avoid careless errors and omissions.

References

Abocol, I. S. 2008 Syntactic Analysis of Independent Corrupt Practices and Other Related Offences Act (unpublished Ph.D thesis, Ahmadu Bello University, Zaria.

Adubi, C. O. 1995 Drafting, Conveyances and Wills. Lagos. The Lighthouse Co. Ltd.

Borjars, K. and Burridge, K. 2001 Introducing English Grammar. London; Arnold Publish.

Criminal Procedure Act (Cap C 41) Laws of the Federation. 2004: Olakanmi & Co. Ltd.

Criminal Procedure Code (Laws of the Federation): Olakanmi & Co. Ltd.

Goddard, C. 1998 Semantic Analysis: A Practical Introduction. Oxford: Oxford University Press.

Imhanobe, S. O. 2007 Legal Drafting and Conveyancing. Abuja: Sylvesta Imhanobe Legal Research Ltd.

Metcalfe, J. and Astle C. 1995 Current English, London: Clarision Books.

Ogiribo, L. 2006 Legal Drafting and Conveyancing. Warri: New Page Publishing Co. Ltd.

Osamor, B. 2004 Fundamentals of Criminal Procedure Law in Nigeria. Abuja: Dee Sage Ltd.

Quirk and Greenbaum 1973 A University Grammar of English. Oxford: Oxford University Press.

Redford, A. 1997 Syntactic Theory and the Structure of English. Cambridge: Cambridge University Press.

Sodunira, R. 1997 Introduction to Nigeria Legal System and Basic Principle of Contract. Lagos Soft Associates.

The New Webster's Dictionary of the English Language. (International Edition) New York: Lexicon Publication Sin C.

The Constitution of the Federal Republic of Nigeria, 1999, Lagos.

Wierzbicka, A. 1996 Semantic Primes and Universals Oxford: Oxford University Press.

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AELR: - All England Law Report

NNLR: - Northern Nigeria Law Report

LRCN: - Nigeria Constitutional Law Report

WLR: - Weekly Law Report

AC: - Appeal Cases

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