



## SEARCH AND RIGHT TO PRIVACY IN NIGERIAN LAW

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### Abstract

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*The paper will discuss the roots of the rights to privacy and its domestication in Nigeria. It will also discuss the meaning of search, types of search (I.e search with warrant and without warrant), the classification of searches (i.e. search of persons body and objects), then conclusion and suggestions.*

*The right to privacy does not feature at all under African charter on human and peoples rights [ACHPR] 1981, but section 8 [1] of European convention for the protection of human rights and fundamental freedoms 1950 provides that "everyone has the right to respect for his private and family life, his home and his correspondence."*

*The objective of search is to obtain evidence that may be used in the prosecution of criminal trial. Search can be on the person, things/object or premises. This paper intends to discuss why search, how its done, limitation there to, visa-a-vis the right of privacy.*

**Keywords:** Right, Convention, Privacy, Search, Citizens.

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## INTRODUCTION

The United Nations General Assembly recognizes that international human rights law provides the universal frame work against any interference to individual privacy rights.

The universal declaration on human rights [UDHR] 1948 sets out the terms for protection of privacy; "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attack"

To domesticate the above charters, treaties and declaration of the international organization, section 37 of the 1999 constitution as amended guaranteed and protects the privacy of citizens in relation to their homes, correspondence, telephone conversation and telephone communications. Accordingly and ordinarily, the invasion of or intrusion in the privacy of citizens by other persons including law enforcement agents is not allowed.

However, because of the needs to protect the entire society against criminals, laws are made and actions are taken which restricted or even derogate from citizen's right to privacy such laws and actions include; those pertaining to the search of the person of citizen, their homes and other object. For this purpose various laws have been made which confer and or empowers law enforcement agent to search citizens, their homes and objects such as vehicle bags, etc.

More so like any other power, the power of search is not without any regulation or restriction. The law that allow law enforcement agents to invade the privacy of other citizen do atb the same time, impose a duty on the former as to when, if the person conducting the search abuses his powers by violating the rules governing search, he may be held responsible for the abuse or violation.

### **MEANING OF SEARCH**

“The act of looking carefully in order to find something or somebody”

The term, however, has a wider and more technical meaning in law.

According to the Black's law Dictionary the term refer to

An examination of a man's house or other buildings or premises or of his person, or of his vehicle or aircraft, etc, with a view to the discovery of contraband illicit or stolen property, or some evidence of guilt to be used in the prosecution of a criminal action for some crimes or offences with which he is charged.

As we could hardly find a better way of defining the term as does the Black's law Dictionary, the latter's definition is adopted in this article.

### **TYPES OF SEARCH**

As regards the authority of the police and other law enforcement agents to conduct search, it can be classified into two;

1. Search with warrant; and
2. Search without warrant

In nature, search can be classified into three, namely;-

Search of a person's body

Search of premises; and

Search of other objects.

For clearer understanding let us look at each of the above:

**1. SEARCH WTTTH WARRANT:-** As will be seen in the subsequent pages in certain instances (particularly as it relates to premises), the law requires a search to be with a  
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warrant, which is a written authority, usually in a prescribed form issued usually by a Magistrate directing a named person or persons to enter specific premises and look for and seize certain specified object<sup>1</sup>.

Search warrant is usually issued by a Magistrate where he is informed on oath and in writing and he is satisfied that there is reasonable ground to believe that there is in the state and in a particular place as premises any of the following: -

- a. Anything upon or in respect of which any offence has been or is suspected to have been committed; or
- b. Anything which there is reasonable ground for believing will afford evidence as to the commission of any offence, or
- c. Anything which there is reasonable ground for believing is intended to be used for the purpose of committing any offence<sup>2</sup>.

#### **ISSUANCE AND EXECUTION OF SEARCH WARRANT:**

Search warrant may be issued and executed on any day including Sunday and or public holiday<sup>3</sup>

Search warrant may be executed between the hours of five O'clock forenoon (morning) and eight O'clock at night: but the Court may in it's discretion authorize any other hour (ibid).

A search warrant need not necessarily be executed the day it is issued, infact, it remains validly in force until it is executed or until it is cancelled by the Court that issued it<sup>4</sup>. To be valid, a search warrant must;

- a. be signed by the Magistrate issuing it<sup>5</sup>.
- b. Bear the name and address of the person or premises to be searched; and
- c. State the particular offence for which the search is to be made.

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#### **POWER OF FORCEFUL ENTRY AND EXIT**

Section 112 (1) CPA requires that whenever any building, things or place to be searched is closed, any person residing in any baing in charge of all building, thing or place should on demand of the police officer or other person executing the search warrant, allow him free( I e access to building, thing or place and reasonable facilities for the search.

Where ingress (i.e access or entry) is refused or denied the police officer or any other person executing the warrant can enter into the premises even by breaking open any other outer or inner door or window of the premises or other premises in order to enter and conduct the search. And the police officer or any other person executing the search warrant, has the same right or power when going out<sup>6</sup>.

Section 78 CPC requires that search be conducted in the presence of respectable inhabitants of the neighborhood to be called by the person to whom the search warrant is addressed who is in most cases the owner or occupier of the premises).

The above section further requires that a list of all things seized in the course of search and of the places in which they are found should be sighted or sealed by the witnesses.

It should be noted however, that non compliance with the provision of section 78 mentioned above does not necessarily invalidate any evidence thereby obtained, though it may affect the weight to be attached to it by the court.

*In Musa Sadau Vs The State*<sup>7</sup>, the appellant was charged and convicted in the high court for being in possession of forged vehicle licensing forms. He was known as a licenses agent and would collect money from vehicle owners and issue forged licenses to them. His house was searched by the police, not in the presence of two witnesses of the neighborhood as required by section 78 CPC, and a large quantity of the forged here licenses were recovered. During the trial, he said, he was a bicycle repairer and that it was the police who carried into the house a bag of forged licenses recovered in his room. The evidence recovered was used in his trial and he was convicted.

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On appeal, counsel to the appellant argued that at section 78 of the CPC was not complied with, during the search, the search was illegal and the property recovered there from should not have been received in evidence. The D.P.P submitted that section (1) did not make the presence of witnesses mandatory during a search.

The court hold that where a fact is relevant, it could not be excluded at laws except by virtue of a specific statutory provision or rule of law there is no rule of law that evidence which is relevant is excluded merely by the way in which it has been obtained The appeal was accordingly dismissed.

Similarly, *in Kuruma Vs The Queen*<sup>8</sup>, Emergency regulations empowered police officer above the rank of Assitant Suprentendent of police to stop and search persons having in their possession anything which could afford evidence of the commission of an offence . The applicant was searched at a road block by police officer not above the rank of the assistant superintendent of police (ASP) a knife and two round of ammunition were discovered. It was contended that since the search was illegal, evidence obtained therby should not be admitted. However, court held that test to bw applied in consideration whether particular evidence is

admissible is whether it is relevant to the matter in issue. If it is admissible and the court is not concerned with how it was obtained.

This position was re-iterated in *Torti Vs Ukpabi*<sup>9</sup>, where the supreme court laid down the principle that where a document is admissible, the issue of proper custody is irrelevant to the issue of admissibility.

Its production from proper custody goes to weight to be attached to the piece of evidence, Per Eso JSC J.S.S AT PAGE 236 -237 Has this to say: “I think that admissibility should be based on relevance and not on proper custody. Once a matter, be it documentary or oral evidence is relevant , it is admissible. Proper custody only raises the issue of presumption, or to put it more clearly, the weight to be attached to the evidence, documentary or otherwise after admissible. For evidence documentary otherwise to be admissible it is sufficient that proper ground of its relevance is laid”.

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### **SEARCHING OF WOMEN QUARTERS**

Section 79 CPC is to the effect that if the police to be searched is an apartment in the actual occupancy of a women, not being the person to be arrested, who according to customs (or religion) does not appear in public such as married women observing “*Purdah*” then the person making the search should before entering the apartment give notice to such women that she is at liberty to withdraw and he should further give or assist her with every reasonable facility to withdraw.

The occupant (s) of any place searched or some searched or some person or persons on his or their behalf should be permitted to be present at the search should, if he or they so requires receive a copy of the list of things seized in the presence<sup>10</sup>

It is very important to note that non compliance with the above rules, as seen in some cases earlier referred to may render the person conducting the search liable

In damages for trespass<sup>11</sup> it may further affect the evidential weight to be attached to any article recovered during the search even if same is finally admitted by the court in evidence.

The question one would like to ask is ; what article are the police or any other person conducting the search, allow to seize? in other word are they restricted to those specified in the search warrant or do they include other articles not specified or mentioned in the search warrant ?

Legal authorities have since the late sixties established the rule that both Reynolds Vs Commissioner of Police for The metropolis (1985) 80 CAR 125 articles could be seized. However, in the case of articles not specified or mentioned in the search warrant, certain

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condition which squarely boarder on “Reasonable suspicious” Must be satisfied ( Chic Fashion (West Wales) Ltd Vs Jones (1968)2 QB 299<sup>12</sup>

## **B SEARCH WITHOUT WARRANT**

The CPA and the police Act , have shown that the powers of the police, courts official and other specified persons to search without warrant are wider than those where search warrant is required section 7 CPA, 85 PC, 147 (1) Customs and Exercise management Act, section 59 and 60 of the explosive Act and section 28 (1) of the police.

Secton 6 CPA, 44 CPC, 29 police Act, and section 180 Custom and Exercise management , are all to the effect that arrested persons may be searched.

For instance, section 6 CPA, which is similar with section 44 CPC provides that:

Whenever a person is arrested by as police officer or private person, the police officer making the arrest or to whom the private person handed over the person or arrested, may search such person, using such force as may be reasonably necessary for such purpose, and place in safe custody all articles other than necessary wearing apparel round upon him.

It appears from the above sections that private person has no legal barking to search a suspect arrested except where a person is arrested on suspicion of concealing any offensive weapon about himself for the purposes of taking the same from him(section 44(1)cpc).

A very important point to note is that, the search of an arrested woman must not be done except by a woman (sections 6(2) CPA, 44(3) CPC and 150 (i) (b) (ii) (FEMA)

### **WHAT ARTICLE TO REMOVE?**

It should be noted that the provision of the law which allows for the removal of wearing apparels is not without limitation<sup>13</sup>. The provision to the section goes further to state that “--- whenever the person arrested is admitted to bail is furnished, such person shall not be search unless there are reasonable ground for believing that he has about his person any:

- 1) Stolen articles; or
- 2) Instruments of violence or poisonous substances; or
- 3) Tools connected with the kind of offence which he is alleged to have committed; or
- 4) Other articles which may furnish evidence against him in regard to the offence which he is alleged to have committed.”

Judicial authorities have, for long established the firm view that the only wearing apparels to be searched and removed from detained suspect or accused are such objects which the police reasonably suspects to be connected with the criminal offence committed by

suspects to be connected with which the suspect or accused or prisoner might do himself or others injury or which could be used to effect escape<sup>14</sup>.

### **C. SEARCH OF OTHER OBJECTS**

Relying on the laws just referred to, the power given to the police is not restricted to the searching of the person of a suspect. The power extends to the search of anything he carries there with including what is carrying him. These may be luggage, baggage, vehicles, documents, etc

*“ Further, section 59 explosive Act , empowers an inspector*

*“to stop and examine any carriage which he has reasonable grounds for believing is being used for the conveyance of explosives”*

Also section 149 (1) FEMA provides that :

“Where there are reasonable grounds to suspect that any vehicle or ship is or may be carrying any goods which are :

- (i) Chargeable with any duty which has not been paid or secured; or
- (ii) In the course of being unlawfully removed from or to any place ;or
- (iii) Otherwise liable to forfeiture under the customs and exercise laws.

### **CONCLUSION**

Considering the importance of the privacy of individuals which dictates the freedom to be left alone, the constitution of the Federal Republic of Nigeria 1999 and some international instrument guarantee every person the freedom not to be unnecessarily interfered with. These and similar laws do not only guarantee but proceed to stoutly protect this right against all actions that end to injure it by providing sanctions in the event it is encroached upon.

Suffice it to say, however, that is misleading and misconceiving to ever assume one’s right to privacy is limitless; as clothing him with the freedom to do as he wishes.

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It is pertinent to appreciate the fact that as every individual, as a component of the society, remains desirous of being allowed to enjoy his privacy without unnecessary interference , so yawns the entire society to be spared his vices.

Accordingly, the constitution and other laws recognize instances when the peace, order and harmonious co-existence of the entire society should and can be protected even at the expense of the privacy of individuals. Action taken in furtherance of this objectives extend to the search of the person of individuals, their homes, communications and other objects.

This paper is finally suggesting that people whose rights were tempered with without lawful reasons should always wake-up to their rights, prosecute the intruders. This will control the excess of the law enforcements agents that usually intrude in to peoples' right unlawfully, particularly the right privacy.

It is pertinent to note, however, that since the privacy of individual can only be interferred with to the extent only the safety of the entire society requires, any law made or action taken which tend to restrict or derogate from his freedom must be justifiably necessary in a democratic society else, the victim may maintain an action against the person or authority making or causing the violation. A person whose home is unlawfully invaded or intruded into by others –including law- enforcement agents, such as the police, has the right to keep them off the premises by ordering them to leave or even through ejection and that does not in the slightest temper with his right to maintain a legal action against them for trespass.

#### **END NOTES**

- 1.(Nchi, 2000 and Section 76 (1) CPC).
2. Section 107 (i) (1). (b) and (c) CPA AND Section 28 Police Act.
3. Section 111 (i) CPA and also Section 76 (1) (a) and (b) CPC and Section 28 Police Act.
4. Section 109 (2) CPA
5. Section 109 () CPA).
6. sections 34 and 84 CPC and sections 7, 8,112 (1) and (2) CPA.
7. (1968) NMLR 208
8. (1955) AC 197
9. (1984) 1 SC NLR 214
10. Section 80 CPC
11. Mallam Abdullahi Hassan & others vs EFCC & others (2013) LPELR
12. shugaba vs minister of internal affairs (1982)3NLCR 915 at 1008 and Abiola vs Abacha (1996) LPELR-SC- 246
13. Sections 76 (1) CPC & sections 29 of police act
14. Johnson Vs Omorokuma (1981) 1 NCR 283 Lindly Vs Rutter (1980) C. L. R 279, R vs Angela Naylor (1979) C.L.R 532 and Kingslay s case (1836) C. L . R 7 C & P. 447.

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