

AN ASSESSMENT OF REMAND PROCEEDINGS UNDER THE KEBBI STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW, 2020 OTHERWISE KNOWN AS HOLDING CHARGE.

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Abstract

The concept of holding charge or remand proceedings involving suspects accused of committing capital offences is one of the relics of unconstitutional practices that have proven to have held the liberty of defendants/suspects accused of committing capital offence to ransom. These concepts were obtainable in the defunct criminal procedure code applicable in northern Nigeria and Criminal procedure Act applicable in southern part of this country. However with enactment of the Administration of Criminal Justice Act by the national Assembly in 2015 and the subsequent domestication of the Act by some states of the federation making it laws, it was expected that the unconstitutional practice could have been cured by the Act and Laws of different states. Regrettably, most of the administration of criminal justice law of some states retained the unconstitutional practice by even strengthening its grip on it through empowering the Magistrate Courts to grant applications for remand until proper trial by the police and other prosecuting agencies' applications, Administration of criminal justice law of Kebbi State inclusive. The research employs doctrinal legal research methodology, analyzing primary and secondary legal sources. This paper subjects the Administration of criminal justice Law of Kebbi State 2020 to the test of the constitution *vis-à-vis* pronouncements of the superior courts, thereby critically examining whether the law is not unconstitutional and in contrast with some judicial authorities on the subject-matter. The paper found and concludes that the practice is in collusion with the constitution and decided authorities, The paper finally recommends that both the prosecutors and the courts not only in Kebbi state should always be wary and resist being swayed by the nature of the allegations against a suspect, they must strive to jealously protect the liberty of individuals accused of committing offences no matter how heavy the allegations are.

Keywords: Holding Charge, Prima Facie, Capital Offence, Remand Order and Remand Proceedings

1.1 INTRODUCTION

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Police and other prosecuting agencies in Nigeria empowered by law to receive complaints, investigate, invite, arrest, detain and prosecute must make sure that they discharge their constitutional responsibilities within the prism of the Constitution. It is a known practice of placing the cart before the horse by the prosecutors in Nigeria. The law enforcement agencies are always eager to make arrests without satisfying themselves of a prima facie case against the suspect through investigation. It detains the suspects and sometimes questions them before making professional and discreet investigation in order to have compelling and convincing evidence against a particular suspect that can warrant his arrest and detention. It is a practice by the prosecuting agencies when they make arbitrary arrest and found out that they do not have enough evidence to prosecute the suspect to quickly seek for an order from a magistrate Court to remand the suspect pending when they will be ready to properly charge the suspect to a competent court that is clothed with the requisite jurisdiction to try the suspect. The suspect may spend months or years under remand awaiting proper arraignment and trial before the conclusion of the investigation against him, after which the prosecutors will transmit the file to the office of the Honourable Attorney-General of either the state or the federation for legal advice. thus, at this stage the office of the Honourable Attorney-General may not necessarily advise that the suspect be charged to Court for the capital offence he is accused of and have been remanded by the order a Magistrate Court that do not have jurisdiction to try the offence, they may of course charge him with same capital offence he is alleged to have committed or advise that he be discharged, the case be terminated or lesser offence be preferred against him. However, in the event he is discharged, case terminated, or lesser offence is preferred against him, he would have spent months or years in detention based on the orders of the court that do not have the requisite jurisdiction to try him for the offence. If this happens, it then goes without saying that the magistrate Court though empowered by law became the mechanism through which the liberty of an individual was unconstitutionally violated.

There are many instances where a suspect is detained but the process of commencing trial has not been completed. Where this is the case and in order not to violate the constitutional timeline, an application is usually made to the magistrate court requesting that the suspect be remanded in custody pending arraignment. Remand is defined as the act of committing an accused person to custody after a preliminary examination. It is the process of bringing a defendant with an alleged offence not triable summarily before a magistrate to keep the said defendant in lawful custody.¹ Ordinarily, investigation to an alleged commission of a criminal offence ought to be concluded prior to the arrest of the suspect, thereby paving the way for arraignment within a reasonable time as contemplated by the Constitution, but unfortunately this is not the case in Nigeria, hence the need for a procedure that will accommodate the lapses created by ineffective criminal investigation. The law enforcement agencies and prosecutors in their ingenuity introduced the procedure of “holding Charge” which ultimately birthed the present “Remand Order Procedure” in our criminal justice system.² This paper critically examines and analyzes the practical challenges bedeviling investigations and timely arraignment of suspects accused of committing capital offence in Nigeria, with a view to determining whether the Administration of Criminal Justice Law of Kebbi State that empowers the magistrate to take the plea of person

¹ Ifidayo Ogunyemi, (2020) Addressing Remand Proceeding in Nigeria <https://tribuneonline.ng/addressing-remand-proceeding-in-nigeria/> accessed on 4th day of November, 2025 at 10:00am.

² <https://www.scirp.org/journal/paperinformation.aspx?paperid=12246> accessed on the 4th day of October, 2023 at 1:30pm.

accused of committing a capital offence and remand them in correctional center is in agreement with the extent provisions of our Constitution and plethora of judicial authorities of superior Courts. It is in the light of the above that the researcher intends to embark on this research work.

1.2. Definition of Key Terms

1.2.1 Meaning of Holding Charge

Holding Charge is the practice whereby a suspect undergoing investigation is taken to Magistrate's Court upon a Phony or miniature charge by the Police with the view to moving the Court to order the remand of the suspect pending the conclusion of it investigation into the matter and on conclusion of the investigation, the suspect is formally arraigned on a proper charge before the Court with jurisdiction while the phony or miniature charge with which the suspect has been remanded is withdrawn.³ The term "Holding Charge" has been variously construed and defined. The Black's Law Dictionary⁴ defines it as "a criminal charge of some minor offence filed to keep the accused in custody while the prosecutor takes time to build a bigger case and prepare more serious charges." "Holding Charge" has also been described as "the practice of bringing suspects before an inferior Court that lacks jurisdiction for the primary purpose of securing a remand order, to look for evidence in support of the allegation against them and thereafter abandon the suspects in prison under the pretext of awaiting trial" In Nigeria where there is overcrowding in Correctional centers as a result of majority of inmates serving time for pre-trial detention issues, it is submitted that corruption is one major reason why officers from law enforcement agencies are unable to conclude their investigation before arraigning a suspect in court; a specie of this corruption is where officers has been compromised with money by the family of the suspect and they deliberately set out to frustrate every attempt at speedy conclusion of investigation so that the case will get cold and material evidence lost in the process which will ultimately lead to a decision of non-prosecution of the suspect or his acquittal if eventually he is arraigned in court; another factor is inadequate financing of the law enforcement agencies leading to officers demanding that families of victims of crime should finance investigation to cover their movement from one place to the other and often time the humongous amount demanded is not readily available, will cause delay in the investigation until the family provides the money; also indiscipline and lack of professionalism by some officers causes delay in conclusion of the investigation; inadequate remuneration of law enforcement officers leads to lack of motivation, interest, and excitement in their job performance which will certainly impact on their output thereby causing delay in conclusion of investigation; obsolete or near absence of modern facilities needed in crime investigation and policing, for instance electronic recording gadgets such as video cameras and recorders, absence of closed circuit television installed in public places by Government or individuals for crime control are other reasons for delay in conclusion of the investigation as officers are made to resort to near manual and orthodox system of investigation.⁵ This unconstitutional practice was berated and frowned at by the apex Court in *A.G Abia State v A.G Federation*.⁶

³ Yahya Duro Uthman Hambali, *Practice and procedure of criminal litigation in Nigeria* (2nd edn, FEAT Print & Publish Ltd, 2019),77.

⁴ Brayn A. Garner, *Black's Law Dictionary*. (10th edn, West Publishing Company, 2014), 211.

⁵ Ifidayo Ogunyemi, Addressing Remand Proceeding in Nigeria. *Op. cit.*

⁶ (2002) 6 NWLR (Pt. 763) 204.

1.2.2 Remand Order

The Black's Law Dictionary captures the meaning of the word "remand" as to recommit (an accused person) to custody after a preliminary examination⁷. Also, Webster's Dictionary considers the word "remand" to mean "To return to custody pending trial or for further detention". The Nigerian Supreme Court in *Lufadeju v Johnson*⁸ defined "remand" to mean to send to prison or send back to prison from a court of law to be tried later after further inquiries have been made; often in the phrase "remanded in custody". It also means to "recommit accused to custody after a preliminary examination".

3.1 Holding Charge and Remand Proceedings under the Kebbi State Administration of Criminal Justice Law, 2020

Section 304⁹ empowers the Magistrate Courts to take cognizance of a capital offence against a defendant, being an offence which the magistrate courts do not have jurisdiction to try. The section mandates the courts to take the defendant's plea only for the purpose of remanding him in prison custody not for the purpose trying him duly for such offence. The Law admits the lacking of jurisdiction by the magistrates yet gives them power under sections 304 and 305¹⁰ to remand a suspect.

Meanwhile, in the succeeding section 306¹¹ also gives the same magistrates the power to yet admit the defendant to accused of committing capital offence after taking cognizance of the case. The law provides thus:

304. (1) A Suspect arrested for an offence which a Magistrate Court has no jurisdiction to try may take cognizance of the offence brought before a Magistrate within a reasonable time of the arrest and the Magistrate upon taking cognizance of the offence, may order the remand of the suspect in custody.

(2) An Application for remand under this section shall be made ex-parte and shall:

(a) be made in the prescribed "Report and Request for Remand Form" as contained in Form 8, in the first schedule to this law; and

(b) be verified on oath and contain reasons for the remand request.

305. (1) Where the court, after examining the reason for the arrest and for the request for remand in accordance with the provision of section 305 of this Law, is satisfied that there is probable cause to remand the suspect pending the receipt of the copy of the legal advice from the Attorney-General and arraignment of the suspect before the appropriate Court, as the case may be, may remand the suspect in custody.

(2) In considering whether "probable cause" has been established for the remand of the suspect pursuant to subsection (1) of this section, the court may take in to consideration the following:

(a) the nature and seriousness of the alleged offence;

⁷ Brayn A Garner, Black's Law Dictionary, (n 4), p. 125.

⁸ (2007) 8 NWLR (Pt. 1037) 535 at 562 SC.

⁹ Kebbi State Administration of Criminal Justice Law, 2020.

¹⁰ *Ibid.*

¹¹ *Ibid.*

(b) reasonable ground to suspect that the suspect has been involved in the commission of the alleged offence;

(c) reasonable grounds to suspect that the suspect has been involved in the commission of the alleged offence where he is not committed to custody; and

(d) any other circumstance of the case that justifies the request for remand.

306. The Court may, in considering an application for remand brought under section 305 of this Law, grant bail to the suspect brought before it, taking in to consideration the provision of section 171 to 201 of this Law relating to bail.

307. (1) Where an Order of remand of the suspect is made pursuant section 305 of this Law ,the order shall be for a period not exceeding 21 days in the first instance, and the case shall be returnable within the same period.

(2) Where ,on application in writing , good cause is shown why there should be an extension of the remand period, the court may make an order for further remand of the suspect for a period not exceeding 14 days and make the proceedings returnable within the same period.

(3) Where the Suspect is still in custody on remand at the expiration of the period provided for under subsection (1) or (2) of this section, the court may , on application of the suspect, grant bail in accordance with the provision of section 172 to 200 of this Law.

(3) Where the suspect is still in custody on remand at the expiration of the period provided for under subsection (1) or (2) of this section, the Court may, on application of the suspect, grant bail in accordance with the provisions of sections 172 – 200 of this Law.

(4) At the expiration of the remand order made pursuant to subsection (1) or (2) of this section, and where the suspect is still remanded with his trial having not commenced, or charge having not been filed at the relevant Court having jurisdiction, the Court shall issue a hearing notice on:

(a)the Commissioner of Police and the Attorney-General,

(b)any relevant authority in whose custody the suspect is or at whose instance the suspect is remanded, and adjourn the matter within a period not exceeding 14 days of the expiration of the period of remand order made under subsection (1) or (2) of this section,to inquire as to the position of the case and for the Commissioner of Police or the Attorney-General of the State to show cause why the suspect remanded should not be unconditionally released.

(5) Where the Commissioner of police and the Attorney-General show good cause pursuant to subsection (4) of this section and make a request to that effect, the Court:

(a)may extend the remand of the suspect for a final period not exceeding 14 days for the suspect to be arraigned for trial before an appropriate court; and

(b) shall make the case returnable within the said period of 14 day from the date the hearing notice was issued pursuant to subsection (4) of this section.

(6) Where a good cause is not shown for the continued remand of the suspect pursuant to subsection (4) of this section, or where the suspect is still on remand custody after the expiration of the extended period under subsection (5), the court shall, with or without an application to that effect, grant bail to the suspect and the suspect shall be immediately released from custody.

(7) No further application for remand shall be entertained by any Magistrate after the proceeding in subsection (6) of this section pending the time when the suspect is formally charged before the appropriate court.

It is worthy to note that the power of remand donated to the Magistrate Court to take cognizance of the offence which they do not have powers to try are being exercised by them without any apprehension, however, yet conversely, in most cases magistrates appear to be hamstrung in exercise of the powers given to them by the same law under section 306¹² for the release of the suspect remanded in prison on bail. Putting it differently, the magistrate do take cognizance in an unfettered manner but remain highly circumspect in granting bail to such suspects they remanded under the guise of cognizance. The Court of Appeal in the recent case of *Musa v C.O.P Jigawa State*¹³ when pronouncing on section 300¹⁴ which is in *pari materia* with section 308¹⁵ excoriated the refusal and denial of bail to suspects by magistrates, when they spent the number of days as required by the law to be entitled to bail, when they are remanded on holding charge without an advise from the office of the Attorney General for a charge before a competent Court. Similarly, with respect to satisfying the provision of the law by the prosecution, in most cases the prosecution while making the applications for remand do not care to comply with the provision of section 305(2).¹⁶ Yet, the Courts do grant such applications. It is the opinion of the writers that most often than not, the prosecution make oral applications to remand suspects without reducing it in to writing and making sure that they comply with the provisions of section 305(2).¹⁷ The wordings of the section contain the word ‘shall’ and it is instructive to note that where shall appears in statutes or Laws, it denotes that the action is mandatory.

However, the Magistrates also do not apply the provisions of section 307¹⁸ that provides for the factors which the magistrates must satisfy themselves of the existence of probable cause to warrant the grant of the prosecution’s request to remand the suspect in custody. By practice, magistrate do not engage in voyage of discovery of facts and legal analysis to satisfy themselves whether or not a prima facie case or a probable course has been established against the suspect to warrant his remand. What Magistrates mostly do is to gloss over the First information Report to ascertain the nature of the alleged offence against the suspect. If they confirm that it is a capital offence which they do not have jurisdiction to try, they will quickly arraign the suspect and

¹² Section 307, *Ibid.*

¹³ (2023) LPELR – 60504 (CA).

¹⁴ Kebbi State Administration of Criminal Justice Law, 2020.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

inform him they are only taking cognizance of the offence and remanding him in the correctional facility. Similarly, sections 304 and 305¹⁹ provides that the suspect is to be remanded by the Magistrate Court pending the outcome of the advice from the office of the Attorney-General of the state and there is also a time limit of 83 days maximum after the expiration of the first 21 plus another 62 days as contained given under the law for the Attorney-General to make available his legal advice²⁰. It is observed that the advice of the Honourable Attorney-General may not necessarily confirm the allegation of capital offence against the suspect. The advice from Honourable Attorney-General may emerge confirming the allegations of capital offence or it may be a charge on lesser offence or exculpation of the commission of the alleged capital offence against the suspect depending on the nature of the evidence contained in the case diary. The law itself contemplates under section 308(3)²¹ the possibility of legal advice from the office of the Attorney General becoming different from the allegations on the original case file. Invariably because most of the prosecutors are not lawyers and are not professionally trained to analyze complaint brought before them and make sure there is *prima facie* case against suspects before swinging into action and make arrests and detentions. The law²² did not contemplate the fate of a suspect detained for months or years by the orders of Magistrates taking cognizance in case the advice from the office of the Honourable Attorney General with respect to those remanded under cognizance becomes otherwise. This is because by practice the advice from the office of the Attorney General hardly comes within the time frame of 14 days minimum and 63 days maximum as provided for under the law. The law did not also provide for public apology or compensation as encapsulated under chapter 4 of the 1999 Nigerian constitution as amended in the event the advice from the office of the Attorney-General recommends, discharge, acquittal or lesser charge than the alleged capital offence. By this time, the suspect would have spent months or years in detention despite the fact that his detention was based on the order of court yet his rights to liberty and freedom of movement would be violated against the provision of the Constitution. Finally another subtle point worthy to note is that there is a serious conflict and collision between section 308 and section 385.²³ While section 308 gives the Court the power and latitude to allow adjournments at three instances for the period of 83 days maximum for the remand of the suspect; in particular 21 days at the first instance, 14 days at the second instance, 14 days at the third instance, 14 days at the fourth instance and finally 14 days at the final instance, after which the Court shall not grant further remand and discharge the suspect accordingly in the absence good cause shown to continue the remand of the suspect, and gain in the absence of advice from the office of the Attorney-General. On the other hand, section 385(2) mandated the Attorney-General to make available his legal opinion within the period of 14 days after the original case file is submitted to him by the Police. For the purpose of emphasis the section provides:

385(1) Where an offence for which the Magistrate Court has no jurisdiction to try is preferred against a defendant, the Police Shall at the end of investigation submit the original case file to the office of the Attorney-General

¹⁹ *Ibid.*

²⁰ *Ibid.*, Section 308 (2).

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

- (2). The Attorney-General shall, within 14 days of receipt of the police case, file, issue and serve his legal advice indicating whether or not there is a prima facie case against the Defendant for which he can be prosecuted.
- (3) Where the Attorney-General is of the Opinion, as contained in the legal advice, that the suspect has no prima facie case to answer, he shall serve a copy of the legal advice on the:
 - (a) police or the head of the police legal unit through whom the police case file was sent to the Attorney-General;
 - (b) Court before whom the suspect was remanded in prison, where he is remanded custody, or before whom the suspect was granted bail; and
 - (c) Suspect in respect of whom legal advice is preferred through the prison authority, where the suspect is remanded in custody, or through his legal representative, if any.

It can easily be discerned from the aforementioned sections that there is a serious collision between the two sections. Section 308 gives the court power to adjourn after remanding a suspect on holding charge for a period of 49 days yet section 385(2) mandates the Attorney-General to issue and serve his legal advice within the period of 14 days. Both sections mandate the Attorney-General to submit his legal advice but give different days within which the Attorney-General shall provide his legal advice. This conflict is capable of plunging the Magistrate Courts, the prosecution and even the suspect whose liberty is at stake into serious confusion and quagmire. It is also observe that the magistrates do not strictly comply with the provisions of sections 308 and 385 of the law. In most cases, suspects do spent more than 83 days in detention being the maximum number of days as provided under the law, without an advice from the office of the Attorney-General and without the Court admitting the suspect to bail or discharging him, even without any application by the suspect or his legal representative as provided for under section 305(6).²⁴

4.1 Position of the Practice of Holding Charge and Remand Proceedings under the Constitution of the Federal Republic of Nigeria, 1999 (As Altered)

The Constitution of the Federal Republic of Nigeria firmly protects the dignity, liberty and the freedom of movement of Nigerians. This is why the Constitution provides for the fundamental rights of individuals and clearly states the circumstances that the liberty of individuals can be legally curtailed. It is against this backdrop that the Police and other prosecuting agencies often adopt the practice of holding charge in order to shield themselves against being culpable of holding a suspect in custody beyond the time allowed under the Constitution. The Constitution provides that a person arrested or in police custody must be taken to a Court of competent jurisdiction within one day if the Court is within a radius of 40 kilometers to the place of arrest or detention or within two days or such longer period as the Court may consider reasonable if the distance is more than 40 kilometers.²⁵ The emergence of the practice of holding charge in the Nigerian Criminal Justice system is not an invention of law but an ingenuity created by Prosecutors to circumvent the provisions of Section 35(4) and (5).²⁶ These sections, in a nutshell, provide

²⁴ *Ibid.*

²⁵ Yahya Duro Uthman Hambali *Op. Cit.* p. 10.

²⁶ Constitution of the Federal Republic of Nigeria, 1999 (As Altered).

that a suspect who is arrested or detained shall be brought before a Court of law within a period of one (1) day where there is a Court of competent jurisdiction within a radius of forty (40) kilometers, or a period of two (2) days or such longer period as the Court may consider reasonable in the absence of same. In Danfulani v Economic and Financial Crimes Commission,²⁷ the Court held that to detain a suspect without arraignment in Court beyond the period stipulated by the Constitution is unconstitutional. Consequently, detention of a suspect beyond the permissible period comes with unpalatable consequences in terms of award of damages and other sanctions against any law enforcement agency, especially where the suspect was arrested for offences which punishment is not death sentence. Section 61(1)²⁸ is in conformity with the provisions of the Constitution while stating that a suspect arrested without a Court warrant, other than a capital offence, should be granted bail, where it is impracticable to charge him to Court within 24 hours. It is the researchers' opinion that the practice of holding charge and the adjudged reason for its emergence when placed side-by-side with the constitutional provisions under reference cannot legally survive any constitutional scrutiny, especially as there are no known provisions of the law backing it. Assuming without conceding that there is a provision of the law backing it, the clear and unambiguous wordings of section 1(3)²⁹ which provides that "if any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void" makes such a provision unconstitutional.³⁰ It therefore goes without saying that the provisions of section 305³¹ which empowers magistrate Courts to take cognizance of the offence which they do not have the requisite jurisdiction to try and make orders for remand is unconstitutional to the extent of its inconsistency because it clearly goes against the provision of the Constitution.

5.1 Position of the Judicial Authorities on Holding Charge and Remand Proceedings

Holding Charge is alien to the Nigerian criminal justice system as it is not provided for under any law. More so, it is adopted more in cases where a suspect is being investigated over an allegation of commission of capital offence in which the suspect will be taken to Magistrate Court that does not have jurisdiction to try the offence in the first place for a remand order. It is not even favoured by any rule or practice and this is why it has been condemned in strong terms by the superior Courts in Nigeria.³² Throughout the investigation of these researchers, there is no single Supreme Court authority that ratifies the famous practice of holding charge and remand proceedings by the Magistrate Court. Plethora of judicial authorities condemned the practice of remand proceedings for been unconstitutional, aimed at arbitrarily trampling upon the rights of liberty and fair hearing of the suspect. Yet, there are pockets of Court of Appeal authorities that partially support the practice of holding charge and remand proceedings. But the majority of the authorities frowns at it and excoriate it for making bleak the prospects of a suspects rights to liberty and fair hearing. The Court of Appeal in the case of *Enwere v Commissioner of Police*³³ held that

²⁷ (2016) 1 NWLR (Pt. 1493) 223 at 247.

²⁸ Nigeria Police Act, 2020.

²⁹ Constitution of the Federal Republic of Nigeria, 1999 (As Altered).

³⁰ *Ibid.*

³¹ Administration of Criminal Justice Law, Kebbi State, 2020.

³² Yahya Duro Uthman Hambali. *Op. cit.* p. 13.

³³ (1993) 6 NWLR (Pt. 299) 333 at 335; See also the case of *Johnson v Ludefaju* (2002) 8 NWLR (Pt. 768) at 217.

...as it is palpable that the appellant in the instant case up till 8th March, 1993 when he was granted bail by this court still being detained under what is called a purported Holding Charge without any information filed against him before any law court. I hold that this act constitutes improper use of power or flagrant abuse of power by the police for which they stand condemned. This particular abuse of power is all more condemnable when it is known that there have not been exhibited proof of witnesses's evidence evidencing police desire to prosecute the appellant placed before the trial court.'

The Supreme Court was therefore emphatic and categorical when the afore mentioned two cases of *Lufadeju v Johnson*³⁴ and *Enwere v Commissioner of Police*³⁵ reached the Supreme Court by way of Appeal where it was held that the practice of holding charge is illegal and unknown to Nigerian law, same being in conflict with the Constitution. In that same case, the Supreme Court also held that the practice of remand order is unconstitutional and went on to state that its decision was meant to compliment the realization of the Constitutional provisions on the right to personal liberty. In support of the above Constitutional provision is Article 6³⁶ which provides that "Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained." The Charter has been signed and ratified by 54 African countries (including Nigeria) to underscore its importance, and the only country yet to sign and ratify same is South Sudan. Therefore, it goes without saying, detaining a suspect above the period prescribed by law is arbitrary detention, unknown to our laws.

Moreover, the Court of Appeal in the cases of *Olutide & Ors v Hamzat & Ors*³⁷ and *Nwadike v The state*³⁸ held that:

While I am not holding brief for the Magistrate Court, I am aware that in the case of *Stanley Nwadike v The State* (2015) LPELR-24550 (CA) His lordship Mbaba held (pp 19-20, paras B-D) thus: "I also believe that where no criminal trial has commenced, pursuant to a valid arraignment, the court lacks power to pronounce on the liberty of the accused. In the recent cases of *Ibeghim v COP Abia State & Anor* (2021) LPELR -56548 (CA), *Charles v COP Abia State* (2021) LPELR – 56547 (CA) the court of Appeal reiterated the pronouncement of the Apex court in the case of *Bolakale v State* (2006) 1 NWLR Part 962 p 507 "this Court held it is an aberration and abuse of judicial process for an accused person to be arraigned before a magistrate court for an offence over which it has no jurisdiction, only for the accused person to be remanded in prison custody and not tried or properly charged before a competent Court for

³⁴ (2007) 8 NWLR (Pt. 1037) at 199.

³⁵ (1993) 6 NWLR (Pt. 299) 333 at 335.

³⁶ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria, 2004.

³⁷ (2016) LPELR – 26047 (CA).

³⁸ (2015) LPELR – 24550 (CA).

trial. It will be an infraction on the right to fair hearing and liberty of the accused person. It will place him in a position of hopelessness as to how to enforce his right.” In the earlier case of *Onagoruwa v The State* (1993) 7 NWLR part 303 page 49 at 107 para G-H. Tobi JCA (as he then was) this court held: “In a good number of cases, the police in this country rush to court on what they generally refer to as a holding charge ever before they conduct investigations, though there is nothing known to Law as “holding charge”...Where investigation does not succeed in assembling the relevant evidence to prosecute the accused to secure conviction, the best discretion is to abandon the matter and throw in the towel...On no account should it go out of its way in search of evidence to prosecute the accused when it is not there. When it degenerate to such a situation of “hunting down” the prosecution is no more regarded as the prosecutor but as a persecutor. And it is not consistent with the philosophy of adversary system of adjudication.

Meanwhile the Court of Appeal in the most recent authority³⁹ on the subject matter held as follows:

...The law is settled, that a parade of suspect on FIR before an inferior court , without a formal charge, backed by a proof of information or proof of evidence ,remains a speculation and cannot be used as credible basis to throw a citizen in to prison custody without bail or deny him bail. The state cannot use the holding charge as pretext to curtail the appellant’s personal liberty ad infinitum. That will offend section 35(1) of the constitution. Subsection (4) of section 35 of the constitution provides ready tool to enhance the powers of the court either to enforce the personal liberty of the accused or to insist on his speedy trial within a reasonable time under sections 35(1) and 36 of the constitution. Even section 300 of the ACJL of Jigawa State which permits a holding charge and remand of an accused person in custody, especially in capital offence does not allow such remand be open-ended, as it stipulates restraint and review mechanisms. which also stipulates unconditional release of the accused person when no formal charge is brought for his trial after a given period. See section 300(5)(6)(7) of the ACJL Jigawa state, 2019. As earlier stated in this judgement, it is quite scandalous that appellant had been held in prison custody in the circumstance of the case (gravity of the offence alleged against him notwithstanding) without any formal charge in a competent court against him, and without trial or hope of trial. He ought to be released from prison and I so order, unconditionally, without prejudice to his being arraigned, when the prosecution, through the office of the DPP, is ready and willing to arraign him...

By a community and comprehensive reading of the pronouncements of the Apex Court and the Court of Appeal in the afore mentioned authorities, it can safely and easily be discerned

³⁹ *Musa v C.O.P Jigawa State* (2023) LPELR – 60504 (CA).

that the practice of holding charge and remand proceedings are not in tandem with the constitutional provision and judicial authorities. As evident from the authority of *Musa v C.O.P Jigawa State*⁴⁰ even though the Jigawa State Administration of Criminal Justice Law, 2020 empowers the Magistrates to remand suspects on allegations of capital offences, the Court still excoriated the practice, most especially the refusal of the Magistrate Court to release the Appellant after he spent the time limit provided by the Law for the Attorney General to issue his advice. Meanwhile, The Kebbi State ACJL empowers the Magistrate Courts to remand suspects on allegations of capital offence that magistrate Court have no jurisdiction to try and gave them a period of 49 days to make sure that they release the suspect unconditionally even without any application by the suspect or his counsel. Conversely, as earlier observed in this paper, magistrates in Kebbi state do not exercise the power of release of suspects as denoted to them by the law yet they exercise the power of remand in an unfettered manner. It goes without saying that the provision of the Kebbi State ACJL on remand proceedings does not hold water and therefore immaterial when placed side by side with the judicial authorities and the constitutional provision because the Constitution is supreme and any law that is inconsistent with the constitution is to be declared null and void.⁴¹

6.1 Observations

This paper examined and analyzed the practice of holding charge and remand proceedings bedeviling the Nigerian criminal justice system both in law and practice which is in pari materia with the provisions of the Kebbi State ACJL. Hence, the following are the findings of this research:

1. The paper found out that even though the Kebbi State ACJL empowers the Magistrate Court to remand suspect accused of committing capital offence upon application by the prosecution, yet the Magistrates do grant the application for remand pursuant to section 304⁴² without the prosecution meeting the requirement as contained under section 304(2).⁴³ This is because; the prosecutions by practice do not care to make formal application on oath for remand. In most cases, they make only oral application upon arraignment of a suspect before the Magistrate Court. Thus, the Magistrates are also hamstrung and circumspect in the exercise of the discretion for bail given to them by the same law, yet they exercise their power for remand in an unfettered manner.
2. It was also observed that by practice magistrate do not engage in voyage of discovery and analysis of law and facts as contained on the First information report brought before them to satisfy themselves whether or not a prima facie case or probable course has been established against the suspect to warrant his remand in compliance with section 305 of the Law.
3. The paper also observed that the 1999 Nigerian Constitution as amended and judicial authorities of the Court of Appeal and the Apex Court do not recognize the practice of holding charge and remand proceedings, as a result of which the paper found out that that the provisions of section 305⁴⁴ that empowers magistrate Courts to take cognizance of the

⁴⁰ *Supra*.

⁴¹ Section 1(1) and (3) of the Constitution of the Federal Republic of Nigeria, 1999, (As Altered).

⁴² Administration of Criminal Justice Law, Kebbi State, 2020.

⁴³ *Ibid*.

⁴⁴ *Ibid*.

offence which they do not have the requisite jurisdiction to try and make orders for remand is unconstitutional to the extent of its inconsistency, if placed side by side with the provision of section 1(3).⁴⁵ And decided authorities.

7.1 Recommendations

Consequent upon the above findings, the research has the following recommendations:

1. There is need for compliance by the Magistrates in exercise of their power of remand as provided under the law, and also exercise the power to grant bail which was expressly donated to them by ACJL Kebbi State. Magistrate must summon the ingenuity and judicial courage to exercise such power of granting bail the way they grant applications for remand which is unambiguously unconstitutional as condemned by the Apex court and the Court of Appeal.
2. The practice of the prosecuting agencies in Nigeria of placing the cart before the horse instead of the other way round during investigation should be obliterated. The Kebbi State Administration of criminal justice Law, 2020 and the Various states Administration of criminal justice Law should be amended so as to compel the Courts, Police and other prosecuting agencies to always make sure that a prima facie case is established against a suspect before making arrest and subsequent application for remand, which is obviously tantamount to violating the rights of the suspect accused of committing capital offence.
3. The liberty of individuals is paramount hence; the Constitution made it a fundamental right. The Kebbi State ACJL should be amended to be in conformity with the provision of the Constitution with respects to citizen's liberty. And decided authorities on the subject matter. Otherwise section 304⁴⁶ if tested in Courts will always be declared unconstitutional as already stated in this paper, various decisions of superior courts have condemned the practice.

8.1 Conclusion

This research has demonstrated that the practice of holding charge and the remand proceedings permitted under the Kebbi State Administration of Criminal Justice Law, 2020 conflict fundamentally with constitutional guarantees of personal liberty and fair hearing. Although sections 304 - 308 empower magistrates to remand suspects for capital offences, these provisions are routinely abused and applied without compliance with statutory safeguards. The persistent failure of prosecutors to establish probable cause, coupled with magistrates' reluctance to exercise their statutory powers to grant bail, aggravates unlawful detention. Judicial authorities from the Court of Appeal and the Supreme Court have consistently condemned holding charge as unconstitutional and alien to Nigerian criminal jurisprudence. The contradictions within the ACJL itself, especially between sections 308 and 385, further create uncertainty and jeopardize suspects' rights. The practice ultimately results in prolonged detention without trial, undermining the integrity of the criminal justice system. To align with constitutional standards, the law must be amended and enforced with strict professional discipline by prosecutors, magistrates, and the Attorney-General. Protecting individual liberty remains paramount, and any legal framework inconsistent with the Constitution cannot stand. The justice system must therefore

⁴⁵ Constitution of the Federal Republic of Nigeria, 1999 (As Altered).

⁴⁶ *Ibid.*

prioritize timely investigation, lawful detention, and respect for due process in all remand proceedings.