

# KARUMI v. FRN

**CITATION: (2016) LPELR-40473(CA)**



## In the Court of Appeal In the Lagos Judicial Division Holden at Lagos

ON FRIDAY, 6TH MAY, 2016

**Suit No: CA/L/233AC/2015**

### Before Their Lordships:

JOSEPH SHAGBAOR IKYEGH

Justice, Court of Appeal

TIJJANI ABUBAKAR

Justice, Court of Appeal

YARGATA BYENCHIT NIMPAR

Justice, Court of Appeal

### Between

ADAMU ALI KARUMI

- Appellant(s)

### And

FEDERAL REPUBLIC OF NIGERIA

- Respondent(s)

## RATIO DECIDENDI

- COURT - DISCRETION OF COURT:** How the Court should exercise its discretion in matters of sentence

"In sentencing, the trial judge has a discretion to exercise and having done so in this case, I do not think it just to interfere with the exercise of his discretion which I also find properly exercised based on the materials placed before him. In the case of *AGBANYI v. STATE* (1995) 1 NWLR (Pt. 369), the Court held as follows: "It is settled law, that a trial Judge has a discretion in matters of sentence. But the discretion or power must be exercised on the basis of the materials before him. It is desirable that in exercising his jurisdiction over sentence, a trial Judge should state in his judgment the factors that influenced his decision." It is clear that the trial Court considered all the relevant factors and stated the factors that influenced his decision in passing such a sentence as required by law, see *PETER USHIE v. THE STATE* (2012) LPELR-9705 (CA); *BLESSING TOYIN OMOKUWAJO v. FEDERAL REPUBLIC OF NIGERIA* (2013) LPELR-20184 (SC)." Per NIMPAR, J.C.A. (P. 20, Paras. B-F) - [read in context](#)

- 2. CRIMINAL LAW AND PROCEDURE - DOUBLE JEOPARDY:** Meaning of double jeopardy

"...The phrase was defined in the case of NIGERIAN ARMY v. AMINUN-KANO (2010) 5 NWLR (Pt. 1188) 429 as follows: "Even in the ordinary usage" double jeopardy connotes the unlawful procedure of subjecting a person to a trial on two separate occasions for the same offence... In law also, it connotes the act of being prosecuted or tried for substantially the same offence."Per NIMPAR, J.C.A. (Pp. 23-24, Paras. D-A) - [read in context](#)
- 3. CRIMINAL LAW AND PROCEDURE - SENTENCING:** Circumstances under which an appellate Court will interfere with the sentence imposed by the trial Court

"It is trite that ordinarily, an appellate Court will not interfere with a sentence imposed by a trial Court, unless it is manifestly excessive in the circumstances or wrong in principle, see ADEYEYE v. THE STATE (1968) 1 ALL NLR 239 @ 241 where ADEMOLA, CJN (of blessed memory) held as follows:"It is only when a sentence appears to err in the principle that this Court will alter it. If a sentence is excessive or inadequate to such an extent as to satisfy this Court that when it was passed there was failure to apply the right principles, then this Court will intervene."EKO, JCA in the case of ILYASU SUMAILA v. THE STATE (2012) LPELR- 19724, in the same vein held as follows:"The trial judge, in matters of sentence has discretion. That cannot be denied. And it is also settled that an appellate Court will not readily interfere with the sentence imposed by the trial judge unless it is manifestly excessive or wrong in principle. See STEPHEN v. THE STATE (CA/C/117/2007 OF 10th December, 2008); T.S.A. INDUSTRIES LTD v. KEMA INVESTMENT (2006) 7 SC Pt. 964) 1.The Appellant therefore has a duty to establish necessary conditions to warrant interference."Per NIMPAR, J.C.A. (Pp. 17-18, Paras. C-C) - [read in context](#)
- 4. CRIMINAL LAW AND PROCEDURE - SENTENCING:** Factors the appellate Court will consider before altering a sentence

"It has been settled that an appeal Court does not alter a sentence on the ground that it would have otherwise passed a lesser sentence, if it had been the Court that conducted the trial. There are factors the appellate Court must consider before altering a sentence and these are: i. The gravity of the offence;ii. The prescribed punishment for the offence;iii. Prevalence of the particular class of crime in a locality; andiv. The circumstances of the offence to see if there are grounds of mitigating the punishment. See CHUKWUDI OYEM v. FEDERAL REPUBLIC OF NIGERIA (2013) LPELR - 20836 (CA)." Per NIMPAR, J.C.A. (P. 19, Paras. A-D) - [read in context](#)
- 5. CRIMINAL LAW AND PROCEDURE - OFFENCE OF TERRORISM:** Nature of the offence of terrorism

"The gravity of the offence of terrorism which involves the use of violence or force to achieve something, be it political or religious, is a grave affront to the peace of society with attendant unsalutary psychological effect on innocent and peaceful members of the society who may be forced to live in perpetual fear.It is an offence that may even threaten the stability of the state. The sophisticated planning and execution of the acts of terrorism show it is an offence that requires premeditated cold-blooded organisation. The circumstances under which such a crime is organised calls for appropriate sentencing to deter its recurrence by potential or prospective offenders."Per IKYEGH, J.C.A. (P. 25, Paras. A-D) - [read in context](#)
- 6. CRIMINAL LAW AND PROCEDURE - SENTENCING:** Factors the appellate Court will consider before altering a sentence

"The law is well settled that this Court must consider the prevalence of a particular crime in a society before taking the decision to interfere with sentence."Per ABUBAKAR, J.C.A. (P. 28, Paras. D-E) - [read in context](#)

7. **CRIMINAL LAW AND PROCEDURE - SENTENCING:** Essence of sentencing and punishment

"The essence of imprisonment is to meet the legitimate expectation of society of retribution, where the society strikes back at the offenders to deter potential offenders and make the commission of crime unattractive, protect the public and society by ensuring that dare devil criminals and recalcitrant offenders are taken out of circulation to provide interregnum for dangerous criminals to reflect pending their rehabilitation to normalcy. See: An almanac of contemporary judicial restatements by 'Lai Oshintokun Oshisanya Page 282-283. Nigeria is a State party to the United Nations Convention against Transnational Organized Crimes, otherwise known as the Palermo Convention, which came into force on the 29th day of September 2003. By the articles of the convention Nigeria has obligation to criminalize and punish transnational Organized crimes. Again Nigeria subscribed to the Universal Legal framework against terrorism, as part of Nigeria's obligations under the International conventions, Nigeria must demonstrate commitment by applying the provisions of the Terrorism Prevention Acts 2011 and 2013 (Amendment Act). I am all for the consecutive sentence imposed by the lower Court. The essence of punishment of hardened criminals is to restore confidence and enhance the credibility of government and governance, failure to send signal by imposing such severe punishment may engender disunity and promote private retribution by the aggrieved. Failure to impose proper punishment facilitates escape from justice and serves as incentive to commission of grievous crimes."Per ABUBAKAR, J.C.A. (Pp. 26-28, Paras. F-A) - [read in context](#)

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## 8. **LEGISLATION - ENACTMENT OF A STATUTE/DATE OF COMMENCEMENT OF A STATUTE:**

The position of the law as regards the date of commencement of any law

"The issue here is the appropriateness of the conviction under the Terrorism Act (Prevention) Amendment Act 2013 by the trial Court. The trial Court had recourse to the Interpretation Act to determine when the Act came into operation. The Act has no commencement date but had been assented to by the President on the 21st February, 2013. This was about a month before the arrest of the Appellant. The Appellant's contention is that he cannot come under the provisions of the said Act. The basic question is how does an Act of the National Assembly come into effect or when is its commencement date? Commencement simply means the beginning, the starting point, genesis, birth, kickoff, onset initiation and dawning of a thing. For a statute or legislation, the commencement or coming into force refers to a process by which legislation, regulation and such related matters or processes and legal instruments come in to effect. Generally, it includes the publication of the legislation. It is not therefore uncommon to find a legislation not mentioning its commencement date. It can be made contingent to the happening of an event. Occasionally, no date is mentioned and commencement is not made subject to an event or act, when that happens, it is trite that recourse is had to the Interpretation Act. The Appellant's contention is that the trial judge was wrong to have relied on the Interpretation Act in determining when the Terrorism (Prevention) (Amendment) Act 2013 came into effect. It is the tradition and practice to refer to the Interpretation Act for a number of issues touching on Legislations or Statutes. The applicability of the Interpretation Act is clearly spelt out in Section 1 of the Act and it states as follows:"1. This Act shall apply to the provisions of ANY enactment except in so far as the contrary intention appears in this Act or the enactment in question."(bold and capitalized letters are for emphasis). The Interpretation Act applies to all legislations in the areas covered by the extant provisions. Therefore, the Terrorism (Prevention) Amendment Act is a legislation that is covered by the Act. It also provides for situations where a commencement date is not named in the legislation and how to decipher a commencement date. Section 2 of the Act states:"(1) An Act is passed when the President assents to the Bill for the act whether or not the Act then comes into force.(2) Where no other provision is made as to the time when a particular enactment is to come into force, it shall, subject to the following subsection, come into force-(a) In the case of an enactment contained in an Act of the National Assembly, on the day when the Act is passed;(b) In any other case, on the day when the enactment is made.(3) Where an enactment is expressed to come into force on a particular day, it shall be construed as coming into force immediately on the expiration of the previous day."It is clear from above, that the Interpretation Act applies to all Statutes in this country and that where no commencement date is named in any legislation then such legislation comes into effect on the day the President assents to it. It is not in contention that, in this case, the Terrorism (Prevention) Amendment Act was assented to on the 21st day of February 2013, a month before the Appellant was arrested. Furthermore, the argument that the Terrorism (Prevention) Amendment Act came into effect on the 24th May, 2013 is not supported by evidence. Since assent is done once, and it was on 21st day of February, 2013, there cannot be another assent of the President on the 24th May, 2013. The Act did not say so. The fact that the group known and called "BOKO HARAM" was proscribed on the said date did not mean the Act came into effect on the same day. The proscription was made pursuant to an official gazette of the Federal Republic of Nigeria No. 34 of 24th May, 2013 titled Terrorism (Prevention) (Proscription Order) Notice. Going by the title it is clear that it is not an Act but an order. The two are not one and the same. In any case, the Appellant was not prosecuted under the Proscription Notice but the Act. The Appellant missed it in this regard. Consequently, the trial judge was right to apply the Terrorism (Prevention) Amendment Act, 2013 to convict and sentence the Appellant. It is the extant Legislation on Terrorism and such related Acts."Per NIMPAR, J.C.A. (Pp. 11-15, Paras. B-A) - [read in context](#)

## 9. **LEGISLATION - INTERPRETATION ACT,(Cap.192) LAWS OF THE FEDERATION OF NIGERIA 1990: Application of the Interpretation Act**

"The argument that the Interpretation Act applies to civil legislations only is not only untenable but flawed. A legislation is a legislation and there is nothing in the Interpretation Act to indicate that it applies to civil and not criminal legislations."Per NIMPAR, J.C.A. (P. 15, Paras. A-B) - [read in context](#)

A  
YARGATA BYENCHIT NIMPAR, J.C.A. (Delivering the  
**Leading Judgment):**

B This is an appeal against the Judgment of the Federal High  
Court delivered on the 30th day of September, 2014  
wherein **HONOURABLE JUSTICE IBRAHIM N. BUBA**  
found the Appellant guilty, convicted and sentenced him to  
varying terms of imprisonment which were to run  
consecutively. The Appellant dissatisfied with the  
conviction and sentence filed a Notice of Appeal dated 23rd  
C December, 2014, on the same day which set out 2 grounds  
of appeal. The Appellant sought the following reliefs:

D *a. To allow the appeal, set aside the judgment of the Court  
below convicting the appellant for the offences under the  
Terrorism (Prevention) (Amendment) Act 2013 and  
discharge and acquit the Appellant.*

E *b. Alternatively, to set aside the term of consecutive  
sentence passed on the Appellant and replace same with a  
term of concurrent sentence and reduce the total term of  
imprisonment to 20 years.*

F The facts leading to this appeal are that the Appellant along  
three others were arraigned before the Court below for the  
offences of conspiracy to commit a felony, i.e. terrorism,  
concealing

A information about acts of terrorism, committing acts  
B preparatory to or in furtherance of acts of terrorism and  
being in possession of prohibited firearms and ammunition.  
Initially about 17 persons were arraigned but in the course  
of trial, 13 others were discharged pursuant to a Nolle  
Prosequi filed by the Attorney General of Lagos State and  
trial proceeded against 4 amongst whom was the Appellant.  
The charge sheet reads as follows:

C **COUNT 1:**

*That you ALI MOHAMMED MODU 'M', ADAMU ALI  
KARUMI 'M', AND IBRAHIM USMAN ALI 'M', on or about  
the 21st day of March, 2013 at plot 5, Road 69, Lekki phase  
D 1, Housing Estate, Lagos, No. 24, Oyegbemi Street, Ijora  
Oloye, Apapa, Lagos and at a bungalow house  
(unnumbered) on Oyegbemi street behind Celestial Church,  
Ijora Oloye, Apapa, Lagos, within the jurisdiction of this  
E Honourable Court did conspire amongst yourselves to  
commit a felony, to wit: acts of terrorism by having in your  
possession explosive substances, namely:- (a) three (3) pack  
of explosive construction pipes; (b) fifteen (15) detonators;  
F (c) eleven (11) AK-47 rifle magazines loaded with 30 rounds  
of live ammunitions each; (d) two hundred (200) rounds of*

7.62mm live ammunitions; (e) one (1) AK - 47 rifle; (f) two AK-47 rifle magazines with 3 rounds of live ammunitions each; (g) two (2) suit cases containing explosives; (h) one (1) water container containing explosives; (i) one (1) bag containing explosives; (j) fourteen (14) explosive canisters; (k) one (1) tin of chemical; (l) one (1) plastic drum containing explosives; (m) one (1) HP Laptop; (n) five (5) Nokia handsets and (o) one (1) red Volkswagen Golf Car, with Registration Number, SMK 427 AZ (Lagos), meant to transport the explosives and other items to the place or places of terrorism and thereby committed an offence contrary to Section 17 of the Terrorism (prevention) (Amendment) Act, 2013 and punishable under Section 17 (b) of the same Act.

**COUNT 2:**

That you ALI MOHAMMED MODU 'M' ADAMU ALI KARUMI 'M' AND IBRAHIM USMAN ALI 'M' on or about the 21st day of March 2013, at plot 5, Road 62, Lekki phase 1, Housing Estate, Lagos, No. 24, Oyegbemi Street, Ijora Oloye, Apapa, Lagos and at a bungalow house (unnumbered) on Oyegbemi Street, behind Celestial Church, Ijora Oloye, Apapa, Lagos within the jurisdiction of this Honourable Court did knowingly

A conceal information about act of terrorism by keeping in  
your possession and hiding explosive substances, to wit: (a)  
three (3) packs of explosive construction pipes; (b) fifteen  
(15) detonators; (c) eleven (11) AK-47 rifle magazines  
B loaded with 30 rounds of live ammunitions each; (d) two  
hundred (200) rounds of 7.62mm live ammunitions; (e) one  
(1) AK-47 rifle; (f) two AK-47 rifle magazines with 3 rounds  
of live ammunitions each; (g) two (2) suit cases containing  
C explosives; (h) one (1) water container containing  
explosives; (i) one (1) bag containing explosives; (j)  
fourteen (14) explosive canisters; (k) one (1) tin of  
chemical; (l) one (1) plastic drum containing explosives; (m)  
D one (1) HP Laptop; (n) five (5) Nokia handsets and (o) one  
(1) red Volkswagen Golf Car, with Registration Number,  
SMK 427 AZ (Lagos), meant to transport the explosives and  
E other items to the place or places of terrorism and thereby  
committed an offence contrary to **Section 8 (1)** of the  
same Act.

**COUNT 3:**

F That you ALI MOHAMMED MODU 'M', ADAMU ALI  
KARUMI 'M', AND IBRAHIM USMAN ALI 'M', on or about  
the 21st day of March 2013, at plot 5, Road 69, Lekki phase  
1, Housing Estate  
G



A Lagos, No. 24, Oyegbemi Street, Ijora Oloye, Apapa, Lagos  
and at a bungalow house (unnumbered) on Oyegbemi  
Street, behind Celestial Church, Ijora Oloye, Apapa, Lagos  
within the jurisdiction of this Honourable Court knowingly  
B did acts preparatory to or in furtherance of acts of  
terrorism by having in your possession explosive  
substances, to wit: (a) three (3) packs of explosive  
construction pipes; (b) fifteen (15) detonators; (c) eleven  
C (11) AK-47 rifle magazines loaded with 30 rounds of live  
ammunitions each; (d) two hundred (200) rounds of  
7.62mm live ammunitions; (e) one (1) AK-47 rifle; (f) two  
D AK-47 rifle magazines with 3 rounds of live ammunitions  
each; (g) two (2) suit cases containing explosives; (h) one  
(1) water container containing explosives; (i) one (1) bag  
containing explosives; (j) fourteen (14) explosive canisters;  
E (k) one (1) tin of chemical; (l) one (1) plastic drum  
containing explosives; (m) one (1) HP Laptop; (n) five (5)  
Nokia handsets and (o) one (1) red Volkswagen Golf Car,  
with Registration Number, SMK 427 AZ (Lagos), meant to  
F transport the explosives and other items to the place or  
places of terrorism and thereby committed an offence

A contrary to Section 1(2) (b) of the Terrorism (prevention) (Amendment) Act, 2013 and punishable under the same Section of the Act.

**COUNT 5:**

B That you ALI MOHAMMED MODU 'M', ADAMU ALI KARUMI 'M', IBRAHIM USMAN ALI 'M' MOHAMMED A. MOHAMMED 'M' BALA HARUNA 'M', IDRIS ALI 'M', MOHAMMED MURTALA 'M' MUSTAPHA DAURA ALHASSAN 'M', ABBA DUGUNI 'M', SANNI ADAMU 'M' DANJUMA YAHAYA 'M', MUSA AUDU BALA 'M', BALA MATI DAURA 'M', FARUK HARUNA 'M', ABDULAZIZ ZULADAINI 'M' on or about the 21st day of March, 2013 at Plot 5, Road 69, Lekki phase 1, Housing Estate, Lagos, No. 24, Oyegbemi Street, Ijora Oloye, Apapa, Lagos and at a bungalow house (unnumbered) on Oyegbemi street, behind Celestial Church, Ijora Oloye, Apapa, Lagos within the jurisdiction of this Honourable Court did conspire amongst yourselves to commit felony to wit: by having in your possession or control some prohibited firearms without a license and thereby committed an offence contrary to Section 516 of the Criminal Code Act, Cap C.38, Laws of the Federation of Nigeria, 2004 and punishable under the same section of the Act.

**COUNT 6:**

F That you IBRAHIM USMAN ALI 'M' and ADAMU ALI KARUMI 'M' on or

A about the 21st day of March 2013, at No. 24, Oyegbemi  
Street, Ijora Oloye, Apapa, Lagos and at a bungalow house  
B (unnumbered) on Oyegbemi Street, behind Celestial  
Church, Ijora Oloye, Apapa, Lagos within the jurisdiction of  
this Honourable Court had in your possession some  
prohibited firearms, to wit: (a) eleven (11) AK-47 rifle  
magazines loaded with thirty (30) live ammunition each; (b)  
one (1) AK-47 rifle; and (c) two AK-47 rifle magazines  
C loaded with three (3) rounds of live ammunition each and  
thereby committed an offence contrary to **Section 3 of the  
Firearms Act Cap F.28, Laws of the Federation of  
Nigeria, 2004**, punishable under **Section 27 (1) (a)** of  
D the same Act.

**COUNT 7:**

E That you IBRAHIM USMAN ALI 'M' and ADAMU ALI  
KARUMI 'M' on or about the 21st day of March, 2013, at  
No. 24, Oyegbemi Street, Ijora Oloye, Apapa, Lagos and at  
a bungalow house (unnumbered) on Oyegbemi Street,  
behind Celestial Church, Ijora Oloye, Apapa, Lagos within  
the jurisdiction of this Honourable Court had in your  
F possession some prohibited ammunition, to wit: two  
hundred (200) rounds of 7.62mm live ammunition without a  
license or permit and thereby committed an offence  
G

contrary to Section 8 of the Firearms Act, Cap F.28, Laws of the Federation of Nigeria, 2004, punishable under Section 27 (1) (b) of the same Act.

The Respondent called evidence, six witnesses testified and tendered 34 exhibits in its case against the Appellant while the Appellant testified for himself. At the end of trial, the Court found Appellant guilty, convicted and sentenced him thus this appeal.

The Appellant's brief of arguments dated 2nd April, 2015 filed on the same date was settled by Chief Osuala Emmanuel Nwagbara. It was adopted at the hearing of this appeal. The Respondent's brief settled by Ade Ipaye, is dated 27th May, 2015 and filed on the 5th day of June, 2015 but deemed as properly filed and served on the 12/2/16.

The Appellant distilled 2 issues for determination as follows;

1. Whether the learned trial Judge was right when he convicted the Appellant under the Terrorism (Prevention) Amendment Act 2013.
2. As an alternative to issue 7, whether the sentence of the appellants to a total term of 25years is not excessive in the circumstances of the case.

The Respondent formulated 2 issues also for determination by

A the Court in the following manner:

- A
- i. Whether the learned trial judge was not right in convicting the Appellant under the Terrorism (Prevention) (Amendment) Act 2013?
  - ii. Whether the sentence of the Appellant to a term of 25 years imprisonment is excessive?
- B

The two sets of issues are basically the same with little or no difference, therefore the Court shall adopt issues formulated by the Appellant for resolution in this appeal.

C **ISSUE ONE:**

Whether the learned trial Judge was right when he convicted the appellant under the Terrorism (Prevention) Amendment Act 2013.

D

The Appellant contented that the learned trial judge erred in convicting the Appellant under Terrorism (Prevention) Amendment Act 2013. That the commencement date is not indicated on the face of the Terrorism Act, 2013 and the omission would make the commencement date the 24th day of May, 2013, the date the Boko Haram Sect was proscribed as a terrorist organization and brought to the notice of the public/the Appellant who is to be affected by it. Consequently, that the Act cannot be applicable because the Appellant was arrested on the 21st of March, 2013 before the Act

E

F

G

A came into effect. Furthermore, that the trial judge ought  
B not to have relied on the Interpretation Act to find that the  
C commencement date can begin from the date the Act was  
D signed into law by the President because such reasoning  
E can only be applicable to civil legislation conferring benefit  
F and not a criminal legislation like the Terrorism  
G (Prevention) Amendment Act which has heavy penalties, he  
relied on **JOHNSON v. SARGANT & SONS (1918) 1 KB  
101**. He urged the Court to resolve the issue in his favour.

In reaction, the Respondent submitted that a statute comes  
into effect when it is duly passed by the National Assembly  
and assented to by the President, and referred to **A.G.  
BENDEL STATE v. A.G. FEDERATION & ORS (1981) ALL  
NLR 85**. He therefore urged the Court to invoke the  
provisions of **S. 2 of the Interpretation Act** and  
submitted that the commencement date of the Terrorism  
Act is the date the President assented to it which is  
February 21, 2013 about a month before the date the  
Appellant was arrested. He submitted that the argument of  
the Appellant cannot hold sway because the Appellant was  
charged under the Terrorism Act already in force and its

A provisions relate to offences that are committed by "any  
B person" and not necessarily a "proscribed organization".  
C And that the offences for which the Appellant was charged  
D with do not require activation through the Terrorism  
E (Prevention) (Proscription Order) Notice 2013.

### **RESOLUTION:**

The issue here is the appropriateness of the conviction  
under the Terrorism Act (Prevention) Amendment Act 2013  
by the trial Court. The trial Court had recourse to the  
Interpretation Act to determine when the Act came into  
operation. The Act has no commencement date but had  
been assented to by the President on the 21st February,  
2013. This was about a month before the arrest of the  
Appellant. The Appellant's contention is that he cannot  
come under the provisions of the said Act. The basic  
question is how does an Act of the National Assembly come  
into effect or when is its commencement date?  
Commencement simply means the beginning, the starting  
point, genesis, birth, kickoff, onset initiation and dawning  
of a thing. For a statute or legislation, the commencement  
or coming into force refers to a process by which  
legislation, regulation and such related matters or  
processes

A and legal instruments come in to effect. Generally, it  
B includes the publication of the legislation. It is not  
C therefore uncommon to find a legislation not mentioning its  
D commencement date. It can be made contingent to the  
E happening of an event. Occasionally, no date is mentioned  
F and commencement is not made subject to an event or act,  
G when that happens, it is trite that recourse is had to the  
H Interpretation Act. The Appellant's contention is that the  
I trial judge was wrong to have relied on the Interpretation  
J Act in determining when the Terrorism (Prevention)  
K (Amendment) Act 2013 came into effect.

L It is the tradition and practice to refer to the Interpretation  
M Act for a number of issues touching on Legislations or  
N Statutes. The applicability of the Interpretation Act is  
O clearly spelt out in Section 1 of the Act and it states as  
P follows:

Q "1. This Act shall apply to the provisions of ANY enactment  
R except in so far as the contrary intention appears in this  
S Act or the enactment in question."

T (bold and capitalized letters are for emphasis).

U The Interpretation Act applies to all legislations in the  
V areas covered by the extant provisions.



A Therefore, the Terrorism (Prevention) Amendment Act is a  
B legislation that is covered by the Act. It also provides for  
C situations where a commencement date is not named in the  
D legislation and how to decipher a commencement date.

Section 2 of the Act states:

"(1) An Act is passed when the President assents to the Bill  
for the act whether or not the Act then comes into force.

(2) Where no other provision is made as to the time when a  
particular enactment is to come into force, it shall, subject  
to the following subsection, come into force-

(a) In the case of an enactment contained in an Act of the  
National Assembly, on the day when the Act is passed;

(b) In any other case, on the day when the enactment is  
made.

(3) Where an enactment is expressed to come into force on  
a particular day, it shall be construed as coming into force  
immediately on the expiration of the previous day."

It is clear from above, that the Interpretation Act applies to  
all Statutes in this country and that where no  
commencement date is named in any legislation then such  
legislation comes into effect on the day the President  
assents to it. It is not in contention

A that, in this case, the Terrorism (Prevention) Amendment  
Act was assented to on the 21st day of February 2013, a  
month before the Appellant was arrested. Furthermore, the  
B argument that the Terrorism (Prevention) Amendment Act  
came into effect on the 24th May, 2013 is not supported by  
evidence. Since assent is done once, and it was on 21st day  
of February, 2013, there cannot be another assent of the  
C President on the 24th May, 2013. The Act did not say so.  
The fact that the group known and called "BOKO HARAM"  
was proscribed on the said date did not mean the Act came  
into effect on the same day. The proscription was made  
D pursuant to an official gazette of the Federal Republic  
of Nigeria No. 34 of 24th May, 2013 titled Terrorism  
(Prevention) (Proscription Order) Notice. Going by the title  
it is clear that it is not an Act but an order. The two are not  
E one and the same. In any case, the Appellant was not  
prosecuted under the Proscription Notice but the Act. The  
Appellant missed it in this regard. Consequently, the trial  
F judge was right to apply the Terrorism (Prevention)  
Amendment Act, 2013 to convict and sentence the  
Appellant. It is the extant Legislation on

## Terrorism and such related Acts.

The argument that the Interpretation Act applies to civil legislations only is not only untenable but flawed. A legislation is a legislation and there is nothing in the Interpretation Act to indicate that it applies to civil and not criminal legislations. Besides, the Appellant's counsel could not support the said submission with any authority. When it comes to commencement date, the Interpretation Act is of general application. This issue is hereby resolved against the Appellant.

### ISSUE TWO

As an alternative to issue 1, whether the sentence of the appellants to a total term of 25 years is not excessive in the circumstances of the case.

With respect to issue 2, it is the Appellant's contention that the sentence imposed on the Appellant, a total prison term of 25 years is too punitive and the consecutive running pattern of the sentence amounts to a double jeopardy. He submitted that the sentences under the different laws should begin to run at the same time, hence, each sentence will efflux at the end of its full length as imposed. The Appellant relied on the case of EMENEGOR v. THE STATE (2010) ALL FWLR (Pt.

511) 884. He further contended that the sentence is excessive and should be reduced because the Appellant is a first offender and a youth with a wife, he referred to EKE v. FEDERAL REPUBLIC OF NIGERIA (2013) ALL FWLR (Pt. 702) 1748.

On the other hand, the Respondent was of the view that the trial judge did not exceed the maximum term of imprisonment for the offence the Appellant was charged with, that the Appellant did not show that he was sentenced twice for the same offence and that since the Judge has a discretion in matters of sentence, the Appellate Court cannot interfere as the Appellant has failed to demonstrate that the sentence imposed was manifestly excessive or wrong in principle. He referred to the cases of AGBANYI v. STATE (1994) LPELR- 4108 (CA) and SUMAIIA v. STATE (2012) LPELR-19724 (CA) in proof of the submissions.

#### **RESOLUTION:**

This issue challenges the sentence pronounced by the trial Court contending that it is excessive. The trial Court in sentencing the Appellant stated as follows:

"The sentences on counts 1, 2, and 3 are to run concurrently. So also the sentences in counts 5, 6, and 7 are to run concurrently, for

A avoidance of doubt. The maximum for courts 1, 2, and 3,  
the convict will spend is 20 years. Whilst the maximum the  
convicts will spend in respect of counts 5, 6, and 7 is 5  
years thereby bringing the total to 25 years i.e. the offences  
convicted under the Terrorism Act shall run concurrently,  
whilst the offences under the Fire Arms Act will run  
concurrently but not concurrently with each other"

C The Appellant is asking this Court to interfere with the  
sentence pronounced by the trial Court. It is trite that  
ordinarily, an appellate Court will not interfere with a  
sentence imposed by a trial Court, unless it is manifestly  
excessive in the circumstances or wrong in principle, see  
D ADEYEYE v. THE STATE (1968) 1 ALL NLR 239 @ 241  
where ADEMOLA, CJN (of blessed memory) held as  
follows:

E "It is only when a sentence appears to err in the principle  
that this Court will alter it. If a sentence is excessive or  
inadequate to such an extent as to satisfy this Court that  
when it was passed there was failure to apply the right  
principles, then this Court will intervene."

F **EKO, JCA** in the case of ILYASU SUMAILA v. THE STATE  
(2012) LPELR- 19724, in the same vein

held as follows:

"The trial judge, in matters of sentence has discretion. That cannot be denied. And it is also settled that an appellate Court will not readily interfere with the sentence imposed by the trial Judge unless it is manifestly excessive or wrong in principle. See STEPHEN v. THE STATE (CA/C/117/2007 OF 10th December, 2008); T.S.A. INDUSTRIES LTD v. KEMA INVESTMENT (2006) 7 SC Pt. 964) 1.

The Appellant therefore has a duty to establish necessary conditions to warrant interference. The Appellant contended that the sentence of 25 years in the circumstance is excessive and punitive. The trial Court sentenced the appellant to 20 years on count one; 10 years on count two; 10 years count three; 5 years on count five; 5 years for count six and 5 years for count seven. The contention of the Appellant is that the counts are basically from the same Act and arraigned under the same legislation and therefore the sentences should all run concurrently. On why the sentence is excessive, the Appellant's reasons are:-

- a. That he is a first offender
- b. That he is married with 3 wives and 6 children
- c. That he is only 37 years old and

A therefore a youth.

The Appellant on the three factors urged this Court to interfere with the sentence. It has been settled that an appeal Court does not alter a sentence on the ground that it would have otherwise passed a lesser sentence, if it had been the Court that conducted the trial. There are factors the appellate Court must consider before altering a sentence and these are:

i. *The gravity of the offence;*

ii. *The prescribed punishment for the offence;*

iii. *Prevalence of the particular class of crime in a locality; and*

iv. *The circumstances of the offence to see if there are grounds of mitigating the punishment.*

D See CHUKWUDI OYEM v. FEDERAL REPUBLIC OF NIGERIA (2013) LPELR - 20836 (CA).

The offence for which the Appellant was convicted and sentenced is fundamentally terrorism, unlawful possession of fire arm and ammunition. The trial judge observed as follows before passing sentence:

"The Court has considered the plea for mitigation made by learned counsel to the convict . Mr. Agim, the Court has no doubt that the convicts are in their youth or prime. However, the law must take its course to send the right signal to

A those who are not ready to live according to law, terrorism  
used to be alien to us, it is now with us. The convicts must  
be sentenced according to the law without sentiments to  
deter others"

B In sentencing, the trial judge has a discretion to exercise  
and having done so in this case, I do not think it just to  
interfere with the exercise of his discretion which I also  
find properly exercised based on the materials placed  
C before him. In the case of AGBANYI v. STATE (1995) 1  
NWLR (Pt. 369), the Court held as follows:

"It is settled law, that a trial Judge has a discretion in  
D matters of sentence. But the discretion or power must be  
exercised on the basis of the materials before him. It is  
desirable that in exercising his jurisdiction over sentence, a  
trial Judge should state in his judgment the factors that  
influenced his decision."

E It is clear that the trial Court considered all the relevant  
factors and stated the factors that influenced his decision in  
passing such a sentence as required by law, see PETER  
F USHIE v. THE STATE (2012) LPELR-9705 (CA);  
BLESSING TOYIN OMOKUWAJO v. FEDERAL REPUBLIC  
G OF NGERIA (2013) LPELR-20184 (SC). I agree entirely  
with



A his consideration. Terrorism is a serious offence and its  
effect is beyond the offence of just killing one human being.  
B The effects of Terrorism include injuries, deaths,  
psychological trauma of the immediate victims. It has short  
and long term effects on the society and Nation. It also  
impacts on the economy of the entire nation. Buildings and  
infrastructure are damaged. It has no classified enemy  
except total destruction. Life is reduced to an imaginable  
C state of no value.

It is a notorious fact that lives are wasted by the mere acts  
of some demented individuals who have made themselves  
D outlaws. No society would sit back and tolerate such acts.  
In fact, terrorism has no defined enemy except the general  
destruction of human lives and livelihood. It is not a  
conventional fight or agitation. It is a fact that thousands of  
E lives have been wasted in a region of this country, innocent  
citizens displaced from their ancestral homes as a result of  
various acts of the proscribed Boko Haram group. The  
Appellant and his friends travelled all the way from the  
F North East where terrorism had become prevalent, to  
Lagos and commenced preparations to introduce their  
G

A  
callous act of total destruction of innocent lives for just no  
B reason. Lagos is a densely populated city and if not for the  
timeous action of the Security agencies, the story would  
have been different today. Besides, the victims could have  
been anybody.

B  
□□

The long list of warfare items found in the possession of the  
convicts is evidence of how callous the convict and friends  
are. Exhibits recovered from the appellant and his friends,  
C which were tendered are:

- (i) *Fourteen (14) explosive canisters (Exhibits P12 and P13);*
- (ii) *Fifteen (15) detonators (Exhibit P4);*
- (ii) *One (1) AK-47 rifle (Exhibit P10);*
- (iv) *Eleven (11) AK-47 rifle magazines with thirty (30) rounds of live ammunition each (Exhibit P5);*
- (v) *Two (2) AK-47 rifle magazines with three (3) rounds of live ammunition each (Exhibit P11);*
- (vi) *200 rounds of 7.62mm ammunition (Exhibit P6);*
- (vii) *One (1) red Volkswagen Golf car (Exhibit P1);*
- (viii) *A laptop containing several videos, including one with instructions for building improvised explosive devices (Exhibit P8);*
- (ix) *Statements of the 1st Accused (Exhibit P31 A-D);*
- (x) *Statements of the 2nd Accused*

A (Exhibit P32 A-B);

(xi) Statements of the 3rd Accused Person (Exhibit P17 A-D);

(xi) Statement of the 4th Accused (Exhibit P33); and

B (xiii) The video - recorded statements of the 1st to 3rd Accused (Exhibit P34).

C Should the law be lenient to such persons who have no regard or value for human lives? I think not. They, in fact deserve an appropriate and severe sentence to save and preserve innocent lives and property. Also that people should not be refugees in their own country. The Appellant also contended that the sentence made him to suffer double jeopardy. This contention is not in consonance with the principle of double jeopardy. The phrase was defined in the case of NIGERIAN ARMY v. AMINUN-KANO (2010) 5 NWLR (Pt. 1188) 429 as follows:

"Even in the ordinary usage" double jeopardy connotes the unlawful procedure of subjecting a person to a trial on two separate occasions for the same offence...

A *In law also, it connotes the ad of being prosecuted or tried*  
B *for substantially the same offence."*

From the definition and the facts of this case, the Appellant  
was tried twice at different occasions over the same  
offence. There were different counts which are acts of the  
Appellant contrary to different acts of the appellant  
contrary to different sections of the Terrorism Act. That  
does not amount to double jeopardy as known to law.

On the whole therefore, this issue lacks merit and is hereby  
resolved against the Appellant.

D Consequently, the appeal fails in its entirety. The judgment  
of **HON. JUSTICE IBRAHIM N. BUBA** delivered on the  
30h day of September, 2014 is hereby affirmed.

No order as to cost.

JOSEPH SHAGBAOR IKYEGH, J.C.A.:

I am in agreement with the lucid judgment prepared by my  
learned brother, **Yargata Byenchit Nimpar, J.C.A.**, which  
I had the honour of reading in print.

F In matters of sentence, the sentencing Court or Tribunal  
has a discretion. The discretion is hardly interfered with by  
an appellate Court, it would appear that the Court below  
was even-handed in the sentencing of the

A appellant. The gravity of the offence of terrorism which  
B involves the use of violence or force to achieve something,  
C be it political or religious, is a grave affront to the peace of  
D society with attendant unsalutary psychological effect on  
E innocent and peaceful members of the society who may be  
F forced to live in perpetual fear.

It is an offence that may even threaten the stability of the  
state. The sophisticated planning and execution of the acts  
of terrorism show it is an offence that requires  
premeditated cold-blooded organisation. The circumstances  
under which such a crime is organised calls for appropriate  
sentencing to deter its recurrence by potential or  
prospective offenders. The Court below did not therefore  
abuse or misuse its discretion in sentencing the appellant  
in the instant case.

I too find no merit in the appeal and hereby dismiss it and  
affirm the judgment of the Court below. (Buba, J.).

TIJJANI ABUBAKAR, J.C.A.: I had the honor of reading in  
draft the lead Judgment of my Lord and Learned Brother  
**NIMPAR, J.C.A.** Let me admit that the Judgment as it is  
covered the entire field and left no space for

A any meaningful contribution, since terrorism is a subject of  
B International importance, and crime completely alien to our  
C domestic criminal justice system, I found it compelling to  
D just put in some few words not necessarily because so  
E doing will significantly alter or provide boost to the lucid  
F judgment rendered by my learned brother, but possibly  
G serve as a mark of support to the Judgment.

Let me pick the issue of sentencing which my learned  
brother addressed is substantial details in the lead  
Judgment. There is no doubt, in matters of sentencing the  
trial Court having had the opportunity to examine the  
accused and the witnesses, has discretion, and this  
discretion exclusively resides in the Court and the  
Appellate Court cannot tinker with this discretion unless it  
is apparent that the trial Court fell into grave error,  
thereby imposing excessive, unreasonable or ridiculously  
low punishment. I have no doubt at all that the learned trial  
Judge applied the correct principles in sentencing the  
Appellant.

□□

F The essence of imprisonment is to meet the legitimate  
expectation of society of retribution, where the society  
strikes back at the offenders to deter

A potential offenders and make the commission of crime  
unattractive, protect the public and society by ensuring  
that dare devil criminals and recalcitrant offenders are  
B taken out of circulation to provide interregnum for  
dangerous criminals to reflect pending their rehabilitation  
to normalcy. See: [An almanac of contemporary judicial  
restatements by 'Lai Oshintokun Oshisanya Page 282-283.](#)

C Nigeria is a State party to the United Nations Convention  
against Transnational Organized Crimes, otherwise known  
as the Palermo Convention, which came into force on the  
29th day of September 2003. By the articles of the  
convention Nigeria has obligation to criminalize and punish  
D transnational Organized crimes. Again Nigeria subscribed  
to the Universal Legal framework against terrorism, as part  
of Nigeria's obligations under the International  
conventions, Nigeria must demonstrate commitment by  
E applying the provisions of the Terrorism Prevention Acts  
2011 and 2013 (Amendment Act). I am all for the  
consecutive sentence imposed by the lower Court. The  
F essence of punishment of hardened criminals is to restore  
confidence and enhance the credibility of government and  
governance,

A failure to send signal by imposing such severe punishment may engender disunity and promote private retribution by the aggrieved. Failure to impose proper punishment facilitates escape from justice and serves as incentive to commission of grievous crimes. I totally agree with the learned trial Judge and my learned brother that the time to send proper signal is now.

In sentencing the Appellant, the Learned Trial Judge said as follows:

***"The law must take its course to send the right signal to those who are not ready to live according to law, terrorism used to be alien to us it is now with us, the convicts must be sentenced according to the law without sentiments to deter others"***

I think the learned trial Judge acted in accordance with the law. The law is well settled that this Court must consider the prevalence of a particular crime in a society before taking the decision to interfere with sentence. In the instant case, the accused was at the point of embarking on a deadly mission when he was apprehended and arrested. I think it is proper to keep him out of circulation for the general good of Nigeria and the International Community.

For these



A few reasons and the more elaborate reasons marshaled in  
the lead Judgment I have no slightest hesitation in joining  
B my learned Brother Nimpar, JCA, in holding that Appellants  
appeal is bereft of merit and therefore deserves to be  
dismissed, it is hereby dismissed by me. I abide by all  
C consequential orders.