



Aurora

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SEARCH AND ARREST UNDER NIGERIAN LAW

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1 INTRODUCTION

Arrest as we know it has its root in the French word "arrêt" which simply means "stay or stop". It connotes the restraining of a person or thing. An arrest is a legal procedure in the administration of criminal justice, where a person is apprehended, detained, or taken into custody, either for legal protection or control. This usually happens when the person is suspected to have committed, is about to commit, or is seen committing a crime in order to answer for an alleged or suspected crime.

The key component of an arrest is that the suspect, that is, the subject of the arrest, must be aware that his freedom of movement is being restricted, curtailing his right to personal liberty enshrined and guaranteed pursuant to Section 35 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("CFRN"). Depending on the exigencies, an arrest may come before a search or the other way around, as the situation at hand demands.

2. PROCESSES OF ARREST

For the purpose of curtailing the constitutionally guaranteed freedom of movement of a person who is reasonably suspected to have committed a crime, an arrest can be made in any of the following ways:

- a) Arrest with warrant;
- b) Arrest without warrant; and
- c) Summons.

2.1 ARREST WITH WARRANT:

For an arrest with warrant, a warrant of arrest, which is a written authority to a police officer or any other person directing the officer or person to arrest a named offender and bring him before the arresting authority to answer a complaint previously made against the arrested person, must be issued to the arresting officer before the arrest is effectuated. It is within the discretion of the issuing authority to elect, whether to issue a warrant of arrest at the first instance or to issue a summons instead. This is dependent on the circumstance of the case. There exists a world of difference between a summons and a warrant of arrest. Summons is issued and directed or addressed to the offender while a warrant of arrest is issued to the Police officer or any other named person to effect the arrest of the suspect.



This is posited by Section.113 of the Administration of Criminal Justice Act. (the "ACJA").

Section.114 ACJA.

2.1.1 WHO CAN ISSUE A WARRANT OF ARREST?

Authorities that may issue a warrant of arrest include:

- (a) A Judge;
- (b) A Magistrate; and
- (c) A Justice of the peace.

A police officer, regardless of rank, cannot issue a warrant of arrest. The National Assembly can also issue a warrant of arrest in limited circumstances stipulated in Section 88 of the CFRN, thus, its power of issuing a warrant of arrest is not all-encompassing. Also, an Area Court Judge, who is a legal practitioner can issue a warrant of arrest in the Federal Capital Territory. Where a warrant of arrest is directed to a private person, he is for the purposes of that arrest seen as a law enforcement agent in the eyes of the law and shall have all the powers of a police officer for the purposes of the arrest and where necessary

2.1.2 PERMISSIBLE USE OF FORCE IN EFFECTING AN ARREST

Reasonably commensurate force may be used by an arresting officer where any of the following is present or threatened:

- a) Reasonable apprehension of violence against the arresting officer;
- b) Order of Court to that effect;
- c) An attempt by the suspect to escape arrest; and
- d) Safety of the suspect/person effecting the arrest.



2.1.3 CIRCUMSTANCES REQUIRING A WARRANT OF ARREST

A warrant of arrest must be procured, prior to attempting or effecting an arrest in any of the following circumstances:

- Statutory stipulation: Where the law creating the offence provides that the offender cannot be arrested without warrant.
- Disobedience of summons: Where a summons is disobeyed.
- Serious offence: Where the gravity of the offence alleged to have been committed is very serious.

2.1.4 LIFE SPAN OF A WARRANT OF ARREST?

Once a warrant of arrest is issued, it will remain in force until it is either executed or cancelled by the issuing authority. Once executed, the warrant lapses and cannot be subsequently used.

A warrant of arrest is enforceable, even after the issuer vacates office under any circumstances.



This is as contained in Section 36 (1) of ACJA.

Section 40(2) of ACJA.

Section. 94 of Criminal Justice Administration Law of Lagos State.

2.1.5 EXECUTION OF A WARRANT OF ARREST

A warrant of arrest is executed when the Police officer or other person to whom it is addressed arrests the person named in the warrant. A warrant of arrest may be executed at any time and on any day including a Sunday and a public holiday

Generally, a warrant of arrest can be executed at any place, but it is not to be executed in any of the following:

- a) Inside a Courtroom in the presence of a Judge, except with the permission of the Court. Thus, if the Judge or Magistrate is still in chambers, an arrest can be made in the Courtroom. However, a warrant of arrest can be executed at any place in Northern Nigeria. The implication is that it can be executed in a Courtroom in the presence of a sitting judge; and
- b) The current position of the law is that no member of the National Assembly or State House of Assembly shall be arrested within the precincts (the vicinity) of these legislative houses.

2.2 ARREST WITHOUT WARRANT:

Generally, where a person was previously arrested on the authority of a warrant, to re-arrest such person for the same allegation of crime or offence, a warrant would no longer be needed. In certain instances, an arrest could be made by law enforcement agents or private individuals without procuring a warrant for such arrest. An arrest without warrant can be made by three categories of persons, namely:

- (a) Law enforcement agents;
- (b) Judicial officers;
- (c) Private persons.

2.2.1 ARREST WITHOUT WARRANT BY LAW ENFORCEMENT AGENTS

Various enactments setting up different law enforcement agencies oftentimes empower its officers or operatives to effect an arrest without warrant in specified circumstances. Section 41(1)(b) of the National Drug Law Enforcement Agency (the "NDLEA") Act, gives officers of the NDLEA powers to search, seize and arrest in deserving circumstances by providing that, for the purpose of the Act:

Any officer of the Agency involved in the enforcement of the provisions of this Act:

- 1) *may, without a warrant, enter and search any land, building or carrier, including aircraft, vehicle or container or any other instrumentalities whatsoever which he has reason to believe is connected with the commission of an offence under this Act;*

S. 43(2) of ACJA.

S. 63 Criminal Procedure Code Law.

- 2) *may perform, test and take samples of any substances relating to the commission of an offence which are found on the land, building or carrier, including aircraft, vehicle, container or any other instrumentalities whatsoever searched pursuant to paragraph (a) of this subsection;*
- 3) *arrest any person whom he has reason to believe has committed an offence under this Act;*
- 4) *seize any item or substance which he has reason to believe has been used in the commission of an offence under this Act.*

Although it could be argued that the NDLEA's powers contravene the spirit of the Constitution of the Federal Republic of Nigeria on the right of private citizens to privacy and freedom of movement, it has been seen over time, that officers of the NDLEA acting on credible intelligence have been able to apprehend people dealing in controlled or prohibited substances as a result of effecting searches and arrests without procuring a warrant.

2.2.2 Arrest without Warrant by Judicial Officers

Judicial officers by the nature of their offices reserve the power to arrest without warrant where the situation demands

2.2.3 Arrest without Warrant by Private Citizens

The Nigeria Police Act of 2020 (the "Police Act") and the ACJA give power to any private citizen to arrest someone who commits an offence known to the law or is suspected of having committed an offence. Section 39 of the Police Act, 2020 states that:

"A private person may arrest a suspect in Nigeria, who in his presence commits an offence or whom he reasonably suspects of having committed an offence for which the Police is entitled to arrest without a warrant".

The practical implication of the above is that private citizens are also permitted by law, to effect an arrest of suspects of a crime for which a warrant of arrest would not have been required, where the police is not immediately available. After the arrest has been made by the private citizen, he is expected to hand over the arrested suspect to a police officer or take the suspect to the nearest police station. Section 40 (1) of the Police Act provides that:

"A private person who arrests a suspect shall immediately hand over the suspect so arrested to a police officer or in the absence of a police officer, shall take the suspect to the nearest police station and the police officer shall make a note of the name, address and other particulars of the private person making the arrest".

As garnered from the above provision, the private citizen effecting an arrest is not empowered to detain/continue to detain the suspect, but to hand over the suspect to the police. While Section 61 of the Police Act gives the police the power to make an arrest, Section 40 (3) of the Police Act states that:

“Where there is reason to believe that the suspect has committed an offence and he refuses, on the demand of a police officer to give his name or address, or give a name or address which the police reasonably believes to be false, the provisions of Section 61 of this Act shall apply.”

2.3 Summons

Summons is a formal written document issued and directed or addressed to a particular person, (the offender) requesting his presence or attendance at a named place and given time.

Where a person neglects to honour a summons, a warrant for the arrest of such person may be issued.

The authority that issues a summons reserves the discretion to either issue a summons in the first instance, and proceed with its schedules where the summoned person honours the invitation or proceed to issue a warrant for his arrest where the summoned person neglects to honour the summons.

3. SEARCHES

The purpose of a search is to obtain evidence of the commission of a crime. Searches could be done on:

- a) Persons;
- b) Premises; and
- c) Things.

3.1 Search of Persons

The body, personal luggage or possession and garment of a person may be searched by law enforcement officers, without the need to procure a search warrant. A police officer can detain and search any person whom he reasonably suspects to have anything in his possession, which the police officer has reason to believe may have been stolen or otherwise unlawfully obtained.

A police officer making an arrest or receiving an arrested person who was arrested by a private individual, may search the arrested person or cause such arrested person to be searched. After such search is conducted, the police officer will place, in safe custody, all articles recovered from the person searched, except his necessary wearing apparel. Where the person to be searched is a woman, the search will only be conducted by another woman.

Whenever it is necessary to cause a woman to be searched, the search will only be made by another woman, with strict regard to the decency of the person being searched.

3.2 Search of a Premises

As a general rule, premises cannot be searched without a search warrant. Thus, any search of any premises without a search warrant is unlawful and constitutes a breach of Section 37 CFRN 1999 as amended.

3.2.1 Who can issue a Search Warrant?

There are four categories of persons that can issue a search warrant. These are:

- a) Magistrates;
- b) Judges;
- c) Justices of the Peace; and
- d) Superior Police Officers above the rank of a Cadet ASP, subject to some restrictions.

3.2.2 Contents of a search warrant

- a) Address of the premises to be searched;
- b) Items to be searched for;
- c) Directive that the items be seized and brought to issuing authority; and
- d) Signature of the person issuing it.

3.2.3 When can a Search Warrant be Issued or Executed?

A search warrant can be issued or executed on any day including a Sunday and a public holiday and may be executed between the hours of 5:00 am and 8:00 pm, but the Court may, in its discretion, order that the warrant be executed at any other hour. If a Magistrate approves the execution of a search warrant at any time other than between 5:00 am and 8:00 pm, the approval may be noted on the warrant at the time of issuance or may be attested to by any subsequent Magistrates prior to the execution of the warrant. The person executing the search warrant must submit himself to a search before carrying out the search, in order to ensure transparency.

Generally, items not specified in the search warrant should not be seized. However, where the person executing the search warrant comes across incriminating items which he reasonably believes to have been stolen or are relevant in respect of other offences, he can lawfully seize them. Upon seizure, all the things seized should be taken to the person that issued the search warrant.

The position of the law is that incriminating items recovered in the course of an illegal search are admissible in evidence once it is relevant to the facts in issue unless the desirability of admitting the evidence is outweighed by the undesirability of admitting the evidence

3.2.4 Liability for Wrongful Procurement of a Search Warrant

Generally, searches are procured on complaint or intelligence, there is no liability if the complaint was made in good faith. However, where the complaint was made recklessly, maliciously or without reasonable cause, then the complainant may be liable in damages for malicious procurement of a search warrant.

Where the complainant made a report, and a search warrant is issued and executed, he may not be liable in damages for false imprisonment, if the person whose premises is searched is arrested and detained. A complainant who maliciously set the law in motion against a person alleged to have committed an offence, may render himself liable in damages for malicious prosecution.

3.2.5 Execution of Search Warrant outside Jurisdiction

A person executing a search warrant beyond the jurisdiction of the Court or Justice of the peace issuing it shall, before doing so, apply to the Court within whose jurisdiction search is to be made and shall act under its directions.

3.3 Search of things

The contents of a bag or baggage, containers, car, vessel or aircraft may be searched in deserving cases. The search of things may be conducted with or without a search warrant as a police officer can routinely stop and search the contents of a vehicle on the road without a warrant. However, for searches of things like an aircraft or a vessel, a search warrant is always required.

Powers of search of things without warrant are also conferred by their enabling laws on officers of the Nigerian Customs Service, National Agency for Food Administration and Control, Economic and Financial Crimes Commission, etc.

4. STEPS TO TAKE DURING SEARCH AND ARREST BY LAW ENFORCEMENT AGENTS

As a citizen, it is your responsibility to know your rights and guard them jealously against any infringements. The following steps are a practical guide on how to deal with searches and arrests by law enforcement agents.

If stopped by a law enforcement agent in any part of Nigeria:

- 1) Do not attempt to run as that may raise suspicion and put you in heightened harm's way;
- 2) Identify yourself, when asked to do so and request to know the reason for your arrest or search;
- 3) Where the proposed arrest or search is one to be carried out with by warrant, request to see the search or arrest warrant duly signed by Magistrate, Judge, or a senior police officer;
- 4) Do not engage the arresting officer in any argument, it is within your rights to remain silent until your attorney is present, and you have the right to demand to speak with your attorney in such a scenario;
- 5) It is important to note the particulars of the arresting officer by memorizing the tag number and name and the patrol vehicle's plate number or other inscription;
- 6) Where the arresting officers are adorned in civilian clothing, you should request positive identification of each of them present and where you are actually arrested, request to know the relevant post or station where the arresting officers are from and where they intend to take you;
- 7) Contact your attorney and provide information regarding the name of your arresting officer and the place of detention; and
- 8) Where the arresting officer intends to conduct a search of your place, request to see the duly signed search warrant and request to first search the officer.

5. CONCLUSION

As private individuals and corporate organisations, a well-rounded understanding of the concepts of search and arrest is crucial to our daily lives and operations, especially in a country like Nigeria. Knowing and understanding the acceptable standards will help us to know when there is a breach of our fundamental human rights.

Damilola Adeniyi is an Associate from the Commercial Dispute Resolution Team in our Dispute Resolution & Private Law Practice.

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Lekki Gardens Estate Limited -

TOLG Advisors is pleased to officially announce the closing of the N10bn Commercial Paper Exercise by Lekki Gardens Estate Limited.

TOLG Advisors acted as Transaction Counsel on this deal and we are proud to be one of the few law firms in Nigeria to have advised on deals of this nature in 2022.

We congratulate our Securities, Mergers & Acquisitions Team for a job well done.

PHONE:

+234 (0) 8055190065

EMAIL:

info@tolegalgroup.com

WEBSITE:

www.tolegalgroup.com

GLOBAL HEAD OFFICE:

The Bolajoko
15A Remi Olowude Street
Lekki, Lagos
Nigeria