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**NOLLE PROSEQUI AND THE LIMITS OF
POLICE AUTHORITY: CAN LAW
ENFORCEMENT QUESTION THE
ATTORNEY-GENERAL'S DISCRETION?**



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The powers vested in the Attorney-General (AG) of the Federation and of the States under the Nigerian Constitution are some of the most consequential in the administration of criminal justice. Among these powers are:

- The power to institute and undertake criminal proceedings;
- The power to take over and continue criminal proceedings initiated by others; and
- The power to discontinue criminal proceedings at any stage before judgment.

One of the most significant expressions of this authority is the entry of a *nolle prosequi*. This is a formal notice filed by the Attorney-General to discontinue criminal proceedings against a person standing trial. Both Section 174(1)(c) of the 1999 Constitution (as amended), in relation to the Attorney-General of the Federation, and Section 211(1)(c), in relation to the Attorney-General of a State, expressly provide this prerogative. The Supreme Court, in *State v. Ilori*, affirmed that the discretion to enter a *nolle prosequi* is vested solely in the Attorney-General and is not subject to judicial control.

Recent developments, however, have raised questions about the scope of this constitutional discretion. Reports emerged that the Police investigated the Attorney-General of Anambra State regarding his use of *nolle prosequi*. The Nigerian Bar Association (NBA) swiftly condemned the action as an institutional overreach, stressing that the police lacked the constitutional authority to interrogate or supervise the exercise of the Attorney-General's prosecutorial discretion.

The issue, therefore, is clear: Can the Police probe the Attorney-General's discretion under a *nolle prosequi*? The answer is no. The constitutional role of the Police is to investigate facts and offences. The discretion to discontinue criminal proceedings is not within their supervisory mandate. To hold otherwise would undermine the constitutional separation of powers and erode the independence of the prosecutorial function.

It is important, however, to distinguish between the exercise of discretion and the commission of an offence. If credible allegations of criminal misconduct, such as bribery, corruption, or obstruction of justice, are made against an Attorney-General, the Police may investigate those allegations. But such an inquiry is directed at possible criminality, not at reviewing or reversing a constitutionally valid decision to enter a *nolle prosequi*.

Under Nigerian law, the power to discontinue criminal proceedings through a *nolle prosequi* remains the constitutional prerogative of the Attorney-General. While this discretion is not immune from political or constitutional scrutiny, it is insulated from police supervision. Any attempt by law enforcement to investigate the exercise of such discretion amounts to institutional overreach and a breach of the separation of powers principle.
