

Juritrust Administration of Criminal Justice Academy Moot Competition, 2025/26

ACJAMC 105

IN THE FEDERAL HIGH COURT OF MAGARIA

IN THE MAGARIA JUDICIAL DIVISION

HOLDEN AT MAGARIA

CHARGE NO:

BETWEEN

FEDERAL REPUBLIC OF MAGARIA.....COMPLAINANT

AND

MUSA EMEKA AYO..... DEFENDANT

DEFENDANT'S FINAL WRITTEN ADDRESS.

INTRODUCTION

1.0. In this written address, the Defendant prays this Honourable Court to rule that **Section 74 of the Proceeds of Crime (Recovery and Management) Act, 2022**, which creates a presumption of guilt against the Defendant and requires the Defendant to prove his innocence is a violation of the Defendant's fundamental human right to be presumed innocent until proven guilty enshrined in **Section 36 (5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)**.

BRIEF STATEMENT OF FACT

2.1. Following the charge of money laundering and terrorism financing brought against the Defendant, **Section 74 of the Proceeds of Crime (Recovery and Management) Act, 2022**, requires him to prove that he owns the assets in question legitimately or that the assets originate from lawful sources and are not proceeds of crime.

ISSUES FOR DETERMINATION

Whether having regard to the provisions of Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the reverse burden of proof created by **Section 74 of the Proceeds of Crime (Recovery and Management) Act, 2022**, is not a fundamental violation of the Defendant's right to be presumed innocent until proven guilty.

LEGAL ARGUMENT

Whether having regard to the provisions of Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the reverse burden of proof created by Section 74 of the Proceeds of Crime (Recovery and Management) Act, 2022, is not a fundamental violation of the Defendant's right to be presumed innocent until proven guilty.

4.1. To the above issue, we submit in the negative, which is to the effect that the reverse burden of proof created by **Section 74 of the Proceeds of Crime (Recovery and Management) Act, 2022, (hereinafter referred to as the “Proceeds of Crime Act”)** is a violation of **Section 36(5) of the Constitution of the Federal Republic of Nigeria (hereinafter referred to as “the Constitution”)**. Hence, our argument is premised on a single standpoint, to wit,

The reverse burden of proof created by Section 74 of the Proceeds of Crime Act imposes a legal burden on the Defendant, thus presuming the Defendant guilty, thereby violating the constitutional principle of presumption of innocence under Section 36(5).

4.2. While we recognize that pursuant to the proviso under **Section 36(5) of the Constitution** a law may impose upon any person the burden of proving the existence of a particular fact, we however strongly contend that where such law imposes upon the Defendant the burden of proving his innocence such law constitutes a violation of the Defendant fundamental right under **Section 36(5) of the Constitution**.

4.3. Section 36(5) of the Constitution is clear that any person accused of an offense is presumed innocent until the contrary is proven. We respectfully refer my noble Lord(s) to cases of **Matthew v. C.O.P¹**, **Nigerian Navy v Adebayo²**, and **Alabi v. The State³**, where the Court held that: "This section of the Constitution invests in every accused person a presumption of innocence. In other words, the accused person is not obliged to prove his innocence; rather, the law and our Constitution presume that he is innocent until the contrary is proved. Furthermore, in criminal cases, culpatory evidence which is equally open to an interpretation consistent with innocence

¹ (2025) 10 NWLR (pt. 1996) 259

²(2025) 4 NWLR (pt. 1983) 417

³ (1993) 7 NWLR (pt. 307) 511 at 531

must be construed in the Defendant's favour. That is why the principle is now firmly established, that the duty lies on the prosecution to prove its case beyond reasonable doubt and a general burden to rebut the presumption of innocence constitutionally guaranteed to the citizen."

4.3. The principle of presumption of innocence forms the foundation of our criminal system, of which no departure is accommodated. It is the rule in criminal law that a prosecution has to make out its case beyond reasonable doubt, and until this is done, the Defendant is presumed innocent. This was made clear in the case of **Ankpegher vs. State**⁴ where the apex court per Kekere-Ekun held that "there is no doubt that in criminal proceedings the onus of proof lies on the prosecution throughout the trial and does not shift. In other words, there is no burden on the defendant to prove his innocence.⁵ Similarly, in **Nwaobashi v F.R.N**⁶ the court held that "under the Nigerian adversarial criminal justice system, an accused person, no matter the gravity of the offense he allegedly committed, is entitled to be presumed as innocent until he is duly proved guilty beyond reasonable doubt." The presumption of innocence has been enshrined in several international instruments⁷ which is in *pari materia* with the provisions of Section 36 (5) of the Constitution and to which Magaria is a party.

4.4. Consequently, **Section 74 of the Proceeds of Crime Act**, which creates a reverse burden of proof, violates this right by imposing upon the Defendant the duty of proving his innocence.

For ease of reference, Section 74 of the Proceeds of Crime Act, is produced below.

⁴ (2018) LPELR-43906 (SC) at page 24-25

⁵ **Ugboji vs. State** (2017) LPELR-43427 (SC) at page 28

⁶ (2023) 16 NWLR (pt. 1911) 539

⁷ Article 11(1) and 12(4) of the Universal Declaration of Human Right, 1945

“Subject to the provisions of the Act, the defendant in any proceedings under this Act bears the burden of proving that he is the legitimate owner of the assets suspected to be proceeds of crime or derived from unlawful activity or that the assets are of legitimate origin and not proceeds of unlawful activity.”

4.5. We contend that by **Section 74 of the Proceeds of Crime Act** requiring the Defendant to prove that he is the legitimate owner of the assets suspected to be proceeds of crime or derived from unlawful activity or that the assets are of legitimate origin and not proceeds of unlawful activity it already presumes a Defendant charged under the Act to be guilty hence violating the constitutional presumption of innocence entrenched in **Section 36(5) of the Constitution**.

4.6. While we admit that by virtue of **Section 140 of the Evidence Act**, as well as the proviso under **Section 36 (5) of the Constitution**, a Defendant could be required to establish the existence of peculiar facts within his knowledge, however, a Defendant cannot be required to prove his innocence.

4.7. According to the Supreme Court in **Hafizu v. State**⁸ the Law is now settled that in criminal trials, a Defendant is entitled to be presumed innocent until proven guilty by the Prosecution. Therefore, it goes without saying that it is not the responsibility of the Defendant to prove his innocence (except when he alleges the existence of certain facts which he must prove) but a bounden duty on the State to prove the guilt of the accused person beyond reasonable doubt. The burden placed upon the Prosecution is generally known as the legal burden of proof, which cannot

⁸ (2024) LPELR-62579(SC)

be reversed or placed upon the Defendant. The only burden of proof allowed by law to be placed on the Defendant is the evidential burden of proof.

4.8. However, and sadly so, my Lord(s), **Section 74 of the Proceeds of Crime Act** places a legal burden of proof on the Defendant. In **Dick v. State**⁹, the court in distinguishing between legal burden of proof and evidential burden of proof, held that the duty to prove the offence charged which always lies with the Prosecution and which remains fixed on the Prosecution and never shifts to the Defendant throughout the trial is known as the legal or general burden of proof, and this is distinct from the evidential burden, which is merely the burden to adduce evidence in proof or disproof of certain facts. It is this evidential burden that can shift from the Prosecution to the Defendant and vice versa, depending on the circumstances of each case.

4.9. We contend humbly but firmly that **Section 74 of the Proceeds of Crime Act** does not fall within the contemplation of the proviso of **Section 36 (5) of the Constitution** in that it intends to totally reverse the burden of proving the offense of the defendant. Whereas it behooves the Prosecution to establish that the alleged proceeds emanated from an illegitimate transaction, and as such, the burden of establishing the legitimacy of the proceeds of a transaction would amount to the defendant proving his innocence, which is against **Section 36(5) of the Constitution**.

4.10. It is trite that to discharge the legal burden of proof in a criminal case, the Prosecution must prove every ingredient or essential element of the offence with which the accused is charged beyond reasonable doubt. This well-established principle of law was reiterated by the apex Court in **Nwaturuocha v. State**¹⁰ where it was held as follows: "In the process of establishing the guilt

⁹ (2025) LPELR-82544(CA)

¹⁰ (2011) LPELR- 8119(SC)

of an accused, the prosecution has to prove all the essential elements of an offence as contained in the charge. This requirement is predicated on the accused person's presumption of innocence as guaranteed by **Section 36 (5) of the 1999 Constitution**. We humbly refer my noble Lord(s) to the cases of **David v. People of Lagos State**¹¹; **State v. Adu**¹²; **Ibrahim v. The State**¹³; and **Posu & Anor v The State**¹⁴.

4.11. In this instant case, **Section 74 of the Proceeds of Crime Act** requires the Defendant to establish that the money that was paid into his Foundation's account is not proceeds of crime or derived from unlawful activity, which invariably means he is being required to prove an element of the offence for which he was charged, thus placing upon him the legal burden of proof.

4.12. Furthermore, by virtue of the importance of the right to fair hearing, and subsequently, the presumption of innocence, it cannot merely be derogated from by reason of the reversal burden of proof being justifiable on the grounds of the gravity of the offense. Hence, the reversal burden of proof in **Section 74 of the Proceeds of Crime Act** cannot be justified on the grounds of the gravity of the offense, relying on the decision in **Nwaobashi v F.R.N**¹⁵ where the Court held that "under the Nigerian adversarial criminal justice system, an accused person, no matter the gravity of the offense he allegedly committed, is entitled to be presumed as innocent until he is duly proved guilty beyond reasonable doubt."

¹¹ (2025) LPELR-80373(SC)

¹² (2021) LPELR-56616(SC)

¹³ (2015) 11 NWLR (Pt.1469) 164

¹⁴ (2011) 2 NWLR (Pt.1234) 393

¹⁵(2023) 16 NWLR (pt. 1911) 539

4.13. Section 36 (5) of the Constitution only creates a limited exception or loophole, allowing evidential shifts, but we submit that this is limited only to "particular facts" as it does not authorize the reversal of the onus of establishing the guilt of the defendant.

4.14. For the above reason, **Section 74 of Proceeds of Crime Act** is a clear contravention of **Section 36 (5) of the Constitution** as it requires the defendant to prove the legitimacy of his assets, thereby shifting the legal burden on the prosecution to the Defendant.

4.15. In further substantiating our argument, the Defendant submits that the proviso provides only for the proof of particular facts which is reinforced in **Section 140 of the Evidence Act**. **Section 140 of the Evidence Act** provides that "**When a fact is especially within the knowledge of any person, the burden of proving that fact is upon him.**" This permits evidential shifts for specific facts, but not a blanket reversal.

4.16. The application of **Section 140 of the Evidence Act** and the proviso under **Section 36 (5) of the Constitution** in justifying the provision of **Section 74 of the Proceeds of Crime Act** is greatly flawed as it presumes the criminality of the Defendant, Dr. Musa Emeka Ayo, rather than requiring him to merely adduce evidence on facts that are specifically within his knowledge.

4.17. In **Daudu v. FRN**¹⁶ while the Court upheld the reversal burden of proving unexplained wealth in money laundering, the Court clarified that it applies specifically to "particular facts" rather than to the onus on the prosecution. It remains our stance that Section 74 of the Proceeds of Crime Act runs counter to **Section 36 (5) of the Constitution** and by extension **Sections 131 and 140 of the Evidence Act**.

¹⁶ (2018) LPELR-43637 (SC)

4.18. Conclusively, from the argument canvassed herein, it is our submission that **Section 74 of the Proceeds of Crime Act** is a fundamental violation of the defendant's right to be presumed innocent until proven guilty which is constitutionally guaranteed by **Section 36(5) of the Constitution** and as such a clear contravention of same. Accordingly, the provision of **Section 74 of the Proceeds of Crime Act** is rendered null and void to the extent of its inconsistency by virtue of **Section 1(3) of the constitution**.¹⁷

We therefore respectfully urge my noble Lord(s) to resolve this issue in favour of the Defendant.

Dated this 24th Day of March, 2026.



Counsel for the Defendant

Team 105

¹⁷Constitution of the Federal Republic of Nigeria, 1999 (as amended)

FOR SERVICE ON

Counsel for the Prosecution

LIST OF AUTHORITIES RELIED ON**Judicial Authorities**

1. Ankpegher vs. State (2018) LPELR-43906 (SC) at page 24-25
2. Daudu v. FRN (2018) LPELR-43637 (SC)
3. Esteller v William 425 US. 501 at 503 (1976)
4. Flores v Oklahoma 1995 Ok CR 31
5. Kentucky v Wharton 441 vs.786 at 790 (1979)
6. Matthew v C.O.P (2025) 10 NWLR (pt. 1996) 259
7. Nigerian Navy v Adebayo (2025) 4 NWLR (pt. 1983) 417
8. Nwaobashi v F.R.N (2023) 16 NWLR (pt. 1911) 539
9. Nwizi v Oke (2025) 12 NWLR (pt. 2000) 589
10. Omokaro v State (2026) 2 NWLR (pt. 2027) 125
11. Onakporo v State (2026) 1 NWLR (pt. 2025) 309
12. Ugboji vs. State (2017) LPELR-43427 (SC) at page 28
13. Unipetrol (Nig.) Plc v Adireje (W.A) Ltd (2005) 14 NWLR (pt. 946)
14. Yakubu v State (2014) 8 NWLR (PT. 1408) 111

Statutory Authorities

1. Section 1(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)
2. Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)
3. Section 74 of the Proceeds of Crime (Recovery and Management) Act, 2022
4. Section 140 of the Evidence Act, 2011, (as amended)
5. Sections 131 of the Evidence Act, 2011, (as amended)

International Statutory Authority

1. Article 11(1) and 12(4) of the Universal Declaration of Human Rights, 1948