

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

ACJAMC 105

IN THE FEDERAL HIGH COURT OF MAGARIA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

CHARGE NO:

BETWEEN

FEDERAL REPUBLIC OF MAGARIA.....COMPLAINANT

AND

MUSA EMEKA AYO..... DEFENDANT

COMPLAINANT’S FINAL WRITTEN ADDRESS

INTRODUCTION

1.1. This is the Prosecution’s final written address wherein this Honourable Court is called upon to determine whether the provisions of **Section 74 of the Proceeds of Crime (Recovery and Management) Act, 2022**, do not violate the right enshrined in **Section 36 (5) of the Constitution of the Federal Republic of Magaria 1999 (as amended)**.

BRIEF STATEMENT OF FACTS

2.1. My noble lords, the relevant facts pertaining to this matter are as stated in the fact sheet.

ISSUES FOR DETERMINATION

The Prosecution respectfully submits that the sole issue to be determined by this Honourable Court is:

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. We answer in the affirmative and humbly contend that 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.

4.2. By virtue of **Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)**, it is firmly established in Nigerian criminal jurisprudence that the obligation to establish the guilt of an accused person rests primarily on the prosecution, and such guilt must be proved beyond reasonable doubt.

4.3. However, this presumption of innocence is not absolute as the proviso under Section 36(5) allows for shifting the burden of proof to the defendant under certain circumstances. The said 36(5) section provides thus;

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty: Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

4.4. This implies that the burden of proving particular facts can be statutorily assigned to a party and such law will not be deemed invalid.

4.5. This statutory exception to the requirement of burden of proof does not affect the legal or general burden of proof rather it is with respect to evidential burden of proof.

4.6. The Supreme Court in **Alake v. State**¹ succinctly recognized and distinguished between evidential and legal burden of proof in criminal jurisprudence. The Supreme Court in the instant case recognized that although the prosecution bears the ultimate obligation of establishing the guilt of the accused commonly which is referred to as the legal burden of proof, there are circumstances where the accused person may be required to provide an explanation concerning facts that are especially within his personal knowledge. This obligation placed on the accused is known in law as the evidential burden of proof.

The legal burden refers to the responsibility of ultimately persuading the court of the guilt of the accused person, and in criminal proceedings this burden invariably rests on the prosecution and must be discharged beyond reasonable doubt. The evidential burden, however, simply entails the obligation placed on a party to introduce sufficient material evidence capable of making a

¹ (1991) 7 NWLR (Pt. 205) 567

particular fact or issue worthy of judicial consideration. It does not require proof beyond reasonable doubt but merely necessitates the production of credible evidence.

4.7. This evidentiary rule is further reinforced by **Section 140 of the Evidence Act**² which provides that where a fact is especially within the knowledge of a particular individual, the burden of establishing that fact lies upon that person.

4.8. It is within the constitutional authority of the proviso in **Section 36(5)** as well as **Section 140 of the Evidence Act**, that **Section 74 of the Proceeds of Crime (Recovery and Management) Act, 2022**, takes effect.

4.9. Section 74 of the Proceeds of Crime (Recovery and Management) Act, 2022 provides thus;

74. 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.

4.10. A perusal of the above section shows that the burden of proof only shifts to the defendant upon the prosecution establishing a prima facie case against the Defendant. This is evidenced by the section's use of the phrase "**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**".

4.11. This is because these are facts within the special or peculiar knowledge of the Defendant.

In **Ibrahim v State**³ The Court held that where certain facts are peculiarly within the knowledge of the accused person, the evidential burden may shift to him to provide an explanation.

² Section 140 of the Evidence Act, 2011 (as amended)

³ (2025) 20 NWLR (Pt. 2022) 177

4.12. Similarly, the Supreme Court in **Akinfe v State**⁴ acknowledged that although the prosecution bears the primary burden of proof in criminal trials, the accused person may in appropriate circumstances be required to rebut presumptions created by law once the prosecution has established facts giving rise to such presumptions.

4.13. Consequently, **Section 74 of the Proceeds of Crime (Recovery and Management) Act**,⁵ must be interpreted in its proper evidentiary context. The provision does not compel the Defendant to establish his innocence nor does it transfer the ultimate burden of proof from the prosecution. Instead, it merely requires the Defendant to provide a satisfactory explanation in respect of circumstances that reasonably call for clarification and which fall particularly within his sphere of knowledge.

In the instant case, the prosecution having first established a sufficient prima facie case of a structured POS deposits, the large foreign transfer from a high-risk jurisdiction and the recovery of supplies linked to the Foundation in the custody of a proscribed insurgent group, it now behooves on the defendant to rebut such by providing a detailed and accurate explanation as to his involvement or non-involvement in the alleged offences.

4.14. A community reading of **Section 36** of the Constitution together with **Section 140 of the Evidence Act** demonstrates that **Section 74**⁶ represents a reasonable and proportionate legislative response to the challenges of prosecuting terrorism and financial crimes. The provision serves a

⁴ (1988) 3 NWLR (Pt. 85) 729

⁵ Section 74, Proceeds of Crime (Recovery and Management) Act, 2022

⁶ Section 74 Proceeds of Crime (Recovery and Management) Act, 2022

legitimate aim, namely the protection of national security and public safety. There is a clear rational connection between the evidential burden imposed and the objective of effectively prosecuting clandestine terrorist activity. To maintain the balance between the individual and the society as a whole, rigid and inflexible standards should not be imposed on the legislature's attempts to resolve the difficult and intransigent problems with which society is faced when seeking to deal with serious crime.⁷

4.15. Furthermore, the provision remains proportionate because it preserves the essential safeguards of criminal justice, including the requirement that the prosecution prove the accused's guilt beyond a reasonable doubt. **Article 12 (7) of the United Nations Convention Against Transnational Organized Crime [UNTOC]** to which Magaria is a party and which formed the basis for the enactment of the Proceeds of Crime (Recovery and Management) Act is to the effect that "states Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

4.16. Accordingly, the reverse burden contemplated under **Section 74**⁸ does not violate the constitutional presumption of innocence but merely introduces a limited evidential mechanism necessary for the effective enforcement of laws against terrorism financing and proceeds of crime.

⁷ Attorney General of Hong Kong v Lee Kwong-kut [1993] AC 951, 975

⁸ *ibid*

4.17. We therefore submit that **Section 74⁹** does not undermine the presumption of innocence guaranteed by the Constitution. Instead, it provides a specific evidential mechanism designed to require those who have exclusive knowledge of suspicious financial transactions to offer an explanation when the situation reasonably calls for it, while the prosecution still carries the ultimate responsibility of proving criminal liability beyond a reasonable doubt.

SUMMARY OF POINT RAISED AND ARGUED

The Prosecution argued that 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 as the reversal is in accordance with the constitution and the Evidence Act.

CONCLUSION/RELIEF SOUGHT

6.1. Relying on the legal arguments above as well as the judicial and statutory authorities, we respectfully pray my noble Lords to resolve the above issues in favour of the Prosecution by finding that Section 74 of the Proceeds of Crime (Recovery and Management) Act is in conformity with Section 36 (5) of the Constitution of the Federal Republic of Magaria 1999 (as amended)

May my noble Lords be pleased.

Dated this 24th Day of March 2026.

⁹ *ibid*



Counsel for the State

Team 105

FOR SERVICE ON

Counsel for the Defendant

LIST OF AUTHORITIES

Statutory Authorities

1. Section 140 of the Evidence Act, 2011 (as amended)
2. Section 36(5), Constitution of the Federal Republic of Nigeria, 1999 (as amended)
3. Section 45, Constitution of the Federal Republic of Nigeria, 1999 (as amended)
4. Section 74 of the Proceeds of Crime (Recovery and Management) Act, 2022
5. Article 12 (7) of the United Nations Convention Against Transnational Organized Crime [UNTOC]

Judicial Authorities

1. Alake v. State (1991) 7 NWLR (Pt. 205) 567

2. Ibrahim v. State (2025) 20 NWLR (Pt. 2022) 177
3. Akinfe v. State (1988) 3 NWLR (Pt. 85) 729
4. Attorney General of Hong Kong v Lee Kwong-kut [1993] AC 951, 975