

An Examination of the Powers of the Executive to Continued Detention of Suspects in Disobedience to Court Orders

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Abstract : The 2015 Administration of Criminal Justice Act in Nigeria clearly sets out conditions for bail for felonies, lesser offenses and capital offenses. Even where the conditions for bail are met, granting an application for bail is not automatic as it is subject to the discretion of the court. Where the court, however, grants bail to an accused, the detaining authority which usually is the executive arm of government is bound to comply with the order of the court. This paper discusses the constitutionality of the continued detention of criminal suspects in disobedience to an order of the court and in the absence of an appeal. Particularly, the paper looks at the rights to personal liberty, the dignity of the human person and also the presumption of innocence which remains one of the crucial pillars of our criminal jurisprudence. The paper analyses the reasons posed by the executive for the continued detention of a suspect including State security and security of the suspect and questions whether the reasons are reasonable justifiable in a constitutional democratic society and whether they breach the principles of separation of powers. The paper concludes that the continued detention criminal of suspects in disobedience to court orders constitutes contempt of court and dishonours the principles of separation of powers enshrined in the Nigerian Constitution. This paper makes a strong case for the donation of more enforceable powers to the judiciary particularly with regards to the granting of compensation orders against the executive and ensuring compliance by the executive to bail orders.

Keywords : breach of fundamental rights, contempt of court, discretion of court, right to bail, separation of powers

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