

## AN OVERVIEW OF THE COURT-MARTIAL STRUCTURE AND PROCESS UNDER THE NIGERIAN MILITARY JUSTICE SYSTEM

BY

DR. PETER ADEMU ANYEBE

ASSOCIATE PROFESSOR OF LAW AG. DEPUTY DIRECTOR & HEAD, POSTGRADUATE SCHOOL NIGERIAN  
INSTITUTE OF ADVANCED LEGAL STUDIES UNILAG CAMPUS, AKOKA, LAGOS, NIGERIA



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### Corresponding author:

**DR. PETER ADEMU  
ANYEBE**

### Abstract

The military justice system exists to deal with members of the armed forces who commit crime or a disciplinary violation. The Court-Martial is for many the most familiar aspect of the military service justice system. It has global jurisdiction over all service personnel and civilians subject to service discipline and hears all types of criminal cases including murder and other serious offences. The court-martial is an ad hoc standing court. The jurisdiction of the military courts is established when the court is properly convened. The aim of this paper is to bring to fore the law, practices and procedures of courts-martial under the Nigerian military justice system. It is the argument of the paper that despite being a military court, court-martial's rules and procedures are very similar to those in civilian criminal court trials. It is the finding of the paper that the power to review bestowed on Reviewing Authority does not amount to double jeopardy, except that it is contrary to fair trial and a breach on the independence and impartiality of court-martial. It is recommended that among its various procedures, revision of findings of courts-martial which is a breach of the rule of *functus officio* be expunged from the AFA. The paper concludes that AFA makes adequate and comprehensive provisions for the trial of military offences.

**Keywords:** courts-martial, double jeopardy, military justice, Nigerian military justice system, reviewing authority

## INTRODUCTION

Under military justice system in Nigeria, the Armed Forces Act (AFA) authorizes military commanders to convene court-martial on *ad hoc* basis to try a single case or several cases of service members suspected of breaking the code. This is done by the convening of courts-martial by the empanelling of appropriate military officers of appropriate rank by an appropriate officer to perform an administrative job of a quasi-judicial nature. Therefore, the President, judge advocates, and other members are assigned to the Courts-Martial on temporary basis. The President and the judge advocates of the courts-martial are also assigned duties while serving as officers of the courts-martial. Therefore, there has been much debate about whether proceedings before a military court or court-martial can meet the standard of a fair and public hearing by a competent, independent, and impartial tribunal established by

law, as required by the International Covenant on Civil and Political Rights (ICCPR) and regional human rights treaties.<sup>1</sup>

Nigerian Courts-Martial reflect civilian legal system in their criminal jurisdiction. Courts-Martial have the similarity of a judge,

<sup>1</sup> *International Covenant on Civil and Political Rights* (Dec. 16, 1966) UNTS 171 (ICCPR) Art. 14 (1); *cf. Convention for the Protection of Human Rights and Fundamental Freedoms* (Nov. 4, 1950) 213 UNTS 222 (ECHR) Art. 6 (1); *American Convention on Human Rights* (Nov. 22 1969) 1144 UNTS 123 (AmCHR), Art. 8 (1); *African Charter on Human and Peoples' Rights* (June 27 1981) 1520 UNTS 217, Art. 7 (1); *Arab Charter on Human Rights* (May 22, 2004) (ArabCHR), Art. 13 (1)

a prosecutor and apply the rules of evidence as obtainable at civilian criminal trials.

Typically, courts-martial take place in the military community where the service offence is alleged to have occurred or at the unit where the accused is currently posted. The location of the court-martial is set out in the convening order. The military court room is configured in a manner that will be quite familiar to the civilian criminal justice administration. Courts-martial are bound by the provisions of fair hearing enshrined under section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (CFRN) as amended. Hence, in the case of *Akono v. Nigerian Army*<sup>2</sup>, the Court of Appeal set aside a court-martial decision convicting the appellant on the grounds of lack of fair hearing. Equally, legal technicalities are not allowed to defeat the end of justice under Courts-martial. The abhorrence of legal technicalities in Courts-Martial was given judicial approval by the Court of Appeal in the case of *Gbasozour v. Nigerian Army*.<sup>3</sup>

The AFA prescribes for a review and confirmation of Courts-Martial trials. The powers confer on reviewing authority do not amount to double jeopardy, as they are not equivalent to new trials of the accused. Rather the powers breach the principle of fair hearing and are breaches of the independence and impartiality of courts-martial. Thus, the powers of review of reviewing authority do not contravene constitutional provisions under section 36 (9). Any person aggrieved by the decision and subsequent confirmation of the decision of the Courts-Martial may appeal against the decision to the Court of Appeal<sup>4</sup>. Any of the parties may further appeal an unfavorable decision to the Supreme Court.<sup>5</sup>

This paper therefore looks at the law, practices, and procedures of courts-martial under the Nigerian military justice system. To achieve this aim, the paper is divided into eight parts. Part one is the introduction. While part two concerns the nature of court-martial, part three deals with the nature of court-martial. Part four discusses trial procedures before court-martial. Part five examines the confirmation and review of court-martial proceedings. Part six is double jeopardy and the power of reviewing authority. Appeals from Court-Martial and conclusion and recommendations are discussed under parts seven and eight respectively.

## 2. Conceptual Clarifications

Before examining the construction of court-martial and the various parts and levels of the system, we will in the first place look at some basic definitions that will appear often under this article.

### (a) Court-martial.

Court-martial is a military court that is assembled by a commander to try personnel within his command who are alleged to have committed offences. A court-martial is a judicial body, thus all its affairs, from the convening of the court, its jurisdiction,

arraignment of accused, and calling of witnesses must conform to law, otherwise, the entire court proceedings could be quashed on appeal.

Bhatia affirms that Court-Martial is a court of army, naval, and air force officers...It is a tribunal for the administration of military law.<sup>6</sup> It is determined by statutes, e.g. Nigeria's AFA<sup>7</sup> and the United States' UCMJ. Also, it handles violations of the statutes. Doherty refers to it as "a specialized court set up to cater for the peculiar disciplinary needs of the Armed Forces".<sup>8</sup> Section 129 of AFA<sup>9</sup> states that there are two types of court-martial as listed in the order of increasing severity: General Court Martial and Special Court Martial.<sup>10</sup> The Courts –Martial are differentiated by the amount of sanctions they can impose, and by the trial process that apply to each. A court-martial is the trial of an offence in military law parlance.<sup>11</sup> Court-martial is a class of judicial body enacted by the constitution or legislation to try persons under the military law of the state, presided over by a military judge or by a civilian judge sitting as a Judge Advocate<sup>12</sup>, in which the tries of fact are military, and possessing the core attributes of a court. It has global jurisdiction over all service personnel and civilians subject to service discipline and hears all types of criminal cases including murder and serious sexual offences.<sup>13</sup>

### (b) Convening Authority

There are none existence of standing or permanent Courts-Martial in Nigeria. What we have are *ad hoc* courts-martial. Courts-martial are instituted when requested by command of a military convening officer. Under the Rules of Procedure (ARMY), 1972, the convening officer is the commander who ascertains that a case be tried by court-martial (and by which type of court) and who has the power to direct the charges for trial and also nominates the court members.<sup>14</sup> The convening authority performs the act of referral (i.e. the formal act of sending a specific case to trial). Ordinarily, the convening authority will be identified by the class of court that

<sup>2</sup> *Akono v. Nigerian Army* (2007) 1 FWLR (pt. 28) 120

<sup>3</sup> (2000) 2 CLR 230

<sup>4</sup> *Armed Forces Act, Cap. A20, Laws of the Federation of Nigeria, 2004, section 183*

<sup>5</sup> *Ibid, section 202*

<sup>6</sup> *H. Bhatia, Martial Law under the Uniform Code of Military Justice* (West Port, Connecticut: Greenwood Press Publishers 1979) 12

<sup>7</sup> *Armed Forces Act, op cit, section 291-defined as a court-martial constituted under this Act*

<sup>8</sup> *O. Doherty Criminal Procedure in Nigeria, Law and Practice, (London Black Store Press Ltd 1999) 48*

<sup>9</sup> *Armed Forces Act, op cit,section 129*

<sup>10</sup> *Ibid*

<sup>11</sup> *R.S.B. Bello-Fadile, An Officer and A Gentleman* (Zaria: Tamaza Publishing Company Ltd 1992) ix

<sup>12</sup> *As currently in the United Kingdom, the term 'Judge Advocate' historically denoted the legally trained person who presided at a court-martial, who may at various times and places and in different national systems have been either a military or civilian lawyer or judge.*

<sup>13</sup> *E. Norton, Military Justice: 2nd Rate Justice* (London: Liberty Publications 2019) 32

<sup>14</sup> *Rules of Procedure (ARMY) 1972, rr. 22-25*

he is permitted to convoke. Accordingly, Norton stated that 'a court would be classified as the Summary Court-Martial Convening Authority (SCMCA), the Special Court-Martial Convening Authority (SPCMCA) or the General Court-Martial Convening Authority (GCMCA).<sup>15</sup> he power to assemble a court-martial by the CO is enacted by the statutes, i.e AFA and UCMJ, based usually on the standard of the unit commanded.

In Nigeria, trial by Court-Martial is provided for under the Armed Forces Act, 2004. However, section 217 of the 1999 Constitution of the Federal Republic of Nigeria together with the provisions of the then Armed Forces Act of 1993 amplified the administrative processes and command regulations of the Armed Forces. Section 129 of the then Armed Forces Act 1993 (referred to as the AFD 1993) prescribed the establishment of Courts-martial. Similarly, section 129 of the Armed Forces Act<sup>16</sup> makes provision for the establishment of Courts-martial.

**(c) The nature of Court-Martial**

Black's Law Dictionary<sup>17</sup> defines a Court-Martial as 'an ad hoc military court convened under military authority to try someone, particularly a member of the armed forces, accused of violating the UCMJ.'<sup>18</sup> Furthermore, Garner has defined it as an 'ad hoc military court, convened under military authority, to try and punish those who violate the UCMJ, particularly members of the armed forces.'<sup>19</sup> According to the New Zealand Armed Forces Discipline Act, (AFDA) Courts-martial are defined as 'military courts established by senior military officers to determine the most serious allegations of misconduct by members of the armed forces and, in limited circumstances, non-military persons.'<sup>20</sup> Courts-Martial are special courts which are established under the Armed Forces Act<sup>21</sup>. Hambali<sup>22</sup> maintained that 'it is convened when the need arises and stands dissolved once the trial for which it has been conveyed is concluded.'<sup>23</sup> It gives binding and enforceable decisions, exclusively of criminal or quasi-criminal nature. Punishment or sentence includes committal to prison for a term of years. Appeals against its decisions lie to the Court of Appeal<sup>24</sup>.

Courts-martial and civilian courts differ greatly in the method adopted in the selection and appointments of the latter are members. Contrary to what obtains under civilian legal system, neither the prosecutor nor the defence counsel contributes to the selection of members of the court-martial as the selection is done by the convening authority alone. Further, AFA states that 'although there is presumption of innocence and the prosecution has the burden of proving the charges beyond reasonable doubt, questions of guilt and punishment are determined by simple majority of the court members.'<sup>25</sup> In addition, AFA provides that 'determinations are made in private conference with the judge advocate, to the exclusion of the accused and prosecutor and without giving reasons.'<sup>26</sup>

Court-Martial is a court for the trial of offences against military or naval discipline, or for the administration of martial law<sup>27</sup>. It is a tribunal that tries violations of military criminal law. It often refers to the entire military justice process, from actual court proceedings to punishment<sup>28</sup>.

Military court-martial is a mechanism by the military for the control, discipline, and punishment of its personnel. It is primarily concerned with the discipline and control of troops. Although it is not yet an independent instrument of justice, court-martial remains to a significant degree, a specialized part of the overall mechanism by which military discipline is preserved<sup>29</sup>. In *Maclaughry v. Denning*<sup>30</sup>, the court maintained that court-martial is 'a creature of statute and as a tribunal, it must be convened and constituted in entire conformity with the provisions of statutes or else, it is without jurisdiction.'<sup>31</sup> Thus, according to Abubakar, a court-martial is 'a judicial body and thus all its affairs, from the convening of the court, the jurisdiction of the court, arraignment and calling of witnesses must conform to law otherwise the entire court proceedings could be quashed on appeal.'<sup>32</sup> Courts-martial are generally found in all nations with military judges to try military personnel who commit offences. In addition, courts-martial might be used to try enemy prisoners of war who are on trial for war crimes.

<sup>15</sup> E. Norton, *Military Justice: 2nd Rate Justice* (London: Liberty Publications 2019) 12

<sup>16</sup> *Armed Forces Act, Cap.A20, Laws of the Federation of Nigeria, 2004*

<sup>17</sup> B .A.Garner: *Black's Law Dictionary* (St. Paul, Minnesota: West Publishing Compaany, 9<sup>th</sup> edn. 2009) 413

<sup>18</sup> *Ibid*

<sup>19</sup> *Ibid*, 358

<sup>20</sup> *The New Zealand Armed Forces Discipline Act, 1971 [AFDA]*

<sup>21</sup> *Armed Forces Act, section 29*

<sup>22</sup> Y.D.U. Hambali, *An Appraisal of the Jurisdiction of Courts-Martial' in O. Omole (ed) Reflections on Nigerian Law: Commemorative Essays in Honour of Professor Jadesola Akande (OFR)*, (Lagos: Feat Nigeria Ltd, 2005) 206

<sup>23</sup> *Ibid*

<sup>24</sup> *Ibid*

<sup>25</sup> *Ibid*, section 140

<sup>26</sup> *Ibid*, section 141

<sup>27</sup> *Definition of court-martial: <[http://www.1911encyclopedia.org/Offences The Person](http://www.1911encyclopedia.org/Offences_The_Person;)>; <[http://www.1911encyclopedia.org/Martial Law](http://www.1911encyclopedia.org/Martial_Law)> accessed 5 October 2022*

<sup>28</sup> *Nature of court-martial, <<http://www.legal-dictionary.thefreedictionary.com/criminal+law>> accessed 5 October 2022.*

<sup>29</sup> *O'Callaghan v. Parker*, 395 US 258, 265 [1969]

<sup>30</sup> *Maclaughry v. Denning* 186 US 49 [1902]

<sup>31</sup> *Ibid*

<sup>32</sup> A.Q. Abubakar, "'reconstructing the Basis of Appellate Court Rulings in Court-Martial Decisions and the Way Forward", Vol. 4 (2009) *The Military Lawyer* 60

Despite classifying Court-Martial as a judicial body, in Nigeria it is not part of the judiciary. The Court-Martial is empanelling of appropriate military officers of appropriate rank by an appropriate officer to perform an administrative job of a quasi-judicial nature<sup>33</sup>. Any attempt, therefore, to bequeath on it the status of an arm of the judiciary would not only negate the concept of judicialism but would indeed vitiate the concept of separation of powers entrenched in our constitution<sup>34</sup>.

### 3.1 Types of Courts-Martial

By virtue of the provisions of AFA of Nigeria, 2004, there shall be, for the purposes of carrying out the provisions, two types of Courts-Martial, that is-

- (a) A General Court-Martial (GCM), consisting of a President and not less than four members, a waiting member, a liaison officer, and a judge advocate;

It is the highest level of court-martial and is reserved for the most serious crimes such as rape, robbery, murder, etc. In other words, the GCM is the court-martial with full jurisdiction, empowered to try any offence under the Act and the United States Uniform Code of Military Justice. Also, it awards any punishment authorized by the statutes.

- (b) A Special Court-Martial, consisting of a President and not less than two members, a waiting member, a liaison officer, and a judge advocate.<sup>35</sup>

In the United States, Article 16 of Uniform Code of Military Justice (UCMJ) provides for the three types of courts-martial<sup>36</sup> in each of the armed forces. They are as follows:

- (1) General Courts-Martial, consisting of
  - (a) A military judge and not less than five members or, in a case in which the accused may be sentenced to a penalty of death, the number of members determined under section 825(a) of this title (article 25a); or
  - (b) Only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defence counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves.

General Court-Martial has jurisdiction over all accused persons that have committed any UCMJ offences referred to by the

convening authority. Except the accused foregoes his right, no charge might be directed to a general court-martial unless careful and fair investigation into the circumstance for the charge has been made. This pre-trial proceeding is called an "Article 32" investigation or preliminary hearing and fundamentally serves the similar work of a grand jury hearing in civilian jurisdictions. It comprises a military judge and not less than five members and in non-capital cases, Military judges might try the case alone on the demand of the accused. Usually, a military advocate is directed to defend the accused at no expense.

- (c) Special Courts-Martial, consisting of
  - (a) Not less than three members; or
  - (b) A military judge and not less than three members; or
  - (c) Only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed as in clause (1) (B) so requests. It is commonly presided over by a military judge. The prosecutor is a military lawyer (Judge Advocate). The maximum punishment a special court-martial may adjudge is: confinement for 12 months, forfeiture of two-thirds pay for 12 months, reduction to the lowest pay grade among other punishments; and
- (d) Summary Courts-Martial, consisting of one commissioned officer.<sup>37</sup>

However, under the provisions of 2019 MCM<sup>38</sup>, composition of courts-martial depends on non-capital and capital cases in the case of General Court-Martial.<sup>39</sup>

Depending on the severity of the alleged offence, the accused commanding officer enjoys great discretion in the selection of the type of Court-Martial to try the accused.<sup>40</sup> Also, the Court-Martial provides fundamental and procedural rights to the accused, including, but not limited to, the right to a personal representative or counsel, the opportunity to confront evidence and witnesses, and the right to have a decision reviewed by a lawyer or a court of appeal.<sup>41</sup>

In United Kingdom, there are three classes of courts-martial. They are:

1. a regimental court-martial, usually convoked and confirmed by the CO of the regiment or detachment, presided over by an officer not under the rank of captain, composed of at least three officers of the regiment or detachment with not less than one year's service, and having a maximum power of punishment of forty-two days' detention;
2. a District Court-Martial, usually convoked by a general officer having power to do so, comprising not less than three officers, each with not less than two

<sup>33</sup> D.O.I. Ikponmwen, 'Comment' Being a Paper presented in Response to the Lead Paper 'Deconstructing the Basis of Appellate Court Rulings in Court-Martial decisions and the Way Forward' presented by Brigadier General A.Q. Abubakar, Chief Legal Adviser (Army) at the Nigerian Army Law Seminar, Vol. 4 (2009) *The Military Lawyer* 111

<sup>34</sup> *Ibid*

<sup>35</sup> Section 129(a) (b), ; It has the equivalent of AFD, section 129; see also, *Agbiti v. The Nigerian Navy* (2011) 4 NWLR (pt. 1236) 175 at 183

<sup>36</sup> *Uniform Code of Military Justice, 1952, Article 16*

<sup>37</sup> *UCMJ, 1952, Article 816*

<sup>38</sup> *Manual For Courts-Martial, United States (2019 Edition)*

<sup>39</sup> *Ibid, Rule 501*

<sup>40</sup> *Rules of Procedure (ARMY) 1972, rr. 22-25*

<sup>41</sup> *Ibid, r. 25*

years' service, and having a maximum punishment of two years' imprisonment;

3. a General Court-Martial, the only tribunal having power to try a commissioned officer, and with a force of sanction stretching to death or penal servitude, for crimes in which these penalties are permitted by statute; it consists of not less than nine officers.<sup>42</sup>

In addition, there is yet another class of court-martial called Field General Court-Martial. Its nature is described by the UK AFA as follows: It is summoned by any officer in command of a detachment when not on active service or by any officer in immediate command of a body of forces on active service where it appears to him on complaint or otherwise that a person subject to military law has committed a crime.<sup>43</sup> Furthermore, the officer must be satisfied that it is not feasible to try the person by an ordinary court-martial. The quorum of the court is three.<sup>44</sup> The UK AFA provides in addition that 'the sanctions which can be authorized by a court-martial vary from imprisonment in a civilian prison (for any period up to life if the offence warrants it), detention at the Military Corrective Training Centre for two years or less, dismissal from the armed services (with or without disgrace), or an unlimited fine, down to those punishments effectual to a CO.'<sup>45</sup> Anybody who has chosen to have a charge heard by a court-martial rather than summarily by a CO cannot be given a punishment greater than the maximum obtainable to the CO.<sup>46</sup> Also, appeals from courts-martial are heard by Court-Martial Appeal Court. It is generally made up of judges from the civilian Court of Appeal for England and Wales.<sup>47</sup>

### 3.2 Composition of Court-Martial

There is the need for Court-Martial to be constituted in accordance with the law. Thus, in earlier reported case of *Karim v. Nigerian Army*<sup>48</sup>, Galadima, J.C.A, further stated that a 'Court-Martial is the creation of statute and as a body or Tribunal, it must be convened and constituted in entire conformity with the provision of the statute or else it is without jurisdiction.'<sup>49</sup> Accordingly, the Armed Forces Act, deals extensively with the composition of the Court-Martial. Therefore, section 133 (1) of AFA states that 'a court-

martial shall be properly established if it comprises the President of the court-martial, not less than two officers and a waiting member.'<sup>50</sup> AFA further provides that 'a person shall not be appointed a member of a Court-Martial unless he is subject to service law under the Armed Forces Act and has been an officer in any of the services of the Armed Forces for a period amounting in aggregate to not less than five years.'<sup>51</sup> Furthermore, AFA provides that 'the President of a court-martial shall be appointed by order of the convening officer and shall not be under the rank of major or corresponding rank, unless, in the opinion of the convening officer, a major or an officer of corresponding rank having suitable qualifications is not available, however, the president of a court-martial shall not be under the rank of a captain.'<sup>52</sup> Again, under the provision of AFA, where an officer is to be tried, the president shall be above or of the same or equivalent rank and seniority of the accused and the members thereof shall be of the same but not below the rank and seniority of the accused.<sup>53</sup> What is more, under AFA, the members of a court-martial, other than the President, shall be appointed by order of the convening officer or in such other manner as may be prescribed.<sup>54</sup> Accordingly, convening officer shall appoint a judge advocate for every court-martial.<sup>55</sup> Additionally, a judge advocate shall be a commissioned officer who is qualified as a legal practitioner in Nigeria with at least three years post-call experience or failing that he shall on request by the convening officer be nominated by the Director of Legal Services of the respective services of the Armed Forces.<sup>56</sup>

The issue of composition of a court-martial is statutory as it is embodied in AFA, and this must be strictly complied with.<sup>57</sup> Therefore, the composition of members of a court-martial is a condition precedent imposed by statute. Where it is not adhered to, the statute strips the tribunal of compliance. Where the tribunal is not competent, it lacks the jurisdiction to try the accused person. All the proceedings in the trial and verdict automatically become a nullity.<sup>58</sup> Therefore, in *State v. Olatunji*<sup>59</sup>, the court stated that 'any court-martial which is not constituted as required by the provisions of the Armed Forces Act is like a court or a tribunal which is not properly constituted. And if a court is not properly constituted, any

<sup>42</sup> United Kingdom Armed Forces Act, 2006, section 22

<sup>43</sup> *Ibid*, section 5

<sup>44</sup> *Ibid*

<sup>45</sup> *Ibid*

<sup>46</sup> United Kingdom Armed Forces Act , 2006, sections 164-165

<sup>47</sup> Rule 33 of the Armed Forces (Court-Martial) 2009 [http://www.opsi.gov.uk/si/si2009/uksi\\_20092041\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20092041_en_1) Accessed on 16 December 2014(Statutory Instrument 2009/204), Office of Public Sector Information; see more on Military Courts of the United Kingdom from Wikipedia, the free encyclopedia,

<[http://en.wikipedia.org/wiki/Military\\_Courts\\_of\\_the\\_United\\_Kingdom](http://en.wikipedia.org/wiki/Military_Courts_of_the_United_Kingdom)> accessed 10 October 2022

<sup>48</sup> (2002) 4 NWLR (pt. 758) 716 at 732

<sup>49</sup> *Ibid*

<sup>50</sup> Armed Forces Act, Cap. A20, LFN, 2004, section 133(1)

<sup>51</sup> *Ibid*, section 133 (2)

<sup>52</sup> *Ibid*, section 133 (3) (a)

<sup>53</sup> *Ibid*, section 133 (3) (b)

<sup>54</sup> *Ibid*, section 133 (4)

<sup>55</sup> *Ibid*, section 133 (5)

<sup>56</sup> *Ibid*, section 133 (6)

<sup>57</sup> *Ibid*

<sup>58</sup> *Agbiti (n 39)* ; See also, *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341; *Sule v. Nigeria Cotton Board* (1985) 2 NWLR (pt. 5) 17; *Atolagbe v. Awuni* (1997) 9 NWLR (p. 522) 536; *C.C.B. Nig. PLC v. A.G. Anambra State* (1992) 8 NWLR (pt. 261) 528; *Okereke v. Yar'Adua* (2008) 12 NWLR (pt. 1100) 95

<sup>59</sup> *State v. Olatunji* (2003) 14 NWLR (pt. 839) 138

process issued or trial conducted by it is a complete nullity *ab initio*.<sup>60</sup>

The issue may well arise whether a jurisdictional error has been committed as where the accused failed to make an objection to the competency of a member of the court who would have ordinarily been disqualified to sit as a member<sup>61</sup>. Thus, in *Agbiti v. The Nigerian Navy*<sup>62</sup>, the court stated that ‘therefore, by virtue of section 137 (1) of the Armed Forces Act, any accused about to be tried by the court-martial shall be entitled to object on any reasonable grounds to any member of the court-martial or the waiting member of the court-martial whether appointed originally or in lieu of another officer.’<sup>63</sup> Members against whom objections are raised and upheld are excused and substitution made thereafter by the convening authority where no objection is raised, the President and members including waiting member(s) are sworn in by the Judge Advocate.<sup>64</sup>

### 3.3 The Right to Object to Membership of Court-Martial

The statutory selection of the President, members, Judge Advocate, and other officers of the court-martial after diligently ascertaining that they are not disqualified by any law sets the stage for the assembly of the court. A Court-Martial is assembled when the court is fully formed and the convening order is read in court. This is followed by the swearing-in of officers of the court. The accused may be given the chance to make an objection if he has any against any member of the court he thinks will not be fair to him during trial.<sup>65</sup> Therefore, a trial can be nullified if an accused is not afforded the opportunity to make an objection<sup>66</sup>. Section 137 of AFA makes a special provision which enables the accused to object, on any reasonable ground, to the membership of any member of a court-martial conveyed to try him.<sup>67</sup> The same section 137 further stipulates that ‘the names of the panel members should be announced in court when accused is present for the purpose of enabling any objection to be taken before the members of the court are sworn and the accused shall be asked whether he objects to any of those officers.’<sup>68</sup> The right of objection is a privilege of the accused.<sup>69</sup> Therefore, the courts have variously held that ‘failure to object to defect in constitution of court-martial by an appellant cannot be treated as a waiver or an estoppel and even if so treated cannot avail the respondent. It is like a situation where a party who raises the issue, of lack of jurisdiction is sought to be stopped

merely because he took part in the proceedings at the lower court.’<sup>70</sup> Thus a party cannot waive a situation where the court clearly and apparently lacks jurisdiction<sup>71</sup>. In *Okoro v. Nigerian Army Council*<sup>72</sup>, the court stated that ‘the failure of a party to raise an objection at a court-martial as to the membership of unqualified officers on the court-martial is not a bar, waiver or an estoppels for the said party to raise objection to the jurisdiction of the court-martial on appeal.’<sup>73</sup>

### 4. Trial Procedures before Courts-Martial

After a preliminary inquiry and consideration of administrative, non-punitive, and non-judicial actions, the unit commander may determine that the matter is sufficiently serious to warrant trial by court-martial. Preferral of charges that initiates the court process follows. Any person subject to the code might prefer charges. However, the persons who prefer charges must:

- a. sign the charges and specification forms under oath before a commissioned officer of the armed forces who is authorized to administer oaths; and
- b. state that they have personal knowledge or have investigated the matters set forth in the charges and specifications and that the allegations are in fact true to the best of their knowledge and belief.<sup>74</sup>

In *Edun v. The Police*<sup>75</sup>, the court stated that ‘a charge and its specification constitute the formal written allegation of criminal behavior by the accused.’<sup>76</sup> Under the CFRN, the charge informs the accused of the specific offence under the Armed Forces Act, alleged to have been violated.<sup>77</sup> Section 123 of AFA states that ‘the specification sets out the specific facts, dates, times, places, and circumstances of the offences to enable the accused prepare his defence to the allegation.’<sup>78</sup> Ordinarily, charges and specifications alleging every renowned crime by a defendant ought to be preferred at the same time. Therefore, section 14 of ICCPR states that ‘the immediate commander must inform the accused of the

<sup>60</sup> *Ibid*

<sup>61</sup> *Ibid*

<sup>62</sup> *Agbiti v. The Nigerian Navy (2011) 4 NWLR (pt. 1236) 175 at 183*

<sup>63</sup> *Ibid* 198

<sup>64</sup> A.A. Onitiju, “Prosecution in the Court-Martial: Proceedings and Procedure” (22nd Advanced Course in Practice and Procedure on 18th July, at the Nigerian Institute of Advanced Legal Studies, Lagos, 2002)

<sup>65</sup> Armed Forces Act, *op cit*, section 137 (2)

<sup>66</sup> Interview conducted at Ikeja Cantonment, 5 October, 2019

<sup>67</sup> Armed Forces Act, *op cit*, section 137

<sup>68</sup> *Ibid*, subsection (2)

<sup>69</sup> O. Achike, *Ground Work of Military Law and Military Rule in Nigeria (Enugu: Fourth Dimension Publishers 1978) 79*

<sup>70</sup> *Ajakaiye v. Military Governor of Bendel State (1993) 9 S.C.N.J. 242; Yusuf v. Cooperative Bank Ltd (1994) 7 N.W.L.R (pt.359) 676; Okesuji v. Lawal (1991) 1 N.W.L.R. (pt. 170) 661; Shaka v. Salisu (1996) 2 N.W.L.R. (pt. 428) 22 at 29*

<sup>71</sup> *Ugo v. Okafor (1996) 3 N.W.L.R.(pt. 438) 542 at 560; Odua’a Investment Co. Limited v. Talabi (1991) 1 N.W.L.R (pt.170) 761 at 781*

<sup>72</sup> *Okoro v. Nigerian Army Council (2003)3 N.W.L.R (pt. 647) 77 at 83*

<sup>73</sup> *Ibid*

<sup>74</sup> Department of Law, US Military Academy ‘Balancing Order and Justice: The Court-Martial Process’ (West Point at the ABA Section of Litigation Section Annual Conference April 18-20, 2012)

<sup>75</sup> See *Edun v. Police (1966) 1 ALL NLR 17*

<sup>76</sup> *Ibid*

<sup>77</sup> See *Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 36 (12)*

<sup>78</sup> *Armed Forces Act, op cit, section 123*

charges and the name of the person who preferred the charges as soon as possible.<sup>79</sup>

The commander may decide to forward the disciplinary concerning an offence to a superior or subordinate commander for action.<sup>80</sup> This may be due to where the commander might lack the power to take action, or a higher commander may have withheld power to act on certain crimes. The commander will thus forward the matter through the appropriate channel to the officer who is authorized to summon a court-martial of the appropriate level for the offence charged. He is known as the convening authority.

The last stage is the referral where the power of the convening officer appoints a particular court-martial panel to try the accused. The convening authority may not refer a charge to a court-martial except there are reasonable grounds to accept that the accused committed the offence charged under AFA. Depending on the seriousness of the charges, they might be directed to any of the two levels of courts-martial as provided for under AFA i.e. a General Court-Martial or a Special Court Martial. The trial is then officially scheduled when the convening authority issues an order convening the court-martial.

Anyone who commits a military crime is detained. However, he shall be brought before his Commanding Officer (CO) without delay who on ascertaining the matter dismisses the case or arraigns him before the Court-Martial. According to The 1911 Classic Encyclopedia<sup>81</sup>, the course of procedure in military trials is as follows:

1. When a soldier is remanded by his C.O. for trial by General Court Martial, a copy of the charge, together with the statements of the witnesses for the prosecution (called the summary of evidence) is furnished to him, and he is given proper opportunity of preparing his defences, of communicating with his witnesses, or legal adviser, and of procuring the attendance of his witnesses.
2. Further, if he desires it, a list of officers appointed to form the court shall be given him. Any officer is disqualified to sit as a member who has convened the court, who is the prosecutor or a witness for the prosecutor, who has made the preliminary inquiry into the facts or who is the prisoner's C.O. or who has a personal interest in the case. The accused may also object to any officer on the ground of bias or prejudice.
3. Except as regards the delay caused by the writing out of the evidence, the procedure at a court-martial is very much the same as that an ordinary criminal trial-the examination-in-chief and cross-examination of the

witnesses, addresses of the prosecutor and defence and the rules governing the admission and rejection of evidence being nearly identical.<sup>82</sup>

The applicable laws in the court-martial include the provisions of the Criminal Procedure Act and the Criminal Procedure Code.<sup>83</sup> Furthermore, section 181 of AFA provides that 'subject to the provisions of section 182 of this Act, the rules of trial relating courts-martial and summary proceedings for the time being in force in the various services of the Armed Forces, that is, the Rules of Procedure (Army) 1972, the Court-martial Procedure for Royal Navy BR 11 and the Rules of Procedure (Air Force) 1972 and shall apply *mutatis mutandis* unless otherwise provided.'<sup>84</sup> The Rules of Procedure (Army) 1972 is fundamentally on all fours with the Criminal Procedure Act. It guarantees an accused person all the safeguards guaranteed under the civilian laws of procedure.<sup>85</sup> In addition, AFA<sup>86</sup> states that 'notwithstanding these provisions, the Rules of Procedure referred to above shall cease to apply when the President makes the rules of procedure and other rules.'<sup>87</sup> Therefore, court-martial, being a military court recognized by the Constitution is perpetually bound by the criminal rules of evidence and manifestations of fair trial. Where such is breached, the trial becomes a nullity.<sup>88</sup> Criminal proceedings are not instituted in courts-martial at the instance of the Attorney General. He is equally not empowered to take over proceedings at courts-martial or enter a *nolle prosequi*.<sup>89</sup> These contrast sharply with section 157(2) of the Customs and Excise Management Act of 1958.<sup>90</sup>

Although the court-martial is a military court, it is nevertheless bound by the rules of evidence and manifestation of fair trials.<sup>91</sup> In essence, courts-martial are bound by the provisions of fair hearing enshrined in section 36 of the Constitution of the Federal Republic of Nigeria, 1999 as amended. Consequently, section 143 (1) of AFA provides that 'except as otherwise provided in the Armed Forces Act, the rules as to evidence to be observed in proceedings before a court-martial shall be the same as those observed in criminal courts in Nigeria and no person shall be required in a

<sup>82</sup> *Ibid*

<sup>83</sup> A.A. Onitiju, 'Prosecution in the Court-Martial: Proceedings and Procedure', (22nd Advanced Course in Practice and Procedure on 18th July, at the Nigerian Institute of Advanced Legal Studies, Lagos, 2002)

<sup>84</sup> Armed Forces Act, *op cit*, section 181(1)

<sup>85</sup> A.Q. Abubakar, "Deconstructing the Basis of Appellate Court Rulings in Court-Martial Decisions and the Way Forward" Vol. 4 (2009) *The Military Lawyer* 6

<sup>86</sup> Armed Forces Act, *op cit*, section 181 (2)

<sup>87</sup> *Ibid*

<sup>88</sup> Agbiti v. *The Nigerian Navy* (2011) 4 NWLR (pt. 1236) 175 at 183

<sup>89</sup> A.Q. Abubakar, "Deconstructing the Basis of Appellate Court Rulings in Court-Martial Decisions and the Way Forward" Vol. 4 (2009) *The Military Lawyer* 63

<sup>90</sup> *Ibid*

<sup>91</sup> *Nigerian Army v. Col. Umar Mohammed* (2003) 40 W.R.N

<sup>79</sup> *International Covenant on Civil and Political Rights, 1996, Article 14 (3) (a)*

<sup>80</sup> *Armed Forces Act, op cit, section 127*

<sup>81</sup> *Military Law, The 1911 Classic Encyclopedia based on the (11th Edition of the Encyclopedia Britannica 1911) < [http://www.1911encyclopedia.org/Military\\_Law](http://www.1911encyclopedia.org/Military_Law) > accessed 11 October 2022*

proceeding before a court-martial to answer a question or to produce a document he could not be required to answer or produce in a similar proceeding before a civil court in Nigeria.<sup>92</sup> Also, AFA provides that 'a witness before a court-martial or any other person whose duty it is to attend or appear before the court-martial shall be entitled to the same immunities and privileges as a witness before the High Court.'<sup>93</sup> Again, AFA<sup>94</sup> provides that 'a court-martial shall sit in the open and in the presence of the accused; however, nothing shall affect the power of a court-martial to sit in *camera* on the ground that it is necessary or expedient in the interest of defence and security to do so.'<sup>95</sup> Courts-Martial sessions are open to the public. Oaths and affirmations are administered and made in the same manner as applicable in the course of administration of justice.<sup>96</sup> This according to the Court of Appeal is mandatory and failure to comply with this requirement will render the proceedings thereupon void.<sup>97</sup> AFA<sup>98</sup> states under section 143 (3) that 'court-martial must take judicial notice of all matters of notoriety, including all matters within the general service knowledge of the court, and of all other matters of which judicial notice would be taken in a civil court in Nigeria.'<sup>99</sup>

Abubakar<sup>100</sup> stated that after the close of the case for the prosecution the accused is informed of his rights. The President or the Judge Advocate would explain to the accused that:

- a) If he wishes, he may give evidence on oath as a witness or make a statement without being sworn, but that he is not obliged to do either;
- b) If he gives evidence on oath, he will be liable to be cross examined by the prosecutor and to be questioned by the court and the Judge Advocate (if any) but that if he makes a statement without being sworn, no one will be entitled to ask him any questions; and
- c) Whether he gives evidence or makes a statement or remains silent, he may call witnesses on his behalf both to the facts of the case and to his character.<sup>101</sup>

Rule 58 of the Rules of Procedure (Army) 1972, states that 'the accused through his counsel may submit to the court a no case to answer to any charge for which he was arraigned that the prosecution has failed to establish a prima facie case for him to answer.' If the court is satisfied, it would uphold same, and where

the no case is rejected, the accused will be invited to open his defence to the charge.

When the prosecutor and the defence have closed their case, the Judge Advocate advises the court on points of law by summing up evidence. At the end of the Judge Advocate's address, the court retires to consider arguments on the facts and evidence led before it. The court would thereafter reopen to announce its verdict in the open court.<sup>102</sup> AFA<sup>103</sup> provides that 'the proceedings before a court-martial are usually in public, except in the matters that offend public morality, compromise public order, or where publicity is considered injurious to the public.'<sup>104</sup> Section 141 (2) of AFA provides on finding and sentence that 'the sentence of a court-martial, together with any recommendation to mercy shall be announced as being subject to confirmation'<sup>105</sup> while section 153 of AFA concerns the approval of death sentence by the President, i.e. a sentence of death passed by a court-martial shall not be carried into effect unless it is approved by the President.<sup>106</sup> The court is empowered under section 142 of AFA to enter a verdict for an offence other than the one charged. It may impose less punishment where the facts proved support a finding of guilt a lesser degree of punishment. Similarly, under section 142 (3) of AFA, where the accused may be found guilty of attempting to commit the offence he may still be convicted on that charge of attempting notwithstanding that it is proved that he actually committed the offence<sup>107</sup>. However, when he pleads guilty, the court finds a verdict consequently, reads the summary evidence, hears any statement in mitigation of punishment, and takes evidence as to the character before proceeding to pass sentence.<sup>108</sup> Under the provisions of AFA<sup>109</sup>, the sentence is that of the majority of the court, except where death is awarded when two-third of the members in the case in the case of a general court-martial and the whole in that of a field general court-martial must concur.<sup>110</sup> However, under the provisions of Manual of Military Law, where the accused pleads otherwise, the court must determine:

- (a) Where the facts of the case are; and
- (b) The legal consequences of these facts, that is, whether the facts proved in evidence constitute the offence charged or some other offence of which the court may convict the accused or disclose no offence at all.<sup>111</sup>

Similarly, the Manual of Military Law<sup>112</sup> provides that 'when an acquittal upon all the charges takes place the verdict is announced in the open court, the prisoner is released without any further

<sup>92</sup> *Armed Forces Act, op cit, section 143 (1)*

<sup>93</sup> *Ibid, section 144*

<sup>94</sup> *Armed Forces Act Cap. 20 Laws of the Federation of Nigeria, 2004*

<sup>95</sup> *Ibid, section 139 (1) and (2)*

<sup>96</sup> *Ibid, section 138*

<sup>97</sup> *Yakubu v. Chief of Naval Staff (2003) 46 W.R.N 122*

<sup>98</sup> *Armed Forces Act, op cit, section 143(3)*

<sup>99</sup> *Ibid*

<sup>100</sup> *A.Q. Abubakar, "Deconstructing the Basis of Appellate Court Rulings in Court-Martial Decisions and the Way Forward" Vol. 4 (2009) The Military Lawyer 65*

<sup>101</sup> *Ibid*

<sup>102</sup> *Armed Forces Act, op cit, sections 139 and 140*

<sup>103</sup> *Ibid, section 139 (3)*

<sup>104</sup> *Ibid*

<sup>105</sup> *Ibid, section 141 (2)*

<sup>106</sup> *Ibid, section 153*

<sup>107</sup> *Ibid, section 142 (3)*

<sup>108</sup> *Ibid, see sections 141 and 142*

<sup>109</sup> *Ibid, sections 140-142*

<sup>110</sup> *Ibid*

<sup>111</sup> *M.M.L., Chap. 7, 77*

<sup>112</sup> *Ibid*



proceeding. No conviction or sentence has any effect until it is thus confirmed by the proper authority.<sup>113</sup>

The court-martial system upholds the rights of the accused. However, the process in military courts varies from country to country. Thus, *The 1911 Classic Encyclopedia*<sup>114</sup> made it obvious that in some systems, procedures adopted are as follows:

- (a) The examination and preparation of evidence are confided to a *juge d'instruction*;
- (b) In other systems procedures, they are confided to a special commission of inquiry;
- (c) Again, in other places they are left to the court-martial itself that will judge the case.

In addition, The Encyclopedia<sup>115</sup> stated that:

1. Most of the common law countries such as United Kingdom and United States follow the last plan. A commission of inquiry for the preparation of evidence is held in Norway, Denmark, Germany, Austria, Hungary, Belgium, and Holland. An auditor directs these courts of inquiry.
2. In Russia an officer acts as *juge d'instruction*; in grave cases he must be a military juriconsult.
3. In Italy, Spain, Rumania, Greece, and Turkey an officer acts as *juge d'instruction*.
4. In several States such as Norway, Denmark, Holland, Austria, and Germany, the public prosecutor is also the counsel of the accused. In other states, there is a special office of public prosecutor.
5. In Spain, Portugal, Romania, Greece, and Turkey he is an officer. In Russia, Belgium, Switzerland, and Italy he is a military lawyer. In these countries the accused has the right to choose a counsel, or one is assigned him.
6. In the United Kingdom and the United States, when the matter is grave, the direction of the case is put in the hands of a judge advocate. In the United States the judge advocate is the public prosecutor.<sup>116</sup>

Certainly, the procedures enumerated here differ from what obtains in Nigeria as previously explained.

## 5.0 Confirmation and Review of Court-Martial proceedings and findings

### 5.1 Confirmation of proceedings and Revision of findings of Courts-Martial Decisions

The AFA provides some safety valves for an accused. Accordingly, section 149(1) of AFA is to effect that an accused is encouraged within 90 days after being sentenced by a court-martial and before the sentence is confirmed, to submit to the confirming authority any written matter which may reasonably tend to affect the confirming authority's decision whether to disapprove a finding of guilty or to approve a sentence. This process does not exist in the regular justice system and further reinforces the necessity to exhaust all administrative redress and appellate chain within the military justice system before seeking other remedies.<sup>117</sup> According to Mukhtar<sup>118</sup>, matters which may be submitted under this provision include the following:

1. Allegation of errors affecting the legality of the trial;
2. Portions or summaries of the record or copies of documentary evidence offered or introduced at the trial; and
3. Matters in mitigation which were not available for consideration at the trial.<sup>119</sup>

In *Akinwale v. The Nigerian Navy*<sup>120</sup>, the Court of Appeal through its obiter stated that 'one of the peculiar features of the proceeding of General Court-Martial is that the act of confirmation and promulgation are integral to and are components of the process of investigation, the trial and delivery of sentence.'<sup>121</sup> Oguntade, JCA, (as he then was) put it thus:

The process of hearing before the General Court-Martial and the confirmation of sentences are one and the same integral part of the trial of an accused person under the Armed Forces Act. When a sentence has not been confirmed by the confirming authority, the hearing is not completed.

Abubakar maintains that 'when a court-martial has reached a finding and if the accused person is found guilty, the court will pass sentence on him. Such a sentence must be within the limits prescribed by the law creating the offence of which the accused has been found guilty.' Again, under the provisions of AFA, a finding of guilty or sentence of a court-martial shall not be treated as a finding or sentence of the court-martial until it is confirmed. This is unlike what obtains under the civilian criminal trials where the sentence takes immediate effect. A finding of not guilty does not require confirmation. It takes immediate effect from pronouncement by the court. The powers conferred on Confirming Authority pursuant to section 151 (1) (a) of AFA regarding withholding confirmation, if the Confirming authority is of the opinion that the finding of the court-martial is unreasonable or cannot be supported, having regard to the evidence or to the fact

<sup>117</sup> A. S. Mukhtar, "The Doctrine of Exhausting Military Remedies and the Appellate Chain for the Military Justice System under the Democratic Dispensation" Vol. 4 (2009) *The Military Lawyer* 34

<sup>118</sup> *Ibid*

<sup>119</sup> *Ibid*

<sup>120</sup> (2001) 16 NWLR (pt. 738) 109

<sup>121</sup> *Akinwale v. Nigerian Army* (2004) 12 NWLR (pt. 738) 109, per Galadima, JCA

<sup>113</sup> *Ibid*

<sup>114</sup> *Military Law, The 1911 Classic Encyclopedia*

<sup>115</sup> *Ibid*

<sup>116</sup> *Ibid*

that it involves a wrong decision on a question of law or that on any other grounds was a miscarriage of justice. Section 151 (b) and (c) state that 'by confirming the finding or sentence or by referring the finding or sentence or both to a higher confirming authority.' In *Yekini v. Nigerian Army*, the Court of Appeal stated the duty of confirming authorities and the rights of court-martial thus:

The court-martial like any other court or Tribunal established by law for determination of civil rights and obligation has a duty of fairness in proceedings before it. On the provisions of section 148(3) of the Armed Forces Decree No. 105 of 1993 (as amended) when it is stated that a finding or sentence of the court-martial be confirmed, however such, confirming authority is expected to play a quasi-judicial function which includes the observance of fairness in its proceedings, its decision is vitiated if fairness in its proceeding is not apparent. The holding of the court is hinged on the fact that the right of the court-martial convict to petition confirming authority was obstructed

Under the provisions of AFA, the under-mentioned persons are competent to confirm the finding or sentence of a court-martial, i.e.

- (a) The Service Chief concerned where the accused person is a warrant officer, chief-petty officer, soldier, rating or airman;
- (b) The appropriate Service Council or Board, as the case may be, where the accused person is a commissioned officer; or
- (c) In the absence of the persons specified in paragraphs (a) and (b), an officer appointed by the appropriate superior to act as the confirming authority.

Equally, the same AFA provides that the following shall not confirm the finding or sentence of a court-martial, that is:-

- (a) An officer who was a member of the court-martial; or
- (b) A person who, as commanding officer of the accused, investigated the allegations against him or who is for the time being the commanding officer of the accused; or
- (c) The person who as Appropriate Superior Authority, investigated allegations against the accused.

The exclusion of these persons from sitting on appeal over their own decisions is a welcome development unlike the position under the Decree where a convening officer could serve as a confirming officer. Furthermore, according to Akinseye-George, 'this provision is in consonance with the constitutional right to fair hearing amply hinged on one of the two pillars of natural justice that one cannot be a judge in one's own case.' Appeals from the decisions of courts-martial go to the Court of Appeal and finally to Supreme Court. Furthermore, section 150 of AFA provides that, 'a confirming authority may direct that a court-martial shall revise its finding of guilty where it appears that the finding was against the weight of evidence, some question of law determined at the trial and relevant to the finding was wrongly determined.' This post-trial procedure of confirmation is so fundamental that where it is

breached or not conformed with, it shall be held to be a nullity on appeals. Thus, in the case of *Gami v. Nigerian Army, Oguntade, JCA* (as he then was) opined that:

The confirming authority by proceeding to confirm the decision of the General Court-Martial without waiting for the representation of the appellant would appear to have believed that nothing the appellant said could have persuaded him to change its mind...I think the approach was wrong and not to be repeated.. This shoddy proceedings in my respectful view, makes a mockery of the independence and impartiality provided and guaranteed by the Constitution of this country

Section 153 of AFA is to the effect that sentence of death passed by a court-martial requires the approval of the President, Commander-in-Chief before it is carried out.<sup>122</sup> However, there is a time lag for the submission of the petition to the confirming authority. Hence, an accused can within three months after sentencing by a court-martial and before it is confirmed; petition the confirming authority on the above grounds. However, if he does not petition before the confirmation of the decision of the court-martial, he may submit a petition a petition for review after confirmation.<sup>123</sup> The confirming authority should not show any act of bias towards the petition of the accused. Thus, in *Akinwale v. The Nigerian Army*<sup>124</sup> where the trial general court-martial delivered its sentence on 16<sup>th</sup> August 1996, which was confirmed and promulgated on the same day. On appeal, the Court of Appeal observed that: it is most improbable that a proper confirmation and review could be completed within only one day, as provided for by section 149 (1) of the Act, when in actual fact the petition written on behalf of the appellant by his counsel was written and dated 16<sup>th</sup> August, 1996<sup>125</sup> The Appeal Court concluded that "it is clear that the appellant's petition against his conviction and sentence was not received, considered and judiciously reviewed before confirmation.

The Armed Forces Disciplinary Committee (AFDC) while it existed was condemned the manner it considered the petition to it from the GCM case of *Mohammed v. The Nigerian Army*<sup>126</sup> where the Court of Appeal held thus:

Although the Appeal Committee (AFDC) fairly summarized the nature of the appellant's complaint (of lack of fair hearing occasioned by the descent into the arena by the President of the GCM), the perfunctory manner in which it dismissed the allegations of bias and absence of fair trial shows that it not give adequate considerations to the instances alluded by the appellant...the Appeal Committee should have upheld the contention of the appellant that the proceedings were vitiated by a pervasive breach of the duty of fairness.<sup>127</sup>

<sup>122</sup> *Armed Forces Act, op cit, section 153*

<sup>123</sup> *Ibid, section 154*

<sup>124</sup> (2001) 16 NWLR (pt. 738) 109

<sup>125</sup> *Ibid, p. 122*

<sup>126</sup> (1988) 7 NWLR (pt. 557) 232

<sup>127</sup> *Ibid, pp. 249-250; also see Akinyemi Oshuntoye, Jemibewon's Introduction to Military Law (Ile-Ife: Awolowo University Press Ltd 2010) 106-107*

Accordingly, sections 151 (6) and 175 of AFA are to the effect that the confirmation of a finding or sentence shall not be deemed to be completed until such finding or sentence has been promulgated.<sup>128</sup>

The Presidential Regulations for the Nigerian Army<sup>129</sup> provides that promulgation shall be in the following forms:

- (a) By being communicated to the accused; or
- (b) If the accused absents himself without leave before any such matter can be communicated to him, by being published in the orders of the unit to which he belongs or is attached; or
- (c) In such manner as may be directed for special reasons by the confirming officer or reviewing authority.<sup>130</sup>

The Presidential Regulations for the Nigerian Army further states that the result of every court-martial is to be published in the orders in which the convening of the court was published and in the orders of the unit to which the accused belongs or is attached.<sup>131</sup>

### 5.0 Review of Judgments of Court-Martial

Reviews and petitions mark the beginning of the end of military jurisdiction; appeals trigger the civilianization of military justice, hitherto, through the Armed Forces Disciplinary Committee (AFDC) to the Court of Appeal and from thence to the Supreme Court. The AFDC having been abolished in 1997<sup>132</sup>, its functions and powers were transferred to the Court of Appeal.

It is pertinent to look at the provisions of the Draft Principles Governing the Administration of Justice through Military Tribunals<sup>133</sup> where it states that ‘the exercise of the rights of the defence must be fully guaranteed in military courts under all circumstances. The Draft Principles also states that “everyone convicted of a crime shall have the right to have his or her conviction and sentence reviewed by a higher tribunal according to law.”<sup>134</sup>

Under section 154 of AFA, ‘an accused person may, after confirmation of a finding or sentence of a general court-martial or of a special court-martial, submit a petition for review of the finding or sentence to a reviewing authority.’ Similarly, the Act states that ‘the reviewing authority for the purposes of the Act shall be the appropriate Service Council or Board or a person so delegated to act for the Service Council or Board.’<sup>135</sup> Other powers of the confirming authority are stated under section 151 (3) of AFA provides as follows:

Where it appears to a confirming authority that a sentence of a Court-Martial is invalid, the confirming authority may, instead of

withholding confirmation of the sentence, substitute therefore a proper sentence of any punishment which might have been awarded by the court, not exceeding or, in the opinion of the confirming authority, more severe than that awarded by the Court-Martial.

The scope and extent of power of confirming authority to review sentence of court-martial is well articulated by the Court of Appeal in the case of *Lt. Felix Olanrewaju Odunlami v. The Nigerian Navy*<sup>136</sup> as follows:

By virtue of section 151 of the Armed Forces Act, where it appears to a confirming authority that a sentence of a court-martial is invalid, it may instead of withholding confirmation of the sentence, substitute thereof a proper sentence of any punishment which might have been awarded by the court, not exceeding, or in the opinion of the confirming authority, more severe than that awarded by the court-martial. And, where the confirming authority withholds confirmation under the section, notice thereof shall be promulgated, and it shall have effect as from the date of the promulgation.<sup>137</sup>

By section 154(1) of AFA, an accused may, after confirmation of a finding or sentence of a general Court-Martial or of a Special Court-Martial, submit a petition for review of the finding or sentence to a reviewing authority. However, section 154 (6) of AFA subordinates the reviewing authority’s functions to the right of the convict to file an appeal. The section provides as follows:

If an appeal or application for leave to appeal is lodged with the Registrar of the Court of Appeal under the provisions of Part XVI of this Act so much of subsection (2) of this section as requires the review of a finding or sentence against which a petition has been presented shall thereupon cease to apply to the finding to which the appeal or application for leave relates and to the sentence passed in consequence of that finding.

#### 5.0.1 The Effect of Review of the findings of a Confirming Authority on the Independence of Courts-Martial

The European Court of Human Rights has stated in some recent cases<sup>138</sup> that ‘administrative review bodies (similar to the reviewing authority under the Armed Forces Act of Nigeria) offend Article 6 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention).’<sup>139</sup> Article 6 (1) requires that in the determination of criminal charges courts must be independent and impartial. Thus, in *Brumarescu v. Romania*,<sup>140</sup> the court held that ‘Article 6 (1) includes the right to a court which administers justice unobstructed by review tribunals with the power to annul without limit of time a

<sup>128</sup> *Armed Forces Act, op cit, sections 151(6) and 175*

<sup>129</sup> *The Presidential Regulations for the Nigerian Army, para. 5.069, 188*

<sup>130</sup> *Ibid*

<sup>131</sup> *Ibid, para. 5.071*

<sup>132</sup> *Armed Forces (Amendment) Decree No. 15 of 1997*

<sup>133</sup> *UN Commission on Human Rights, E/CN.4/2006/58, (2006)*

<sup>134</sup> *Ibid*

<sup>135</sup> *Armed Forces Act, op cit, section 154 (3)*

<sup>136</sup> (2011) 6 NWLR (pt. 1244) 589 at 595

<sup>137</sup> *Ibid at 596*

<sup>138</sup> *Martin v. United Kingdom Application No. 4042/98, 2006 and Morris v. United Kingdom (2002) EHRR 34*

<sup>139</sup> *Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1960) 213 UNTS 222*

<sup>140</sup> (1999) EHRR 33-862

final, binding and executed judgment.’ The same reasoning was applied to the United Kingdom’s court-martial review system in *Morris v. United Kingdom*,<sup>141</sup> in which the European Court, citing *Brumarescu v. Romania*,<sup>142</sup> held that the army review procedure, similar to New Zealand’s Board of Review, undermined the independence of the trial court-martial. The court further held that:

The very fact that the review was conducted by such a non-judicial authority as the “reviewing authority” is contrary to independence required by Article 6 (1) of the European Convention. The court is particularly concerned by the fact that the decision whether any substituted sentence was more or less severe than that imposed by the court-martial would have been left to that authority. The court’s concerns are not answered by Government’s argument that the existence of the review serves the interests of convicted soldiers such as the applicant nor by the essentially fair procedure followed by the authority when conducting its review. The court is of the view that the fundamental flaws which it has identified were not corrected by the applicant’s subsequent appeal to the Courts-Martial Appeal Court.

The court in *Morris v. United Kingdom*,<sup>143</sup> went further on to conclude that ‘the review tribunal adversely affected the objective independent status of the court-martial, and that such courts were therefore not independent and impartial for the purposes of Article 6(1) of the European Convention.’ In line with Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Rights, the Nigerian public would not accept such a tribunal whose decisions are reviewed by a non-judicial body as a fair vehicle for the dispensing of justice.<sup>144</sup>

Furthermore, under the review, no further evidence will be received. Also, the accused person will not be privy to the proceedings. Accordingly, the provision under section 150 of AFA offends the principle of fair hearing, equity, and natural justice. Additionally, the provision is in breach of the rule of *functus officio*. Hence, the court-martial cannot sit on appeal to amend, review, quash or interfere with its earlier decision.

## 6. Double Jeopardy and the Power of Reviewing Authority

The question that arises from the above analysis is that ‘Does the present practice of sending cases back to reviewing authority amount to double jeopardy in spite of constitutional provisions thus?’ No person who shows that he has tried by any court of incompetent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.<sup>145</sup>

What it entails is that where a person subject to military law, like any civilian criminal law, has been duly convicted or acquitted by a

court-martial and has been tried, cannot be tried again, against his will, for the same offence, or for any included offence, and it is immaterial whether the conviction or acquittal has been approved or disapproved. The reviewing authority,<sup>146</sup> i.e., the Service Council or Board, represents essentially a first appellate stage. No sentence of court-martial can be carried into execution until it has been approved by reviewing authority, that is, neither acquittal nor conviction is effective until it has been approved by the reviewing authority. The very object of this reviewing authority is to secure the due application of the law and to surround the accused with an additional protection independent of the trial court.

In this respect, the military justice system is different from the usual civil code. Incidentally, the reviewing authority’s power includes quashing the finding and if the sentence relates only to the finding quashed, quash the sentence, in any other case, exercise the powers of substituting a finding of invalid for invalid sentence and of remitting or commuting punishment as are conferred by the Armed Forces Act (AFA), 2004. Intrinsically, nothing more is here implied than that the court is to reconvene and reconsider its judgment freely and independently. It is no sense a measure which subjects the court-martial to the command of the reviewing authority in framing the tenor of its judgment upon such reconsideration: for the court is, under the law, entirely at liberty to adhere to its original decision. In addition, the power is exercised in the vast majority of cases solely for example for formal corrections which will make the record of the trial correspond to facts. The revision, therefore, is not a new trial within the meaning of section 149 of AFA, 2004.

A new trial is a rehearing of the case. A Court-Martial on revisal does not rehear the case, it only reconsiders the record for the purpose of correcting or modifying any conclusions thereon. The true analogy of such a revisal ‘...is the case of a jury sent out by the court to reconsider its verdict.’<sup>147</sup> Therefore, the revisal may possibly not be, technically speaking, a new trial and perhaps is not forbidden by the Armed Forces Act, 2004. It is also not contrary to constitutional provisions of double jeopardy.<sup>148</sup> The Armed Forces Act (AFA) provides that ‘The punishment shall be such as the Court-Martial and not the commanding officer may direct, and that the trial shall be had before the Court-Martial, and not the commanding officer, and that no person shall be twice tried for the same offence’.<sup>149</sup> That the practice is anomalous, indeed, seems to be fully recognized by the military authorities, for they all appear to agree that on the review or rehearing no new evidence can be taken.

Jeopardy or trial means the prosecution of a case to a verdict; that unless the case has proceeded at least to an acquittal or a

<sup>146</sup> *Armed Forces Act, op cit, section 154 (3)*

<sup>147</sup> A.A. Bruce, ‘Double Jeopardy and the Power of Review in Court-Martial Proceedings’, (1919), *Minnesota Law Review*. 836. < <https://scholarship.law.umn.edu/mlr/836> > accessed 17 December 2022

<sup>148</sup> *Constitution of te Federal Republic of Nigeria, (n 1) s. 36 (9)*

<sup>149</sup> *Armed Forces Act, op cit, sections 139, 140, 141 and 171*

<sup>141</sup> *Morris v. United Kingdom (2002) EHRR 52*

<sup>142</sup> *Ibid*

<sup>143</sup> *Ibid*

<sup>144</sup> *See Constitution of the Federal Republic of Nigeria, 1999, (as amended) Chapter 4*

<sup>145</sup> *Ibid, section 36 (9)*

conviction, there has been no trial and therefore no jeopardy.<sup>150</sup> Similarly, the word 'tried' in section 36 (9) of the 1999 Constitution is to be interpreted as meaning duly prosecuted before a court-martial to a legal conviction or acquittal. After such a conclusion the Constitution prohibits a further trial of the accused save upon the order of a superior court. To complete the trial, no judgment or sentence properly follows at once, and as a matter of course upon a conviction, a court-martial will properly hold an accused to have been tried in the sense of the Constitution, when he has been duly acquitted or convicted, without regard to whether, in a case of conviction, a sentence or a legal sentence has been adjudged. Further, where the accused in a military case has been once duly acquitted or convicted, he has been tried in the sense of the Constitution, although no action may have been taken upon the finding or proceedings by the review authority. Nor has he been any the less tried where the finding has been formally disapproved, by such authority. For the finding is no less a consummation in law of the trial, though, from a cause beyond the control both of the accused and the court, such finding has been rendered ineffective. In interpreting section 40 of the Articles of War,<sup>151</sup> which provides that no person shall be tried a second time for the same offence, which is similar to section 36 (9) of Nigeria's Constitution, Major General George B. Davis says:

The Constitution declares that 'no person shall be subjected for the same offence to be twice put in jeopardy of life or limb.' The United States courts, in treating the term 'put in jeopardy' as meaning practically tried, hold that the 'jeopardy' indicated 'can be interpreted to mean nothing short of the acquittal or conviction of the prisoner and the judgment of the court thereon.' So it has been held that the term 'tried', employed in this article, meant duly prosecuted, before a court-martial, to a final conviction or acquittal; and therefore that an officer or soldier, after having been duly convicted or acquitted by such a court, could not be subjected to a second military trial for the same offence, except by and upon his own waiver and consent...where the accused has been once duly convicted or acquitted he has been 'tried' in the sense of the Article, and cannot be tried again, against his will, though no action whatever be taken upon the proceedings, findings (and sentence, if any), be wholly disapproved by him. It is immaterial whether the former conviction or acquittal is approved or disapproved.<sup>152</sup>

A new trial has been succinctly described by Garner as follows:

A post-judgment retrial or re-examination of some or all of the issues determined in an earlier judgment. The trial court may order a new trial by motion of a party or on the court's own initiative. Also, when an appellate court reverses the trial court's judgment, it

may remand the case to the trial court for a new trial on some or all of the issues on which the reversal is based.<sup>153</sup>

The phrase of section 36 (9) of the Constitution of Nigeria, 1999 which reads thus '...shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a Superior court' contemplates a situation where a person who can be so charged, may be tried once again even after the order of the conviction or acquittal in the previous case, however with prior consent of the state government acting through the office of the Attorney General or DPP as the case may be by filing for and obtaining the required leave or consent order under section 185 (b) of the Criminal Procedure Code.<sup>154</sup>

Therefore, where the accused has been once duly convicted or acquitted he has been tried in the sense of the Constitution, and cannot be tried again, against his will, though no action whatever be taken upon the proceedings by the reviewing authority, or though the proceedings, and sentence if any, be wholly disapproved by him. It is immaterial whether the former conviction or acquittal is approved or disapproved.

Furthermore, nowhere speaking of the reviewing power under section 154 of AFA that suggests that a rehearing may be ordered, nor that any resubmission or recommendation may be made to the court-martial.' Nowhere even is the word "recommendation" used. The Act merely provides that 'the authority can quash the finding or exercise the powers of substituting a finding of invalid for invalid sentence.'<sup>155</sup> The question then, is, 'Is there anywhere any intimation that a new trial may be ordered or a revision of the record by the court-martial may be suggested, and a verdict of guilty substituted for that of not guilty?' Thus, the practice is nothing but an arbitrary assumption of power.

## 6.0 Conditions to entitle the Accused to the Plea of Double Jeopardy

The doctrine of double jeopardy is revered as a principle vital to the protection of personal freedom. It underpins the legitimacy of the common law rule which ordains that a man should not be put in peril twice on a charge for the same or practically the same offence.<sup>156</sup> When a criminal charge is brought against an accused person by the State, he is taken to Court and arraigned. Usually, the allegations are read out as contained in the charge sheet and the accused will then be required to enter a plea. One of such pleas required or a combination of such pleas is the *plea of autrefois convict* or *autrefois acquit*. These pleas are provided for in section 36 (9) of the 1999 Constitution (as amended).<sup>157</sup>

<sup>150</sup> A.A. Bruce, *op. cit*

<sup>151</sup> *Articles of War are the rules and regulations that govern the activities of an army and navy. They are the bodies of laws and procedures that governed the U.S. military until replaced by the Uniform Code of Military Justice.*

<sup>152</sup> G.B. Davis. *Military Laws of United States*, (3<sup>rd</sup> edn. U.S. Government Printing Office, 1897) 533

<sup>153</sup> Bryan .A. Garner, *Black's Law Dictionary* 1812

<sup>154</sup> *Bature v. State* (1993) 1 NWLR (pt. 300) 267

<sup>155</sup> *Armed Forces Act op cit*, section 154 (4) (a) (b)

<sup>156</sup> *Nafiu Rabiu v. Kano State* (1980) LPELR-2936 (SC); *Imade v. IGP* (1993) 1 NWLR (pt. 271) 608; *Nigerian Army v. Brig. Aminu Kano* (2010) 5 NWLR (pt. 1188) 429

<sup>157</sup> *See Agagaraga v. FRN* (2006) LPELR 5655 (CA); *Ali v. FRN* (2016) LPELR-40472 (CA); *Aliyu v. FRN & Ors* (2020)

In view of the above, it is trite that for the constitutional provision of the right against double jeopardy to apply, the following conditions must occur:

- a. There must be a first trial which must be on a criminal charge;<sup>158</sup>
- b. The first trial must have been before a court of competent jurisdiction;<sup>159</sup>
- c. The first trial must have ended with a conviction or an acquittal;<sup>160</sup> and
- d. The two offences must be the same, have the same ingredients, the same set of facts, or on the same charge, which means that the two offences must have the same offender, place, time, victim, and offence.<sup>161</sup>

The International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR) expressly prohibit the bringing of a second prosecution for the same offence. Thus, ICCPR<sup>162</sup> provides that 'no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country'.

The doctrine is not without its exceptions. One, it must be in accordance with the last phrase of section 36 (9) of the Constitution which states that 'save upon the order of a Superior Court. In addition, the defendant can be charged with two identical but separate crimes. Furthermore, if a defendant/accused is tried for a criminal case, double jeopardy does not protect them from also being tried for a related offence in civil court.

It is our submission that juxtaposing the above-prevailing circumstances necessitating double jeopardy with sections 149, 153, and 154 of the AFA, the power of the Reviewing Authority does not amount to double jeopardy. Hence, the section does not contravene the constitutional provision of section 36 (9).

## 5. Appeals from Court-Martial

In Nigeria, there are provisions made for appeals from courts-martial to higher courts. This is in line with the provision of Article 14 (5) of the ICCPR<sup>163</sup> and UN Draft Principles Governing the Administration of Justice through Military Tribunals<sup>164</sup> where Principle No. 17, provides as follows:

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*LPELR 50517 (CA); State v. Alaefule [2020] LPELR-49789 and Nwude v. FRN & Ors (2015) LPELR-25858*

<sup>158</sup> *R. v Jinadu (1948) 12 WACA 368*

<sup>159</sup> *Chief of Air Staff v. Iyen (2005) AII FWLR (pt. 252) 1; Umeze v. The State (1973) 6 SC 221*

<sup>160</sup> *Romrig Nigeria Ltd v. FRN (2014) LPELR-22759 (CA); Clarke v. AG Lagos State (1986) 1 QLRN 119*

<sup>161</sup> *Samson Umen Sunday v. The State (2017) LPELR-42140 Article 14 (7)*

<sup>163</sup> See also *European Convention, Article 2 of Protocol 7; American Convention, Article 8(2) (h); and African Commission Resolution para. 3*

<sup>164</sup> *UN Commission on Human Rights, E/CN.4/2006/58 (2006)*

In all cases where military tribunals exist, their authority should be limited to ruling in the first instance. Consequently, recourse procedures, particularly appeals, should be brought before the civil courts. In all situations, disputes concerning legal issues should be settled by the highest civil court. Conflicts of authority and jurisdiction between military tribunals and ordinary courts must be resolved by a higher judicial body, such as a supreme court or constitutional court that forms part of the system of ordinary courts and is composed of independent, impartial, and competent judges.

The right to appeal is aimed at ensuring at least two levels of judicial scrutiny of a case, the second of which must take place before a higher tribunal. Section 240 of the Constitution of the Federal Republic of Nigeria, 1999 is the source of jurisdiction of a Court of Appeal in Nigeria to hear appeals from Military Court-Martial-general and special. It provides as follows:

Subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Federal High Court, the High Court of the Federal Capital Territory, Abuja, Shariah Court of Appeal of a State, Customary Court of Appeal of the Federal Capital Territory, Customary of Appeal of a State and from decisions of Court-Martial or other Tribunals as may be prescribed by an Act of the National Assembly.

Section 183 of AFA<sup>165</sup> stipulates that an appeal from the decision of a court-martial lies to the Court of Appeal with the leave of the latter except in a decision involving a sentence of death in which case an appeal would lie without leave of court.<sup>166</sup> Again, section 202 of AFA provides that an appeal shall lie from the decision of Court of Appeal to the Supreme Court.<sup>167</sup>

It would appear that unlike the normal procedure in the Court of Appeal that applies to non-service personnel, all appeals to the Court of Appeal from the Court-Martial must be with the leave of the Court of Appeal the only exception being cases involving the death sentence. In the case of persons not subject to the service laws, all appeals are subject to section 242 (1) of the Constitution. Sections 240, 241, and 242 of the 1999 Constitution when read together provide for an absolute right of appeal to citizen including the members of the Armed Forces. However, there seems to be conflict between the provisions of the Constitution and Part XVI of the AFA. Consequently, in the likelihood of any conflict, the Constitution prevails. Hence, the provisions of the AFA cannot prevent any person, whether to service laws or ordinary Nigerians from exercising his right of appeal from a final decision of a Court-Martial or an interlocutory ruling on grounds of law alone.<sup>168</sup> For

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<sup>165</sup> *Armed Forces Act, op cit, section 183*

<sup>166</sup> *Ibid*

<sup>167</sup> *Ibid, section 202*

<sup>168</sup> *M. Agbamuche, 'Appellate Review at Military Law', (Nigerian Institute of Advanced Legal Studies/Nigerian Navy Training Course on Military Law at The Nigerian Institute of Advanced Legal Studies, University of Lagos Campus, Akoka, Lagos from 25-27 March 2013)*

clarification purpose, it is pertinent to state the provision of the Armed Forces Act section 184(1) as follows.

Leave to appeal to the Court of Appeal shall not be given except in pursuance of an application in that behalf made by or on behalf of the appellant and lodged, subject to subsection (2) of this section, within forty days of the date of promulgation of the finding of the court-martial in respect of which the appeal is brought with the Registrar of the Court of Appeal, being an application in the prescribed form and specifying the grounds on which leave to appeal is sought and such other particulars, if any, as may be prescribed.

By virtue of the combined provisions of section 202 of AFA and section 232(2), (3), and (5) of the Constitution of the Federal Republic of Nigeria, any person not satisfied with the judgment of the Court of Appeal delivered after proceedings of the Court-Martial can appeal against such judgment. Therefore the appeal from the decisions of the Court-Martial to the Court of Appeal and subsequently to the Supreme Court in Nigeria is a Constitutional right. This was affirmed by the Supreme Court decision in *N.A.F v. Wing Commander T.L.A. Shekete*<sup>169</sup> where it stated that either party to court-martial proceedings has a right of appeal at every stage up to Supreme Court albeit with leave, except in any decision involving a sentence of death where appeal is as of right.

However, going by the provisions of section 190 of AFA, 'it shall be the duty of the Attorney-General of the Federation on an appeal against a decision of a court-martial to undertake the defence of the appeal.' Despite this provision, there should be a proviso to the section empowering the armed forces to engage counsel of their choice to undertake the defence of appeals against decision of courts-martial.

## 6. Conclusion and Recommendations

Courts-martial is a formal military courts presided over by a military president in Nigeria. They are designed to deal with more serious offences, and are conducted in accordance with rules and procedures similar to those followed in civilian criminal courts while maintaining the military character of the proceedings. Courts-martial may be held anywhere in the world. Statutorily, courts-martial have the same rights, powers, and privileges as superior courts of criminal jurisdiction with respect to all matters necessary or proper for the due exercise of its jurisdiction, including the attendance, swearing, and examination of witnesses, the production and inspection of documents and the enforcement of suspects rights.

Nigeria's military justice system continuous to evolve in harmony with the requirements of the Nigerian Constitution and the Nigerian values generally. Nevertheless, at its core, the system remains that is focused on contributing to the maintenance of discipline, efficiency, and morale of the Nigerian armed forces, and one that preserves a strong role for the chain of command at all appropriate stages.

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<sup>169</sup> (2002) 14 N.W.L.R. (pt. 788) 418 at 422

It is imperative for stakeholders in military law and justice to take steps to review the Armed Forces pertaining to the proceedings of courts-martial under the Armed Forces Act, 2004. It is also recommended that the necessary infrastructure be set in motion for the use of court-martial to enable the aid of quick, effective and efficient dispensation of military justice. The post-trial procedure for court-martial should be as swift as the actual trials in order to avoid unnecessary delay and miscarriage of justice.