

**DOCKING THE DEFENDANT IN CRIMINAL TRIAL IN NIGERIA:
A CRUCIFIXION BEFORE CONVICTION**

**BALOGUN ONOSHI GIDEON* &
OGUNDELE SAMSON ABAYOMI****

Abstract

Justice is concerned that the use of the dock impacts the defendant's right to fair trial, particularly, effective participation in one's defence, preserving the presumption of innocence and maintaining dignity in the administration of justice as mandated by European convention on human rights and international human rights. These rights have long been protected by our domestic legal system, the European convention on human rights and international human rights law. This paper examines the adverse effect of the criminal dock in courtrooms on the defendants. It finds that the dock impacts on fairness in the criminal trial and is disproportionate to any perceived threat. It is recommended that open docks should no longer be used and defendants should sit with their legal team. There should be a presumption that all the defendants sit in the well of the court, behind or close to their advocate. Where security concerns exist, a procedural hearing should be held to satisfy the court that additional security is required. Open docks should no longer be used and defendants should sit with their legal team.

Keywords: Criminal Trial; Defendant; Dock; European Convention on Human Rights

* LL.B (Hons) (KOGI), LL.M (Unilorin), Legal Practitioner, Rotimi Jacobs & Co, 50 Queen Street, Alagomeji, Yaba, Lagos. Email: gidbalogun@gmail.com

** LL.B (Unilorin), B.L, LLM (Lagos), Legal Practitioner, Rotimi Jacobs & Co, 50 Queen Street, Alagomeji, Yaba, Lagos. Email: ogundelea076@gmail.com

1. Introduction

At the gallery are the spectators whose gazes pierce through the heart of the accused like a two-edged sword, as he is deliberately led to the altar of justice like the Paschal lamb and the sword of crucifixion laid on his neck. Into a strait wooden box, he is led. At this time, no man wants to associate with him, not even the man he has paid to speak for him (his advocate), who stands north-east to him, pointing to him with the closest finger to his thumb “my client...” in the cage. Adjacent South to him is an aged sage, whose spectacle sits on his nose, looking at him with every drop of condemnation. The accused looks frail and embarrassed as he struggles to hold back his tears. His demeanour betrays him. He closes his eyes and wonders if he could escape the sight, yet the same set of Pharisees look sternly at him and all over their faces are the words ‘crucify him’. Although, not convicted, on every adjourned date, he is crucified. This paper intends to unravel the agony of a defendant in a Nigerian criminal trial, particularly in respect to the facilitation of effective participation of an accused in his trials, his constitutional right of presumption of innocence and his right to be treated with dignity.

There are various factors that significantly influence a judge’s mind beyond the evidence led by the prosecution and the defence counsel in a criminal trial. One of such potentially bias factors which over the years have received considerable attention is the design of the courtroom. The courtroom design is frequently said to symbolize goals of transparency, majesty, openness, security, fairness and authority.¹ Unfortunately, the ability of courts to make case-specific assessments and not be prejudiced can be impeded by court-room architecture.

2. Courtroom Architecture and Dock

A courtroom is usually an enclosed space in which the judge presides over matters brought or assigned to him. It houses different participants, to wit: the presiding judge, court officials, the

¹ Linda Mulcahy and Meredith Rossner and Emma Rowde, ‘What if the dock was abolished in criminal courts?’ <<https://howardleague.org/wp-content/uploads/2020/01/What-if...-the-dock-was-abolished-1.pdf>> Accessed 25/08/2021.

defendant(s), prosecuting counsel, defence counsel, witnesses, spectators, and security personnel. The judge, generally, sits behind a raised desk, known as the bench. The bench is an elevated podium in front of the court room where the presiding judge sits. The bench is strategically located at a part of the court room where the Judge can have a proper view of every participant and the legal transaction going on in his courtroom. Directly beneath the bench, and before it, is the registrar's table. The registrar sits with court clerks or other clerical assistants. The registrar normally backs the judge and only stands up to face the judge when his attention is required by the judge. A security officer is stationed behind the judge and others are stationed to man the entrance and the dock.

The direct opposite of the judge and the clerk is the bar and the gallery. The bar is a hallowed portion of the courtroom, partitioned for persons who have been called into the bar, while the gallery is meant for the general public. The witness-box is specially designed for persons who wish to or have been compelled to give evidence on oath. There is another place in the court room which is regarded as the dock. The dock is a portion abridged with a wooden bar, set aside for the accused/defendant which marks him out from other participants in the trial. In Nigerian courts, this distinct enclosure is usually placed either at the side of the courtroom or in between the bar and the gallery. There is however no rule as to which side of the court the dock should be located. The dock is usually made up of a wooden base measuring up to five feet height.

A close look at the history of legal architecture reveals dynamic conceptions of court houses and court rooms.²Originally, a dock is a holding pen for defendants held in cells below the court, but docks soon metamorphosed into a segregated space for the defendant to sit in the courtroom. Initially, it was more like a wooden box, similar to a witness box. In Nigeria, the situation is not so different. Upon the mention of the suit in the court, the defendant is ushered and lodged in

²Meredith Rossner, 'Does the placement of the accused at court undermine the presumption of innocence?'
<<https://www.penalreform.org/blog/does-the-placement-of-the-accused-at-court/>>
25/08/2021.

a wooden box throughout the sitting of the case called. However, in some jurisdictions today, docks have further evolved to include a more 'secure' variety which encloses the accused in glass so that they are completely separated from the rest of the courtroom. The use of dock has been a subject of debate over the years. Particularly in respect of the secured type of dock which is more fortified than the five feet wooden bar. Some of such docks are made of glass, raised wall or wired cage. Such docks can now be found in courtrooms throughout much of the world, in countries with both common law and civil law traditions, for example, France, England, Canada and much of Australia commonly place criminal defendants in docks made of wood or a combination of wood and glass.³ In England, docks are required to have side walls more than seven feet tall. Higher-security docks are often enclosed by glass up to the ceiling.⁴ Countries like Russia and several Eastern European countries routinely place defendants in docks surrounded by metal bars or mesh cages. Conversely, Scandinavian countries and the United States, allows their defendants or the accused person sit beside their lawyer at the bar table.

3. Docking of Accused, a Crucifixion before Conviction

It is established that certain constitutional safeguards are enshrined in the Constitution of the Federal Republic of Nigeria, 1999 As Amended 2011 to ensure the fair trial of accused persons in criminal matters. A breach of any of the constitutional safeguards will vitiate a trial and may consequently nullify the entire proceeding depending on the degree of such breach. The right to a fair means, in the first place, equality of arms, which is highly relevant in proceedings based on the adversarial system prevailing in common law countries. Equality of arms entails inter alia; that the accused has rights to examine, or to have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions

³David M. Herszenhorn, 'Presumed Innocent, but Caged in Court' <<https://www.nytimes.com/2013/11/19/world/europe/courtroom-cages-remain-common-despite-criticism.html>> Accessed 27 September 2021

⁴*Ibid*

as witnesses against him.⁵The principle of equality of arms as one of the features of the wider concept of a fair trial means that each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage vis-à-vis his opponent.⁶The court in the case of *Eze v. FRN*⁷ in an attempt to interpret the meaning of fair trial, held that:

For a hearing or trial to be fair, this Court has enumerated certain basic principles which should guide the judge. They include among others, that a person/party whose right is to be affected should:-

- i. be present throughout the proceedings and to hear all the evidence against him;
- ii. cross-examine or otherwise confront or contradict all the witnesses that testified against him;
- iii. be read before him all the documents tendered in evidence at the hearing;
- iv. have the nature of all the relevant material evidence, including documentary and or real evidence, prejudicial to him, disclosed to him, save in recognized exceptions;
- v. know the case he has to meet at the hearing and to have adequate opportunity to prepare for his defence and
- vi. give evidence by himself, call witnesses if he likes and make oral submissions either personally or through counsel of his choice.⁸

The use of the dock in criminal trials interferes with the proper enjoyment of these rights. The dock essentially excludes the defendant, placing him or her in a structure which physically

⁵Masha Fedorova and Sten Verhoeven and Jan Wouters, 'Safeguarding The Rights Of Suspects And Accused Persons In International Criminal Proceedings' <https://www.researchgate.net/publication/46723516_Safeguarding_the_Rights_of_Suspects_and_Accused_Persons_in_International_Criminal_Proceedings> 25/08/2021.

⁶*Öcalan v. Turkey* (2005) 41 EHRR 45 at [140].

⁷(2017) LPELR-42097(SC).

⁸ See *Baba v Civil Aviation* (1991) 7 SCNJ (Pt. 1) 1: JSC Cross-River State v. Young (2014) All FWLR (Pt. 714) 40." Per IBRAHIM TANKO MUHAMMAD, JSC (Pp 36 - 37 Paras B - A) (emphasis mine).

segregates him or her from the proceedings. Locking the defendant away in the dock in all courts unfairly distances the defendants from their legal representatives and makes it difficult for defendants to consult with their legal representatives during trials, especially as counsel usually sit backing their client. Most times, the defendant in the dock can only communicate to his legal practitioner by passing notes via security officers in the dock, or gesticulating in an attempt to grasp the attention of his lawyer. Sometimes, it is the judge who notices that the defendant wants to communicate with his lawyer and then draws the attention of his counsel.

In the adversarial system, the evidence that can be relied upon primarily comes from live witnesses who are led through their evidence at trial. This makes the role of the defendant far more significant than the civil systems where the dossier of evidence is prepared pre-trial with little witness evidence given during trial.⁹ Therefore, in the process of examining or cross-examining a witness in the witness box, there are instances where it would have been advantageous for the defendant to chip in some details to his counsel in order to effectively and comprehensively extract the necessary facts to prove his case. The gesticulation and notes of defendants to their counsel would obviously break the flow of the counsel's argument which in a way hampers fair trial. Thus, the barrier created by the dock can lead to delayed or failed communication. Where the defendant is far from his legal representative, an answer which ought to have been challenged may not have been challenged or a different question may have been asked. Defendants are rarely asked their views during trials as to what questions should be put to witnesses or on the answers given which are consequent to the court set-up. It is therefore hard to know how often a lack of communication impacts upon the outcome of the trial.¹⁰ The US Supreme Court stressed in the 1970 case of *Illinois v Allen*¹¹ that "one of the defendant's primary advantages of being present at the trial is his

⁹Justice, 'In the Dock Reassessing the use of the dock in criminal trials' <<https://files.justice.org.uk/wp-content/uploads/2015/07/06170833/JUSTICE-In-the-Dock.pdf>> p.13.

¹⁰*Ibid* p. 13.

¹¹ 397 U.S. 337 (1970).

ability to communicate with his counsel” and this “is greatly reduced when the defendant is in a condition of total physical restraint.”¹²

The rationale behind the presence of an accused at his/her trial is that he may hear the case made against him and have the opportunity of answering it. The presence of the accused means not only that he must be physically present in attendance, but also that he must be capable of understanding the nature of the proceedings.¹³ Understanding the nature of the proceeding obviously goes beyond interpreting the proceeding in the language understood by the accused where the accused is an illiterate. It implies knowing the implication of every averment made by the prosecuting counsel. Most often than not, the space between the bar and the dock makes it difficult to hear the defendant from inside the dock, which would suggest that it is also hard for the defendant to hear or follow the proceedings properly.

This argument had eventually led to the decline of docks in America, beginning with cases such as *Commonwealth v Boyd*¹⁴, where a Pennsylvania court decided that as a general principle, a defendant has a right to sit with counsel at the bar table.¹⁵ In several other American judicial decisions over the course of the twentieth century, A judge from United State agreed that docks are “an anachronism in a modern criminal trial which could have been abandoned years ago”. He concluded that, "The practice of isolating the accused in a four-foot-high box very well may affect a juror’s objectivity. Confinement in a prisoner dock focuses attention on the accused and may create the impression that he is somehow different or dangerous. By treating the accused in this distinctive manner, a juror may be influenced throughout the trial".

Secondly, the presence of the accused in the dock at the back or side of the courtroom cannot fail to create a strong sense of isolation for the accused during proceedings which inhibits his ability to fully participate in the trial. In the course of criminal trial, inhuman or

¹²Oliver Small, ‘In the dock: why the setup of the British courtroom needs to change’ <<https://www.thejusticegap.com/in-the-dock-why-the-setup-of-the-british-courtroom-needs-to-change/>> Accessed 27 September 2021

¹³ *R v Lee Kun* (1916) 1 Kings Bench Reports 337, at 341.

¹⁴ 92 A. 705, 246 Pa. 529.

¹⁵*Ibid.* (n 2)

degrading treatment must be avoided. This means that persons standing trial for alleged offences have the right to always be treated as humans without being subjected to any psychological or physical damnation or intimidation. The provision of Section 17 of the CFRN, though not justiciable, provides that the state social order is founded on ideals of freedom, equality and justice and that the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced and Section 34 of the 1999 Constitution provides that "Every individual is entitled to respect for the dignity of his person". The pertinent question is how is this dignity preserved for an accused person? The Supreme Court held in the case of *Enigwe & Ors v. Akaigwe & Ors*¹⁶

An embarrassing trial is not a fair trial. A fair trial must be fair to all concerned. An unfair trial is a breach of the appellant's constitutional right to fair hearing guaranteed under Section 33(1) of the 1979 Constitution.

An accused is the person charged of a crime before a competent court. In other words, he is a person whom a charge has been brought against. In the context of criminal proceedings, the word 'accused' is used as a synonym for a defendant. An accused becomes a convicted person if he is pronounced guilty for committing a crime in a final decision of the court. Thus, an accused is not a convict and his constitutional rights ought to be guaranteed until pronounced guilty. In other words, until the defendant's presumption of innocence principle in criminal trial is rebutted, the defendant ought to be treated in the same manner as a regular person and any suggestion to the contrary would be a breach of his fundamental human rights.¹⁷

Lastly, the right to be presumed innocent until proven guilty is another constitutional principle that an accused person is expected to enjoy throughout the period of criminal investigation and trial until judgement is handed down. The presumption of innocence which is an essential foundation in our adversarial adjudicatory system has a secured place in our criminal jurisprudence, which is constitutionally

¹⁶ (1992) LPELR-1145(SC).

¹⁷ *Ekele v. FRN* (2018) LPELR-45831(CA).

guaranteed. Section 36 (5) of the 1999 Constitution (as amended), provides thus:

Every person charged with a criminal offence shall be presumed to be innocent until he is proved guilty

Going by that constitutional provision, the accused person is presumed innocent, until proved guilty. The presumption of innocence is the cornerstone of modern international criminal procedure and is recognised in all human rights instruments. In the case of *Ekele v FRN*¹⁸

The presumption of innocence is the legal principle in criminal cases that one is considered innocent until proven guilty. This basically means that until a judicial pronouncement on the guilt or otherwise of the accused person is made, he/she is to be treated the same as a regular person, any suggestion to the opposite would be a breach of the fundamental human rights of the individual. Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 as amended guarantees this right.

Thus, the law is settled that when a person is accused of committing a criminal offence, he enjoys presumption of innocence under Section 36(5) of the 1999 Constitution (as amended). This presumption of innocence inures until the accused person is found guilty by the court.¹⁹

Confinement in a dock focuses attention on the accused and may create the impression that he is somehow different or dangerous. By treating the accused in this distinctive but disdainful manner, a judge may be influenced throughout the trial. The impression created may well erode the presumption of innocence that every accused is to enjoy.²⁰ It will be trite to state that the principle of presumption of innocence still avails an accused caught in the act of crime and the court is obligated, on the presumption of the innocence of the accused person, not to convict him until his guilt is proved beyond reasonable

¹⁸ (2018) LPELR-45831(CA).

¹⁹ *Adu v State* (2020) LPELR-51096(CA).

²⁰ *Walker v Butterworth*, 599 F. 2d 1074, 1080 (1st Cir. 1979).

doubt. On this obligation, Karibi-Whyte, JSC in *Okoro v. The State*²¹ (1988) 5 NWLR (Pt.94) 255 at 277, re-stated the law to the effect that:

“the presumption of the innocence of the accused person constitutionally also means a duty on the Court not to convict until his guilt is proved beyond reasonable doubt, and that by that duty anything that ex facie negatives the guilt of the accused person must not be gleefully swept under the carpet and ignored”²²

Thus, it is unimaginable to concede that the dock is an essential part of courtroom equipment for a criminal trial. On the contrary, it is considered rather obsolete and incompatible with the presumption that the accused is innocent until he is proved guilty.²³

4. Rebuttable Rationale and Recommendation

The provision of Section 269 of the Administration of Criminal Justice Act provides that:

Where a defendant appears before a court on a summons, he shall be required to enter the dock, to standing or sit in it, except where circumstances do not permit, as may be directed by the court.

The provision of the Administration of Criminal Justice Act mandates the accused person to enter the dock to either sit or stand in the dock during his trial except where the circumstances do not permit. One of such circumstances is where there are two or more defendants and the dock (wooden box) cannot accommodate all the defendants at once, the court can give direction see as to how other defendants are to be stationed. Thus, this provision suggests that a dock is a place in the court where the defendant in a criminal trial sits or stand in the course of his trial.

The provision of Section 356 (8) of ACJA is to the effect that the defendant shall take his plea in the dock except the judge directs otherwise. Thereby being the second section in the Administration of Criminal Justice Act which specifically suggests the second purpose of

²¹ (1988) 5 NWLR (Pt.94) 255 at 277.

²² .” *Per EJEMBI EKO, JSC (Pp 44 - 45 Paras D - B)*

²³ *Ibid* (n 8)

the dock as a place where the accused takes his plea. The phrase “except the judge directs otherwise” simply implies that the plea of an accused person can be taken outside the dock without making the trial a nullity. The Constitution of the Federal Republic of Nigeria and the Administration of Criminal Justice Act allows the Chief Justice of Federal High Court to make practice directions to that effect. In exercise of the powers conferred by Section 259 of the Constitution of the Federal Republic of Nigeria, 1999, Section 490 (g) of the Administration of Criminal Justice Act 2015, the Chief Justice of the Federal High Court has the power to make practice directions to regulate the administration of criminal justice system in Nigeria. It was in the bid of exercising this power that Honourable Ishaq Usman Bello, Honourable Chief Judge of the Federal Capital Territory High Court make the practise direction particularly Order 3 Rule 3(d) which provides that:

where a defendant is present in court and refuses to enter the dock to take a plea, a not guilty plea shall be entered for him.

By this provision, it will suffice that the Chief Justice of the Federal High Court can make directions as to where the defendant can sit in the court, hence rebuttably removing the die-hard tradition of dock system in criminal trial.

Furthermore, it has also been severally argued that the dock is meant to identify the person of the defendant in a criminal trial from other participants. It is a place where a witness identifies the defendant as being the perpetrator they saw at the scene of a crime. Identification of an accused person whose name would be mentioned when the case is called need not be in the dock. The moment the case is called from the cause list, all the defendant needs to do like parties in civil proceedings, is to signify by the raise of his that he is the one called and not necessarily marching out to the dock. Also, the witness test of identification is properly done when the witness is left to identify the accused person in the gallery where there is crowd. The act of segregating and isolating the defendant in the name of identification is nothing but pure discrimination of the accused person. The bench is the most elevated part of the court which allows the court to see virtually every individual present in the court, thus the judge can

perfectly observe such demeanour from any angle the accused is seated.

More so, it has been further presumed that dock may be required, not only to protect the public and court officers from the defendant, but also to protect the defendant from external attack or from participant attack on him. It is a way of avoiding violence or escape. The pertinent question to be asked is, are defendants released on bail also dangerous to the other participants in the court? Would it not be easier to attack a defendant which is on bail outside the court than when in the Court? The argument that the essence for docking the defendant is to protect him from being attacked by participants cannot hold water. The provision of Administration of Criminal Justice Act provides for what is to be done where it is perceived that the defendant in question is violent/dangerous. The provision of Section 5 of ACJA provides for instances where necessary measures to be taken in securing the defendant in criminal trial, the section provides thus:

A suspect or defendant may not be handcuffed, bound or be subjected to restraint except:

- (a) there is reasonable apprehension of violence or an attempt to escape;
- (b) the restraint is considered necessary for the safety of the suspect or defendant; or
- (c) by order of a court.”

Aside from this, security officers are often time allotted to court for the purpose of protecting the judge, the accused and the general public who are present in the court.

5. Recommendation

It is recommended that where the defendant who is standing trial is on bail and has not at any time evaded or attempted to jump who is on bail and such other types of defendants who has in no way show any form of violence or danger can be allowed to sit with their legal representative. This is because a defendant released on bail would pose no threat or exhibit violent behaviour towards the court and/or plaintiff and his counsel whatsoever to pose or violent to exhibit.

Furthermore, where threat or violence is exhibited, an application by either the prosecution or the defence counsel to satisfy the court that

additional security is required. The provision of Section 5 of the Administration of Criminal Justice Act can then be invoked where there is a sign of violence or danger from the accused.

Also, it is recommended that not less than three security personnel should be deployed into every court room system. One should stand close to the judge, at least a security personnel should man the entrance of each door to the courtroom.

Lastly, it is recommended that when the case file is called by the court registrar, the defendant should rise up for the purpose of recognition and move to a space close to his legal practitioner instead of the dock.

6. Conclusion

Flowing from the above, it has been argued that a dock is a confining enclosure to detained defendants in the courtroom. It is not a legal necessity but handed over tradition. The undesirable consequences of the use of the dock have been considered and identified to have issued restraint on communications with defendant's legal representative, isolation of the defendant and breach of the fundamental legal principle as the defendant is innocent until proved guilty.²⁴ In order to ensure that a fair trial is effective in practice, every defendant should, in our view, sit in the well of the court, next to or behind their legal representatives.²⁵ This will enable defendants to actively take part in their own case, by being available to provide instructions and respond to evidence far more easily than the current arrangement allows.²⁶ It will also remove any prejudicial effect that the dock might hold against defendants.

It is a fundamental mark of democracies that they recognise equality before the law and the rights of the defendant. These include the requirement that all defendants are treated as innocent until proven guilty, that the accused has access to counsel, and that defendants are able to participate in their own trial. In line with these expectations, we

²⁴Anon 'No Brief for The Dock - Report Of The Howard League Working Party On Custody During Trial' <<https://www.ojp.gov/ncjrs/virtual-library/abstracts/no-brief-dock-report-howard-league-working-party-custody-during>> Accessed 27 September 2021

²⁵*Ibid.* (n 8)

²⁶*Ibid*

anticipate that defendants will be positioned so that they are able to see and hear the witnesses who give evidence against them, have easy access to the lawyers whom they have instructed and an opportunity to scrutinize written evidence.

AJLEE (2023) Vol 5, Issue I