

## **COMPARATIVE ANALYSIS ON SEARCH AND SEIZURE IN NIGERIA, THE USA, AND UNITED KINGDOM**

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### **ABSTRACT**

*This study analyzes the search and seizure legislation in Nigeria with those in the United States of America and the United Kingdom as of right now. The main laws of Nigeria that are referred to and relied upon without reservation in this research are the Criminal Procedure Code, the Administration of Criminal Justice Act and Law (ACJA, ACJL), and the Nigeria Police Act (NPA), 2020. The Federal Republic of Nigeria's 1999 constitution (as amended in 2011), particularly in section 37 on the right to privacy, which is afterward limited in section 45, makes it clear that law enforcement officials do not have unrestricted authority to execute searches and seizures in the course of their respective duties. Hence, adequate respect for the sacredness of fundamental Human Rights. In light of this, this study thoroughly assesses the regulations of the UK and the USA, as well as the Criminal Procedure Code and the Criminal Procedure Act, which serve as the legal foundation for the use of such authority.*

**KEYWORDS:** Search, Seizure, Privacy, Fundamental Human Right, Nigeria, UK, USA

### **1.0 INTRODUCTION**

There has not been a universal, suitable nor uncontested definition to the word 'search' but it is distinguishable by reference to synonyms, the focus and the objective of the information seeker can bring about clarity when doubts becloud knowledge. a search occurs when a government agent, or someone acting on

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behalf of the government, interferes with that expectation of privacy<sup>160</sup> and a seizure occurs when a government agent or someone acting on behalf of the government “meaningfully interferes with an individual’s possessory interests in the property [in question].<sup>161</sup>” Search and seizure is a technique employed and appreciated to recover either from the “body of a person or from a premise, non-material, and material needed for law enforcement, most searches require a warrant, and searches performed by a valid warrant are presumed to be reasonable. In Nigeria Legal framework, particularly the criminal law and procedure, a search constitutes the examination of a person’s body, apartment, premises, office areas, vehicle, aircraft, and other such places by a police officer or other categories of law enforcement agents to find evidence of a crime with which to prosecute an accused person in a court of competent jurisdiction

As a bed rock to this examination, it is apposite to reiterate that; because of the close historical connection between the United Kingdom, USA, and Nigerian law, even as well as the persuasive nature of English court decisions. What is obtainable in Nigeria's jurisprudence is not farfetched but well considered in line with the practice in other common law jurisdictions, such as India, England, and the United States. In the light of the foregoing, and to eradicate grain of obscurity, this paradigm is given; in that, while the intended victim may exercise a right of resistance or petition the courts for an injunction, an actual victim may

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<sup>160</sup> See *Skinner v. Ry. Labor Executives Ass’n*, 489 U.S. 602, 613-15 (1989). Exactly what is and is not a search can be difficult to ascertain in some situations (e.g., when a police officer squeezes a bag to determine if it contains drugs). Wherever the boundary between search and non-search is drawn,

however, the computer operations described in this Note will fall within it.

<sup>161</sup> *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).

“bring an action to recover damages for trespass, assault in the courts or "battery, or petition/for restoration of the items seized beforehand when such is flagrantly carried out against the law. The relevant provisions of the CPC on search and seizure are sections 28, 32, 34, 44, 74-86, and 127 respectively and the laws in the United States and United Kingdom are exhaustively dissected.

## **2.0 NIGERIA LEGAL FRAMEWORK AND ITS ENFORCEABILITY**

The regime of law would not have been, without the brutish and nasty state of nature that preceded the Democratic society which birth the idea of social contract theory<sup>162</sup>. The advent of law has never eliminated the particles of the brutal era but lessen it to a manageable level. When capitalism emerged, the unguided servant ship and mastership still avail bondage where no competent law could be said to have been, because of the maltreatment, inhumane act, and havoc wrecked. Therefore, Law and order in society are sine qua non to sustainable democracy and reliability on the doctrine of the rule of law. The enforcement with security agencies is ordered by law to detect, prevent and prosecute persons who committed infractions against the criminal laws of the country. **The Police Act, 2020**,<sup>163</sup> enacted by the National Assembly has deemed it worthwhile in making the police to search any person if there is a reasonable ground that an offense has been committed or is reasonably suspected to have been committed or will be committed.

As the supremacy of the constitution could not be overridden by other laws, the inconsistencies of those other laws would be tantamount to naught to the extent

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<sup>162</sup><<https://www.iilsindia.com/blogs/social-contract-theory-origin-state/>>Accessed on the 13<sup>th</sup> of April, 2023>

<sup>163</sup> Section 39, 40, 49 and 52 of the Nigeria police Act, 2020 lay emphasis on arrest on reasonable suspicion and reasonable ground.

of their inconsistency<sup>164</sup>. However, **section 36 (5)** of the 1999 Constitution of the Federal Republic of Nigeria, which is established on the principle of Fair hearing also provides that all persons charged with a criminal offense are presumed innocent until proven otherwise guilty by a competent court of law having jurisdiction. This is a dilemma and encumbrance to enforcement of the powers conferred on the police officers and other governmental agencies as it is closely showing that the rights in **chapter IV of the 1999 constitution** are not absolute but qualified, such could therefore be quash predicated on a reasonable ground.

In light of the foregoing, the basis of this paper is not to differentiate the level of inconsistencies in Nigeria's laws but to comparatively examine our laws with that of the USA<sup>165</sup> and UK<sup>166</sup> which manifestly has similarities and differences too. Law enforcement agencies cannot move into any premises to conduct a search or search a person's phones, laptops, or bags without a **search warrant** gotten from the expected authorities except in some **exceptional circumstances**. The spirit and letters of the **Administration of Criminal Justice Act, 2015 section 143-157** is clear when it provides inter alia that:

*The process and procedure for applying and executing search warrants on any person, property, or place in Nigeria. The Act requires that there must be a pending investigation and an application must be made to a court or Justice of the Peace within the jurisdictions where the search warrant is to be executed. The application*

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<sup>164</sup> 1999 CFRN S1{3}

<sup>165</sup> United States of America

<sup>166</sup> United Kingdom

*must be made in writing and accompanied by an affidavit or statement on oath showing that there are reasonable grounds for believing that there is in any building, ship, carriage, motor vehicle, aircraft, or place anything in respect of which an offence has been committed or is suspected to have been committed, or where there is a suspicion that the place or object is being prepared to commit an offence. The suspicion in this respect must be real and compelling” (emphasis is mine as summarily couched)*

The community reading of sections **143<sup>167</sup> and 144 of the ACJA, 2015**, abreast us with the fact that the court of law or justice of Peace, according to the law could issue the search warrant if satisfied with the grounds stated and authorized as an officer of the court, police officer or any other person named on the warrant to execute the search warrant by entering the place or property and seize any such thing until further trial proceeding. Additionally, the warrant may specifically outline that the occupier of the house or place be arrested where incriminating items were found in the place. However, if there's no complaint against the arrested individual, the court shall immediately discharge him according to **section 145<sup>168</sup> ACJA**. The period when the search could be issued and done is available in section 148<sup>169</sup> same Act **which states that a search warrant may be issued and executed at any time on any day, including a Sunday or**

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<sup>167</sup>Where an investigation under this Act is being made by a police officer, he may apply to court or justice of the peace within the local limits of whose jurisdiction he is for the issue of search warrant.

<sup>168</sup>ACJA 2015 S149{5}; S150 the occupier of any building or the person in whose possession a thing named in a search warrant is found and is brought before a court or justice of the peace and a complaint is not made that he has committed an offence, the court or justice of the peace shall immediately discharge him.

<sup>169</sup>ACJA 2015 S148. A search warrant may be issued and executed at any time on any day, including a Sunday or public holiday.

**public holiday.** It is therefore lawful for a gender to search the same gender; this is according to **section 149(3) ACJA**, which must be made in the presence of two witnesses and the person to whom the search warrant is directed may also provide a witness of his own. On jurisdictional issues on search, the provision of **section 151** is clear and its reproduced below:

*A person executing a search warrant beyond the jurisdiction of the court or justice of the peace issuing it shall, before doing so, apply to the Court within whose jurisdiction the search is to be made and shall act under its directions.*

Evident from **Section 154 of the Act** is the highlights that where a thing seized under a search warrant is of a perishable or noxious nature, it may be disposed of in such a manner as the court may direct. Interestingly the law also preached that all items seized shall be written and signed by the suspect, the person executing the search warrant, and their witnesses, and a copy of the signed list be made available to the suspect searched. It is of right for the suspect to get a copy of the inventory under **Section 149(5) & 150 ACJA, 2015**. However, confrontations with security personnel should not be entertained when they denied to give a copy, but complaints should be lodged concerning such irregularities. Sequel to that, under **section 46(1) of the 1999 Constitution**<sup>170</sup>, Victims of a warrantless search or alleged execution of an illegal search warrant

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<sup>170</sup>1999 CFRN S(46)(1) provides; Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

(2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcement or securing the enforcing within that State of any right to which the person who makes the application may be entitled under this Chapter.

may seek legal recourse in court for the invasion or violation of their fundamental right to privacy of person and home, right to personal liberty, or trespass to property, and right to be free from unlawful detention as the case may be.

**The criminal procedure Act (CPA)**, isn't silent, on the concept being treated, it provides for the procedural principles applicable to criminal trials in Southern Nigeria. It is prescribed serially within relevant provisions on search and seizure in sections **6-8, 12, 107, 109, 111-117** respectively. Principally, **section 6(1) of the CPA** which borders on the search of arrested persons provides accordingly that:

*Whenever a person is arrested by a police officer or a private person, the police officer making the arrest or to whom the private person makes over the person arrested, may search such person, using such force as may be reasonably necessary for such purpose, and place in safe custody all articles other than necessary wearing apparel found upon him....*

This has reinforced the other rules on search and seizure that Nigeria has in place, particularly when used in a criminal trial. However, the acts of the law's enforcers were never intended by the legislation's designers because they are against the spirit and the letter of the law. Meanwhile, the **CRIMINAL CODE ACT CAP. 77 L.F.N 1990 AC CAP S4 L.F.N 2004; SECTIONS 233(E)(1)(2) AND (6) AND SECTION 144;197(1)(2)**

*(1) Subject to the provisions of this Chapter, if a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that articles deemed to be obscene for the purposes of*

*this Chapter are, or are from time to time, kept for publication for gain in any premises or on any stall or vehicle in the State, the magistrate may issue a warrant under his hand empowering any constable to enter (if need be by force) and **search the premises,** or to search the stall or vehicle, within fourteen days from the date of the warrant, and to seize and remove any articles found therein or thereon which the constable has reason to believe to be obscene articles for the purposes of this Chapter and to be kept for publication for gain.*

- (2) *A warrant under subsection (1) of this section shall, if any obscene articles are **seized under the warrant, also empower the seizure** and removal of any documents found in the premises or, as the case may be, on the stall or vehicle which relate to a trade or business carried on at the premises or from the stall or vehicle.*

It is pertinent to note that the foregoing section argues that there must be certain circumstances met before a search and seizure can be carried out by the legitimate agency charged with that duty in Nigeria, regardless of whether a court has issued a warrant or not.

## **PERSONAL PRIVACY AND ITS BEDEVILMENT IN NIGERIAN AGAINST USA**

**The dint of section 37 of the 1999 constitution of the Federal Republic of Nigeria (As amended 2011) is very clear, it provides that; The privacy of citizens, their homes, correspondence, telephone conversations, and telegraphic communications is hereby guaranteed and protected, this is a very**



fundamental right which is no without limitation under **section 45 (1)** of the constitution which for clarity's sake states accordingly;

Nothing in sections 37, 38, 39, 40, and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society-

- a. in the interest of defense, public safety, public order, public morality, or public health; or
- b. for the purpose of protecting the rights and freedom or other persons.

It would be necessary to state first that when the Right to privacy comes into play, technological innovation couldn't be left out. However, this is not absolute; reasonableness, which is unique to other common-law nations, is crucial. In the case of **FRN V. DANIEL (2011)**,<sup>171</sup>the court sagaciously observed that the **right to privacy is limited in section 41 of the constitution as highlighted above.** Although, in the case of **Gani Fawehinmi v. Nigeria Bar Association**, the court held that **section 37 of the 1999 constitution cannot be waived**, this is eroded by section 45(1) and subsequent decisions of the court.

Regrettably, recent actions by Nigerian law enforcement agencies show a lack of care, although the illegal activity is even being committed by them in plain sight. Specific rules and regulations, notably those derived from the constitution, are what is driving the growth of the act of gathering digital forensic evidence in the US.

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<sup>171</sup>FRN v Daniel (2011) LPELR-CA/I/136/2009

**United State Constitution Amendment I**<sup>172</sup> has given Americans protection from unauthorized searches and seizures. A search would be impossible without a court order that authorized it. As a result of the foregoing, if the search were to occur in the United States, looking through someone's phone without a search warrant would be illegal and a violation of their 4th amendment rights (subject to conditions like plain view, consent, and an emergency). Regardless of how incriminating, digital evidence obtained from the victim in Nigeria would not be admissible since it is the "**fruit of a poisonous tree**"<sup>173</sup>. The United States Supreme Court has decided several cases related to this doctrine. In the case of *United States v. Rey*<sup>174</sup>, it was expressly stated that for the exclusion of evidence to be ordered, the police misconduct must have been "**sufficiently deliberate**" that future similar conduct would be deterred due to the exclusion and that such future deterrence would be worth the cost to the justice system. Significantly, non-warrant searches are also permitted when doing so could put the lives of law enforcement personnel or members of the public in danger. It can be urgent if there is a chance that the evidence will be irreparably damaged or destroyed. Even after evidence has been collected and stored, you will still require a valid

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<sup>172</sup> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

<sup>173</sup>The Fruit of the Poisonous Tree doctrine (also known as the Derivative Evidence Doctrine) is a rule in criminal law that makes evidence that was derived from an illegal search, arrest or interrogation inadmissible. In other words, the evidence (the "fruit") was tainted due to it coming from the illegal search and seizure (the "poisonous tree"). Under this doctrine, not only must illegally obtained evidence be excluded, but also all evidence obtained or derived from exploitation of that evidence. The courts deem such evidence tainted fruit of the poisonous tree. The origin of this doctrine is found in the landmark Supreme Court case, *Wong Sun v. United States*, 371 U.S. 471 (1963). <<https://www.lacriminaldefenseattorney.com/legal-dictionary/f/fruit-of-poisonous-tree-doctrine/>> Accessed from on 9<sup>th</sup> May, 2023.

<sup>174</sup>*United States v Reynolds* 345 US 1 (1953)

search order to access the confiscated phone and carry out an accurate forensic examination.

In Nigeria, this is undoubtedly equivalent to a defendant having the right to remain silent and not implicate himself or act in a way that would jeopardize his case.<sup>175</sup> The rights guaranteed by the 4th and 5th Amendments to American citizens are currently being tested in significant cases like **State v. Stahl**<sup>176</sup> as it relates to digital forensics and cybersecurity.

As established in **INEC v Musa (2003)**<sup>177</sup> and **Chevron (Nig) Ltd V. Imo State House of Assembly & Ors. (2016)**<sup>178</sup> on the supremacy of the constitution of Nigeria, it invariably means that its provisions shall not be treated with frivolities. Fundamentally, it is acknowledged that Chapter IV of 1999 preceded civilized society, and its contravention is tantamount to a disaster in society. Therefore, **the privacy of citizens, their residences, letters, telephone conversations, and telegraphic communications is thus secured and preserved according to Section 37 of the Nigerian Constitution.** On this basis, it is against the law and unconstitutional to forcibly confiscate phones and other personal devices under the guise of a search and seizure. **The Nigerian Data Protection Regulation and the Cybercrime Act 2015**, which make it a felony to invade a person's privacy, illustrate how unlawful Nigerian law enforcement's

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<sup>175</sup> By virtue of section 35(2) of the constitution of the federal Republic of Nigeria (As amended, 2011) at section 35(2) hinged on personal liberty...it provides that Any person who is arrested or detained Shall has the right to remain silent or avoid answering any question until after consultation with legal practitioner or any other person of his own choice. See also; **Dokubo-Asari v Fed. Rep. of Nigeria (2007) 5-6 S.C. 150 at 183- 186, Lines 25 – 40;**

<sup>176</sup> State v. Stahl, 206 So. 3d 124

<sup>177</sup> INEC v Musa (2003) LPELR-SC.228/2002

<sup>178</sup> Chevron (Nige) Ltd v Imo State House of assembly & Ors. (2016) LPELR-CA/ph/633/2008

actions are. **Section 29 of the Police Act** states only hammers on search ground of reasonableness, it is reproduced below:

*A police officer may detain and search any which he has reason to believe to have been stolen or otherwise unlawfully obtained". person whom he reasonably suspects of having in his possession or conveying in any manner anything.*

This solidifies the power of the police, to search and seize, on mere suspicions. They may exercise the right to so search and detain if there is **reasonable suspicion**. Nigeria's jurisprudence has another curious complexity. Meanwhile, improperly acquired evidence are admissible in Nigeria; except the judge discretionarily thinks in Nigeria. According to **Section 14 of the Evidence Act of 2011**, evidence that has been unlawfully obtained or obtained in violation of the law "shall be admissible unless the court believes that the desirability of admitting the evidence is outweighed by the undesirability of admitting evidence that has been obtained in a manner in which the evidence has been obtained.

### **3.0 SUBSTANTIATING THE SIMILARITIES IN DISPARITY**

The search and seizure techniques used by Nigerian police officers are interconnected. Therefore, the seizure of a thing and the arrest of a person are not separate actions that may or may not be incident to a search. The element of reasonability, which penetrates the three countries under analysis, is a complicated yet common one. However, some warrants are predicated on circumstances, while others require the permission of designated authorities. Due to the common law heredity of both legal systems' fundamental ideas about the roles and activities of the police within the criminal justice framework, the

laws governing search and seizure in England and the United States are essentially identical. A large portion of the discrepancies stems from different English and American presumptions regarding whether police will themselves uphold legal norms or whether maximal judicial control is necessary if the police are needed. England emphasizes the need for police restraint. Undoubtedly, the police are required to act reasonably, and if they do, it is unlikely that the accused will object to a search if it is conducted following his right to privacy. The two's differences also resulted from their individual past experiences.

#### **4.0 LEGAL OPERATION OF SEIZURE AND SEARCH IN THE UNITED STATES OF AMERICA**

The Fourth Amendment was designed to protect against general, exploratory warrants.<sup>179</sup> Now, general warrants allowed the holder the authority to undertake an extensive, exploratory search for any signs of illicit activity and to confiscate any such evidence that was discovered.<sup>180</sup> Contrarily, the Fourth Amendment requires a "particular" description of the items to be searched for and seized, in addition to a specific description of the area to be searched, sufficient to show that the government's agents took reasonable steps to discover the exact location.<sup>181</sup>

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<sup>179</sup>Maryland v Garrison, 480 U.S. 79, 84 (1987).

<sup>180</sup> Id. at 84.

<sup>181</sup> Id.

Thus, the scope of a search is limited and defined by the particular object or objects at which it is targeted.<sup>182</sup> When evaluating whether searches carried out with a warrant are legal, the Supreme Court prefers using objective tests<sup>183</sup>. However, there are times when the Court will rely on the officer's subjective intent in determining whether a search was unreasonable (for example, if the warrant was obtained by lying to the magistrate if the warrant was facially illegal) are automatically reasonable as long as the law enforcement agent followed the warrant's instructions in good faith.<sup>184</sup>

In **United States v. Carey**,<sup>185</sup> arguably the most well-known case involving computer searches, the Tenth Circuit<sup>186</sup> adopted a "special approach" for evaluating computer searches in which it directly took into account the searching officer's subjective intent to find evidence of a crime outside the parameters of the warrant.<sup>187</sup> Whether and how the Fourth Amendment's current restrictions should be applied to digital searches and seizures is another hotly debated topic among commentators. For instance, **Professor Orin Kerr** claimed that "new methods of gathering digital evidence trigger a need for new legal

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<sup>182</sup> See *id.* For example, if a police officer obtains a warrant to search for a stolen piano at a suspect's residence, the officer may search the basement, but cannot search the suspect's sock drawer

(Unless the suspect has a very, very large sock drawer, big enough to hold a piano).

<sup>183</sup> *Horton v California*, 496 U.S. 128, 129 (1990).

<sup>184</sup> *Leon*, 468 U.S. at 920-21.

<sup>185</sup> *United States v Carey*, 172 F.3d 1268 (10th Cir. 1999).

<sup>186</sup> The Tenth Circuit Act of 1863 (12 Stat. 794) was a federal statute which increased the size of the Supreme Court of the United States from nine justices to ten, and which also reorganized the circuit courts of the federal judiciary.

<sup>187</sup> *Id.* ...." The warrant in the case covered various names and ledgers related to drug dealing. *Id.* at 1272. The officer searching the computer opened a .jpg image file with a suspicious name and discovered that it contained child pornography. *Id.* at 1273. The officer continued to open suspiciously named .jpg files and discovered additional child pornography. *Id.* The Tenth Circuit admit

standards" in a recent issue of the Columbia Law Review.<sup>188</sup> However, without applying the **Fourth Amendment's Exclusionary Rule**, the practice in the USA would not be complete. It is a right to be free from unjustified searches and seizures, even though the way this assurance is translated into actual concepts is not distinct. Over time, many potential enforcement strategies have been put forth; thankfully, the supreme court has, despite some disagreement, settled on just one as an efficient way to make the right a reality. Aside from that, there is an alternative to the Exclusionary Rule, which allows for criminal prosecution of officers who conduct illegal searches and seizures. Needless to say, instances of overzealous law enforcement resulting in an officer being criminally prosecuted are unquestionably rare.

A police officer who conducts an unauthorized search or seizure is subject to internal departmental discipline, which may be supported in the few jurisdictions that have adopted them by police review boards' oversight and involvement. However, these instances of disciplinary action are incredibly rare. People who have been unlawfully detained or had their privacy infringed are typically eligible for a tort case under state statutory or common law. Due to the factual circumstances surrounding the nature of the items to be searched, Fourth Amendment law governing the searches of containers and mixed-up physical documents developed. There are significant distinctions between computers and real-world sources of evidence like containers and file cabinets when the

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<sup>188</sup> Orin S. Kerr, Digital Evidence and the New Criminal Procedure, 105 COLUM. L. REV. 279, 279 (2005).

technological features of how computers store information and how searches can produce evidence are examined.<sup>189</sup>

Although this statute does not have jurisdiction over federal officers or those acting per federal law, the Supreme Court of the United States recently ruled that the guarantee that the police officer was acting following state law gives rise to an implied right to damages for Fourth Amendment violations. And, if a damage remedy were to become effective, police officers would always be covered by common law defenses, particularly the claim of good faith. Federal agents are entitled to qualified immunity based on an objectively reasonable belief that the search was authorized, even though a warrantless search that was later determined to violate the Fourth Amendment was justified by probable cause or urgent circumstances.

## **5.0 UNITED KINGDOM AND OPERATION SEARCH AND SEIZURE BEING EXAMINED**

**Money Laundering and Proceeds of Crime Act 2002, section 49** gives the police officer the power to (a) search a person for tainted property or proceeds of crime; (b) enter upon land or upon or into premises and search the land or premises for tainted property or proceeds of crime; and (c) in either case, seize any property found in the course of the search that the police officer believes, on reasonable grounds to be tainted property or proceeds of crime. Noteworthy is

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<sup>189</sup>G. Robert McLain; CLARITY FOR THE RULES GOVERNING COMPUTER SEARCHES AND SEIZURES; George Mason University School of Law, Juris Doctor Candidate, May 2008; Articles Editor, GEORGE MASON LAW REVIEW, 2007-2008; University of Florida, B.A., Philosophy.



**section 51,**<sup>190</sup> which hammers on emergency search where a police officer suspects on reasonable grounds that particular property is tainted property; it is necessary to exercise the power of search and seizure to prevent the concealment, loss, or destruction of the property; and the circumstances are so urgent that they require immediately. In furtherance, a police officer may enter upon land or into premises; and search the land or premises for any document of the type described in section 70(1)<sup>191</sup>; and could seize any document found in the course of that search that the police officer believes, on reasonable grounds, to be a relevant document to a serious offense, provided that the entry, search, and seizure is made within the content of the occupier of the land or the premises.<sup>192</sup>

**Flowing from the above, The Official Secrets Act, of 1911,** complements search and seizure in **section 9** when it explicitly provides *ipsissima verba*:

*(1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search warrant authorizing any constable named therein to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note, or document, or anything of a like nature or anything which is evidence of an offence under this Act having been*

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<sup>190</sup> Id.

<sup>191</sup> (1) Where a person has convicted of a serious offence and a police officer has reasonable grounds for suspecting that any person has possession or control of - (a) a document relevant to or quantifying property of the person locating a document necessary for the such person; or (b) a document relevant to identifying, locating or quantifying tainted property in relation to the offence, or to identifying or locating a necessary for the transfer of tainted property in relation to the offence,

<sup>192</sup>2018 Ivory Act S {74}

*or being about to be committed which he may find on the premises or place or on any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.*

Furthermore, the **Ivory Act of 2018**<sup>193</sup> needful provisions which are substantially relevant to search and seizure is section **14 (1)** of the act, which granted the Power of police to stop and search persons. It applies where a police or customs officer has reasonable grounds to suspect that a person has committed, or is committing a relevant offence, it adds in 24(2) that the officer may (a) search the person for relevant evidence;(b) stop and detain the person for the search. with an exemption certificate or with registration under section 10, or (b) an offense under section 12.

The power to stop and search vehicles are outlined in **section 15 (1)(2)(3)-(6) which** falls under the categorization of material and non-material things not individual or premises anymore. However, section 16 (1)-(7) of the Act grants the power to board and search vessels and aircraft specifically on reasonable ground, but only the vehicle may be searched on reasonable grounds for want of relevant evidence, the provisions of section apply where **(a)** a police or customs officer has reasonable grounds to suspect that there is relevant evidence in a vehicle, and **(b)** the vehicle is not a dwelling. The officer may at any time—enter the vehicle and search it for relevant evidence; stop and detain the vehicle.<sup>194</sup> Additionally, where a police or customs officer has stopped a vehicle under this section, and the officer considers that it would be impracticable to search the

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<sup>193</sup> 2018 Ivory Act CHAPTER 30

<sup>194</sup>2018 Ivory Act S74S{2}

vehicle in the place where it has stopped, the officer may require the vehicle to be taken to another place to enable the vehicle to be searched.<sup>195</sup> A police or customs officer may require any person traveling in a vehicle, or the registered keeper of a vehicle, to provide any help and facilities, concerning matters under the person's control, that the officer considers would facilitate the exercise of a power conferred by this section.<sup>196</sup> Nevertheless, the powers conferred by this section may be exercised in any place to which the officer lawfully has access (whether or not it is a place to which the public has access)<sup>197</sup> The other limb, **section 17**, like it is attainable in Nigeria, talks on issuing warrants authorizing entry and search of premises, after which the condition is fulfilled. **Section 21** granted the Powers of seizure where it clearly states that;

*(6) A police or customs officer who is exercising the power of search conferred by section 14 may seize and detain anything found in the course of the search.*

*(7) A police or customs officer who is exercising a power of search conferred by sections 15, 16, or 17 to any premises may—*

*(a) seize and detain or remove any item found on the premises;*

*(b) take copies of or extracts from any document or record found on the premises.*

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<sup>195</sup>2018Ivory Act S74S{3}

<sup>196</sup> 2018 Ivory Act S74S{4}

<sup>197</sup>2018Ivory Act S74S{5}

## **6.0 A CURSORY LOOK INTO NIGERIA LEGISLATION COURT DECISIONPREDICATED ON SEARCH AND SEIZURE**

By way of substantiating the subject of this paper which is inseparable from arrest with or without a warrant. The Nigeria Police Act 2020 section 38(1) annotated that a police officer may without an order of a court and without a warrant, arrest a suspect;

*(k) whom he reasonably suspects to be planning to commit an offence for which the police officer may arrest without a warrant if it appears s to him that the commission of the offence cannot be otherwise prevented; or*

Subsection (2) of the section, reiterates to the effect that no person shall be arrested without arrant except as provided in subsection (1). It went further at subsection (3) to avail that the authority given to a police officer to arrest a suspect who commits an offense in his presence is exercisable.

Additionally, it is significant to reiterate the provision in **section 39 of the Police Act, 2022** which provides that a private person may arrest a suspect in Nigeria who in his presence commits an offence, or whom he reasonably suspects of having committed an offence for which the police is entitled to arrest without a warrant. However, **section 48** of the same act preaches is very lucid and translucent to the effect of search which is the gamut of this paper, the same is reproduced and is comprehensible below;

*(1) A police officer may seize and retain anything for which a search has been authorized.*

*(2) In every case in which property is seized under this section, the person on whose premises*

*it was at the time of seizure or the person from whom it was taken, if other than the person on whose premises it was, maybe summoned or arrested and brought before a court to account for his possession of the property, and the court shall make such order on the disposal of the property and may award costs as the justice of the case may require. (3) An authority under subsection (2) may only be given when the premises to be searched are, or within the preceding twelve months have been, in the occupation of any person who has been convicted of receiving stolen property or of harboring thieves, or of any offense involving fraud or dishonesty, and punishable by imprisonment. (4) While searching the premises, a police officer shall not violate the human rights of persons found in the premises that is being searched.*

In **NWAOBOSHI & ORS v FRN (2018)**<sup>198</sup>, Per Ugochukwu Anthony Ogakwu, JCA (pp 24 - 30 paras a - c) expatiated in this light;

*...In approaching a resolution of this issue, the provisions of Section 44 (2) (k) of the 1999 Constitution and Section 26 EFCC Act. Seizure of property (1) Any property subject to forfeiture under this Act may be seized by the Commission in the following circumstances - (a) the seizure is incidental to an arrest or search; or (b) in the case of property liable to forfeiture upon process issued by the Court following an application made by the Commission in accordance with the prescribed rules....(Emphasis is mine)*

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<sup>198</sup> LPELR-45107(CA)

## **7.0 CONCLUSION**

As earlier stressed in this study, the historical background of the three nations under analysis cannot be overstated principally because it brought and solidified them together. While it is agreed by this writer that there are disparities, however, the variation has never diminished the efficiency and effectiveness obligatory for the maintenance of the states. Therefore, premised on this, this paper would draw the basic conclusion that these tripartite laws require that the necessary judicial and statutory processes cum procedures for seizure and search should be strictly followed in cases and never to be sacrificed by any means. Additionally, just as perfection would always be sought after, the legal draftsmen should make a substantial and judicious effort to correct precedents and survive irregularities in the existing laws.