

Criminal Liability Under the Nigerian Law: An Examination of the Liability of Non-Legal Entities

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Abstract

It is trite that the essential elements of an offence, particularly as it relates to criminal liability under the Nigerian Criminal Law are the actus reus and mens rea. However, in recent times the media has been filled with reports of animals stealing and carting away monies belonging to certain public agencies. This has continued to generate diverse views and raises new concerns for criminal liability and prosecution in Nigeria. This article, therefore, seeks to examine the basis of criminal liability under Nigerian law, particularly as it relates to non-legal entities such as animals. In achieving this, the essential elements of the offence of stealing under the Criminal Code Act, the Penal Code Act, the Administration of Criminal Justice Act, and other laws will be examined. Drawing from the recent incidents of animals alleged of stealing of public funds, this article suggests an amendment of the criminal laws in Nigeria.

Key words: Criminal liability; Non-legal entities; Criminal law; Stealing

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INTRODUCTION

Crime generally referred to as an offence against the State, is defined as an act or omission of an act that

contravenes an existing law. There are usually stipulated penalties imposed on anyone that commits what qualifies as a crime. A crime is committed against the State as the lawmakers prescribe the type of actions or omission of actions that constitute a crime and the corresponding punishment. The person that is guilty of a crime is said to be criminally liable. In most jurisdictions, only a natural person or a juristic person can be held criminally liable. Criminal liability is when a person is answerable for a crime which he or she commits with criminal intent as opposed to acting accidentally or lacking the ability to act deliberately (Deborah, 2021). The standard of proof for criminal liability is beyond a reasonable doubt. In other words, to establish that a person is criminally liable for an offence, the prosecution must prove their case beyond a reasonable doubt that the accused committed the crime.

However, two essential elements must be present before a person can be held criminally liable for an offence. These elements are Actus Reus which is the physical or external element required and Mens Rea which is the mental or internal element. These two elements must be present and proven beyond a reasonable doubt before a person can be held criminally liable for an offence. "The prosecutor must show that person's conduct has caused a certain event or state of affairs forbidden by the criminal law, and this was accompanied by a fault element derived from the wrongdoer's state of mind." (Smith, 1978) The exception to these two elements is strict liability which only requires Actus reus as the only element for criminally liability to be established.

"Actus reus commonly is described as including, first, the requirement that liability be based on conduct that includes a voluntary act. Also, part of the actus reus is the conduct required to constitute the offence, as well as any circumstances or results that are required to make the conduct criminal." (Robinson, 1993, pp. 187-211) "The mens rea of an offence typically is said to be the defendant's required mental state at the time of the

conduct constituting the offence.” (Ibid) “The required mens rea may also include proof of additional culpable mental state beyond that required as to each objective element.” (Ibid)

As for criminal liability of animals, the practice of putting an animal on trial was more prominent in the mediaeval era both in Europe and America. One could argue that during this era, it was assumed that animals have the capacity to understand the implication of their actions and understand man-made laws and are put on trial as it is done to humans. During this period, the court endeavoured to try animals as close as it could to the same way humans were tried (Grundhauser, 2021). “As barbaric, strange, or just silly as animal trials may seem, they continued well into the modern day. In 1916 an elephant named Mary murdered her trainer and was hanged in Tennessee using a crane. In 2008, in Macedonia, a bear was convicted of stealing honey from a barkeeper.” (Ibid)

CRIMINAL LIABILITY AND THE LAW IN NIGERIA

To put it succinctly, criminal law is a body of laws that controls and determines what is classified as a criminal act and provides a deterrent in form punishments. Any act that is dangerous, harmful, and threatening to both human lives and properties is deemed to be a criminal act. For every criminal act, there is a punishment that is expected to be applied when a person is found liable for any criminal act. What is deemed as a criminal act differs between jurisdictions.

In Nigeria, criminal law is also defined as stated above and the peculiarity of the Nigerian judicial system has provided for what should be deemed as a criminal act and the appropriate punishment for any guilty party. The sources of criminal law in Nigeria include The Received English Law, Nigerian Legislation, Case Laws, Customary Laws, and Delegated Legislation. These various sources of criminal law in Nigeria define criminal acts and prescribes the resulting penalties (Daniel, 2021). Depending on the jurisdiction, different laws are applicable in criminal courts in Nigeria. Some of these laws include Criminal Procedure Act (CPA) and Criminal Procedure Laws of various States, Criminal Procedure Code (CPC) and Criminal procedure Code Laws of the various States, Administration of Criminal Justice Act 2015, Administration of Criminal Justice Law 2011a, Penal Code Act and Penal Code Law of the Northern States, Evidence Act 2011, Code of Conduct Bureau and Tribunal Act Cap C 23 (LFN), Economic and Financial Crimes Commission (Establishment) Act, 2004, Independent Corrupt Practices and Other Related offence Act 2000 (Legal Emperors, 2021), to mention but a few.

In criminal cases in Nigeria, the burden of proof is on the prosecution and the standard of proof that must be

satisfied is proof beyond a reasonable doubt as held by Per E. Tobi, J.C.A in *Aderemi Aderounmu v. Federal Republic of Nigeria*.¹ A crime is considered an act against the state and there are government institutions responsible for the prosecution of crime in Nigeria. The Ministry of Justice of States and the Federation particularly the Department of Public Prosecution are responsible for the prosecution of criminal cases (Okemuyiwa, 2019). The Nigerian Police is the primary governmental authority responsible for the initiation and administration of the criminal justice system in Nigeria. The Nigerian police is the first government institution to have contact with a suspect alleged to have committed an offence either during arrest or investigation. Therefore, whether or not the suspect will obtain justice depends on how the police go about its duty (Ibid). In most jurisdictions including Nigeria, before a person can be held to be criminally liable for an offence, the prosecution must be able to prove beyond a reasonable doubt that the alleged crime has satisfied the two requirements of actus reus and mens rea. It is also incumbent on the accused to come up with a defence to disprove the presence of the two elements required for criminal liability.

ESSENTIAL INGREDIENTS OF AN OFFENCE UNDER THE NIGERIAN CRIMINAL LAW

In all jurisdictions, an offence is deemed as an infraction on the established religious, political or moral law that is considered essential in protecting the interest and sovereignty of the State or the welfare of its citizens (Igwe, 2014). Some of the acts that are classified as a criminal offence in Nigeria include Murder, Rape, Kidnapping, Burglary, Armed-robbery, money laundering, Terrorism, cyber-crimes, and so many others. In Nigeria, it is enshrined in the various extant criminal laws that the two basic ingredients for proving criminal liability are actus reus and mens rea. “A crime consists of both an external element (actus reus or overt act) and a mental element (mens rea or guilty intent). Accordingly, a person is deemed not liable for his/her conduct unless the prescribed state of mind concurs with the proscribed event or state of affairs. Hence the axiom: actus non facit reum, nisi mens sit rea (meaning, an act does not make a man guilty of a crime unless his mind be also guilty).” (Oyakhromen, et al, 2006)

“Actus reus is an overt act done where it is for the purpose of furthering a guilty intent.” (Ibid) In other words, “a lawful act done without guilty intent is not an offence. In the way, a wicked thought or bad mind without more may not constitute a crime.” (Ibid) “To say that an

¹ (2018) CA/L/782C

act is a crime; such an act must have been a violation of the ethical standards of society. The community must view such violation as anti-social behaviour hated and punishable by the law of that Community or State.” (Igwe, 2014) In other words, actus reus is an action that is prohibited by extant laws and the prosecution in establishing a criminal case must show the presence of this ingredient. Under Nigerian criminal laws, every definition of a crime contains the element of actus reus as one of the elements that will make an accused guilty of a crime. For example, Stealing is defined as the fraudulent act of taking anything capable of being stolen, or fraudulent conversion to one’s own use or the use of any other person, anything capable of being stolen, with intent permanently to deprive the owner of the thing.” (Oyakhromen, et al, 2006) In this illustration, the act of taking that thing that is capable of being stolen is referred to as actus reus. It is pertinent to note that under Nigerian criminal laws that there can be no liability for the omission of an act except the accused has a legal duty to act at the time of omission. “A moral duty to act is not enough.” (Ibid)

“Mens rea refers to the mental element required to be proved by the definition of the crime.” (Olamide, 2021) Mens rea is the second basic element that must be proved by the prosecution to successfully prove its case. Mens rea must be contemporaneously proven alongside actus reus. In Nigeria, mens rea is defined in the various criminal laws, and what constitutes mens rea vary from crime to crime. Mens rea is the guilty mind or state of the mind with which the accused person executed the criminal act as held by Per E. Eko, J.S.C in *Akinyede Olaiya v. The State*.² The principle of mens rea implies that no one should be convicted of a crime unless some measure of subjective fault is attributable to him (Oraegbunam & Onunkwo, 2011). Meaning that mens rea is the state of mind that an accused person must possess at the time of performing whatever conduct requirements that are stated in the actus reus of an offence (Ibid). This could connote a state of mind with which a person acts or of a failure to comply with a standard of conduct or even part of such a state of mind and part of such a failure (Ewulum, 2010).

For a successful conviction of a criminal offence, the mens rea and actus reus must be present and contemporaneously established by the prosecution. For illustration purposes, as defined under section 316 of the Criminal Code, John Doe and Jane Doe are a couple. Jane Doe discovers that she stands to inherit all the properties of John Doe when he dies, and she decided to do something about it. She poisons John Doe and he dies of food poisoning. It can be said that the actus reus is the act of poisoning John Doe’s food and the intent to kill John Doe on the knowledge that she stands to inherit all his properties is the mens rea.

² (2014) SC.562

CRIMINAL LIABILITY OF NON-LEGAL ENTITIES (ANIMALS) IN NIGERIA

Legal Entity is a term that is used to describe an individual or a corporate body that has been conferred with rights and obligations under extant laws of a state. This further validates the aphorism that says that for every right there is an obligation. A non-legal entity is therefore defined as an individual or a corporate body that is not recognised under any extant laws of a State. The legal implication of being a non-legal entity is that such entity cannot be held liable for any infraction on any extant law of the State. In other words, where existing laws do not confer any right on an entity, such entity is not obligated to abide by the laws of the land, and such entity cannot be held liable for any offence.

Thus, examples of non-legal entities in Nigeria include non-living things and animals. The focus of this article is on the criminal liability of animals under Nigerian law. In civil matters in some other jurisdictions, in cases of an animal attacking a person or trespassing on a property, the animals are oftentimes regarded as the property of the owner who is a legal entity. In such cases, since it is their property, the law of torts holds them strictly liable for any injuries or damage caused by an attack or trespass of their animal (Olamide, 2021). In Nigeria, there are not a lot of decided cases to show the position of our laws on the civil liabilities of animals. For criminal liabilities of animals, the law is even more silent as there is virtually no statutory provision nor decided case on an animal being held liable for a criminal offence. This is a source of concern as in recent times, it has been reported that animals carted away huge sums of money in Nigeria.

In 2018, Philomena Chieshe, a clerk working in the office of the Joint Admissions and Matriculations Board in Makurdi, Benue State claimed that a snake “swallowed” over ₦36 million equivalent to \$100,000 from the accounts’ office vault³. Shortly after that, Mr. Sani, a Nigerian Senator, claimed that monkeys in a farmhouse hauled off with over ₦70 million (\$194,444) belonging to the Northern Senators Forum⁴.

Suffice to say that our laws have not made adequate provisions for the prosecution of non-legal entities (animals) should an analogous situation in which a legal entity would have been found liable for an offence arise.

³ “Nigerian Snake Ate Millions of Naira, Clerk Says” (*BBC News* February 12, 2018) <<https://www.bbc.com/news/world-africa-43030827>> accessed 28/11/2021

⁴ “Monkey Carted Away N70 Million in Senators’ Farm House - Shehu Sani” (*Premium Times Nigeria* February 22, 2018) <<https://www.premiumtimesng.com/news/headlines/259430-monkey-carted-away-n70-million-senators-farm-house-shehu-sani.html>> accessed 28/11/2021

CRIMINAL LIABILITY OF NON-LEGAL (ANIMALS) ENTITIES IN OTHER JURISDICTIONS (UNITED STATES, UNITED KINGDOM)

For every jurisdiction, there are laws that guide both legal and non-legal entities in their conduct. Every entity in the society that is recognised by extant laws is subject to those laws and all actions are put under the scrutiny of the law to determine any liability that might have occurred due to their actions. We shall be examining two of these jurisdictions as regards the criminal liabilities of animals.

“Several European legal levels were involved in trials of animals. They were held before royal, urban, seigneurial, and ecclesiastical courts. Nevertheless, they followed only two distinct procedures, secular and ecclesiastical. While the former type was used to penalise domestic beasts that had mortally injured a human being, the latter was employed to rid the population of natural pests that could not individually be punished.” (Cohen, 1986) From the thirteenth century, animal trials were held in many European regions, especially in France, but also in Switzerland, Tyrol, Germany, the Netherlands, the southern Slavonic countries, and, on rare occasions, in Italy and Spain. (Dinzelbacher, 2002)

It is noteworthy that in the UK, there are instances in recent times when a court orders for the destruction of an animal, the animal itself is not held criminally liable, but it can be destroyed to prevent a repetition of such incidence, this is done when the court, upon investigation, declares the animal to be dangerous and would cause harm to humans. In January, 2020, in Edinburgh, United Kingdom, a court ordered the destruction of a Tibetan Mastiff after it attacked three people, a 31-year-old female named Cher Hardy pleaded guilty to being the owner of the said animal at the time it attacked people. It was established that the dog attacked a 17-year-old schoolgirl, a 73-year-old pensioner and a 53-year-old Fiona McHale. Although, in this case the owner was charged, the punishment was meted on the animal itself.

In the United Kingdom, owners of animals by default, are expected to exercise a general duty of care to prevent their animals from causing harm to other animals and people (Trevelyan, 2021). “This is a civil liability under the law of tort, which means that where harm is caused - action can be taken against the animal owner by the person who suffered loss or injury in the civil courts.” (Ibid) In other words, to establish a civil case against an animal, the owner will be held liable and the ingredients that must be present include Duty of care; Breach of duty; Causation; Damage or Injury. (Ibid)

“The practice of punishing animals for their ‘participation’ in criminal acts even reached across the Atlantic to the American colonies. In 1642, in Massachusetts, a mare, a cow, and other ‘lesser cattle’,

were executed along with Thomas Graunger” (Girgen, 2003). It is necessary to note that although in modern day practice, animals are no longer “tried” for causing harm to humans in the US, it does not necessarily mean that these animals cannot be punished. Several US states have laws that provide for the destruction of animals in cases where these animals have caused some form of harm to a human being. In most cases, the court describes the animal as “vicious” or “dangerous” before ordering the destruction (killing) of the said animal (Derbeken, 2012). In San Francisco, in 2002, a 12-year-old boy was mauled to death by two pitbulls, a male and female. Although the dogs were never tired and there was an argument by the defence that the female dog was not involved, Bane the male dog was destroyed shortly after the incident, while Hera, a 3 1/2-year-old female was destroyed after the matter was brought before the State Supreme court, and she was given a lethal injection that led to her death (Ibid).

COMPARATIVE ANALYSIS OF CRIMINAL LIABILITY OF NON-LEGAL ENTITIES IN NIGERIA AND OTHER JURISDICTIONS

It is a matter of fact that the Nigerian legal system does not take cognizance of the existence of criminal liability as regards non-legal entities (animals) in Nigeria, this factual statement is backed by knowledge of the non-existence of any Legislative (statutory law), or Judicial authority on this subject matter. To provide a broad overview of the criminal liability of non-legal entities, we shall analyse the position of the law of other jurisdictions (UK, US) and juxtapose this with that of Nigeria. For the sake of clarity, the position of the law shall be briefly discussed in separate paragraphs then subsequently followed by proper analysis.

In the United Kingdom, the position of the law is clear in matters where an animal is termed as “dangerous” or injures, mauls, or caused the death of a human being, in most cases, the court orders that the animal be “destroyed” - which means that the animal be killed, there are also instances where the court pronounced judgment in terms on exile, home detention, or impounding the said animal⁵. This, however, does not dispute that in matters of torts law, the owner of an animal can be held to be “responsible” or “culpable” for the actions of its non-legal entity, there are decided cases to this effect.

In the United States, the case is also similar, and there

⁵ See “Edinburgh Court Orders 14-Stone Dog Which Bit Three Women to Be Destroyed” (BBC News January 21, 2020) <<https://www.bbc.com/news/uk-scotland-edinburgh-east-fife-51192669>> accessed 27/11/ 2021.

ii. Animals Act 1971

iii. Dangerous Dogs Act 2004

iv. Antisocial Behaviour, Crime and Policing Act 2014

v. Control of Dogs (Scotland) Act 2010

were times in its history when animals were “tried” for committing a crime. In New Jersey, in 1994, A dog spent over 1000 days as Bergen County’s prisoner No. 914095 while its owner appealed (Stryker, 1994), this case however received a lot of criticism from judicial erudites. A similar case occurred in Ports-mouth, New Hampshire where a dog was declared “vicious” under the New Hampshire’s vicious dogs’ law, and it was stated that the dog be restrained at all times, however the dog escaped twice and was “sentenced” to death pursuant to the three-strikes-and-you’re-out ordinance (Hirsch, 1997).

However, in recent times, there are hardly any of these kinds of cases, in this sense, the legal system of the US is similar to that of the UK. Many states in the US set up their own legislation for cases where an animal causes harm to an individual(s) or property. In Texas, there is a law known as the Texas Health and Safety Code, particularly in Chapter 822, there is a provision that a court can set a time for the hearing (and order) for the “punishment” - the destruction of a dog if it has been determined “whether the dog caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person”⁶. In a hearing of this scenario, the owner of the owner of the animal is charged in its place.⁷

Flowing from preceding paragraphs, it is clear that in the US and UK an animal cannot be held to be “criminally liable”, however an animal said to be “responsible” for its action, this had been exemplified in statutory provisions in these jurisdictions and cases where the courts ordered the destruction of an animal as a result of its misbehaviour. Although this is not criminal liability in a strict sense, it has the same aim which is to reprimand; reform; rehabilitate; punish, and for the prevention of crime. These measures put in place by statutory authorities are meant to protect the lives and properties of other individuals in the community.

Taking a cursory look at the legislations put in place to serve as the sources of criminal law in Nigeria, one can see that neither of the two major sources of Criminal law in Nigeria - penal and criminal code, provides for a scenario where an animal can be convicted of crime. Considering that the major focus of this writing is on the offence of stealing, we have analysed in earlier paragraphs that these codes make provision for the offence of “stealing”, but not an offence perpetrated by an animal. One then looks at a legislation that is fairly recent in the administration of criminal justice in Nigeria, the ACJA. Upon a perusal from the lengths and breadths of this statutory authority, one can see that it also does not make room for the offence of stealing especially as it relates to a non-legal entity (animal), as a matter of fact, the ACJA itself is not as explicit on the offence of stealing as compared to the other criminal laws.

Under the Nigerian Criminal law system, an animal is completely incapable of committing a crime, this is largely due to the fact that it does not satisfy the principle of “mens rea”, it would be almost impossible to prove that an animal made a set of actions with the intention of committing a crime. There is a dissimilarity in the legal standing of a non-legal entity (animal) being held responsible for its actions both in Nigeria and other jurisdictions. This is due to the fact that there is no law that expressly provides for the destruction or punishment of an animal as a result of its actions. This calls for either the amendment of existing laws or the enactment of new laws that reckons with the fact that animals, with or without owners can cause harm to both humans and properties. Although this would not provide for the criminal responsibility of a non-legal entity in a perfect sense, it will fill the oblivion in Nigerian law that exists as a result of the absence of any law in this regard.

It is pertinent to note that under civil law, the owner of a non-legal entity (animal) can be held to be responsible for its actions, although there are very few decided cases to this effect. In the case of *M.K.O. Abiola v. Felix Ijoma*⁸, it was held that an individual can be held responsible for public nuisance when that person collects a large number of animals and causes public discomfort.

CONCLUSION

The legal status in Nigeria as regards to criminal liability of non-legal entities (animals) is clear, and it is to the effect that an animal cannot commit a crime. This is backed by a plethora of statutory and judicial authorities (both international and local) that before a person can be said to have committed a crime, he/she must possess both *mens rea* and *actus reus*. However, from a deeper observation of other jurisdictions, we learnt that it is popular practice for an animal to be held responsible although not criminally liable for its actions when it causes harm to humans or property. The basic reason for this is to prevent the repetition of similar events and to ensure that an animal is disciplined for its misbehaviour.

From a Nigerian perspective, especially with the rise of recent incidents of animals stealing public funds, it is a matter of necessity that there is at least one legislation that would ensure the prevention of the repetition of these kinds of “offences”. Such a law should make provision for the restriction of movement of non-legal entities around specified government areas; it should make provisions for the destruction of an animal in situations of violations of the previous provision and that an animal can be held responsible for its actions, especially in cases where such animal has shown prior behaviour of this nature.

⁶ Texas Health and Safety Code 2005.

⁷ *Timmons v Pecorino* (Court of Criminal Appeals of Texas, En Banc).

⁸ 422 LD 10 (1970)

See. *Daryani vs. Njoku* 1965 2 All NLR 53

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