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Criminal Justice, Spiritualism and Judicial Attitudes in Nigeria

Rev. Fr. Ikenga K. E. Oraegbunam*
&
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1. Introduction

Law is an instrument of social control and integration. As a vehicle of social engineering, law is a dependent variable causally determined by the societal structure. Also viewed as more active instrument for shaping future behaviours and social forms, the function of law and legislation must be clearly seen as one of communicating with the relevant society. The long and short of the above assertions is that law should be a mirror that reflects the behaviour and world view of a given society. Thus, the legal needs of one society may not be in tandem with those of another. As law exists for a society and not that society for the law, it becomes imperative that legislation and judicial hermeneutics should be *ad rem* to the experiences and *lebenswelt* of a given people.

There is no doubt that Nigerian society, in spite of foreign influences sequel to colonialism and missionary religions, still harbours beliefs in spiritualism, witchcraft and other preternatural and paranormal experiences. Sometimes, spiritual powers attendant to these practices are utilized to others' disadvantage not excluding causing their deaths. Yet, the British-type court and judicial system operating in Nigeria, as in many other common law countries, would flatly reject and disregard spiritually -related claims made before it in the exercise of its adjudicatory functions. Hence, in *Re: Opekun*,[1] the Court of Appeal. Ibadan Division, held that "a court is a court of law where miracles or magic have no place in decision making." Although, the court refers to miracle or magic, its intendment in the light of some other decided cases to be seen *anon,* covers all issues related to extra-sensory phenomena.

The main thrust of this paper is to discuss some experiences of these paranormal and spiritual matters, and critically examine some court decisions on cases involving references thereto. Finally, the paper will jurisprudcntialty seek to

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1 (2002) 6NWLR. 583.

find, in the light of traditional Nigerian and African worldview, whether the courts in Nigeria are right in relying on Western 'empirical', and 'rationalistic" approach and knowledge in dealing with matters peculiarly traditional. There will be suggestions as to the way out.

2. Some Preternatural Experiences

For the purpose of this paper, the word "preternatural" interchangeably used, as it were, with other kindred words such as "spiritual, "supernatural" and "extrasensory", refers not to the powers of deities and spirits which are superhuman within the hierarchy of beings in traditional ontology as enunciated by Metuh.[2] It rather connotes those magical and occult experiences of man, which though within the powers of their human purveyors, are certainly outside the day-to-day natural and explicable realities that confront the average traditional African man. Such experiences include witchcraft, juju, occultism, sorcery, charms, spiritual poisoning, black and sympathetic magic, and generally all "actions at a distance" or what in local parlance is referred to as "spiritual remote control". Though some use can be made of some of these activities unto good such as for protective medicine, we point to them, in this essay, with reference to their bad use such as in hurting, maiming and killing human beings and destroying their properties which can amount to serious crimes if committed within the adjudicatory parameters of our present laws.

Some of these experiences can be collated from oral interviews granted by victims or their doctors, and from written reports of same. Ndiokwere For instance, reports a number of these experiences.[3] An instance is that of one Mr. Julius Ohuche who narrates a pathetic story of survival from a deadly poison prepared by an unnamed enemy and deposited in his farm in 1962. The poison, wrapped in a piece of tattered black cloth was tied to a piece of stick, which he, Ohuche, touched and was instantaneously paralyzed from head to toe. It was only at the timely intervention of a well known native *dibia* that Ohuche was saved. The victim claimed he vomited for two days, but the poison left a permanent mark on his body, as his mouth is bent and he winks abnormally about several times per second.

Another case in point is that of one Steve Nkwocha, a senior clerk with a construction company in Port-Harcourt, Nigeria. He is paralyzed in one leg, drags it painfully and slowly when he walks, of course with the help of a walking stick. Steve maintains that a certain black powdery substance was deposited on his office seat by an unnamed enemy who had not been happy with the recent promotion of the victim who hitherto was a junior

2 E. I. Metuh, *God and Man in African Religion*, Enugu: SNAAP Press Ltd. 1999. Pp. 88-112

3 N. Ndiokwere. *Search for Security*, Benin City: Amhik Press. 1990. pp 33-49.

clerk. But because Steve had his preventive medicine, he was saved from immediate death. Asked why he was still affected by the enemy's poison in spite of his protective medicine, he said that the type of poison deposited by his unnamed enemy was a very deadly type.

The two experiences above are instances of the phenomenon known as "poisoning" *(ime nsi* or *iko nsi)*. It causes a very deadly form of calamity when administered. This has nothing to do with the European concept of poison which is any substance which can cause harm when wrongly taken or applied such as cyanide or arsenic, etc. Spiritual poisoning, on the other hand, can be administered by depositing the substance on any thing belonging to the enemy who will be affected on elose contact with the poison. It can also be transmitted through ordinary handshake, "thrown" at an enemy, or deposited in a drink - water or wine, etc.

Yet another most important "spiritual" attack prevalent in many African societies up till today is the phenomenon of witchcraft. Though studies on this phenomenon reveal that there are types meant only for protection[4], yet a good dint of it is still used in inflicting grievous bodily, spiritual or mental harm. A good example can be given with the death of a 29-year old man called Joe, well loved by his people for his contribution to the development of his community. On that unfortunate day, Joe and his sister were traveling home in a Peugeot 504 when, at Ofosu, a village on the way to Benin, tragedy struck. No one quite knew what happened. Somehow, the Peugeot had veered sharply from its side of the road to hit with force, a trailer loaded with timber. Joe's hands and feet were ground to pulp. He died later in hospital. The sister survived.

News of Joe's death spread in his town with the force of a sledgehammer, leaving young and old dumb with disbelief. Only one explanation could account for his sudden death - witchcraft. Oforowhe, his village, grounded to a halt. As he lay in state, dressed resplendently in white lace, the blood seeped through his clothes where the wounds were, further confirming the villagers' suspicion that witches had cut short the life of their illustrious son. The women of the village in a war mood danced round the village calling on the gods to root out the witches who were responsible for this infamy. Later, news came spreading like wild fire in the harmattan. Two women, it was reported had started "confessing" at the burial place. The alleged witches were beaten and prodded for the truth and soon began naming various people who had taken Joe's heart and dropped it into the stream. The suspected witches were, of course, rounded up and by the end of the week. 21 men and women were dead, most of them burnt alive.[5]

5 N. I. Ndiokwere: *Op. cit.* pp 47-48.

Moreso, some of the encounters with juju or black magic can also be garnered from literature containing the personal experiences of the writers. The experiences of one James Neal are quite illustrative. He went to take up a job in Ghana in November 1952 as Chief Investigation Officer in a newly established department that covered investigation and security. He saw this as a challenging job and was looking forward to putting his best into it. He however lamented that he was forced to give this job up because of Juju. One of his shocking experiences is narrated in his book I Became a Target for Juju:[6] This is how he conducted an investigation against a section officer who extorted varying amounts of money from certain cocoa farmers by blackmailing them that unless they gave him so much, a new road under construction would pass over their land.

This section officer, Kobla Nyame, was arrested and charged to court but he was later released on bail. He however threatened that he would see a Big Juju man who will kill all those people who agreed to give evidence against him if they did not abandon the prosecution. In addition, he boasted that Mr. Neal and his assistant. Mr. Adjei would regret having brought-the case against him. A few days later, two of the principal witnesses died suddenly. Neal expressed his shock at this since "both had been extremely fit and healthy cocoa farmers"[7] and wondered whether this was a mere coincidence.

Another drama that hit the case was that when Nyame was brought into court for his trial, the presiding judge so suddenly fell extremely ill that the case had to be adjourned. The judge had a recurrence of the illness several times and each time this happened, the case was adjourned. At last, the case was concluded and Nyame, the section officer was sentenced to two year's imprisonment. As he was leaving the courtroom, he muttered something to the effect that his revenge would be striking at Mr. Neal soon.

Neal then recalled how, on many occasions afterwards, he found his tyres slashed, his radiator drained of water, car doors forced open with a steel bar, the car registration plate ripped off, various other damages done, and somebody poured Juju in his car. He described how within a week of this case, he fell ill without warning and was rushed to a European hospital. He wrote that the series of tests showed a viral attack but that the exact cause of this could not be traced. After three weeks, he was discharged, but when there was no improvement a native doctor called Tettey was summoned, who told Neal "it was a Juju attack that caused you to go to hospital, and because it was Juju, the European doctors could not tell what

6 J. M. Neal, "How I became a Target for Juju" in J. Neal, *Juju in My Life*, London: George G. Harrap & Co. Ltd., 1966.

7 *Ibid.*, p. 26.

was wrong with you". Thus, after all his harrowing experience in Ghana, Neal concluded among other things with the statement:

> *There is no shred of doubt in my mind today that the African, in his own mysterious ways has harnessed one of the strangest powers of all the thing they call Juju.*[8]

The above stories in this paper are relevant to the extent that they demonstrate that wrongs, injuries, and evil machinations of spiritually influenced nature which can be inflicted on another are replete in African traditional societies. Many scholars of African traditional religion and Anthropology attest to this fact. Parrinder observes that in West Africa there is a great fear of evil magic where direct poisoning is also possible.'[9] Metuh is aware that in Africa besides the spirit agents of misfortune, witches and sorcerers are also harbingers of bad will. Thus, he holds that even as "protective medicines and charms are good medicines, these medicines too can be abused by sorcerers to obtain their wicked and antisocial ends."[10] Oduyoyc, on the other hand, does not mince words in writing that in African traditional enclave, it is not impossible that one can summon the aid of evil powers against another.[11] Again, writing about the Igbos of Nigeria, Basden observes that "there is a great deal of alleged intercourse with the spirit-world, and the custom of making juju is an almost daily affair."[12] Even beyond the frontiers of Africa, many scholars agree that most of the preternatural experiences are universal.'[13]

All these go to show that a reasonable traditional African man is quite convinced that there are so many forces around him – physical and metaphysical which sometimes affect him. This may perhaps vindicate Tempels for whom, in African ontology, "being is force" and "force is being" *(muntu)*.[14] It is also crystal-clear to the African that another can harness either onto his good or quite against him these forces.

8 *Ibid.*, p. 191.

9 G. Parrinder. *West African Religion*, London: Epworth Press, 1969. p. 166.

10 E. I. Metuh. *Comparative Studies of African Traditional Religions*. Onitsha: Imico Publishers. 1992. Pp 157-158.

11 M. Oduyoye: "The Medicine Man, the Magician and the Wise Man" in E. A Adegbola: (ed.). *Traditional Religion in West Africa*, Ibadan: Sefer. 1998. p. 55.

12 G. T. Basden: *Among the Ibos of Nigeria*, Lagos: University Publishing Company. 1983. p. 2.15.

13 Cf. T. H. Mbuy: *Understanding Witchcraft Problems in the Life of an African: Case Studies from Cameroon*, Owerri: High Speed Printers. 1992. p. 18; see also J. G. Frazer. *The Golden Bough: A Study in Magical Religion*, London: Macmillan Press Ltd: 1922.

14 P. Tempels: *Bantu Philosophy*. Paris: Presence Africaine, 1969. Pp 50-51.

3. Spiritualism and Criminal Justice System in Nigeria

It goes without saying that from the above accounts and many more, there are yet in Nigerian and Africa in general 'mysteries' which are still difficult to explain. But the question is: should civil law refuse to recognize these 'mysteries' and simply dismiss them as primitive notions nurtured by illiterates, miseducatcd or ill-equipped Nigerians who have failed to imbibe the European culture in its totality? In what immediately follows, we shall be concerned with some Nigerian criminal cases and consequent judicial decisions on matters relating to supernatural influences and the general attitudes of the courts thereto.

In *R. v. Nwaoke,*[15] for instance, the appellant was charged with murder of one Nwoacha and was convicted of manslaughter and sentenced to 10 years imprisonment with hard labour. He appealed to West African Court of Appeal (W.A.C.A) against this conviction. It was explained that the deceased was at one time the wife of the accused. She refused to continue to live with him and. as a result, the accused asked for the repayment of his "head money". Both Nwoacha and her mother promised to repay the money as soon as they could do so. The accused not being satisfied with these promises, brought a Juju called "Onye Uku", pointed it towards the deceased and said something like 'since you refuse to pay me my money, this Juju will kill you or since you refuse to pay me you shall no more eat or drink".

He left the Juju in the house of the deceased. It was proved that Nwaocha the deceased was much affected in mind by this Juju and the threat. She became very depressed although there was no evidence that she stopped eating or drinking or that her physical health was in any was affected. Six days after the accused had brought the Juju, Nwoacha went out to hang herself by the neck with a cloth from a tree so high that her feet hung six feet above the ground. Butler Lloyd A. G. C.J.

> There is no evidence whatever that the invoking of this Juju, to the knowledge of the accused at the time he invoked it, would be reasonably likely to cause the deceased to take her own life, and in our opinion, that element of reasonable likelihood must be present in order to make section 310 applicable.[16]

Hence, the appeal was allowed and the conviction and sentence quashed. Okonkwo holds that it is not easy to agree with the reasoning of the Court of Appeal.[17] The court seems to have placed undue weight on the vagueness of the evidence relating to the powers of the Juju whereas in fact what ought to be looked for is the foreseeable capacity of the Juju to constitute a

15 (1939) 5 WACA. 120.
16 *ibid.*
17 C. O. Okonkwo: *Criminal Law in Nigeria.* Ibadan: Spectrum Books Ltd.. 2002, p. 211,

source of fear to the native mind. And according to Ojo in a place like Africa where many people believe in the force of native medicine, such threats as these ought to have been severely punished. Afterall the accused left the Juju in the house. The mere sight of this would continually terrify the deceased.[18] For him, section 310 of Criminal Code ought to have been invoked.

In *R. v. Egbuaba Odo,*[19] the Appellants (2nd and the 3rd accused) were convicted with the 1st accused by the Judge of Enugu-Onitsha Division of the High Court on March 9, 1938 of perverting justice contrary to section 126 (2) of the Criminal Code. The three accused persons in the night of January 16, 1938 placed "magic powder" in the courtroom of the Idodo native court with the intention of influencing the District Officer and the court members to enter a favourable judgement in respect of litigation in which the 1st accused was directly concerned and the 2nd and the 3rd were indirectly concerned. Hence by doing so, each accused attempted by supernatural means to pervert the course of justice, an act which could readily have amounted to a contempt of court.[20]

The accused person put some black powder on the table and chairs in the courtroom as a charm in order that the District Officer might decide the case in their favour. The trial judge accepted what the first appellant said: "we did not bring any poison to kill any, but medicine to make the white man give judgement in our favour". They were convicted under section 126 (2) of the Criminal Code and they appealed to W.A.CA. Kingdom C.J. delivering the decision of W.A.C.A. said:

> *It seems advisable to point out that a person may lawfully hold a belief whether based on superstition or not, that by some intrinsically innocuous and inoffensive act, he can influence a decision of a court in his favour. The mere doing of such an act in the case cannot constitute an offence against section 126 (2) of the criminal code.*[21]

The appeal against convictions of both appellants was therefore allowed, their convictions were quashed and a verdict of acquittal entered. Also, in *Akerele v. Inspector Gen. of Police,*[22] the appellant was convicted under

18 J. D. Ojo, "The Place of Supernatural Powers in the Criminal Law with Particular Reference to Nigeria" in: *Nigerian Behavioural Science Journal,* vol. 1.No 1. 107,8. p. 32.
19 (1938) 4 WACA,71.
20 A. J. Yakubu: *Press Law in Nigeria,* Lagos: Malthouse Press Ltd. 1999. p. 5. See also *Adeniji Adele v. Ogbe* (1989) 9 NWLR. (pt567), 650; *Awobokun v. Adeyemi* (1968) NMLR. 289; *Ezeji v. Ike* (1997) 2 NWLR. pt 486. 206. etc.
21 (1938) 4 WACA, 73.
22 (1955)21 N.L.R..37.

section 210 (6) of the Criminal Code in that on 10th August, 1954 at Oyo, he unlawfully accused one Taiwo Amoke of being a witch. It was argued by the defence that the facts did not amount to an accusation because the appellant merely went to the complainant's house to ask her whether it was true that she was a witch and that she did kill one Bode. But the prosecution on the other hand maintained that the appellant did more than this and that he did accuse the complainant of witchcraft, that she killed one Bode and wanted to kill him (the appellant) also. The trial court accepted the evidence of the prosecution and rejected the evidence offered by the appellant.

Ademola J., delivering the judgement of the Supreme Court said:

> *It appears to me that the short history behind this chapter of the code is to prohibit indiscriminate accusations of witchcraft and to stop the practice of trial by ordeal and the like by making them punishable. In some parts of the country, accusations of witchcraft are visited with trial by ordeal and the taking of sasswood or other poison in order that the person accused may show that she is not a witch. These in many cases have resulted in grave consequences and deaths. The object of the section of the code, to my mind is to stop such accusations which in some cases have led to unnecessary ordeal and deaths.*[23]

The appeal was hence dismissed. In this decision, it does appear that the apex court was even blindfolded by the mere mention of witchcraft. This is clearly manifested by the fact that the court did 'not even make any modicum of effort to ascertain the veracity or not of what the prosecution stated, it immediately believed him against the appellant having heard the word "witchcraft."

Again, in *West v. Police*[24] the appellant was charged under section 210 (d) of the Criminal Code of invoking prohibited Juju. The appellant was quarrelling with her husband about money and some persons present were on the point of taking him away, whereupon the appellant said: "anybody who takes him away this night, let *Angulama Nom-Awo* kill him and his family" and when they said they would report her saying so, she repeated these words adding that whoever reported her "let him first put £200 before the Juju" on which account they did not take the husband away and went off. She was convicted on a charge that she "invoked a prohibited Juju known as *Angulama Nom-Awo.*"

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23 *Ibid.*
24 (1952)20 NLR 71.

Hubbard J., delivering the decision of the Supreme Court, held that the facts as proved did not in his view amount to an offence under section 210 (d) of the Criminal Code. He said that "the particulars in the charge sheet, which charge the appellant with invoking a prohibited Juju, appear to show that the prosecution in error thought that the offence was committed by acting in contravention of the Prohibited **Juju (Angulama Nom-Awo) Order-in-Council, 1951,** which provides that "the worship or invocation of the Juju known as *Angulama Nom-Awo* is hereby prohibited", this is not so."[25]

According to Hubbard J., it was the worship or invocation which was prohibited. He then concluded thus:

> *After considering this matter carefully I have come to the conclusion that it would be an unwarranted stretch of language to speak of a person as being present at his own sole worship or invocation of a Juju, and also that in a consideration of the whole sub-section it would appear that something more formal is intended that is revealed by the evidence, something in which several persons, certainly at least two person are concerned.*[26]

The appeal was therefore allowed. It is not difficult to, of course, agree with the views of Hubbard that the mere invocation of a prohibited Juju should not be subject to criminal prosecution. But what of the situation where the invocation of a Juju now leads to disastrous consequences? Should the very important idea of legal 'causation not be imputed to such invocation considering the world view of a reasonable traditional African man?

In *R. v. Udo Aka Eka Ebong,*[27] after the investigation of the murder of the deceased had proved abortive, the local chief in the area invited the eighteen villages in the neighbourhood for the purposes of investigating the death of the deceased. Juju was invoked for the purpose and it was the general belief of the people that the person who caused the death would go mad unless he confessed.

Eleven months later, the accused went to the chief and said that he had killed the deceased. The court held:

> In our opinion, the confession in this case was voluntary from the legal point of view and was properly admitted... To find otherwise would be getting perilously near to the fallacious theory that a genuine belief in witchcraft might be a possible defence to a charge of murder.[28]

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25 *Ibid.*, p. 72.
26 *Ibid.*, p. 73.
27 (1947) 12 WACA. 139.
28 Ibid., p. 140.

Considering this decision, Aguda observes to his utter disappointment that while physical threats can vitiate voluntariness with regard to confession and thus render it inadmissible in line with section 28 of the Evidence Act, threat harm by metaphysical means has, however, been held not sufficient for this purpose.[29] But in our humble opinion, invocation of Juju as in the instant case is certainly a type of threat which ought to have been seen by the court as vitiating voluntariness and thus rendering the confession inadmissible.

In *Gadam v. R,*[30] the accused believed that the miscarriage and mortal illness of his wife was due to the witchcraft of an old woman, and he killed the latter with a hoe. It was a finding of fact, which was not disputed, that the accused belief was *bona fide* and that a belief in witchcraft was prevalent in the community in which he lived. A strong West African Court of Appeal dismissed the appeal against the conviction for murder, holding the mistake to be unreasonable. Citing its unreported decision in the case of *Ifereonwe v. R,* West African Court of Appeal held that "where a man kills another in the belief that he is bewitched by him, the mistake could not be regarded as reasonable."[31]

It has to be noted that *bona fide* mistake of fact is a defence in criminal law and discharges one from criminal responsibility if such a mistake, according to section 25 of the Criminal Code, is honest, reasonable and relates to the existence of any state of things, as it is believed to be. The issue in the instant case is whether a *bona fide* mistake cannot be regarded as reasonable simply because it concerns a spiritual phenomenon, in this case, witchcraft. No doubt, the above decision of the court perfectly demonstrates the blatant rejection with which the British-type courts treat issues relating to spiritual influences.

Again, in *R. v. Konkomba,*[32] the accused believed that the deceased was the cause of the death of one of his brothers and the illness of the other, and consequently killed him. This was held to be murder. A plea of self-defence under sections 286 and 288 of the Criminal Code was rejected as unreasonable. Brett and Mclean commenting on this case say "it is with respect difficult to see how the accused's fear of immediate danger to his own life can constitute provocation".

The views of the above learned authors can be supported, as the facts do not reveal sufficient conditions for the application of the defence of self-

29 T. A. Aguda: *The Law of Evidence,* Ibadan: Spectrum Books Ltd., 1999. p. 52.
30 (1954) 14 WACA 442.
31 T. A. Aguda. *op. cit.*, p. 105.
32 (1952) 14 WACA. 236. See the comment of Brett and Mclean cited in Madarikan & T. A. Aguda (eds). *The Criminal Law and Procedure of the Six Southern States of Nigeria,* Sweets & Maxwell, 1974

defence on the bases of provocation. Yet, if the court had paid serious attention to the defence of 'reasonable mistake of fact under section 25 of the Criminal Code, which fact, under diligent and comprehensive consideration can either be physical or metaphysical, the accused could have been relieved of criminal responsibility.

Finally, one of the most recent court decisions regarding preternatural issues occurred in the case of *Aiguokhian v. State.*[33] The facts are that between 8 a.m. and 10 a.m. on the day of the incident which led to the death of the deceased, the appellant got to a very big farm of corn, cassava and yam where he saw a deer very close to him at a distance of about 22 feet. The appellant aimed his gun shot at the deer. The deer fell and when he went there, he saw it was a very big deer. He now decided to cut it into pieces to enable him carry the deer. The appellant claimed that it was when he was cutting the deer into pieces that he discovered that he was holding a human being, that the animal was a human being who turned out to be the deceased whom the appellant recognized.

At the conclusion of the trial, the trial court refused to believe the appellant's story and found him guilty of murder under section 316 and sentenced him to death under section 319 (1) of the Criminal Code. The appellant's appeal to the Court of Appeal was dismissed and the judgement of the trial court the affirmed. A subsequent appeal to the Supreme Court which was based on the plea of defence of mistake was also unanimously dismissed.

No doubt, falsehood on the part of the accused is probable even as it may still be possible that the accused is relating his true experience of what happened based on the traditional African belief and in the reality of totems and totemism. Thus, while any of the above is tenable, what is very troubling is the cajoling and cavalier manner of rendition with which Pats-Acholonu JSC. read the lead judgement in flagrant rejection of the accused's defence of *bona* fide mistake of fact as provided by section 25 of the Criminal Code. Pasts-Acholonu states:

> *...this testimony is the most bizarre story I have heard since I qualified as a legal practitioner... when the statement or evidence of a witness is of such obvious exaggerated proportions that it enters into the realm of either fantasy or is an affront to intelligence or is reckless in its utterance, it should be ignored, treated with utmost contempt and rejected in its entirety. Such evidence would be shown to be so manifestly hostile to reason and intelligence as to be nigh impossible that it should be believed by the court.*[34]

33 (2004) 7 NWLR, 566.
34 *Ibid.*, Pp. 569-570.

This statement is certainly a manifest disregard and total exclusion of the possibility of a human being turning into an animal and *vice versa*, a phenomenon which is commonplace in traditional Igbo extraction from which the Supreme Court judge is supposed to take his primordial roots.

The above presentations constitute only a tip of an iceberg of judicial attitudes to Juju and other related cases before our courts in the execution of criminal justice. In what follows we shall be concerned with a philosophico-legal critique of these attitudes in the light of African worldview. We shall at the same time make our recommendations.

4. A Philosophico-legal Critique of the Judicial Attitudes

In this paper we have adumbrated some instances of grievous harms inflicted on respective victims through supernatural means. We have equally discussed how these injuries issue in criminal matters before the courts and the attitude of these courts thereto. It now remains for us to evaluate these attitudes with a view to deciphering the better path that should be followed by our justice system.

That philosophy as jurisprudence, is entrusted with this function is due to the fact of its maintaining an integral focus on its objects of study with its comprehensive approach. But one of the major obstacles to contend with in this study is couched in the question: which philosophy will perform this role? This poser is particularly germane as western philosophy regards supernatural influences generally as embarrassment. Writing about the western philosophical attitude to supernaturalism, Atabong notes that the "idea of magic and witchcraft", for instance, "is a restless tendency of the human mind to conceive of and aspire to more than it can achieve by natural means."[35] Therefore, western philosophy according to this understanding sees all these supernatural beliefs as figments of the mind. And this, despite the fact that practice of magic, sorcery, witchcraft, etc is not lacking even in western society.[36] 'Hence, the task of evaluating the above judicial attitudes, no doubt, will rightly belong only to that philosophy which takes into consideration the entire worldview of the African. Such a philosophy may be designated African philosophy which in the words of Okoko denotes "a path to a systematic, coherent discovery and disclosure of the African as a being-in-the-African-world."[37] In our context, it will be the prerogative of African Philosophy of Law armed with the skills to probe into the nature of African worldview.

35 G. Atabong, "What Does One Believe? Letter to Cameroon Panorama" In H. Mbuy: *op. cit.* p. 7.
36 J. Dojo *op cit.* p. 28; See also: T. H. Mbuy. *op. cit.*: p. 18.
37 C. B. Okoyo, "African Philosophy: A Process Interpretation" In *Africans Marburgensia* XV. 2. 1983. p. 8.

There is no gainsaying therefore that a people's worldview articulates the way in which they experience reality. This is why Kraft calls it the 'Control Box' that governs the application of the people's conceptualisation of their relationships to reality."[38] Again, for Onuoha, a worldview "connotes a set of values, concepts, attitudes and images which guide man's perception and interpretation of facts and events."[39] In the same manner, Okafor regards it as the "totality of the concepts of the world, physical and metaphysical, held by a people and constitute basic notions underlying their cultural, religious and social activities."[40] It follows from the above descriptions that worldview of a people is quite indispensable in the way they view reality. In other words, their being and acting including judicial attitudes are supposed to be predicated on their worldview. In African *lebenwelt,* reality is divided into the visible and the invisible. That is to say, apart from the physical world, an important ingredient of African worldview is the belief in the spiritual. This is perhaps why Mbiti holds that the African is a "deeply religious being in a religious universe."[41]

Be that as it may, the first point to be considered in this discussion is the thorny issue of proving ones case before the court in matters relating to preternatural crimes such as enunciated above. This demand particularly concerns the question of evidential burden and standard of proof required for founding a conviction in dispensation of criminal justice. Generally, in English legal system, burden of proof in criminal cases is on the prosecution and never shifts. That is to say, the onus of proof is heavy on him who asserts against the accused. And this can only be discharged by proving the guilt of the accused beyond reasonable doubt as provided in section 138 (1) of the Evidence Act. This legal principle certainly is built upon a procedural rule, which slates that "every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty".[42] In the light of the above, therefore, securing the conviction of the accused such as in *R. v. Nwaoke*[43] would mean that the prosecution needs to prove beyond reasonable doubt that the said Juju, "Onye Uku". has the power of really influencing the deceased to the point of committing suicide as he did. And also in several cases involving witchcraft, the particular acts of the witches *(actus revs)* in conjunction with their actual intention *(mens rea)* to so harm the victim must be duly proved. These series of proofs, no doubt constitute an uphill task of Herculean magnitude in the dispensation of justice vis-a-vis Juju-related causes.

38 C. Kraft, *Christianity and Culture,* New York: Orbis Books, 1979, p. 53.
39 E. Onuoha, *Four Contrasting Worldviews,* Empress Publishing Company Ltd., (987, p. 26.
40 F. U. Okafor, *Igbo Philosophy of Law,* Fourth Dimension Publishing Co. 1992, p. 3.
41 J. S. Mbiti, African Religions and Philosophy, London: Heinemann, 1969. p. 15.
42 Constitution of the Federal Republic of Nigeria, 1999. Section 36(5),
43 *R v. Nwaoke Supra.*

We are too, not unmindful of the rationale behind the above principles of criminal jurisprudence. It is an oft-quoted maxim that "it is also a demand before the justice system that there should be a fixed standard of measure in relation to adjudicatory procedure in consonance with the need for stability of law. Otherwise dispensation of justice will be a matter for the whims and caprices of individual judges. However that may be, the above "slippery slope" argument will hold sway, if and only if all efforts have been made. The doctrine of *expert evidence* in our view can still constitute a leeway or panacea to the judicial problem in question.

In adjectival law, it is trite that the opinions of experts are generally speaking, regarded as relevant and therefore admissible[44] An expert is a person who being a *peritus,* is especially skilled in the field in which he is giving evidence. According to this view, lawyers in their relevant jurisdictions, doctors, forensic analysts, those knowledgeable in customary law, and generally men of science and arts etc can be regarded as experts under relevant conditions. It is equally worthy of note that a person can be seen as an expert in a particular field even though he did not acquire his knowledge after a systematic tutoring in the particular field, provided that he has had, in the opinion of the court, sufficient practice in the particular field of knowledge as professional or as amateur, to make his opinion reliable.[45] Therefore from this doctrine, it seems that nothing will debar a witch-doctor, Juju priest, diviner or generally a traditional medicine man from being regarded as an expert for the purpose of giving expert opinion in the court about Juju-related and witchcraft cases. It is the popularity of their expertise, for instance, that renders this group of people highly respectable and consulted in African traditional society.

The nature of this expert evidence in relation to preternatural issues should not necessarily be seen to be a source of an intractable problem for the courts any more than any other type of evidence would since its admissibility will also be subject to the laid down principles of the existing law of evidence. For instance, the said expert is not shielded from the rule that before any expert begins to give evidence, he must first give his qualification and experience[46] However, the legal demand on the expert to give the basis of his whatever opinion[47] will certainly mount a challenge to African spiritual experts who are economical with the explanation of their *modus operandi.* And of course since the court is not bound to accept an expert opinion and act on it especially where such opinion conflicts with common sense, it

[44] Cf. Evidence Act, Section 57. See also T. A. Aguda. *op. cit.*, p. 99.
[45] T. A. Aguda. *op. cit.*, p.100.
[46] F. Nwadialo. *Modern Nigerian Law of Evidence,* Lagos: University of Lagos Press 1999.p 203
[47] Evidence Act, Section 65.

should feel free to avail itself of the services of these 'supernatural' experts in the adjudication of cases before it. In case of conflicts of expert opinions in this regard, the court may either require corroboration or pick and choose from the opinions, provided it is acting *debito justiciae.*

But a major problem still presents itself: What is the measure of 'common sense' or 'reasonableness", notions upon which law and administration of justice are fundamentally built? Is the idea of common sense or reasonableness really common to all people of all cultures or is it conditioned by specific time and place? These questions are congenial since the law or the Jury system of trial is always concerned with the view of the 'reasonable' man. This is manifest in an oft-quoted statement accredited to Awolowo that "law is nine-tenths common sense plus one-tenth technicality". Therefore, who is really the reasonable man in a community that believes in the existence of witches and juju-related issues? Certainly, our courts seem not to have convincing reasons for holding the belief on witchcraft, Juju, and allied cases "unreasonable". Here, for instance, is the statement of the trial judge in *Ifereonwe v. R* a case involving an action that was based on belief in witchcraft:

> *I have no doubt that a belief in witchcraft such as the accused obviously has is shared by the ordinary members of the community. It would however in my opinion be a dangerous precedent to recognize that because a superstition, which may lead to such a terrible result as is disclosed by the facts of this case, is generally prevalent among a community, it is therefore reasonable. The courts must, I think, regard the holding of such beliefs unreasonable.*[48]

It is, unfortunately, on this judicial conviction that *Gadam v. R*[49] another witchcraft case was decided. Such a firm statement of the law, though approved by such strong authority, nevertheless requires further examination. Its obvious implication is that the standard of what is reasonable is the standard of the educated man who does not hold a superstitious belief in witchcraft. The decisions in *Ifereonwe* and *Gadam* are in effect decisions of policy based on the deterrent and educative theories of punishment[50] and a belief in the maintenance of standards which many in the community cannot reach. Besides, one may ask, what makes a particular belief superstitious and another not? What is the standard? Is it bringing the western worldview to be a judge on the African traditional beliefs? There is no gainsaying the fact that people act according to their beliefs. It is

[48] See: C. O. Okonkwo. *op. cit,* Pp 105-106.
[49] *Supra.*
[50] J.M. Elegido, *Jurisprudence* Ibadan: Spectrum Books Ltd 1994. Pp 214-216.

equally a cardinal principle of comparative study of religion that the value of a particular religion should not be sought *ab extra*, that is, via extraneous canons. To a large extent, one needs to take on the role of an adherent in order to fully understand the tenets and symbolisms thereof. This is the theory of'symbolic interractionism" as used in the social sciences.[51]

Certainly, one may argue that some standards should be maintained, and yet suggest that they should not be set impossibly high. When the lawmaker uses the word 'reasonable', does it mean and are the courts to interpret it to mean what the enlightened few would regard as reasonable or what the ordinary man would regard as reasonable? To take the former view is surely to do violence to the word 'reasonable'.

Given the diversity and relativity of worldviews and cultures,[52] it seems that the standard of what is reasonable in a community is the standard of a reasonable man in that community, "the ordinary" man. it is that standard however difficult to ascertain which is the safest to adopt, especially in a democratic society and in criminal justice system where punishment is the outcome of conviction. This is also the opinion of Okonkwo when he holds that "the courts should adopt as the standard of "reasonableness" the standard of the general community from which an accused comes, even if this involves opinions or beliefs unacceptable to the judges themselves and the educated minority.[53] Hence, such court decisions as in *Gadam, Ifereonwe , Kokomba, Aiguokhian* in which defences of reasonable mistakes of facts were pleaded might have been otherwise if proper construction had been given to the word "reasonable". This is certainly the view of the Northern Region High Court in *Lamba Kumbin v. Bauchi Native Authority*[54] on the 'reasonableness" of foresight under the Penal Code definition of culpable homicide. It holds thus:

> *... After the court has given due consideration to the person's way of life, it must apply the 'reasonable man' test to the average person in that way of life...*[55]

Therefore, it is our considered view, that it will be tantamount to a cruel mistake and a showcasing of culpable limitation if the courts in Nigeria would readily either visit with insufficient consideration, shy away from or treat with undue rejection criminal causes that come before them simply

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51 M. Haralambos & R. M. Heald, *Sociology: Themes and Perspectives*. New Delhi: Oxford University Press. 1980, p. 544.
52 A. Giddens, Sociology, Oxford: Polity Press, 1993, p. 36.
53 C. O. Okonkwo. *op. cit.*, p. 106.
54 (1963)NNLR, 49.
55 *Ibid.*

because these causes are of metaphysical nature. If the existing court system can admit confessions of witchcraft crimes such as it did in *R. v Udo Aka Eka Ebong*[56] and if oaths, purely spiritual acts invoking the name of the Most Spiritual Being, God, can be administered in and by our courts, then the courts will have an obligation to employ a reasonably comprehensive approach to spiritually influenced cases before them. It should be remembered that oath taking is the religio-legal basis of the very important idea of affidavit and the notion of perjury. Thus, the courts should bear in mind the anthropological nature of man who is composed of a physical and a spiritual dimension, body and soul. The physical is not all that there is. There is equally the psycho-pneumatological aspect in any holistic anthropological consideration.

Yes, the two major criminal legislations operating in Nigeria today namely, the *Criminal Code Act,* (for the South) and *Penal Code Law,* (for the North) contain clear provisions on trial by ordeals, witchcraft, Juju and criminal charms.[57] Yet it appears that the general intendment of these provisions, as Ademola, J. observes in *Akerele v I. G. P.*[58] is nothing more than to prohibit indiscriminate accusations of witchcraft and to stop trial by ordeal. This is a welcome development. But on a deeper reading however, one does not fail to see that witchcraft and Juju related crimes, heinous as they are, are trivialized by the statutory fact of treating them as mere misdeameanours attracting not more than two years imprisonment with or without fine.[59] This is a clear indication that such cases which often can lead to the death of another man are not treated with sufficient consternation which they deserve. It is only probably 'possession of criminal charms" that is regarded as felonious punishable as it were, with 5 years imprisonment.[60] But even at that, it seems the evidential constraints inherent in the existing legal and procedural onus and standard of proof will surely constitute a clog in the wheel of dispensation of justice in matters relating thereto. It will really be a heavy burden to discharge while proving the "criminal" nature of the charms without which proof of conviction may not be secured.

It therefore becomes necessary that the legal system in Nigeria should begin to also look inwards in view of solving the numerous preternatural criminal problems that bug the citizens. Law is made for man and not man for the law. It is for maintenance of peace, order and justice whether among the educated in the urban city or among the illiterates in the suburb. The inevitable demand before the justice system, in this connection, is to seek

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56 *Supra.*
57 See: *Criminal Code.* Sections 207-213; See also *Penal Code.* Sections 214-217.
58 Supra.
59 See: *Criminal Code,* Section 210; and *Penal Code,* Section 216.
60 See: *Criminal Code,* Section 213; and *Penal Code,* Section 217.

for a genuine way of effecting legal inculturation or at least real indigenization in order to be able to comprehensively address the conflict situations of the people. There is no doubt that the present court system in Nigeria is comprised of judicial apparati bequeathed to us as colonial legacies often without due regard to the autochthonous sensibilities. It seems that unless our courts adapt the existing legal system to our local needs in addition to our own inputs, a lot of societal conflicts especially those under discussion herein will either ever remain unresolved or treated with "judicial injustice."

Conclusion

This paper has addressed some few points. It is convinced that grievous harms can be inflicted through spiritual means. It has also observed that when these issues are taken before the court, due to procedural limitations, they do not receive proper remedy in spite of the maxim: *ubi jus ubi reme dium.* Our paper, therefore, has suggested a need for utilizing whatever we have to arrive at justice. Although Africa of today is a hybrid; yet certain beliefs and convictions die hard. The powers of native medicine or Juju and those of witchcraft are mainly supernatural powers and may not be "scientifically" analyzed through Western approach. To get the result, it is strongly recommended that opinions of witchcraft detectors and doctors, Juju priests and the like be strictly seen as those of men of science and arts which may be relevant and hence admissible. One will certainly expect conflicts of opinion in actual practice. But at each time, there ought not to be fear since the courts still occupy the centre stage, as in any adversarial system of adjudication, towards the final determination of any case before it.

Besides, the Nigerian government should now set up research institutes for studies in traditional medicine properly staffed with medical doctors, native doctors, psychologists, botanists, pharmacists, lawyers, and even priests. It would be theirs to investigate the extent to which these powers can be harnessed unto progress rather than for destruction. It would equally be an opportunity for proper study of the activities of witches, wizards and juju makers for the purpose of admitting expert opinions for genuine administration of justice.