

ANALYSIS OF THE PRINCIPLES GUIDING THE APPLICABILITY OF THE RULE AGAINST DOUBLE JEOPARDY IN NIGERIA*

Abstract

*This article gives a critical study of the grounds guiding the rule against double jeopardy in Nigeria, constitutionally incorporated in Section 36(9) of the 1999 Constitution. It argues that while the provision offers an absolute shield against double vexation, its judicial application through the ‘same offence’ test, the requirement of a ‘competent court,’ and the principle of finality has often been restrictive and formalistic, potentially undermining the rule’s fundamental rights rationale. The study concentrates on important decisions such as *State v Ogbomor*, which established the ‘same in law and fact’ test, and *Okeke v The State*, which disclosed the loophole caused by discriminating between administrative and criminal actions. The paper further discusses modern difficulties, including the unsolved federalism conundrum and the potential for abuse through prosecutorial techniques like *nolle prosequi*. It concludes that the current jurisprudence requires evolution to sustain the rule’s efficacy. The article consequently recommends a judicial shift towards a supplemental ‘same conduct’ analysis, a rejection of the dual sovereignty doctrine in Nigeria’s federal context, and legislative amendments to curb the oppressive use of discontinuance procedures, thereby realigning the application of the rule with its paramount purpose as a guardian of liberty.*

Keywords: Double Jeopardy, Applicability, Section 36(9) of the 1999 Constitution, Nigeria

1. Introduction

The prohibition of double jeopardy serves as a robust safeguard within the framework of criminal justice, intended to protect individuals from the coercive authority of the state. The ancient Latin sayings ‘*nemo debet bis vexari pro una et eadem causa*’ (no one should be twice troubled for the same cause) and ‘*autrefois acquit*’ or ‘*autrefois convict*’ (previously acquitted or formerly convicted) sum up its core.¹ This common law principle has been raised in Nigeria from a procedural defense to a basic constitutional protection. It is now written into Section 36(9) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).² This part makes it very clear that ‘a person who shows that he has been tried by any court of competent jurisdiction for a criminal offence and either convicted or acquitted shall not again be tried for that offence or for a criminal offence having the same ingredients as that offence.’

The philosophical foundations of the rule are threefold: it safeguards against the psychological and financial distress of repeated prosecutions; it maintains the finality and integrity of judicial decisions, preventing the state from making endless attempts to secure a conviction; and it acts as a crucial check on prosecutorial overreach and arbitrariness, thereby upholding the rule of law and enhancing public confidence in the justice system.³ The Supreme Court astutely observed that the norm is ‘a principle of universal jurisprudence, founded on the broad ground that it is in the interest of the community that no person should be unnecessarily harassed twice for the same offence.’⁴

The law against double jeopardy in Nigeria seems clear in its constitutional wording, but in practice, it is hard to understand because of complicated court decisions and remaining questions. The seemingly simple questions of what is the ‘same offense,’ which court is ‘competent,’ and what is a final decision

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¹ C O Okonkwo, *Okonkwo and Naish on Criminal Law in Nigeria* (2nd edn, Spectrum Books 2005) 112.

² Constitution of the Federal Republic of Nigeria 1999 (as amended), s 36 (9).

³ E S Ojukwu, ‘Double Jeopardy and the Nigerian Constitution: A Review of Emerging Trends’ (2010) 52 *Journal of African Law* 138, 140-142.

⁴ *State v Ogbomor* (1985) LPELR-3217(SC) 15, per Nnamani JSC.

of ‘acquittal’ or ‘conviction’ have led to a lot of different and often contradictory legal decisions.⁵ The growth of laws at both the federal and state levels, which often make the same behavior illegal under multiple laws, is a modern challenge to the old ‘same offense’ criterion.⁶ Also, the relationship between administrative disciplinary proceedings and criminal trials, as well as the differences between discharges and acquittals, continues to push the limits of this basic right.⁷

This article conducts a rigorous and philosophical examination of the applicability of the double jeopardy rule in Nigeria. It goes beyond just restating the legislation to question the coherence, consistency, and practical effectiveness of the judicial principles that govern its use. The main difficulty it addresses is the gap between the absolute essence of the constitutional right and the technical, often limited, interpretations that might undermine its protective function. The objectives of this article are threefold: first, to delineate and analyse the core principles established by Nigerian courts for applying the rule, with particular focus on the ‘same offence’ test and the requirement of jurisdictional competence; second, to identify and examine contemporary ambiguities and challenges, including those arising from Nigeria’s federal structure and overlapping statutes; and third, to propose coherent recommendations for judicial clarification and legislative action to strengthen this cardinal safeguard of liberty.

2. The Constitutional and Statutory Framework

The rule against double jeopardy in Nigeria finds its supreme authority in the nation’s *grundnorm* and is operationalised through specific statutory measures. This section delineates this framework, charting the elevation of the rule from a common law plea to a fundamental right and reviewing the statutes that control its procedural invocation.

Constitutional Entrenchment: Section 36(9), CFRN 1999

The cornerstone of the rule is Section 36(9) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). It provides a definite shield: ‘a person who shows that he has been tried by any court of competent jurisdiction for a criminal offence and either convicted or acquitted shall not again be tried for that offence or for a criminal offence having the same ingredients as that offence.’⁸ A literary analysis indicates four crucial components that must be achieved for the petition to succeed:

A Prior Trial: The person must have been previously ‘tried.’ This suggests a legal process leading to a verdict, not only an arraignment or preliminary probe.⁹

By a Court of Competent Jurisdiction: The earlier proceeding must have been before a court with the legal capacity to adjudicate on the offence. Trials before incompetent tribunals, such as a court martial trying a civilian for a non-military offence, cannot be found.¹⁰

Resulting in Conviction or Acquittal: The earlier trial must have terminated in a definitive verdict on the merits. This eliminates instances of discharge, *nolle prosequi*, or cases stricken out for technical reasons without a decision of guilt or innocence.¹¹

Identity of Offence: The new charge must be for the same offence or one having the same ingredients. This is the most commonly contested issue, requiring a detailed examination of the legal and factual components of both allegations, a matter discussed in depth in Section 3.¹²

By inserting this rule within Chapter IV (Fundamental Rights), the Constitution elevates it from a simple procedural defence into a justiciable human right. Any breach is therefore not only an error of law but

⁵ A. Adewumi, ‘The Plea of *Autrefois Acquit* and *Autrefois Convict* under the Nigerian Criminal Law: A Critique’ (2016) 4(1) *University of Benin Journal of Law and Political Science* 45, 48-50.

⁶ *Okeke v The State* (2003) 15 NWLR (Pt. 842) 25.

⁷ *Attorney-General of Lagos State v. Attorney-General of the Federation* (2013) 16 NWLR (Pt. 1380) 374.

⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 36(9).

⁹ *FRN v Osahon* (2006) 5 NWLR (Pt. 973) 361 at 417, where the Court of Appeal distinguished between a trial and an investigation.

¹⁰ *Onagoruwa v The State* (1993) 7 NWLR (Pt. 303) 49 at 80.

¹¹ *Attorney-General of Lagos State v. Attorney-General of the Federation* (2013) 16 NWLR (Pt. 1380) 374 at 455.

¹² *State v Ogbomor* (1985) LPELR-3217(SC).

a violation of a guaranteed right, potentially grounding actions for enforcement under Section 46 of the CFRN.¹³

Statutory Codification and Procedure

While the Constitution gives the substantive right, procedural laws detail its application in court. The Administration of Criminal Justice Act (ACJA) 2015, applicable in federal courts and approved by various states, provides the most recent procedural expression of the rule. Section 246(1) of the ACJA specifies that an accused may plead that he ‘has previously been convicted or acquitted of the same offence.’¹⁴ Furthermore, Section 8(3) confirms the constitutional position by barring a person from being prosecuted again for the same offence. The ACJA’s comprehensive system for swift trials also indirectly supports the rule’s purpose by prohibiting protracted, oppressive prosecution.¹⁵ For states yet to implement the ACJA, the older Criminal Procedure Act (CPA) applicable in the South and the Criminal Procedure Code (CPC) in the North include identical provisions. For instance, a plea in bar under these rules requires the accused to raise the matter explicitly, sometimes in writing, leading to a ‘trial within a trial’ to assess the legitimacy of the plea before the main trial can proceed.

Common Law Foundations and Doctrinal Evolution

The Nigerian rule is irrevocably impacted by its English common law ancestry. The pleas of *autrefois acquit* and *autrefois convict* were fully established concepts received into Nigerian law under colonial rule. Nigerian courts have repeatedly drawn upon this rich jurisprudence, citing authoritative English cases such as *Connelly v. Director of Public Prosecutions*, which examined the difficulties of offence-splitting and the required link between charges.¹⁶ However, the constitutional entrenchment in 1979 represented a decisive evolution. It transformed the notion from a judge-made common law principle, which may be modified or exceptions developed, to a hard constitutional guarantee. As the Supreme Court highlighted in *OGBOMOR*, the constitutional provision ‘has given the force of law to the common law pleas of *autrefois acquit* and *autrefois convict*... it is now a constitutional right.’¹⁷ This means statutory or judicial attempts to introduce vast exceptions to the rule are constitutionally questionable. The foundation is now obviously rights-based, focused on safeguarding the individual from state authority, rather than merely ensuring procedural regularity. This sturdy yet elaborately detailed structure sets the setting for the challenging judicial interpretation of its key aspects, particularly the persistent challenge of determining what constitutes the ‘same offence’ in a modern, multi-layered legal system.

3. Core Principles of Application: The ‘Same Offence’ Test

The constitutional guarantee against double jeopardy rests on the judicial interpretation of a critical phrase: ‘the same offence or... a criminal offence having the same ingredients.’¹⁸ Nigerian courts have evolved a complicated jurisprudence to give life to this clause, shifting from a purely formalistic approach towards a more substantive analysis aimed at revealing the underlying core of the allegations. This section critically explores the evolution and application of these basic principles.

The Foundational Test: State v. Ogbomor and the ‘Same in Law and Fact’ Doctrine

The locus classicus on the subject is the Supreme Court ruling in *State v. Ogbomor*.¹⁹ The appellant, initially accused of and acquitted of the murder of one ‘A,’ was later charged with the murder of ‘B,’ who died in the same incident. The Supreme Court laid out the decisive test: for a plea of *autrefois acquit* or *convict* to succeed, the offence must be the same in law and in fact. The Court held that the killing of ‘A’ and ‘B’ were distinct acts resulting in distinct offenses, but emanating from the same

¹³ *Kalu v The State* (1998) 13 NWLR (Pt. 583) 531 at 548.

¹⁴ Administration of Criminal Justice Act, 2015, s 246(1).

¹⁵ Administration of Criminal Justice Act, 2015, s 396, which mandates day-to-day trial.

¹⁶ *Adeyemi v The State* (1991) 6 NWLR (Pt. 195) 1 at 25, where the Supreme Court cited *Connelly* with approval.

¹⁷ *State v Ogbomor* (1985) LPELR-3217(SC) 18, per Nnamani JSC.

¹⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 36(9).

¹⁹ *State v. Ogbomor* (1985) LPELR-3217(SC).

transaction.²⁰ This ‘same in law and fact’ criterion provides a twofold requirement: a) Identity in Law: The offences must be constituted by the same statutory provision and bear the same legal characteristics. For instance, a charge of stealing an automobile under Section 390 of the Criminal Code cannot be the same in law as a charge of obtaining that same car under Section 427, even if the facts overlap;²¹ b) Identity in Fact: The factual particulars of the actus reus, the time, location, victim, and property must be substantially the same. The court in *Ogbomor* stressed that two unique human lives cannot be blended into one factual constituent. The *Ogbomor* test, while offering clarity, has been critiqued for its potential for restricted, technical application that might allow the state to bypass the spirit of the law by prosecuting several offences from a single, uninterrupted course of conduct.²²

The Complexity of Lesser Included Offences

A significant issue arises where one offence is a necessary component or a minor version of another. The constitutional language ‘having the same ingredients’ clearly addresses this. If Offence B comprises all the legal ingredients of Offence A, plus an additional element, then an acquittal or conviction for the greater offence (B) prohibits a further trial for the lesser (A), as all constituents of A have already been disposed of.²³ The inverse is more disputed. An acquittal for a minor offence does not immediately prohibit a prosecution for a higher one, as the latter involves an ingredient not adjudicated upon. However, if the factual basis of the acquittal on the lower accusation necessarily invalidated the basic feature of the higher charge, the rule may apply. For example, an acquittal for manslaughter based on a decision that the accused’s behavior was not the cause of death would logically prohibit a subsequent murder conviction based on the same death. Nigerian courts have dealt with this logical reliance, frequently requiring a close analysis of the record of the first trial to establish what was actually decided.

Same Conduct, Different Statutes: The Okeke Quandary

Modern legislation complicates the ‘same offence’ concept, particularly where a single act contravenes many statutes. The leading case is *Okeke v The State*.²⁴ The appellant, a police officer, was prosecuted and acquitted by a disciplinary panel for conduct adverse to discipline (killing a suspect). He was then charged in a regular court for murder for the same crime. The Supreme Court, in a divided judgment, determined that the two offenses were not the same. The disciplinary offence dealt with disobedience of internal police rules, while murder was a crime against the state and society. The elements and the statutory intents were different. This ruling demonstrates a limited, formalistic approach that prioritises the legal name over the underlying factual nucleus. Scholars have argued that *Okeke* provides a loophole that contradicts the rule’s objective, allowing the state to pursue several punishments for the same offense through separate jurisdictional portals.²⁵ It raises the important question of whether the constitutional protection should extend to a single path of criminal action, independent of the statutory pigeonholes it may fit into.

The Evolving Role of Evidential Nexus and Transactional Integrity

Recent jurisprudence reveals a hesitant shift towards a more holistic, transactional view, informed by comparative common law. Courts have begun to go beyond the rigid four corners of the charges to the underlying evidence link. If the evidence required to prove the second allegation is substantially the same as that led in the first, a plea of double jeopardy may be sustained even if the law offences are technically distinct.²⁶ This technique inquires whether the two allegations arise from the same

²⁰ *Ibid*, 21-22.

²¹ *Adeyemi v. The State* (1991) 6 NWLR (Pt. 195) 1 at 24.

²² A. Adewumi, ‘The Plea of *Autrefois Acquit* and *Autrefois Convict* under the Nigerian Criminal Law: A Critique’ (2016) 4(1) *University of Benin Journal of Law and Political Science* 45, 58.

²³ *Uso v. The State* (2006) LPELR-3441(SC) where an acquittal for armed robbery (a more serious offence) was held to bar a trial for simple robbery.

²⁴ *Okeke v. The State* (2003) 15 NWLR (Pt. 842) 25.

²⁵ E S Ojukwu, ‘Double Jeopardy and the Nigerian Constitution: A Review of Emerging Trends’ (2010) 52 *Journal of African Law* 138, 150.

²⁶ *Abacha v. The State* (2014) LPELR-22014(CA), where the Court of Appeal considered the similarity of evidence in two sets of charges.

‘transaction’ or ‘factual nucleus.’ While not yet the dominant standard in Nigeria, it has been cited in obiter dicta and by progressive judges to prevent fragmentation of prosecutions. For instance, in a case of armed robbery involving the theft of several objects from many victims in one occurrence, charging each theft as a different count in one trial is allowed, but separating them into multiple succeeding cases would likely offend the rule.²⁷ The court’s obligation is to prevent the state from ‘slicing’ a single criminal episode into several cases to harass an accused.

The friction between the stringent Ogbomor test, the problematic Okeke exception, and the growing transactional analysis provides the crucible in which the principle of double jeopardy is currently being fashioned in Nigerian courts. This tension leads immediately to the next key issue: the competency of the court that gave the initial ruling.

4. Jurisdictional Competence and Finality of Proceedings

A successful plea of double jeopardy requires not only identity of offence but also that a recognized authority made the preceding finding and that it was truly final. This section explores two other basic foundations of the rule: the requirement that the first trial be before a ‘court of competent jurisdiction,’ and the necessity that its conclusion constitutes a genuine acquittal or conviction, as opposed to a non-conclusive termination.

Defining ‘Court of Competent Jurisdiction.’

The constitutional shield under S.36(9) CFRN is specifically conditioned on the earlier trial being conducted by ‘any court of competent jurisdiction.’ This is a threshold criterion that goes to the basic validity of the plea. A trial before a tribunal lacking the legal jurisdiction to adjudicate the offence is a nullity and cannot found a plea of *autrefois acquit* or *convict*.²⁸ The Supreme Court in *Onagoruwa v. The State* gave a vital explanation.²⁹ The appellant had been tried and convicted by a Special Tribunal constituted under the Robbery and Firearms (Special Provisions) Decree. Upon appeal, his conviction was vacated, and a retrial was ordered. He pleaded double jeopardy, contending he could not be tried again. The Court decided that the Special Tribunal, being an unlawful invasion of judicial power, was not a court of competent jurisdiction. Consequently, the first ‘trial’ was a legal nullity, and the plea failed. This indicates that ‘competence’ comprises both substantive jurisdiction over the offence and the constitutional legitimacy of the court itself. This principle generates considerable challenges in various areas:

Disciplinary Tribunals vs. Regular Courts: As seen in *Okeke v The State*, a police disciplinary tribunal is not deemed a ‘court’ for S.36(9). Its procedures are administrative and target breaches of professional rules, not criminal acts against the state. Therefore, an acquittal there does not prohibit a subsequent criminal prosecution in a regular court, despite the identity of factual behaviour.³⁰

Customary and Area Courts: Whether a ruling from a customary or area court can be found to support the plea depends on its statutory jurisdiction. If the offence is within its native jurisdiction and the court was duly constituted, its decision may be binding. However, for offences outside its scope (e.g., most serious felonies like murder or armed robbery), its proceedings would be incompetent.³¹

Military Tribunals Trying Civilians: The jurisprudence argues that a military tribunal trying a civilian for a non-military offence is intrinsically lacking jurisdiction, rendering its rulings null and incapable of establishing a double jeopardy plea.³²

²⁷ *Alabi v. The State* (1993) 7 NWLR (Pt. 307) 511.

²⁸ *Kalu v. The State* (1998) 13 NWLR (Pt. 583) 531 at 545.

²⁹ *Onagoruwa v The State* (1993) 7 NWLR (Pt. 303) 49.

³⁰ *Okeke v The State* (2003) 15 NWLR (Pt. 842) 25 at 54-55.

³¹ See *Yabugbe v COP* (1992) 4 NWLR (Pt. 234) 152.

³² This principle is drawn from constitutional challenges to military tribunals. See *Onagoruwa* and the constitutional right to a fair hearing before a lawful court.

The federal system of Nigeria adds another layer. A state high court is a competent jurisdiction for violations under state law. Whether an acquittal for, say, assault under state law prohibits a subsequent federal prosecution for terrorism based on the same act remains a largely unsolved but essential topic, bearing on the interpretation of ‘same offence’ and the independent sovereign powers of state and federation.³³

The Principle of Finality: Acquittal vs. Discharge, Nolle Prosequi, and Struck Out Cases

The provision protects solely against a second trial following a definitive finding on the merits. Therefore, the character of the first proceeding’s termination is paramount. The Constitution specifies ‘convicted or acquitted.’ Nigerian courts have meticulously differentiated these final decisions from other non-conclusive terminations. The landmark case of *Attorney-General of Lagos State v. Attorney-General of the Federation* is instructive.³⁴ The Supreme Court scrupulously distinguished between an acquittal and a discharge. An acquittal is a final verdict rendered after trial, suggesting the prosecution failed to establish its case. It is a ban on any retrial for the same offence. A discharge, however, is often an order releasing an accused from proceedings without a complete trial on the merits, sometimes due to a flawed accusation, lack of jurisdiction, or the prosecution’s refusal to proceed.³⁵ Crucially, a discharge does not serve as a bar to further prosecution on a proper charge or before a competent court. This distinction prevents an accused from claiming double jeopardy based on a procedural issue that did not touch their actual guilt or innocence.

Similarly, the entry of a nolle prosequi by the Attorney-General, under section 174 of the CFRN and section 108 of the Administration of Criminal Justice Act (ACJA) 2015, is not a final finding. A nolle prosequi is a voluntary discontinuation of proceedings by the state; it is not a verdict. It leaves the accused in the same situation as if they had never been charged, expressly preserving the power of the state to commence additional procedures for the same offence at a later date. The same reasoning applies to cases that are ‘struck out’ for procedural inefficiencies. These methods, while necessary for prosecutorial discretion and docket management, offer a possibility for abuse by allowing repeated establishment and withdrawal of charges, therefore subjecting an accused to the harassment that the double jeopardy rule attempts to prevent.³⁶

The Limited Exception: Fraud and the Spectre of New Evidence

The finality ensured by double jeopardy is near-absolute but not fully impenetrable. Nigerian law allows a rare exemption if the sanctity of the initial verdict has been fundamentally vitiated by fraud. If an acquittal (or potentially a conviction) was obtained through the fraud of the accused, such as bribing a judge, procuring perjured testimony, or suppressing material evidence, the court’s inherent power to prevent abuse of its process may allow for the quashing of the tainted verdict and a new trial. However, this exception is applied with utmost caution to prevent it from devouring the rule. The deception must be external, going to the fairness of the trial itself, not only an intrinsic lie within the evidence.³⁷

A more problematic issue is the likelihood of genuinely new and convincing evidence appearing after an acquittal. Unlike some jurisdictions, Nigerian law has not statutorily created an exception for fresh evidence. The constitutional stance in S.36(9) appears to provide no room for it once a lawful acquittal is recorded. This generates a significant tension between the objective of finality and the interest of substantive justice, particularly in grave circumstances. Scholarly debate persists on whether a constitutional amendment or a statutory framework akin to the UK’s ‘double jeopardy’ exception for

³³ Cf. *A G, Ondo State v A.G., Ekiti State* (2001) 17 NWLR (Pt. 743) 706.

³⁴ *Attorney-General of Lagos State v. Attorney-General of the Federation* (2013) 16 NWLR (Pt. 1380) 374.

³⁵ *Ibid*, 455-457.

³⁶ E. S. Ojukwu, ‘Double Jeopardy and the Nigerian Constitution: A Review of Emerging Trends’ (2010) 52 *Journal of African Law* 138, 155.

³⁷ C O Okonkwo, *Okonkwo and Naish on Criminal Law in Nigeria* (2nd edn, Spectrum Books 2005) 118.

serious offences with new evidence might be warranted. However, such a move would require balancing with the paramount right to a fair trial and the prohibition against retroactive laws.³⁸

In sum, the jurisdictional and finality requirements operate as crucial filters. They ensure the double jeopardy protection is triggered only by real, conclusive adjudications, preventing its misuse while simultaneously identifying places where procedural procedures could be manipulated to weaken its meaning.

5. Contemporary Challenges and Ambiguities

The implementation of the rule against double jeopardy in Nigeria does not work in a sterile doctrinal vacuum. It encounters complicated, real-world scenarios originating from the nation's federal system, the development of statutory offenses, and the interface between criminal and other legal actions. This section addresses these modern ambiguities, identifying instances where the existing jurisprudence remains unresolved or perhaps inadequate.

The Federalism Quandary: Prosecution by Multiple Sovereigns

Nigeria's federal structure, which generates distinct legislative capabilities for the federal government and the 36 states, offers a particular challenge to the unity of the double jeopardy protection. The constitutional question is whether an acquittal or conviction by a state court prevents a subsequent prosecution by the federal government (or vice versa) for conduct resulting from the same factual nucleus. The idea of dual sovereignty, accepted in nations like the United States, asserts that separate sovereign entities (e.g., federal and state governments) can separately prosecute for the same offense without breaking double jeopardy.³⁹ Nigerian courts have yet to embrace or reject this doctrine definitively. The Supreme Court's reasoning in *Okeke* (distinguishing between disciplinary and criminal processes) offers a formalistic approach that may be extended to distinguish between state and federal violations. For instance, an acquittal for the state offence of assault might theoretically not prohibit a federal prosecution for acts of terrorism under the Terrorism (Prevention) Act if the legal ingredients are regarded as distinct, even if based on identical conduct.⁴⁰ This raises a major risk of prosecutorial overreach and tyranny, particularly by federal authorities like the Economic and Financial Crimes Commission (EFCC). A person could be acquitted of fraud-related charges under a state's criminal code, only to face additional prosecution by the EFCC under the Money Laundering (Prohibition) Act for the same financial transaction. While the Supreme Court has advised against such oppressive multiplicity of litigation in civil cases, a clear constitutional finding on this specific criminal law dilemma is urgently needed. The argument against adopting a rigid dual sovereignty paradigm in Nigeria is compelling: the citizen's fundamental right under S.36(9) CFRN should safeguard against being twice afflicted by any arm of the Nigerian state for the same criminal act, regardless of the tier of government prosecuting.

The Interplay with Res Judicata and Civil Proceedings

The rule against double jeopardy is theoretically similar to, but distinct from, the civil law notion of res judicata. While double jeopardy bans additional criminal prosecutions, res judicata precludes the re-litigation of issues already definitively established in a prior civil dispute between the same parties.⁴¹ The difficulty arises when facts adjudicated in a criminal trial are asked to be reopened in a civil claim, or vice versa. The fundamental idea is that an acquittal in a criminal trial is not conclusive in a subsequent civil suit deriving from the same facts. This is because the standard of proof differs: 'beyond a reasonable doubt' in criminal proceedings versus 'on the balance of probabilities' in civil cases.⁴² Therefore, a person acquitted of murder may still be judged accountable for the tort of carelessness in

³⁸ For a discussion on comparative approaches, see A. Adewumi, 'The Plea of *Autrefois Acquit* and *Autrefois Convict* under the Nigerian Criminal Law: A Critique' (2016) 4(1) University of Benin Journal of Law and Political Science 45, 60-62.

³⁹ *Heath v Alabama* (1985) 474 U.S. 82 (US Supreme Court case establishing the dual sovereignty doctrine).

⁴⁰ This is a hypothetical based on the logical extension of *Okeke v. The State* (2003) 15 NWLR (Pt. 842) 25.

⁴¹ *Oshodi v Eyifunmi* (2000) 13 NWLR (Pt. 684) 298 at 321.

⁴² *Ike v Ugboaja* (1993) 6 NWLR (Pt. 301) 539.

the victim's death. However, a conviction is often recognized as conclusive evidence of the facts upon which it was based in any future civil proceedings. The more disputed issue is whether a civil ruling can be found to be a plea of double jeopardy in a criminal trial. The response is often no, as a civil court is not a 'court of competent jurisdiction' for criminal conduct. However, if the essence of the criminal charge (e.g., fraud) has been conclusively determined against the state in a prior civil suit to which the state was a party, the principles of issue estoppel, a branch of res judicata, may operate to prevent the state from re-litigating those same facts in a criminal guise. Nigerian courts have cautiously implemented this principle to prevent an abuse of process, so producing a functional, if not technical, overlap between the two doctrines in the interests of justice.⁴³

Comparative Perspectives: Lessons from the United Kingdom and the United States

A simple comparative glance underlines the interpretive alternatives accessible. The United Kingdom's approach, under the Senior Courts Act 1981 and common law, employs a 'same offence' test but has developed sophisticated rules against the 'splitting of cases' and places a high premium on protecting individuals from the oppression of repeated prosecutions for the same conduct, even under different statutory provisions.⁴⁴ Its law has also been modified to allow retrials for serious offences where 'new and compelling evidence' surfaces post-acquittal, a statutory exception Nigeria currently lacks.⁴⁵ Conversely, the United States' Fifth Amendment protection embraces the 'dual sovereignty' idea, specifically enabling federal and state charges for the same offense.⁴⁶ This has been regarded as undercutting the basic objective of the rule. The Nigerian Supreme Court's future direction remains uncertain. Should it lean towards the UK's more protective, conduct-focused model, or risk the US-style formalistic approach that favors governmental layers over individual rights? These contemporary issues suggest that the rule against double jeopardy is at a crossroads in Nigeria. The rising complexity of crime, overlapping jurisdictions, and the demand for responsibility in sectors like corruption and terrorism are straining the limits of the old Ogbomor test. The final section of this paper will synthesise these findings and recommend a clear path ahead to sustain the rule's vitality as a fundamental right.

6. Findings, Conclusion and Recommendations

This article has examined the constitutional, jurisprudential, and practical landscape of the rule against double jeopardy in Nigeria. From its firm anchorage in Section 36(9) of the Constitution to the intricate standards created by the courts for its application, the rule remains an important, albeit occasionally frail, protection against state persecution. This final section distils the major findings and presents concrete recommendations for law reform and judicial practice.

Summary of Findings

A Rights-Based Fortress with Procedural Gates: The rule's constitutional entrenchment as a basic right is its greatest strength. However, its effectiveness is filtered by procedural requirements, the 'same offence' test, 'competent jurisdiction,' and 'finality,' which courts have occasionally read restrictively, possibly diminishing the intended protection.

The Dominance and Deficiency of the Ogbomor Test: The 'same in law and fact' test from *State v Ogbomor* gives certainty but can foster a formalism that misses the reality of a single sequence of culpable conduct. The Okeke ruling highlights this, creating a troublesome gap when administrative and criminal processes are severed.

Federalism as a Frontier of Uncertainty: The lack of a firm perspective on the 'dual sovereignty' dilemma in Nigeria's federal system constitutes a fundamental ambiguity. It leaves persons open to sequential prosecutions by multiple tiers of authority for the same behavior, contradicting the rule's rationale.

⁴³ *Arubo v Aiyeleru* (1993) 3 NWLR (Pt. 280) 126, where the Supreme Court held that a previous civil judgment could, in specific circumstances, operate as a bar to a criminal prosecution on the same facts to prevent abuse.

⁴⁴ *Connelly v Director of Public Prosecutions* [1964] AC 1254.

⁴⁵ Part 10 of the Criminal Justice Act 2003 (UK).

⁴⁶ *Gamble v United States* (2019) 587 U.S., critiqued by dissenting justices as undermining liberty.

Finality is Fundamental but Not Absolute: Nigerian courts correctly respect the distinction between conclusive acquittals/convictions and non-conclusive terminations such as discharges or nolle prosequi. However, the ease of applying nolle prosequi raises a risk of harassment that necessitates procedural safeguards.

Recommendations

To improve the rule against double jeopardy and match its application more closely with its purpose as a basic right, the following modifications are proposed:

For Judicial Practice:

Adopt a Purposive, 'Same Conduct' Supplemental Analysis: The Supreme Court should build upon current patterns and advise lower courts to look beyond the rigid Ogbomor test. Where a new charge, though technically distinct in law, arises from the same core conduct or factual transaction that was the subject of a prior trial, the plea should be upheld unless the prosecution can show a compelling public interest justifying a second trial that outweighs the harassment to the accused.

Reject the Formalistic Dual Sovereignty Doctrine: The Supreme Court should seize an appropriate opportunity to find that S.36(9) CFRN protects against prosecution by any agency of the Nigerian state. An acquittal or conviction by a state court should prohibit a federal prosecution for the same conduct, and vice versa, provided the offences contain significantly different legal elements addressing distinct legal wrongs.

For Legislative Reform:

Amend the ACJA to Curb Nolle Prosequi Abuse: Section 108 of the ACJA 2015 should be revised to specify that where a nolle prosequi is lodged after the prosecution has presented a significant part of its case, the leave of the trial judge must be obtained. The judge should evaluate whether the re-filing of charges would constitute an abuse of process or oppression, thereby putting judicial oversight into the process.

Clarify the Interface with Disciplinary Proceedings: A statute, possibly an amendment to the ACJA, should provide that where a disciplinary tribunal of a profession makes a finding on the merits regarding factual conduct that is criminal in nature, and imposes a substantial penalty, this may be pleaded in bar to a subsequent criminal trial to prevent double punishment, subject to the court's discretion on public interest grounds.

For Prosecutorial Policy:

Develop Inter-Governmental Prosecutorial Guidelines: The National Council of Attorneys-General should adopt binding standards to coordinate state and federal prosecutions. This would prohibit various law enforcement authorities from independently pursuing the same individual for the same behavior, ensuring that charges are consolidated where possible.

Conclusion

The rule against double jeopardy is more than a technical plea; it is a constitutional expression of justice, fairness, and the presumption of innocence. Its vigorous enforcement is a measure of the soundness of Nigeria's criminal justice system. While Nigerian courts have faithfully applied their essential principles, the expanding complications of crime, government, and federalism need a developed, purposive interpretation. By moving from a rigorous formalism towards a substantive justice strategy that focuses on safeguarding the person from the harassment of multiple trials for the same action, the judiciary and legislation can enhance this vital right. In doing so, they would reaffirm that in Nigeria, the might of the state is permanently tempered by the shield of liberty, ensuring that no citizen is twice put at risk for the same cause.