THE PREROGATIVE OF PARDON AND THE DECISION IN FRN V. ALKALI: LEGAL MATTERS ARISING\*

**Abstract**

The Prerogative of Pardon is a political but constitutionally sanctioned preserve of political office holders at the Chief Executive level of modern states. It is an instrument of grace that sets a convict free from the disabilities associated with conviction. It is a procedure that removes all the barriers set by the fact of conviction yet leaving behind the scar or fact of conviction. Pardon is easily understood in post-conviction situations; but as an instrument at the disposal of Chief Executives of states before conviction is the point of concern that calls for a revisit of the Nigerian Court of Appeal’s decision in *FRN v Alkali and anor*.[[1]](#footnote-1) This work sets out to analyse this decision of the Court in the light of statutory and other judicial decisions to come to the conclusion either in support or against the decision of the Court of Appeal in the case under review. This inquiry shall employ the doctrinal investigation method and would consequently use mostly statutory and case law.

**Key words**: Pardon, Conviction, Trial, Instrument and Constitution.

1. **Introduction**

The power to grant the Prerogative of Pardon is at the disposal of Heads of Government of States[[2]](#footnote-2). It is a power that dates back to the origin of political leadership. In the ancient times, once a king granted pardon to anyone found guilty of an offence he became immune to punishment[[3]](#footnote-3). This hoary power has found its way into the provisions of the Constitutions of modern states. The fact that this constitutional power is at the disposal of Chief Executives of states is not in dispute, but whether it is available at all times of criminal trials or inquiries and post criminal trials is the cause to bring to the fore the decision of the Court of Appeal in *FRN v Alkali and anor*[[4]](#footnote-4). for consideration.

In an answer to the question, ‘what is pardon?’ Garner Et al define ‘pardon’ as: ‘The act or an instance of officially nullifying punishment or other legal consequences of a crime.’[[5]](#footnote-5) From this definition, punishment can never be contemplated without a finding of guilt; and there can never be and ‘consequences of a crime’ without the commission of a crime established. Bernard et al[[6]](#footnote-6) have defined ‘pardon’ as ‘an official release from a penalty…’ by this lexical definition; ‘pardon’ could be seen to take its meaning in relation to guilt and punishment. Pardon was judicially described by Ogundare JSC in *Okongwu v State*[[7]](#footnote-7)in the following terms:

Pardon is usually granted where a convict has exhausted all his legal rights of appeal, has no intention of exercising such right, where he is wrongfully convicted and is afterwards pardon upon the ground of his innocence.

Musdapher JCA (as he then was) described ‘pardon in *Falae v Obasanjo*[[8]](#footnote-8) in the following terms:

A pardon is an act of grace by the appropriate authority which mitigates or obliterates the punishment the law demands for the offence and restores the rights and privileges forfeited on account of the offence.

In *US v Wilson*[[9]](#footnote-9), the United States Supreme Court described pardon as:

... an act of grace proceeding from the power entrusted with the execution of the laws, which exempts the individuals, on whom, it is bestowed from the punishment the law inflicts for a crime he has committed.[[10]](#footnote-10)

The tortuous journey through grammatical and legal meanings or descriptions of pardon is intended to ensure a better understanding of the discussion on the subject matter of this work. It suffices to say all these definitions are agreed on one thing, a pardon is relevant when a citizen has been convicted of an offence.

1. **The Decision in FRN v Alkali[[11]](#footnote-11)**

Succinctly put, the facts of this case before the High Court of Sokoto State were that by an instrument of pardon dated 29th day of September, 2016, the Executive Governor of Sokoto State, Alh. Aminu Tambuwal, in exercise of his ‘Constitutional’ power pursuant to section 212(1)(a) of the 1999 Constitution (FRN), granted pardon to the respondents during their trial. The pardon was granted when the prosecution was still calling his witnesses, of course, at a time that the defence was yet to be heard and no judgment passed let alone any conviction on even a single count of the 144 count charges the respondents were facing. It was in the course of hearing prosecution witnesses that the said pardon was granted.

 Consequent to the pardon, counsel to the respondents as defendants before the trial court filed a motion seeking the discharge of the respondents from the criminal allegations against them. In a ruling delivered by the trial judge after hearing arguments on the motion, the respondents were discharged on the ground of the pardon they were ‘granted’ by the Governor. It is against the order of the court discharging the respondent that the appellant went on appeal.

One of the issues hotly canvassed at the Court of Appeal, which is the issue that is *germaine* to this discuss, is whether the exercise of the prerogative of pardon could be exercised by the Governor under section 212(1)(a) of the CFRN[[12]](#footnote-12) before or without conviction. For ease of reference, section 212(1)(a) of the CFRN provides:

(1) The Governor may-

(a) grant any person concerned with or convicted of any offence created by any law of a State a pardon, either free or subject to lawful conditions.[[13]](#footnote-13) (Emphasis supplied).

In facing this issue, the Court of Appeal had the phrase ‘concerned with or convicted of any offence’ in this provision to deal with. It was whether ‘or’ in this phrase should be interpreted disjunctively or conjunctively to make it possible for the exercise of the power be at the disposal of the Governor even before conviction as he did or after conviction making it wrong for the Governor to have granted pardon as he did.

In a split decision of 2:1, the Court of Appeal held that the Governor was right in granting pardon to the respondents even though there was no conviction i.e. the case was still at the stage of the hearing of prosecution witnesses. It is the view of the majority in this appeal in the lead judgment read by his Lordship, Oho JCA that section 212(1)(a) of the CFRN under consideration covers two categories of persons in its two limb provision; to wit, ‘any person concerned with’ and ‘convicted of any offence’. It was the view expressed in the majority judgment that ‘any person concerned with’ in the provision under consideration covered the situation of persons accused of crimes but are yet to be convicted.

In vindication of its position on this, the majority relied on Article II, section 2 of the United States Constitution and the decision of the United States of America’s Supreme Court decision in *Ex Parte A.H. Garland*[[14]](#footnote-14) where the Court quoted the United States’ Supreme Court as remarking that:

‘Pardon power extends to every offence known to law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency or after conviction and judgment.’

Article II section 2 of the United States’ Constitution provides:

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment. (Emphasis supplied)

1. **Legal Matters Arising from the**  **Decision in FRN v Alkali[[15]](#footnote-15)**

Sound as the majority judgment in the case under review may appear to be, it is the contention that it has left much to be desired. It is the contention that by the factors considered under, the minority judgment in this case that was delivered by his Lordship Shuaibu JCA is preferred especially as it relates to the impropriety of pardon in any criminal proceeding before conviction. The grounds of the contention shall be considered immediately.

1. **The Meaning of ‘Pardon’**

The grammatical and legal meanings of ‘pardon’ have been extolled above making it needless to reiterate them here. It is enough to say that the common denominator of these definitions is ‘conviction’. In other words, pardon arises only when there has been a conviction for the commission of a crime; for without conviction ‘pardon’ is meaningless.

1. **The Decision in *Ex Parte A.H. Garland****[[16]](#footnote-16)* ***Relied upon by the Court of Appeal***

The majority judgment in the case under consideration found support in Article II, section 2 of the American Constitution and the decision of the American Court in *Ex Parte A.H. Garland[[17]](#footnote-17)*. The provisions of Article II, section 2 of the United States’ Constitution partly relied upon by the Court as quoted above used the words ‘grant Reprieves and Pardons for Offences against the United States’. To add weight to the definition of ‘pardon’ that has been seen from different sources, ‘reprieve’ has been defined by Garner et al [[18]](#footnote-18) as: ‘Temporary postponement of the carrying out of a criminal sentence, especially a death sentence.’ The conjunction ‘and’ connecting reprieve and pardon can only be meaningfully read to mean alternatively as the two words convey the same meaning.

That being the case, by this constitutional provision, ‘pardon’ is only meaningful when there has been a conviction. It is the contention, with due respect to their Lordships of the Supreme Court of the United States of America in *Ex Parte A.H. Garland[[19]](#footnote-19),* that their decision is more of a political decision than one founded on the clear wordings of the provisions of Article II section 2 of the Constitution. This submission finds support in the decision of the United States’ Court in *US v Wilson*[[20]](#footnote-20) where the majority judgment in the case under review acknowledged the United States’ Court in this case as holding that pardon is an act of grace flowing ‘from the power entrusted with the execution of the laws...is further defined as the private though official act of the executive.’[[21]](#footnote-21)

Agreed that ‘pardon’ is a political power at the disposal of Chief Executives of States; must the political flavour of the power be allowed to over envelope constitutional provisions? The fear is that it shouldn’t or constitutionalism would be dethroned by political considerations. Though politically coloured, the power must be exercised constitutionally while the political undertone is reserved for the extent[[22]](#footnote-22) of its use.

Agreed that in *Ex Parte A.H. Garland[[23]](#footnote-23)* that the Supreme Court held the prerogative of pardon at the disposal of the President of America to be available even when proceedings are still pending in this case, it is the contention that it was a mere obiter dictum as it was not an issue contested before the court whether such power could cover pending criminal proceedings short of conviction since the facts of the case were that the applicant was a convict[[24]](#footnote-24). The phrase ‘Offences against the United States’ in Article II section 2 of the United States’ Constitution quoted above necessarily prompts the question, ‘when could there be an offence against the United States?’ the obvious answer would be when a court of law has so established, or, simply put, when there has been a conviction.

It appears that there are times that our Law Lords accept foreign decisions because they are foreign and not because they are in accord with our statutory provisions. The decision in *State v Ilori[[25]](#footnote-25)* is an example of such. His Lordship Eso JSC (of blessed memory) in this case followed the reasoning of Abbot Ag. CJF in *Shittu Layiwola and ors. v Queen*[[26]](#footnote-26) when he remarked that:

The pre-eminent and incontestable position of the Attorney-General, under the Common Law, as the Chief Law Officer of the State, either generally as a legal adviser or especially in all court proceedings to which the State is a party, has long been recognised by the courts. In regard to these powers, *and* the subject only to ultimate control by public opinion and that of Parliament or the Legislature, the Attorney-General has, at Common Law, been a master unto himself, law unto himself, and under no control whatsoever, judicial or otherwise, vis-à-vis his powers of instituting or discontinuing criminal proceedings. These powers of the Attorney-General are not confined to cases where the State is a party. In the exercise of his powers to discontinue a criminal case or to enter a *nolle prosequi*, he can extend this to cases instituted by any other person or authority. This is a power vested in the Attorney-General by the Common Law and it is not subject to review by any court of law. It is, no doubt, a great ministerial prerogative coupled with great responsibilities.*[[27]](#footnote-27)*

How the terrific powers of a Common Law Attorney-General thus described and ascribed to a constitutional Attorney-General such as that of Nigeria in the 1979 Constitution regime can sail across the ocean of a provision such as that of section 191(3)[[28]](#footnote-28) of the Constitution of Nigeria, 1979 beats the imagination of a critical legal mind. Yet it was the common law of the developed nation of England that was under consideration and had to be accorded respect ‘due’ or even undue. His Lordship Bello JSC (as he then was and of blessed memory) was realistic in *Attorney General of Bendel State v Attorney General of the Federation[[29]](#footnote-29)* when he remarked that:

...I will treat with due respect the rules of constitutional law formulated by the courts of common law countries as persuasive authorities where they are appropriate in construing our constitution but I shall at all times bear in mind that our constitution is unique and the solution to our constitutional problems must invariably be found within the constitution itself or upon its construction. I will further reiterate that great care shall be exercised in the use of the constitutional law formulated for countries whose constitutions are not in *pari materia* with our constitution and whose ways of life are not identical with ours[[30]](#footnote-30). (Emphasis supplied).

In the latter case of *FRN v Achida* [[31]](#footnote-31) from the same Sokoto State; where the Governor of Sokoto State, Aminu Tambuwal, had, as earlier done in the case under review, in purported exercise of his power under section 212(1)(a) of the CFRN granted pardon to persons that had not been tried and convicted by a court for any offence. The Court of Appeal in this case was confronted with the same issue, same law and arguments on Article II, section 2 of the United States Constitution and the case of *Ex Parte A.H. Garland[[32]](#footnote-32)* heavily depended upon by the Court in the case under review. As if in a continuing dialogue with the ghost of his Lordship, Bello JSC above quoted, Sankey JCA in the lead judgment of the Court, remarked:

Moreover, the interpretation of constitutional provisions is local and the Nigerian Courts will not stray away from their course of interpreting the Nigerian Constitution by resorting to foreign decisions which were decided strictly in the con of their Constitutions and which are not similar to ours.

Just before this point is put to rest, the Court of Appeal was confronted with a somewhat similar issue as was in the case under consideration in its earlier decision in *Obidike v State*[[33]](#footnote-33) where the Court affirmed the propriety of the power of the President to grant pardon under section 175(1) of the CFRN but held that for the exercise of the power to be proper, it has to be lawfully done. Thus the Court concluded that the power was not available to the President even if there is a conviction but when there is a pending appeal against the conviction[[34]](#footnote-34).

1. **Constitutional interpretation**
2. **Interpreting ‘or’**

Constitutional interpretation as a factor in this work seeks to revisit the rules of interpretation employed by the Court of Appeal in *FRN v Alkali*[[35]](#footnote-35)under review to arrive at its decision and other rules the Court did not consider. The Court, relying on section 18(3) of the Interpretation Act[[36]](#footnote-36), rested the weight of its judgment on the disjunctive interpretation of ‘or’ that is located between the two phrases ‘...any person concerned with’ and ‘...convicted of any offence’ found in section 212(1)(a) of the CFRN in arriving at the conclusion that the first phrase covers situations of pardon in respect of persons not already convicted of crimes. In other words, it was the view of the Court that ‘or’ in the provision did not depict ‘similarity’ but disjunction.

The rule of the interpretation to be accorded the word ‘or’ has long been established to be subject to a proviso, if doing so would not lead to absurdities. Where it would, courts have interpreted ‘or’ to mean ‘and’ and vice versa[[37]](#footnote-37). It is absurd to pardon someone that has not committed any offence except if pardon has lost its true meaning. This is more so as the constitutional right of presumption of innocence[[38]](#footnote-38) is a forever abiding part of our law. It is the established implication of pardon that it erodes every vicissitude of conviction attached to a convict[[39]](#footnote-39) thereby making him like unto that new creature in whose life old things are passed away and behold all things about him are become new. In a phrase pardon makes a convict a *homo novus* (a new human being) and would lack relevance where a citizen is enjoying his presumption of innocence.

It was the Court’s position that: ‘...the first traditional rule of statutory construction...dictates that the ordinary meanings of the word has to be adhered to...’ The Court then added the proviso to this statement of law when it concluded with ‘...in the absence of any special reasons to act otherwise.’

The concluding part of the decision of the Court of Appeal in the case under review is a proviso that gives way to the application of the exceptional rule to the traditional mode of interpreting ‘or’ in statutes, i.e. except interpreting ‘or’ disjunctively would lead to absurdity. The absurdity in interpreting ‘...any person concerned with’ in section 212(1)(a) of the CFRN to include persons merely accused of offences but not yet tried and convicted as done by the Court in the case under review was put thus by his Lordship Sankey JCA in *FRN v Achida*[[40]](#footnote-40):

The only plausible, workable and reasonable interpretation that can be given to the provisions of Section 212(1)(a) of the 1999 Constitution (as amended), in the light of the other provisions of the Constitution and realities of the words used therein, is that it only empowers the Governor of a State to pardon someone who has been pronounced guilty and convicted of an offence by a Court of law. It cannot be interpreted to extend the power of pardon to someone who was indicted by an administrative panel or Commission of Inquiry or who is still in the process of facing a criminal trial, notwithstanding the use of the phrase ‘any person concerned with” and the word “or” in the provision.

Not done yet, resisting the persuasions of counsel to follow the decision of the United States’ court in *Ex Parte A.H. Garland[[41]](#footnote-41)* as the court did in the case under review, his Lordship, Sankey JCA held that:

Counsel to the Respondent placed heavy reliance on the decision of the United States Supreme Court In Ex-parte A. H. Garland ...where the Court stated that “pardon power extends to every offence known to law and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency or after conviction and judgment.” It is trite in our legal jurisprudence that the application of legal principles established in decided cases cannot be carried out in a mechanical “one size fits all” manner. They are not to be applied across board and in all matters without regard for the facts and issues framed for adjudication in a particular case.

His lordship closed his decision on this vital point of law with this remark:

There is nothing suggesting that the provisions considered by the United States Supreme Court in the case are the same or similar to our present constitutional provisions and that the circumstances of the decision are the same as those in this case. And we have local decisions that infer and suggest a different interpretation. The interpretation of the power of pardon by the United States Supreme Court in Ex-parte A. H. Garland supra cannot be applied in the present case.

In all fairness, this segment of the submissions would be concluded with the words of his Lordship, Shuaibu JCA in his dissenting judgment in the case under review:

...the law must be set on motion for it to arrive at its terminus...prerogative of mercy as a legal concept cannot in my respectful view be set in motion unless and until there is a sentence of Court on a convicted person.

1. **The Holistic Approach in Interpreting the Constitution**

The holistic approach in the interpretation of Constitutions is another consideration that militates against the interpretation given to section 212(1)(a) of the CFRN in the case under review. By this approach, no part of the Constitution should be treated as a constitutional orphan during constitutional interpretation, but that each provision should be viewed in the light of others that make the whole[[42]](#footnote-42).

The constitutional presumption of innocence[[43]](#footnote-43) although of use at this point but has already been considered to show how that it is preposterous to construe section 212(1)(a) to include persons not convicted as befitting for the exercise of the prerogative of pardon. Building upon this, section 36(10) of the CFRN comes to mind. Section 36(10) of the Constitution provides that: ‘No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.’ The phrase ‘again be tried’ in this provision points to just one thing, that there has been a previous trial. This adds weight to the view that pardon can only be invoked pursuant to section 212(1)(a) of 175(1)(a) of the CFRN after a conviction.

Giving section 212(1)(a) of the CFRN the interpretation the court in the case under review did definitely confers on the Governors of States, and, of course the President of the Federal Republic of Nigeria[[44]](#footnote-44) the power to enter a *nolle prosequi* as the Attorney-General of a State or of the Federation would. The power to stay proceedings before judgment has long been established to be that of the Attorney-General and no other office. It is strange for a Constitution to duplicate roles on persons. If it were the intention of the law maker to make the Governor of a State have the power to halt criminal proceedings before judgment there would have been no need making similar provisions for the Attorneys-General of States and the Federation immediately preceding those of Governors and the President[[45]](#footnote-45). While the maker of the Constitution conferred the power to enter *nolle prosequi* on the offices of the number one law citizens of the Federation and of States in sections 174(1)(c) and 211(1)(c) respectively, he knew that no such power had been imbued in any other office.

A community reading of sections 36(5), 36(10) and 211(1)(c) of the CFRN gives credence to the power of a Governor or the President to grant pardon to only persons that have been convicted of an offence. In fact, this Prerogative of Mercy is available immediately after conviction with or without a sentence passed already. The only qualification a potential beneficiary of the prerogative needs is a certificate of conviction and nothing more or less.

1. **Conclusion**

The decision of the Court of Appeal in the case under review has gone down as one of those judicial decisions in Nigeria that have been handed down on the basis of decisions of foreign courts without due consideration given to our own laws and our socio-cultural background. This norm has occasioned miscarriage of justice especially in criminal trials[[46]](#footnote-46). The later decision of the Nigerian Court of Appeal in *FRN v Achida*[[47]](#footnote-47) has partly provided sustenance to the submissions above while other constitutional considerations have been brought to the fore in further substantiation of the position taken against the decision under consideration. It is hoped that our noble Law Lords would critically examine our laws in relation to foreign laws that have been judicially pronounced upon for the appropriate application of foreign decisions in our municipal situations. This is more so that the decisions are merely persuasive and not binding on our courts.

1. \*Musa Y. Suleiman Ph.D is a lecturer in the Faculty of Law, Bingham University, Karu (along Keffi-Abuja Express Way), Nasarawa State, Nigeria. Tel. 08029717918/08038431006 email- suleimanlaw1966@gmail.com; Kuzhe Ashezi Dorcas (Mrs.) LL.M is a lecturer in the Faculty of Law, Bingham University, Karu (along Keffi-Abuja Express Way), Nasarawa State, Nigeria Tel. +2347038933824, email - kuzhedorcas@yahoo.com

 [2018] LPELR-45237 (CA). [↑](#footnote-ref-1)
2. In federations state means the nation on the one hand and its constituent units on the other. [↑](#footnote-ref-2)
3. Holy Bible, 2 Samuel 19:18-23, I Kings 2:8,36-44. [↑](#footnote-ref-3)
4. Supra. [↑](#footnote-ref-4)
5. Bryan A Garner, Tiger Jackson and Jeff Newman*, Black’s Law Dictionary*, (8th edn, Dallas: West Group, 1992) 1144. [↑](#footnote-ref-5)
6. Bernard S Cayne, Dorris E Lechner, Donald O Bolander, Alyce Bolander Sarah A Boak, Grace BF, Suzanne S Burke, Joseph MC, James E Churchill, Jr, Manuela I, Elizabeth J Jewel, Rebecca Lyon, Jean M, Meghan O, Ronald B Roth, Pauline M Sholtys, Valerie L Stodden, Diane Bell S And Jean A McCormic Vreeland (Editors) p. 729. [↑](#footnote-ref-6)
7. [1986] 5 NWLR (Part 44) 741 at 750, paragraph G-H. [↑](#footnote-ref-7)
8. [1999] 4 NWLR (Part 599) 476 at 495, paragraph D-E. [↑](#footnote-ref-8)
9. 32 US (7 Pet) 150 (1833) 159-160. [↑](#footnote-ref-9)
10. Quoted in the case under review. [↑](#footnote-ref-10)
11. Supra. [↑](#footnote-ref-11)
12. or by the President of Nigeria under section 175(1)(a) of the CFRN. [↑](#footnote-ref-12)
13. Section 175(1)(a) provides for the same power for the President of the Federal Republic of Nigeria. [↑](#footnote-ref-13)
14. [1865] US Supreme Court Reports, 18 LAWYERSS’ Edition, Wallace 3-6 page 300. [↑](#footnote-ref-14)
15. Supra. [↑](#footnote-ref-15)
16. Supra. [↑](#footnote-ref-16)
17. Ibid. [↑](#footnote-ref-17)
18. Bryan Garner op. cit at p.1329. [↑](#footnote-ref-18)
19. Supra. [↑](#footnote-ref-19)
20. Supra. [↑](#footnote-ref-20)
21. See also *Verneco Inc. v Fidelity Casualty Co. of New York* 23 LA 721, 219, SO 2D 508, 511 cited by the Court in its decision under review. [↑](#footnote-ref-21)
22. For instance, using this power to excuse from punishment persons that are political associates, that have committed heinous or outrageous crimes. [↑](#footnote-ref-22)
23. Supra. [↑](#footnote-ref-23)
24. In *US v Wilson* (supra), the beneficiary of the presidential pardon was a convict too. [↑](#footnote-ref-24)
25. [1983] 14 NSCC 69 at 75, line1-10, [1983] 2 SC155, [1983] 1 SCNLR 94, [1983] All NLR 84. [↑](#footnote-ref-25)
26. [1959] 4 FSC 119, [1959] WRNLR 194, [1959] 1 NSCC 95. [↑](#footnote-ref-26)
27. Ibid, at 74, 75 paragraph 50-5. [↑](#footnote-ref-27)
28. Section 191(3) of the 1979 Constitution of Nigeria then (now section 174(3) of the 1999 Constitution of Nigeria) placing a check on the powers of the Attorney-General of the Federation provided that: ‘In exercising his power under this section the Attorney-General shall have regard to public interest, the interests of justice and the need to prevent abuse of legal process.’ (Emphasis supplied). [↑](#footnote-ref-28)
29. (2001) FWLR (Part 65) 448. [↑](#footnote-ref-29)
30. Ibid, at 505-506 paragraph H-B; (1981) 3 NCLR 1, [1981] All NLR 85. Cf. the view of Udoma JSC in *Nafiu Rabiu v Kano State* [1980] 8-11 SC 130 at 151. [↑](#footnote-ref-30)
31. [2018] LPELR-46065 CA. [↑](#footnote-ref-31)
32. Supra. [↑](#footnote-ref-32)
33. [2002] FWLR (Part 87) 784 (CA). [↑](#footnote-ref-33)
34. This case is employed here to denote the wrongfulness of the use of the power during pending proceedings and not an appeal proceedings for reasons that would be discussed elsewhere. [↑](#footnote-ref-34)
35. Supra. [↑](#footnote-ref-35)
36. Cap. I23, Laws of the Federation of Nigeria, 2004. [↑](#footnote-ref-36)
37. *JS Tarka v DPP* [1961] NNLR 63 at 64 [↑](#footnote-ref-37)
38. Section 36(5) of the CFRN. [↑](#footnote-ref-38)
39. *Dr. Obi Okongwu v State* [1986] 5 NWLR (Part 42) 721. [↑](#footnote-ref-39)
40. Supra. [↑](#footnote-ref-40)
41. Supra. [↑](#footnote-ref-41)
42. *AG of Lagos State v AG of the Federation* [2014] All FWLR (Part 740) 1296 at 1331, paragraph D-H. see also *Hon. Justice Raliat Elelu-Habeeb v AG of the Federation* [2012] All FWLR (Part 629) 1011 [2012] 2 SC (Part 1) 145. [↑](#footnote-ref-42)
43. Section 36(5) of the CFRN. [↑](#footnote-ref-43)
44. Under section 175(1)(a) of the CFRN. [↑](#footnote-ref-44)
45. 174(1)(c) of the CFRN provides for the power of the Attorney- General of the Federation to enter *nolle prosequi* and section 175(1)(a) provides for the prerogative of pardon for the president; section 211(1)(c) of the CFRN provides for the power of the Attorney- General of a state to enter *nolle prosequi* and section 212(1)(a) provides for the prerogative of pardon for the governor. [↑](#footnote-ref-45)
46. *Gadam v Queen* [1954] 12 WACA 442. [↑](#footnote-ref-46)
47. Supra. [↑](#footnote-ref-47)