



Legal Practitioners



Judicial Resistance To The Criminalisation Of Commercial Transactions:

Insights From Theophilus Kure V. Commissioner Of
Police (2020) 9 Nwlr (pt. 1729) 296 Sc

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Abstract

The Supreme Court of Nigeria's 2020 decision in *Kure v. Commissioner of Police* represents a landmark clarification of the boundary between civil and criminal liability in contractual transactions. The judgment addresses a disturbing trend in Nigerian commercial practice: the deployment of criminal law to settle private disputes.

This article offers a critical analysis of the case, situating it within the Penal Code, broader Nigerian jurisprudence, and comparative international authorities. It argues that the misuse of criminal prosecution for breach of contract undermines the rule of law, weakens commercial confidence, and enables the powerful to weaponise state machinery against weaker parties. Drawing lessons from common law jurisdictions, this article demonstrates that criminal law must serve public, not private interests.

Finally, it calls for systemic reforms across law enforcement, the Bar, and the legislature to fortify the firewall created by *Kure v. Commissioner of Police* against the creeping criminalisation of civil obligations.





INTRODUCTION

Nigeria's legal system has witnessed a rising tide of cases where civil disputes, particularly involving commercial transactions, are reframed as criminal allegations. This phenomenon is symptomatic of deeper systemic failures: distrust in civil enforcement mechanisms, delay in adjudication, and the allure of swift coercion through police power.

The Supreme Court in *Theophilus Kure v. Commissioner of Police* decisively condemned this practice. By reaffirming the doctrinal distinction between civil wrongs and criminal offences, the judgment aligned Nigerian jurisprudence with international best practices.

This paper analyses the Supreme Court's reasoning, contextualises it within statutory law and comparative case law, and explores its broader implications for justice delivery, economic growth, and human rights.



Brief Facts Of The Case

The appellant, a veterinarian, entered into a contract with the Rivers State Ministry of Culture and Tourism, acting through its Director of Tourism, Mrs. Sokari Davies, to supply a calf giraffe for the sum of N3.5 million. The agreed sum was paid into the appellant's account with UBA on 1st February 2013, and he promised delivery within two weeks.

However, several months passed without delivery despite repeated demands. Upon inquiry, Mrs. Sokari Davies discovered that the appellant had been withdrawing from the account, leaving only about N1,000,000. She obtained an ex parte court order placing a lien on the account, and the remaining balance of N995,000 was transferred to her.

Dissatisfied, she reported the matter to the Police in Kaduna, where the appellant resided. The appellant was arrested and arraigned before the Chief Magistrate's Court on charges of cheating and criminal breach of trust under Sections 312 and 322 of the Penal Code. He was convicted, fined, given alternative custodial sentences, and ordered to refund N2,505,000 (the balance of the transaction).

His successive appeals to the High Court and the Court of Appeal were dismissed. Still aggrieved, he further appealed to the Supreme Court, which unanimously allowed his appeal.

- i. The facts disclosed no criminal intent or act beyond a simple contractual breach.
- ii. The prosecution of such a case constituted an abuse of criminal process.
- iii. The police exceeded their statutory mandate under Section 4 of the Police Act, 2020.

The Decision Of The Supreme Court

The Supreme Court held that the facts disclosed only a civil breach of contract and not a criminal offence. There is no legal basis for criminalising a purely contractual dispute devoid of any element of criminality. The N3.5 million paid to the appellant was consideration for a contract that wholly failed; the proper remedy lay in civil litigation for damages or specific performance.

The Court emphasised that the Police, by virtue of Section 4 of the Police Act, are charged with the prevention and detection of crime and prosecution of offenders, not with debt recovery or enforcement of contractual obligations. Consequently, their intervention in this matter was unlawful, and the complaint to the Police was made mala fide.



It was further held that Mrs. Sokari Davies, instead of initiating a civil action, wrongfully invoked the coercive powers of the State in bad faith. Such conduct, aimed at punishing a contracting party through criminal prosecution in a purely civil dispute, was condemned by the Court. The appellant was accordingly discharged and acquitted, with the Court remarking that he deserved an unreserved apology for the unwarranted criminal proceedings.

Penal Code Analysis

The complainant relied on:

Section 312 – Criminal Breach of Trust

Section 320 – Cheating

The Supreme Court clarified that these provisions require dishonest intention or fraudulent inducement from the inception of the contract. Mere failure to perform an agreement cannot transform into a criminal act.

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This reasoning aligns with the doctrinal distinction between:

Civil wrongs → Non-performance, remedied through damages or specific performance.

Criminal wrongs → Fraudulent inducement or dishonest appropriation.

By insisting on this boundary, the court reaffirmed that criminal law cannot be weaponised as a substitute for contract enforcement.

Nigerian Jurisprudence On Criminalisation Of Civil Disputes

Theophilus Kure v. Commissioner of Police is not an isolated case. Nigerian appellate courts have previously expressed disapproval of criminalising civil disputes: *Ishola v. COP* (2016) LPELR-40046 (CA) – Held that the police have no business in enforcing contracts.

Okoli v. State (2007) 2 NWLR (Pt. 1019) 621 – Clarified that breach of promise, absent fraudulent intent, is not criminal.

Onagoruwa v. State (1993) 7 NWLR (Pt. 303) 49 – Emphasised the need for strict interpretation of penal statutes to avoid abuse.

However, unlike earlier cases, Kure represents the Supreme Court's authoritative restatement of this principle, binding on all subordinate courts.



The Criticism Of S.S.

Richardson Annotation And Approach

Historically, some Nigerian courts, influenced by S.S. Richardson annotation made pursuant to the Penal Code Law (Cap. 89 Laws of Northern Nigeria 1963, Fourth Edition), which inferred criminal liability from mere failure to perform a contractual duty. This approach blurred the civil-criminal divide and allowed creditors to pressure debtors through police harassment.

By expressly distancing itself from this outdated reasoning, the Supreme Court restored doctrinal clarity and modernised Nigerian criminal jurisprudence.

International Best Practices

United Kingdom

In *R v. Z* (2005) UKHL 22, Lord Bingham emphasised that criminal law should only be invoked where public interest is implicated, not to settle private disputes.

United States

In *United States v. Handakas* (2002), the Second Circuit held that even deliberate breach of contract does not amount to fraud unless accompanied by deceit or false pretences.

Canada

In *R v. Zlatic* (1993) 4 SCR 29, the Canadian Supreme Court ruled that dishonesty must be contemporaneous with contract formation. Later default cannot retroactively create criminal liability.

India

In *G. Sagar Suri v. State of UP* (AIR 2000 SC 754), the Supreme Court of India cautioned against using criminal proceedings to enforce civil obligations. These cases confirm that Kure harmonises Nigeria with progressive global jurisprudence.

Policy Considerations

1. Investor Confidence:

Commercial actors require assurance that legitimate business failures will not expose them to arbitrary arrests. Criminalising civil breaches chills investment.

2. Judicial Economy:

Allowing police to intervene in contractual disputes diverts resources from genuine crime detection and prosecution.

3. Human Rights:

The use of detention as a debt recovery tool offends constitutional guarantees of liberty and fair hearing.

4. Rule of Law:

Erosion of the civil-criminal boundary delegitimises legal institutions and encourages abuse by wealthy complainants.

Recommendations

1. **Law Enforcement Reform:**
Establish internal review mechanisms within the police, EFCC, and ICPC to screen out petitions arising from contractual disputes.
2. **Bar Association Intervention:**
Lawyers must desist from advising clients to pursue criminal complaints as shortcuts in debt recovery.
3. **Legislative Amendments:**
The Penal Code and Criminal Code should be amended to expressly exclude ordinary contractual breaches from the ambit of fraud or criminal breach of trust.
4. **Judicial Training:**
Continuous judicial education should reinforce the Kure principle, particularly for magistrates who are the first recipients of such cases.
5. **Public Awareness:**
Wider sensitisation campaigns should educate business communities that debt recovery is a civil—not criminal—process.

Citations

Kure v. COP (2020) 9 NWLR (Pt. 1729) 296 SC
Ishola v. COP (2016) LPELR-40046 (CA)
Okoli v. State (2007) 2 NWLR (Pt. 1019) 621
Onagoruwa v. State (1993) 7 NWLR (Pt. 303) 49
Section 4, Police Act, 2020
Sections 311–315, 320 Penal Code Act, Cap 532, LFN 1990
R v. Z (2005) UKHL 22

