

APPEALS AGAINST DECISIONS OF THE EXAMINING MAGISTRATE IN CAMEROON

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Abstract: The Examining Magistrate is involved in the administration of justice in Cameroon. His functions are to carryout preliminary investigations and this has caused the preliminary duties of investigation to be smooth and more matured. Preliminary Inquiry is therefore a criminal hearing usually conducted by an Examining Magistrate to determine whether there is sufficient evidence to prosecute the defendant before a competent court of law. During the preliminary inquiry, the Examining Magistrate is assisted by a Registrar and the defendant may be represented by counsel. At the close of the inquiry, the Examining Magistrate shall ascertain whether or not any offence is sustainable on the evidence against the defendant and shall make either a total or partial no case ruling or a committal order. These various orders and rulings of the Examining Magistrate can be appeal against by any disgruntled party to the proceedings before the Inquiry Control Chambers (ICC) of the competent Court of Appeal.

Keywords: Appeals, Decisions, Examining Magistrate, Cameroon.

1. INTRODUCTION

Preliminary Inquiry is a criminal hearing usually conducted by an Examining Magistrate to determine whether there is sufficient evidence to prosecute the defendant before a competent court of law. It should be stated here clearly that an Examining Magistrate is not a trial Magistrate or Judge and thus his jurisdiction is limited to an investigation of the offence which entails the discovery of the truth: whether there is enough evidence to establish the offence with which the suspect is charged. In the case of *Njume Elong Kome Peter and Ntoko Christopher vs. The People of Cameroon and Alowede Kome Christopher*¹ Agbor James Eyong J stated that “*The purpose of a preliminary inquiry is to enable the Examining Magistrate investigate whether there is the slightest link or connection between the alleged offence and the defendants and to commit them before the competent court for trial. This is because it is vexatious and an abuse of the due process of law to expose a presumed innocent to criminal trial whereas there is no compelling evidence against him.*”

Cameroon Criminal Procedure Code² provides in its Section 142 that a PI shall be obligatory in cases of felonies and discretionary in cases of misdemeanours and simple offences. It should be noted here that an Examining Magistrate shall not be competent to try matters of which he carried out during the PI³. The Examining Magistrate can be seized by a request from a State Counsel by a Judicial Act. This is the tenor of section 143 and 157(1) of the criminal procedure code which states ‘the examining magistrate may carry out a preliminary inquiry only if the State Counsel, by a judicial act, requests him to do so’. This judicial act is called a holding charge; the holding charge of the State Counsel shall be in writing. It can be preferred against a known or unknown person.

¹Suit N^o. CASWR/08^{icc}/2015.

²Law N^o 2005/007 of 27th July 2005 to Institute the Harmonized Criminal Procedure Applicable in the whole Territory.

³Barrister Tanyi Joseph Mbi, *Law without Boundaries: Compensation for Illegal Detention*, Center for Human Rights Education, Training and Research(CHETAR) (Online).Posted by EffaTataw ,5th March 2007.

He can also be seized by direct complaint from a private individual. An Examining Magistrate may be seized directly by any person who alleges that he has suffered injuries resulting from a felony or misdemeanor. This means that a private individual may bring a criminal action directly to the Examining Magistrate without passing through the State Counsel. When this is the case, the complaint must necessarily contain a civil claim.⁴ It suffices for the victim of such civil claim to make a deposit at the registry of the appropriate court.⁵ When the complaint does not reside within the jurisdiction of the court where the preliminary inquiry is held, he shall choose an address for service there in by preparing and depositing a document to that effect at the registry of the said court. Where he fails to choose his address for service, he shall not be heard to say that he had no knowledge of any documents which he ought to have been served with, as provided for by the Law.⁶ As soon as the civil party has deposited the sum of money provided for in section 158, the Examining Magistrate shall forward the complaint to the state counsel for his submissions⁷. In the case where the Preliminary Inquiry is initiated by the victim of the offence (private prosecution), he can safely withdraw the complaint from the Examining Magistrate⁸ and the party applying to withdraw shall be obliged to pay cost of investigation and other incidental expenses which shall be assessed by the Examining Magistrate before withdrawal.

It is important to state here that the Examining Magistrate of the High Court shall be competent to carry out PI throughout the jurisdiction of the High Court. However, those of the court of First of Instance elsewhere other than at the seat of the High Court are competent. Exclusively, only an Examining Magistrate of the court of First Instance is competent to conduct PI involving minor defendants without adult co-offenders.

2. RULINGS OF THE EXAMINING MAGISTRATE

At the close of the inquiry, the Examining Magistrate shall forward the inquiry file to the State Counsel for his final submissions. The State Counsel has five days to forward the final submission with the inquiry file back to the Examining Magistrate⁹. Upon receipt of the inquiry file, the Examining Magistrate shall find out whether an offence has been established having regard to the facts before him. By virtue of section 256 of the Criminal Procedure code, the Examining Magistrate shall ascertain whether or not any offence is sustainable on the evidence against the defendant and shall make either a total or partial no case ruling or a committal order¹⁰. In the case of *Veranso Liberious Afonsi & 2 Ors vs. The People & Adamu Dewa*¹¹ the court stated that “*The Examining Magistrate’s powers are limited to either the making of a committal order or entering of a total or partial no case ruling.*”

The various orders that can be made by an Examining Magistrate during a preliminary inquiry therefore include; a no-case ruling where the Examining Magistrate find that the facts do not constitute an offence or that the author of such offence is not identified or that there is insufficient evidence; a partial no- case ruling where the defendant is charged with several offences, the Examining Magistrate shall give a partial no-case ruling if some of the counts do not appear to him to be supported by sufficient evidence, whereas others do and a Committal Order where the facts sustain the offence. The committal order shall be notified to the state Counsel and the other parties¹². These various orders and rulings of the Examining Magistrate can be appeal against by any disgruntled party to the proceedings.

⁴Criminal Procedure code, Section 157 states that “any person who alleges that he has suffered injury resulting from a felony, or misdemeanour may when lodging a complaint with the competent Examining Magistrate, file a claim for damages. The complaint in which a victim claims damages shall set the criminal action in motion.

⁵*Ibid*, Section 158 of criminal procedure code states that (1) the victim who sets the criminal action in motion by virtue of Section 157 (I) shall, at the risk of his complaint being inadmissible, deposit at the registry of the court of First Instance an amount considered sufficient for defraying the cost of the proceedings. The amount of the deposit shall be fixed by an order of the Examining Magistrate. (2) An additional deposit may be fixed in the course of the inquiry.”

⁶*Ibid*, Section 159.

⁷*Ibid*, Section 160.

⁸In the case of *Atchu Alfred Ndam V.The People & 4 Ors.* (2012), the Inquiry Control Chambers of the North West Regional court of Appeal took the view that a PI can be discontinued just like proceedings during the trial and investigations, except the matter was serious such that any withdrawal is likely to imperil the public interest like murder, armed robbery, human trafficking, money laundry and so on.

⁹Criminal Procedure Code, Section 256(2).

¹⁰*Ibid*, Section 256(3).

¹¹Suit N^o. BCA/ICC/8C/2008. SLR 2 (2014).

¹²Criminal Procedure Code, Section 261.

3. APPEALS AGAINST THE ORDERS AND RULINGS

According to section 267 of Criminal Procedure Code, the decisions of the Examining Magistrate may be subject to appeal before the Inquiry Control Chamber of the Court of Appeal. The appeals shall be brought before a special bench of the court of Appeal by way of an unstamped application in four (4) copies and addressed to the president of the Inquiry Control Chamber; a copy of the ruling appealed against shall be attached to this application. The application for the appeal shall under pain of its being declared inadmissible, clearly state and argue the grounds of appeals¹³. The Legal Department may, except otherwise provided by Law, appeal against rulings of the Examining Magistrate in accordance with the provisions of section 252(3)¹⁴ 254 (1)¹⁵ and (3)¹⁶ and 271¹⁷. The Inquiry Control Chamber shall be presided over by a judge of the court appointed for one judicial year by an order of the President of the said court and the Legal Department and the parties shall be present in the sittings of the chamber.

In the case of the *People of Cameroon vs. Nelson Tabi Asongwe*¹⁸ the appellants were aggrieved by the ruling of the Examining Magistrate at the Fako High Court and they filed an application of appeal pursuant to section 262, 268 and 274 of the Criminal Procedure Code on two grounds;

- i) That the Examining Magistrate erred at Law by granting bail to the respondent following an application made by his counsel without the submissions of the legal Department thereby violating section 222 (2) of the Criminal Procedure Code and
- ii) That the Examining Magistrate equally erred at Law by falsifying the records of proceedings indicating the appearance of prosecuting counsel on the said date.

The Inquiry Control Chamber of the South West Court of Appeal quashed the decision of the Examining Magistrate, cancelled the bail, and remitted the matter back to the High court of Fako Division for continuation before a different Examining Magistrate.

According to Section 269 of the Criminal Procedure Code, the defendant may only appeal against rulings in respect of remand in custody, judicial supervision, and request for expert or counter-expert opinion and restitution of articles seized. In the case of *Ashu Roland Nanjia vs. The People of Cameroon*¹⁹ the defendant/appellant filed an appeal against the decision of the Examining Magistrate on the grounds that the Examining Magistrate erred at Law by arraigning and requesting him the defendant to take a formal plea and that the Examining Magistrate erred at Law in refusing to admit the defendant to bail, when the offence is a bailable offence. The appeal partially succeeded and bail was granted to the defendant/appellant in the sum of XAF 500.000 and one surety in the like sum and the case file forwarded for the appellant/defendant to be tried pursuant to the committal order of the Examining Magistrate.

The civil party may appeal only against rulings in respect of the refusal to commence an inquiry, the inadmissibility of an application to be a civil party in a criminal case, the rejection of an application for expert or counter-expert opinion, the restriction of articles seized and no case rulings²⁰.

It is worth noting that when it comes to appeals, the counsel can only appeal with the instruction of his party. In the absence of such express permission from the party, a counsel cannot proceed against the will of the client. This is why in the case of *Funseng Mark Theodore vs. The People of Cameroon & Sih Fon Colette*²¹ the Inquiry Control Chamber of the

¹³*Ibid*, Section 274(2).

¹⁴It states that only the Legal Department shall have the right to appeal against the ruling. The appeal shall be made within forty-eight (48) hours from the day following its notification.

¹⁵States that, where a party finds that an act of the inquiry, with the exception of orders listed in section 257, adversely affects his interest or the proper administration of justice, he shall apply to the Examining Magistrate for the annulment of such an act.

¹⁶The State Counsel and any other interested party shall be competent to appeal against the said ruling.

¹⁷The time- limit for appeal is forty-eight (48) hours with effect from the day following the date of service of the said ruling.

¹⁸CASWR/20^{ICC}/2015.

¹⁹Suit N° CASWR/09^{ICC}/2015.

²⁰Criminal Procedure Code, Section 270.

²¹CASWP/14^{ICC}/2015.

South West Court of Appeal held that the matter was a fit matter to discontinue as requested by the appellant and as a result the matter was struck off the cause list.

Where the Examining Magistrate issues a committal order in the absence of sufficient evidence, such an order may be quashed. In the case of *The People of Cameroon vs. Terence Fon Acha alias Bongolo & 4 Ors*²² the Inquiry Control Chamber of the South West Court of Appeal set aside the decision of the Examining Magistrate at the trial court committing the second, third, fourth and fifth respondents to trial before the Fako High Court with a sole evidence which was the story of the 1st respondent which was not confirmed by any other evidence. The Chambers ordered that a committal order for murder be made solely against the first respondent Terence Fon Acha *alias* Bongolo.

The committal order made by the Examining Magistrate must contain certain information in the absence of which an appeal would succeed. The information include the full name, date and place of birth, filiations, residence and occupation of the dependent, the particulars and statement of offence, and the section of the Law applicable. It shall in addition, state clearly and concisely the reasons for the existence or non-existence of evidence against the defendant. In the case of *Ayissi Awah Stella & Ayissi Beatrice vs. The People & Francis Kimbu Muh*²³, the Inquiry Control Chamber of the North West Court of Appeal stated that “...the Examining Magistrate erred in law in ruling on a preliminary inquiry without indicating the full name, date and place of birth, filiation, residence and occupation of the defendant, the particulars and statement of offence and the section of the law applicable.”

The Examining Magistrate can make certain orders during a preliminary inquiry. The orders must not be out of the competence of the Examining Magistrate. That is why in the case of *Njume Elong Kome Peter & Ntoko Christopher vs. The People of Cameroon & Alobwede Kome Christopher*²⁴, the Inquiry Control Chambers of the Court of Appeal of the South West Region held that “...the ruling of the Examining Magistrate ordering the 1st appellant to pull down his own flag so that only the flag of the 2nd respondent should be hosted was premature, precipitated, superfluous, uncalled for and made outside the competence of the Examining Magistrate...”, and thus the appeal succeeded.

By virtue of Section 271 of the Criminal Procedure Code, the time-limit for appeal shall be forty-eight (48) hours with effect from the day following the date of service of the said ruling. And thus in the case of *The People of Cameroon vs. Fongang Gilbert and 9 Ors*,²⁵ the Inquiry control chambers of the South West Court of Appeal found inadmissible an appeal that was filed eight days afterwards and dismissed the appeal.

4. PROCEDURE BEFORE THE INQUIRY CONTROL CHAMBER

The inquiry Control Chamber shall hear and determine the appeal within thirty (30) days after receiving the application²⁶. He shall be bound to deliver its ruling within ten (10) days after receiving the application, in case of remand in custody²⁷. The Inquiry Control Chamber may, either of its own motion, or at the request of the Procureur General or any other party, order, any further inquiry which it deems necessary. This shall be done either by the President of the Inquiry Control Chamber himself or by a judge of the Court of Appeal or by an Examining Magistrate appointed for that purpose²⁸. After carrying out the further inquiry, the case shall be deposited at the registry of the Inquiry Control Chamber²⁹.

The Magistrate who carries out the further inquiry shall have prerogative of the Examining Magistrate. He may interrogate the defendant, hear witnesses and proceed where necessary with searches and seizures, give rogatory commissions and issue warrants. However, he may neither decide on an application for bail nor make an order closing the inquiry³⁰. He shall, at the end of his mission, return the inquiry file to the inquiry Control Chamber³¹. The Inquiry Control

²²Suit N^o CASWR/03^{ICC}/2016.

²³Suit No. CANWR/ICC/10C/2012. SLR 2 (2014).

²⁴Suit N^o CASWR/08^{ICC}/2015.

²⁵Suit N^o CASWR/05^{ICC}/2016.

²⁶Criminal Procedure Code, Section 275(1).

²⁷*Ibid*, Section 275(2).

²⁸*Ibid*, Section 276(1).

²⁹*Ibid*, Section 276(2).

³⁰*Ibid*, Section 280(1).

³¹*Ibid*, Section 280(2).

Chamber seized shall examine the regularity of all acts which are brought before it³². Where it discovers that there is reason to declare an act null and void, it shall so declare and, where necessary, all or part of the previous proceeding subsequent to the act³³. After annulment, it may proceed as provided for in Section 278³⁴.

When the Inquiry Control Chamber ascertains that the Examining Magistrate did not decide on certain facts of which it was seized or that the holding charge failed to bring to the knowledge of the Examining Magistrate all the facts contained in the police report, the Inquiry Control Chamber shall order that information concerning all offences emanating from the police report be given to it³⁵. Where the Inquiry Control Chamber seized of an appeal filed in accordance with Sections 267 to 271, against a committal order or a no case ruling, finds that the facts do not constitute an offences, or that the defendant has remained unknown, or where there is insufficient evidence against the defendant, it shall deliver a no case ruling and shall, where necessary, rule on the restitution of the articles seized. The defendants in custody shall be released forthwith³⁶.

Where the Inquiry Control Chamber finds that the facts constitute either a felony, a misdemeanour or a simple offence, it shall refer the case to the court having jurisdiction over such offence³⁷. In case of simple offences, the defendant if remanded shall be released forthwith³⁸. In all the cases mentioned in Section 261 to 263 the Ruling of the Inquiry Control Chamber shall be served on the Examining Magistrate, the State Counsel, the Procureur general and the ; order parties³⁹. Subject to the provision of Sections 279, 283 and 284 the inquiry file shall be returned without delay to the Examining Magistrate⁴⁰.

Only the Procureur General and the civil party shall be competent to appeal, to the Supreme Court against rulings relating to the closure of the preliminary inquiry⁴¹. In case of annulment of the committal order or a no case ruling, the Inquiry Control Chamber may, in the interest of the proper administration of justice, appoint another Examining Magistrate or in default, another Magistrate of the same court to continue with the preliminary inquiry⁴². Appeals against a ruling delivered during a preliminary inquiry other than that relating to a committal order or a no case ruling shall not suspend preliminary inquiry⁴³.

5. CONCLUSION

A preliminary inquiry is a pre-trial placed under the control of an Examining Magistrate of the bench. The purpose of a preliminary inquiry is to enable the Examining Magistrate investigate whether there is the slightest connection between the alleged offence and the defendants and to commit them before the competent court for trial. As a general rule, in Cameroon, a preliminary inquiry is conducted in secret. This is the subject matter of Section 154 of the Criminal Procedure Code which is to the effect that preliminary inquiries shall be secret and in the chambers of the Examining Magistrate except otherwise sanctioned by the Examining Magistrate and anyone participating in the proceedings is bound by professional secrecy. The Examining Magistrate therefore conducts preliminary inquiries under strict rules put in place by the Criminal Procedure Code of the country. This somehow help in the efficacy of justice rendered as a person is thoroughly investigated at the level of a PI in order to determine if there are evidences connecting him to the alleged crime before sending him to open court for trial. This is a very good respect of the right to fair trial and the respect of the dignity of a defendant especially in felonious offences. This has impacted positively on the administration of justice in the country.

³²*Ibid*, Section 281(1).

³³Criminal Procedure Code, Section 281(2).

³⁴*Ibid*, Section 281(3).

³⁵*Ibid*, Section 282.

³⁶*Ibid*, Section 283.

³⁷*Ibid*, Section 284(1).

³⁸*Ibid*, Section 284(2).

³⁹*Ibid*, Section 285(1).

⁴⁰*Ibid*, Section 285(2).

⁴¹Criminal Procedure Code, Section 285(3).

⁴²*Ibid*, Section 286.

⁴³*Ibid*, Section 287.

6. RECOMMENDATIONS

The introduction of the Examining Magistrate in the administration of justice in Cameroon has impacted the legal system so much. The preliminary inquiry is totally under the control of an Examining Magistrate of the bench. Preliminary inquiry is mandatory in felonies and discretionary in simple offences and misdemeanours. In my opinion, it is recommendable that the preliminary inquiry should be mandatory in all categories of cases that is, in simple offence, misdemeanours and felonies. This will prevent any defendant from going to court without enough evidence connecting him to the offence. I equally recommend that the government should review the salaries of judicial authorities to make them independent and free from having the desire to receive unwanted incentives from litigants. The output allowances of judicial authorities should be paid up to date and this will cause them to be effective in rendering their services. The government should equally look for a medium to cause the available Laws to reach the rural arrears; this can be done through the village heads and the intake of Magistrates into the National school of Administration and Magistracy should be increased.

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