

An Assessment of the Viability and Practical Utility of the Tort of Bribery in Nigeria

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ABSTRACT

Bribery is no doubt a cankerworm that has eaten deep into the Nigerian economy, especially with regards to governments and even in interpersonal relationships between individuals. The situation of the Nigerian economy is dire as bribery now cuts through almost every area of national life. Despite the fact that bribery constitutes a breach of fiduciary duties, especially in principall/agent relationships, it remains solely and majorly a crime in Nigeria. In other more progressive jurisdictions however, such as the UK and Canada, bribery is classified as both a civil wrong, and an offence. The civil wrong of bribery is entirely different from the offence of bribery. It relates to a principall/agent relationship, especially where such agent has received a bribe as some sort of inducement to act. This paper seeks to examine the civil wrong of bribery under English Law and to suggest its practical utility in Nigeria.

1.0 INTRODUCTION

Bribery and corruption have become a critical component in the life of every Nigerian citizen and as such has become more of the norm than the exception. It cuts through every institution and this can be said to be a part of the overall effect of poor governance in the country.

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Corruption is generally described as any dishonest action or inaction, by any person, in any form of authority, to derive any form of illegitimate, illicit, immoral, incompatible or unethical advantage.¹ Vices such as bribery, corruption, economic and financial crimes remain a deterrent to human capital advancement.² This has inspired various global bodies and countries to enact anti-corruption, bribery, economic and financial crimes legislations such as, *the United Nations Convention against Corruption*, *African Convention on Preventing and Combating Corruption*, *OECD Convention On Combating Bribery*, *US Foreign Corrupt Practices Act* and *the UK Bribery Act* amongst others.³ Bribery is viewed as improper conduct; therefore, it attracts both civil and criminal penalties in many jurisdictions. Bribery is solely a crime in Nigeria and is provided for by several Nigerian Legislations such as, *the Corrupt Practices and Other Related Offences Act*, *the Economic Financial Crimes Commission Act* etc. Under the offence of bribery in Nigeria, *the ICPC Act* provides for the prohibition of bribery and other corrupt practices, the essential elements of which includes giving or receiving a thing of value to influence an official act. It provides four categories of offences, which includes; giving and receiving of bribes to influence public duty, fraudulent acquisition and receipt of properties, failure to report bribery transactions and the concealment of information and frustration of investigation.⁴ More importantly, *the ICPC Act* also

¹ Oserogho Associates “Bribery, Corruption, Economic and Financial Crimes” available at <http://www.oseroghoassociates.com/articles/162-bribery-corruption-economic-and-financial-crimes?print=0&download=1> (accessed 2 June 2017)

² *Ibid*

³ *Supra* note 1

⁴ SPA Ajibade “Executive summary of anti-corrupt legislations with a view to advising foreign investors in Nigeria on anti-corruption programmes” available

governs corrupt practices involving both government officials and private individuals. In other jurisdictions however, bribery constitutes both a crime and a civil wrong. The common law has long recognised criminal offences of, and related to, bribery and, in 2011, the *UK Bribery Act* was enacted. The meaning of bribery as a civil wrong is very different from the criminal law equivalent. The concept of bribery as a civil wrong involves an agent/principal relationship where such agent and the bribe payer would be personally liable for such wrong. The civil wrong of bribery has been described as a commission or other inducement which is given by a third party to an agent as such, and which is secret from his principal.⁵ The law of England, and that of other common law jurisdictions allow states to pursue claims against the bribe-payer and recipient.⁶ The bribe payer and the agent are jointly and severally liable for either the loss caused by the tainted agreement or the amount of the bribe.⁷ A principal is also entitled, if he wishes, to rescind or terminate a contract that has been obtained as a result of bribery. In Nigeria, for instance, where most of the contracts awarded either to companies by government agents or between agents and other individuals, are based on various benefits conferred on such agent whether or not they are qualified, the tort of bribery would serve as a viable tool in providing an option on whether

at <http://www.spaajibade.com/resources/executive-summary-of-anti-corrupt-legislations-with-a-view-to-advising-foreign-investors-in-nigeria-on-anti-corruption-programmes/> (accessed 5 June 2017)

⁵ J. Maton, J. Humphreys "Civil claims for bribery: an overview of the English and common law position" available at <http://www.lexology.com/library/detail.aspx?g=8f53df2e-1816-4100-b2d4-00a3c0b4382a> (accessed 5 June 2017)

⁶ J. Maton, J. Humphreys "What states should know about the civil tort of bribery" available at <https://cc.cooley.com/tag/tort-of-bribery/> (accessed at 5 June 2017)

⁷ Supra note 5

such contractual relationships with bribe-paying companies should be terminated, rescinded or maintained and if so, on what re-negotiated terms. This is in addition to other liabilities incurred. In addition, the principal, who may be the state, could seek for equitable compensation for any financial loss and an account of profits since bribery constitutes a clear breach of fiduciary duties.⁸ These fundamental elements and remedies available therefore makes the civil wrong of bribery a desirable tool in curbing bribery in cases of principal and agent and third party bribe-payers, in instances where the offence of bribery would still not suffice. This paper attempts to analyse the civil wrong of bribery under the English law, whilst examining the scope of the offence of bribery in Nigeria.

2.0 THE TORT OF BRIBERY

The legal definition of bribery as a civil wrong is wide. According to Lord Templeman, in *A-G for Hong Kong v Reid*⁹, bribery is an evil practice, which threatens the foundations of any civilized society. Briggs J, in *Ross River Ltd v Cambridge City FC*¹⁰ also stated that bribery is committed where one person makes, or agrees to make, a payment to the agent of another person with whom he is dealing without the knowledge and consent of the agent's principal. In the case of *Industries & General Motors Co. v Lewis*¹¹, Justice Slade, in defining a bribe, stated as follows;

For the purposes of the civil law a bribe means the payment of a secret commission, which only means: (i) that the person making the

⁸ Supra note 5

⁹ [1994] 1 AC 324 at p. 330H

¹⁰ [2008] 1 All ER 1004 at p. 203

¹¹ [1949] 2 All ER 573, 574

payment makes it to the agent of the other person with whom he is dealing; (ii) that he makes it to that person knowing that that person is acting as the agent of the other person with whom he is dealing; and (iii) that he fails to disclose to the other person with whom he is dealing that he has made that payment to the person whom he knows to be the other person's agent.

Steele J. affirmed this in *Petrotrade Inc v. Smith*.¹² It is therefore a benefit given by a legal entity or individual to an agent or public official to obtain a favourable decision from the state or from the principal, which may be, for example, the award of a contract. The tort of bribery is founded on the legal relationship of principal and agent.¹³ A claim for bribery will not be available when there is no agency relationship.¹⁴ Such agency relationship could be between a company and its directors. The recipient of the alleged bribe will in most cases be a fiduciary of the innocent party and the Court of Appeal and the House of Lords in the case of *Reading v. Attorney General*¹⁵ affirmed this. In that case, Reading, who was an army sergeant of the Crown, was paid £20,000 to transport illicit spirits and drugs. Although he drove a civilian vehicle, he wore his army uniform in order to divert attention from his illegal activities. After being convicted in criminal proceedings, he sought to recover the payments he had received but was being held by the Crown via civil proceedings. The Crown in defending its action argued that an employee that receives bribes is accountable to his principal or employer for any benefit conferred on

¹² [2000] 1 Lloyd's Rep 486..

¹³ Supra note 6

¹⁴ Supra note 6

¹⁵ [1951] AC 507

him. Reading lost on each occasion, although Denning J, in his judgment, stated that the existence of fiduciary duties was not an essential ingredient of bribery. The Court of Appeal rejected this and postulated that a fiduciary relation must be shown. The qualification however, was that the term be applied in a loose or comprehensive manner and, would particularly arise, where the agent was entrusted with property to be used for the benefit of his principal and not for purposes not authorised by him, which in this case was the uniform, and in situations where the agent was entrusted to perform a particular job for the claimant. The House of Lords upheld this decision.¹⁶ Once a bribe is established, there is an irrefutable presumption that its purpose is to induce the agent to act in favour of the briber.¹⁷ In *Hovenden and Sons v. Millhoff*¹⁸, Romer LJ stated:

If a bribe be once established to the court's satisfaction, then certain rules apply. Amongst them the following are now established, and, in my opinion, rightly established, in the interests of morality with the view of discouraging the practice of bribery. First, the court will not inquire into the donor's motive in giving the bribe, nor allow evidence to be gone into as to the motive.

2.1 Elements of the Civil Wrong Of Bribery

The elements of the civil wrong of bribery include;

2.1.1 Agency Relationship

¹⁶Timeshare Consumer Association "Commercial fraud: Bribery" available at <https://www.timeshareconsumerassociation.org.uk/2014/08/06/commercial-fraud-bribery/> (accessed 7 June 2017)

¹⁷ *Ibid*

¹⁸ [1949] 2 K.B 232

It is clear from the authorities that the civil wrong of bribery necessarily occurs in the context of an agency relationship. The court affirmed this in the case of *Petrotrade Inc v. Smith*.¹⁹

2.2.2 Giving of a "benefit" to the Agent

This can be an actual benefit, or a promise of a future benefit. The benefit could be given directly to an agent, public official, or to a company or other legal entity, such person is in charge of, could be paid indirectly to a third party, family, or trusted associates. The type of benefit is irrelevant, provided it is material and it need not necessarily be monetary. In *Amalgamated Industries Ltd v Johnson & Firth Brown Ltd*²⁰, it was held that a job offer could, at least potentially, amount to a bribe. There appears to be no reason in principle why the relevant benefit should be limited to any particular form, so long as it constitutes a material benefit to the agent concerned. This could arguably take the form of an indirect benefit such as a job offer to a member of an agent's family.²¹ The principal must show that the agent had a role in the decision benefiting the payer. It is not necessary to show a decisive role, although that is often the case.

2.2.3 Conflict of Interest

The benefit conferred must create a real possibility of a conflict of interest for the agent. The conflict of interest is not limited to the specific transaction for which the bribe was paid. It extends to future transactions between the principal and third party.²² Leggatt J, in *Anangel v. IHI*²³, established the proposition that the key to determining whether or not a payment or other inducement

¹⁹*Petrotrade Inc v Smith* [2000] 1 Lloyd's Rep 486

²⁰ (Unreported) 3 April 1981 Ch D

²¹Supra note 16

²²Supra note 5

²³ [1990] 1 Lloyd's Rep 167

constitutes a bribe was whether or not the making of it gives rise to a conflict of interest”.

2.2.4 Briber's Knowledge of the Official's Role

The principal must show that the entity or individual providing the benefit to the agent knew that the recipient was an agent, or public officer, in the case of a state, or was willfully blind to the possibility.²⁴ In *Petrotades* case, it was equally held that to establish a bribe, the claimant/principal must show that the briber knew that the payee was acting as an agent. The court in *Logicrose Ltd v. Southend United FC*²⁵, considered the degree of knowledge, which the briber must possess with regards to the existence of the agent's personal interest. It accepted the submission that nothing less than actual knowledge or willful blindness will suffice, even constructive knowledge. Parties to negotiations do not owe each other a duty to act reasonably, but only to act honestly. In addition, the briber also accepts the risk that the agent may not disclose. In the *Logicrose* case, the court in relying upon dicta of the Court of Appeal in *Grant v. Gold Exploration & Development Syndicate Ltd*²⁶, reaffirmed that a briber cannot seek to defend himself by asserting that he assumed that the agent would disclose the transaction to his principal. Hence the briber therefore bears the risk that the agent will not make disclosure. The converse equally applies as if a person transacts secretly with another's agent behind his principals back and being aware that the agent intends to conceal the transaction from his principal and intends to obtain some private

²⁴ Supra note 6

²⁵ [1988] 1 WLR 1256

²⁶ [1909] 1 QB 233

advantage for himself, and then he takes the risk that the agent does in fact intend to do so.²⁷

2.2.5 Secrecy

The benefit must be secret from the state. It is the vice of secrecy that defines the civil wrong of bribery because a bribe is a breach of the agent's fiduciary duties, as it constitutes secret profit. Full disclosure of the benefit is, however, a defence. The person relying on the defence must prove that full and appropriate disclosure has been given to an appropriate superior official or decision-making committee.²⁸ The benefit must have been concealed from the state. It is the failure to disclose the payment and obtain informed consent that is the "vice". Full disclosure to the state is a defence to a claim for bribery.²⁹ According to the court in the *Ross River* case, the secrecy element is essential in establishing a bribe:

The essential vice inherent in bribery is that it deprives the principal, without his knowledge or informed consent, of the disinterested advice which he is entitled to expect from his agent, free from the potentially corrupting influence of an interest of his own.³⁰

An example of a case in which the court accepted that a bribe had been paid is *Constantin Medien AG v. Ecclestone and others*³¹. In that case, the party who had accepted the £44 million bribe (G) worked at a bank which held a substantial number of shares in the Formula One group of companies. The party who paid the bribe (E) had done so, so that G would facilitate the sale of the Formula One shares held by the

²⁷ Supra note 6

²⁸ Supra note 5

²⁹ *Ibid*

³⁰ Supra note 13 p. 204

³¹ [2014] EWHC 387

bank to a purchaser of whom E approved. It is worth noting that E accepted he had paid G the sum but asserted that he had done so because G had been blackmailing him. The judge rejected that argument. He held that bribery was more probable than blackmail. Further, he accepted G's version of events as "broadly accurate, while the defendants' evidence contained inconsistencies and was "otherwise unsatisfactory".³²

It is not necessary for the state to prove dishonesty, although it is often present. Nor must the state prove that the bribe procured the contract or favourable decision. Once a bribe is proved there is an irrebuttable presumption that the public official was influenced by the "bribe", for example, that its payment procured the contract to build and operate the toll road. And there is no need to link the payment to a particular transaction. Once a bribe is proved, any subsequent contract or favourable decision will be tainted. So, the bribes used in our example would taint subsequent contracts.³³

2.3 Other Considerations

Other important factors the court might take into the consideration includes;

Partial disclosure: There may be circumstances in which the principal has some knowledge of matters relating to the alleged bribe but complains that he had insufficient knowledge to have given proper consent.³⁴ The Court of Appeal held in *Hurstanger v. Wilson*³⁵ that

³² Supra note 16

³³ Supra note 5

³⁴ Supra note 16

³⁵ [2007] 1 WLR 2351

there exists a distinction between cases of no disclosure and that of partial or inadequate disclosure. The former is and remains illustrative of bribery cases, whilst a partial or inadequate disclosure sufficient to negate secrecy has the effect of removing an act from the realms of bribery but it would still potentially constitute a breach of fiduciary duty.

Once all the elements of bribery are established, the court will presume in favour of the principal and against the briber and the agent bribed, that the agent was influenced by the bribe. The presumption is irrebuttable. Also, the motive of the person making the bribe is irrelevant and this was held in the case of *Barry v. Stoney Point Canning Co.*, [1917] 55 S.C.R. 51, at p. 74.³⁶

3.0 THE OFFENSE OF BRIBERY IN NIGERIA

Bribery remains strictly a crime in Nigeria, even in agency relationships, despite the fact that bribery constitutes a breach of fiduciary duties. It is provided for by the *Criminal Code Cap C38 Laws of the Federation of Nigeria 2010*, the *Penal Code (Northern States) Federal Provisions Act No. 25 of 1960* and the *Corrupt Practices and Other Related Offences Act (ICPC ACT) Cap. C3 Laws of the Federation of Nigeria 2010*, as well as state laws such as the Bribery Law of Lagos state.

3.1 The Criminal Code Act

An important observation in the *Criminal Code* is that it provides only for public officials who corruptly requests or asks for a benefit. Sections

³⁶J C Morton, "Elements of civil tort of briber" available at <http://jmortonmusings.blogspot.com.ng/2012/10/elements-of-civil-tort-of-bribery.html> (accessed 12 June 2017)

98, 98A and 98B of the Criminal Code, Schedule to the Criminal Code Act, prohibit bribery involving public officers and section 494 prohibits corrupt acceptance of gifts by agents. Section 98 covers the demand side of the offence involving a public official. Section 98A covers the supply side where any person offers a bribe to a public official. Section 98B covers any person soliciting or demanding a bribe on account of any action of public officers.³⁷

Section 98(1)(a) provides that;

any public official who corruptly asks for, receives or obtains any property or benefit of any kind for himself or any other person; or bribes, etc. or corruptly agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person, on account of anything already, done or omitted, or any favour or disfavour already shown to any person, by himself in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a Government department, public body or other organisation or institution in which he is serving as a public official, or anything to be afterwards done or omitted, or any favour or disfavour to be afterwards shown to any person, by himself in the discharge of his official duties or in relation to any such matter as aforesaid, is guilty of the felony of official corruption and is liable to imprisonment for seven years.

Section 98A on the other hand provides that;

any person who gives a bribe on account of the actions of a public official or corruptly gives, confers or procures any property or benefit of any kind to, on or for a public official, or to, on or for any other person; or promises, or offers to

³⁷A O Bello "Mental Element of Bribery under Nigerian and Us (Federal) Anti-Bribery Laws: an Overview" available at <http://journals.univ-danubius.ro/index.php/juridica/article/view/2368/2727#sdfootnote3sym> (accessed 3 July 2017)

give or confer or to procure or attempt to procure any property or benefit of any kind to, on or for a public official or to, on or for any other person account of any such act, omission, favour or disfavour on the part of the public official as is mentioned in section 98 is guilty of the felony of official corruption and is liable to imprisonment for seven years.

Section 98B provides that;

any person who corruptly asks for, receives or obtains any property or benefit of any kind for himself or any other person; or corruptly agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person, on account of anything already done or omitted, or any favour or disfavour already shown to any person, by a public official in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a government department, public body or other organisation or institution in which the public official is serving as such; or anything to be afterwards done or omitted, or any favour or disfavour to be afterwards shown to any person, by a public official in the discharge of his official duties or in relation to any such matter as aforesaid, is guilty of the felony of official corruption and is liable to imprisonment for seven years

Section 98B(2) further provides that;

In any proceedings for an offence under the section it shall not be necessary to prove the following;

- i. that any public official counselled the commission of the offence; or
- ii. that in the course of committing the offence the accused mentioned any particular public official; or
- iii. that in a case to which Section 98B(1)(ii) is relevant, the accused believed that any public official would do, make or show the act, omission, favour or disfavour in question; or
- iv. that the accused intended to give the property or

benefit in question, or any part thereof, to a public official.

The *actus reus* of the demand side of bribery is established when a public officer asks for, receives or obtains any property or benefit of any kind for himself or any other person or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person, while the *actus reus* of the supply side of bribery is established when any person gives, confers or procures any property or benefit of any kind to, or for a public official...or to, on or for other person, or promises or offers to give or confer or to procure or attempt to procure any property or benefit of any kind to, on or for a public official or to, on or for any person. The physical element of the demand side of bribery can simply be explained as asking for or receiving a benefit, while that of the supply side can be summed as “giving or promising a benefit.”³⁸

The *mens rea* of the demand side of bribery is “corruptly” asking for or receiving a benefit on account of anything already done or omitted, or any favour or disfavor already shown to any person, by the public officer in the discharge of official duties or in relation to any matter connected with the functions, affairs or business of a Government department, public body or other organisation or institution in which the officer is serving; and for anything to be afterwards done or omitted, or any favour or disfavor to be afterwards shown to any person, by a public officer in the discharge of official duties. The *mens rea* of the supply side of bribery is corruptly giving or promising a benefit on account of any act, omission, favour or disfavour on the part of the public official as is mentioned in section 98(1)(i) or (ii).

³⁸ *Ibid*

A critical aspect of this offence is that it must be done corruptly as provided in the act. Bairaman J. in the case of *Biobaku v. Police*³⁹ attempted to explain what corruptly meant in the context of the act. In rejecting the suggestion that corruptly meant improperly, His lordship posited as follows, that;

The notion behind s. 98 is this in my view: an officer in the public service is expected to carry out his duties honestly and impartially, and this he cannot do if he is affected by considerations of benefit for himself or another person; and the mischief aimed at in s. 98 is the receiving or the offering of some benefits as a reward or inducement to sway or deflect the officer from the honest and impartial discharge of his duties- in other words as a bribe for corruption or its price.

3.2 The Penal Code

The Penal Code also provides solely for bribery by public officials in *Section 115*. It provides that;

whoever being or expecting to be a public officer accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification whatever whether pecuniary or otherwise, other than lawful remuneration, as a motive or reward for doing or forbearing to do an official act, or for showing or forbearing to show in the exercise of his official functions favour or disfavour to a person; or for rendering or attempting to render any service or disservice to any person with any department of the public service or with a public officer as such, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both; if such public officer is a public officer in the service of the Government of the Federation acting in a judicial capacity or carrying out the duties of a police officer, with imprisonment

³⁹ (1951) 20 NLR 30

for a term which may extend to fourteen years or with fine or with both.

3.3 The ICPC Act

The Corrupt Practices and Other Related Offences Act unlike the *Criminal Code* and *Penal Code* provides for both public officials and private individuals in *Sections 9 and section 10*. Bribery, nevertheless, remains an offence under this Act and the provision of *Section 9* and *Section 10* of the Act are very similar to that of the *Criminal Code*. *Section 9* provides that;

any person who corruptly gives, confers or procures any property or benefit of any kind to, on or for a public officer or to, on or for any other person; or promises or offers to give, confer, procure or attempt to procure any property or benefit of any kind to, on or for a public officer or any other person, on account of any such act, omission, favour or disfavour or to be done or shown by the public officer, is guilty of an offence of official corruption and shall on conviction be liable to imprisonment for seven years.

Section 10 on the other hand provides that;

any person who asks for, receives or obtains property or benefits of any kind for himself or any other person; or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person, on account of anything already done or omitted to be done, or any favour or disfavour already shown to any person, by a public officer in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a Government department, public body or other organisation or institution in which the public officer is serving as such; or anything to be afterwards done or omitted, or any favour or disfavour to be afterwards shown to any person, by a public officer in the discharge of his official

duties or in relation to any such matter as aforesaid, is guilty of an offence of official corruption and shall on conviction be liable to imprisonment for seven years.

4.0 THE PRACTICAL UTILITY OF THE CIVIL WRONG OF BRIBERY IN NIGERIA

The provisions of the *Criminal Code*, the *Penal Code* and the *ICPC Act* provide a well-structured legal framework for the offence of bribery in Nigeria. However, as has been stated, the civil wrong of bribery and the offence of bribery are two different concepts, although a person can be guilty of both. In Nigeria today where the principal/agent relationship cuts through the social and commercial fabric of the economy, it only makes sense that there should be a remedy for aggrieved principals whose agents have taken bribes and made secret profit. The offence of bribery as provided for in Nigeria would not adequately address the issues of where an agent takes a bribe and pursuing a criminal matter in bribery would require more time, resources and efforts as criminal offenses must be proved beyond reasonable doubt. In addition, the remedies available under the civil wrong of bribery to principals are not provided for by any offence or civil wrong as it relates to principal-agent relationship. A principal has the right to rescind or terminate a contract that has been obtained because of bribery. The reason for this is that the civil wrong of bribery recognises the existence of a contractual relationship between the agent and the principal and the fact that the agent receiving a bribe to award a contract in performance of his agency duties would constitute a bribe and a breach of his fiduciary duties. As it stands in Nigeria today, there is no doubt that a lot of contracts are awarded

both between private citizens and in government based on various benefits conferred on the agent charged with the duties of awarding such contracts. In most cases, the persons to whom these contracts are awarded are usually not the most qualified or the most expedient for the job. For instance, many of the contracts for road construction and repairs done in Nigeria have resulted in more roads being dilapidated even faster because of the poor quality of work done on the roads by the so-called contractors. Another example can be glimpsed from the educational system where contracts for the supply of learning materials, such as desks and chairs in most public schools break down easily not only attributed to the poor maintenance culture but the poor quality of the materials in themselves. All these happen because such contracts are not usually awarded on merit but majorly due to other considerations, bribes included on the parts of the agents or public officials who are in themselves agents of the government. The principal also has the right to claim for any further losses he has suffered. For example, if the principal can demonstrate in a specific way that the agreement negotiated by his bribed agent is less advantageous to him than an agreement negotiated at arm's length by an honest and prudent agent then the principal can claim damages to the extent he has been so disadvantaged.⁴⁰ Another remedy available to the principal would be equitable compensation for any financial loss and accounts of profits since bribery constitutes a clear breach of fiduciary duties. In addition, the principal may request a recoupment of the bribe from the bribed agent. The money derived from the bribe

⁴⁰ J Richmond "A brief overview of the Civil Law of Bribery" available at <http://st-phillips.com/v7/nmsruntime/saveasdialog/f83.pdf?IID=2307&slD=3344> (accessed 16 May 2017)

may also be recoverable from the bribed agent as money had and received to the use of his principal. Such remedy is personal and does not require the principal to show that there was a fiduciary duty owing from the bribed agent to him.⁴¹ It also does not require the claimant to show that he has suffered loss by reason of the bribe. These vital elements and remedies available for the civil wrong of bribery therefore makes it an easier, cost effective and expedient means of curbing bribery in Nigeria, both in cases of public official and that of private individual agents and principals. It affords more useful and practical remedies for the principal and would help in the overall curbing of bribery in Nigeria, encouraging more principals, and even the state to seek more expedient civil redress in cases where the offense of bribery would not even cover.

5.0 CONCLUSION

This paper has examined the civil wrong of bribery as it applies in the UK as well as bribery as an offence in Nigeria. Although the concept of bribery is different as an offence and as a civil wrong, it is evident that the civil wrong of bribery is a practical tool in curbing bribery especially by public officials and offers remedy for the principal, rather than imposing punishments on the agents or public officials. The practical utility of the civil wrong of bribery in Nigeria can therefore not be overemphasized hence, there is no doubt that if the Nigerian courts adopt the civil wrong of bribery in Nigeria; it would be of immense benefit to the State as a principal, and private individuals and contribute to gradually curbing the menace of bribery in Nigeria.

⁴¹ *Ibid*

