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NEWSLETTER

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INVESTIGATION, NOT PROSECUTION:

A FULL REVIEW OF THE EFCC'S FREEZING OF OSUN STATE'S ACCOUNT

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INVESTIGATION, NOT PROSECUTION: A FULL REVIEW OF THE EFCC'S FREEZING OF OSUN STATE'S ACCOUNT

BY:

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INTRODUCTION

When the Economic and Financial Crimes Commission (EFCC) placed a Post No Debit (PND) restriction on Osun State's statutory allocation account and announced that it had, since March 2026, been investigating the alleged fraudulent handling of ₦11 billion in Ecology Funds, Intervention Funds, and FAAC allocations, the reaction followed a familiar script. Days before a governorship election, an anti-graft agency moved against the finances of a sitting administration, and the immediate question on everyone's lips was whether this was a covert prosecution of the Governor disguised as an investigation of his government.

It is a fair question. It is also one that Nigerian courts have answered with more consistency than the public debate usually acknowledges. The answer requires separating three concepts that are too often treated as though they were the same: investigation, restraint of funds, and prosecution.

Start with what is genuinely not in dispute. Section 308 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) shields the President, Vice President, Governors, and Deputy Governors from civil and criminal proceedings, arrest, imprisonment, and any court process compelling their personal appearance for as long as they remain in office as decided in the provision of ***Tinubu v I.M.B Securities Plc (2001) 8 NWLR (Pt. 714) 192 CA.*** What it does not do, on any interpretation adopted by the Nigerian courts, is shield them from investigation.

The Supreme Court settled this question in ***Fawehinmi v Inspector General of Police*** **(2002) 7 NWLR (Pt. 767) 606**. Justice Uwaifo's illustration in that judgment remains remarkably relevant: where a governor's account is traced to suspected stolen funds, the account cannot simply be left untouched on the pretext of constitutional immunity, because the money may disappear before the immunity expires.

The important point is that *Fawehinmi* is the controlling authority, not later political episodes. The investigation of former Anambra State Governor Willie Obiano is often cited because he was reportedly under EFCC scrutiny while still in office and was arrested immediately after leaving office. That episode illustrates the practical operation of the distinction recognised in *Fawehinmi*, investigation may continue during tenure, while prosecution awaits the expiration of immunity. However, the Obiano matter was not judicially determined on the constitutional question and should therefore be treated as an illustration rather than a binding authority.

INVESTIGATION OF A SITTING GOVERNOR

The question of the investigation deserves independent treatment because it is conceptually different from both prosecution and the freezing of assets. While section 308 protects a sitting Governor from criminal proceedings and coercive judicial processes, it does not remove the investigative jurisdiction of law enforcement agencies.

The EFCC derives its investigative authority principally from the **Economic and Financial Crimes Commission (Establishment) Act 2004**. Section 6 empowers the Commission to investigate economic and financial crimes generally. Section 7 authorises it to investigate financial crimes including corruption, money laundering, diversion of public funds, fraudulent transfers, and related offences. Section 13 empowers the Commission to require the production of books, records, financial documents, and other information relevant to an investigation.

These provisions enable the EFCC to examine government accounts, obtain bank records, trace FAAC allocations and Ecology Fund disbursements, interview public officials such as the Accountant General, Permanent Secretaries, and contractors, and gather documentary and electronic evidence relating to suspected financial misconduct.

This statutory framework matters because it demonstrates that the EFCC's investigation of Osun State's financial transactions does not, without more, amount to criminal proceedings against the Governor. Investigative measures directed at public officials, government accounts, and financial records remain within the Commission's statutory mandate and do not necessarily offend section 308 of the Constitution.

To be sure, a contrary constitutional argument exists. Some scholars have argued that investigations of sitting Governors may become instruments of political harassment and that compelling a Governor to submit to interrogation or other coercive investigative measures could undermine the purpose of constitutional immunity. On that view, an investigation that effectively subjects the Governor to arrest, detention, compulsory attendance, or any process substantially interfering with the performance of executive functions may conflict with section 308.

However, Nigerian appellate authority has not adopted a blanket prohibition on investigation. The dominant judicial position remains that investigation is permissible, provided it does not cross the constitutional line into arrest, detention, prosecution, or compulsory judicial process against the Governor during his tenure.

WHY FREEZING AN ACCOUNT IS DIFFERENT

Accepting that principle still does not settle the Osun matter because freezing a government account is not the same act as quietly gathering evidence. It restrains the State's ability to spend its own money and does so through a process that, at some point, may involve the courts. That is precisely where the instinct that "this must be a form of prosecution" comes from.

The answer turns on what kind of court process is actually involved, and Nigerian banking and anti-money laundering law provides a fairly precise answer. The **Money Laundering (Prevention and Prohibition) Act 2022**, particularly section 7(6), empowers the EFCC and the Nigerian Financial Intelligence Unit to place an administrative stop order, a Post No Debit restriction, on any account reasonably suspected to be connected with unlawful activity for a period not exceeding seventy-two hours without any court order at all. It is a short, self-executing preservative measure intended to prevent the movement of funds while investigators determine what they are dealing with.

THE NEXUS BETWEEN INVESTIGATION AND FREEZING OF ASSETS

The freezing of an account is legally justified only because an investigation is already underway. The investigative powers conferred by sections 6, 7, and 13 of the EFCC Act enable the Commission to gather information, trace funds, identify suspicious transactions, and establish a reasonable basis for believing that assets may be proceeds of unlawful activity. Once that threshold of reasonable suspicion is reached, the Commission may invoke the preservation mechanisms available under the Money Laundering Act and the EFCC Act to prevent the dissipation of those assets.

The relationship is therefore sequential and complementary. Investigation identifies suspicious transactions; investigation generates reasonable suspicion that the funds may be connected with financial crime; a temporary PND restriction or preservation order is imposed to prevent dissipation of the funds; and further investigation continues, after which prosecution may or may not follow once constitutional limitations permit.

Freezing is therefore ancillary to investigation. It is not a substitute for investigation and does not automatically amount to prosecution.

THE BENUE AUTHORITY

Whether that power extends to a state government account, and not merely a private citizen's account, was the precise question considered in the long running dispute between the EFCC and Benue State. The Commission froze Benue government accounts in 2018. The State challenged the action, and in 2019 the Federal High Court in Makurdi FHC/MAD/CS/42/18 held that the accounts fell outside the categories the Commission could freeze in the manner adopted.

On appeal, however, the Court of Appeal reversed that decision in September 2022, holding that the EFCC possesses statutory authority to place any account, including a state government account, under a seventy-two hour PND restriction for investigative purposes without a court order. The Court rejected the argument that a state treasury is categorically beyond the Commission's reach.

That decision is the closest thing Nigerian appellate law has to a direct answer for the Osun scenario, and it resolves the freezing question without engaging section 308 at all because the account belongs to the government, not to the Governor personally.

WHEN THE COURT BECOMES INVOLVED

It is only when the Commission seeks to keep an account restrained beyond the initial seventy-two (72) hour window that a court enters the picture. This is the point at which the argument that "a court order means prosecution" requires careful analysis.

An application to extend a stop order or obtain a formal preservation order over funds reasonably suspected to be proceeds of crime is not a proceeding against the Governor. It is an application concerning the funds themselves. The structure is the same one employed when courts upheld the preservation of assets linked to former Kogi State Governor Yahaya Bello. The proceedings were framed as actions against the properties, not as criminal proceedings against the individual who happened to control them.

A Governor's immunity protects him from being sued or charged while in office. It has never been interpreted as rendering money passing through government accounts immune from civil, asset focused proceedings directed at the funds rather than at the office holder.

WHY THE FAYOSE CASES LOOKED DIFFERENT

Governor Ayodele Fayose's litigation is often cited as authority that immunity prevents the freezing of assets. A closer examination shows otherwise.

What was frozen in Fayose's case was his personal account, not Ekiti State's treasury account. When the Federal High Court briefly ordered the account unfrozen, it did so not because investigating a Governor was unlawful, but because he had not been given a hearing before an ex parte order was made against him. The defect was one of fair hearing, not constitutional immunity.

The Court of Appeal later clarified the broader principle, holding that immunity does not automatically extend to funds or assets reasonably suspected to be proceeds of crime.

Osun's situation is therefore materially different. The account reportedly subjected to restriction was a state government account administered in the ordinary course of government business by the Accountant General, who is the official the EFCC says it actually interviewed.

WHAT REMAINS OPEN

None of this means that every question about the Osun freeze answers itself. Two important issues remain.

The first is compliance. Did the restriction imposed on 5 August 2026 remain within the seventy-two-hour administrative window permitted by law, or was the necessary judicial authorisation obtained for any extension beyond that period? If the restriction exceeded the statutory limit without appropriate court approval, that would present a serious statutory compliance issue.

The second is proportionality. Even a lawfully imposed restriction that significantly impairs a State's ability to pay salaries, fund hospitals, or perform other constitutional responsibilities raises a distinct question about federalism, fiscal autonomy, and the proper exercise of statutory discretion. That issue concerns the relationship between federal investigative powers and the constitutional autonomy of the States, not the personal immunity of the Governor.

THE PRESIDENCY AND THE INDEPENDENCE OF THE EFCC

A further development that has emerged in public discourse is the report that the Presidency directed the EFCC to unfreeze Osun State's account. Whether that report is ultimately confirmed or denied, it raises a constitutional question that is arguably even more significant than the immediate controversy surrounding the PND restriction itself.

If the EFCC froze the account in the exercise of its statutory powers under the EFCC Act and the Money Laundering (Prevention and Prohibition) Act, it is difficult to identify any provision of law that empowers the President to direct the Commission to terminate that investigative measure simply because the subject of the investigation is a state government. The EFCC is not constitutionally insulated in the same manner as institutions such as the National Judicial Council or the Independent National Electoral Commission, but the statutory scheme governing its operations contemplates that investigative and enforcement decisions are to be taken pursuant to law, not political instruction.

More importantly, the EFCC Act does not confer on the President a general power to halt an ongoing investigation or compel the Commission to release funds that have been restrained in accordance with its statutory mandate. Once an account has been frozen within the legal framework established by the relevant statutes, any challenge to that restraint ordinarily lies before a court of competent jurisdiction. The proper legal mechanism is judicial review, not executive direction.

The constitutional architecture of criminal justice reinforces this point. Under section 174 of the Constitution, the Attorney General of the Federation possesses the power to institute, take over, or discontinue criminal proceedings on behalf of the State through the doctrine of nolle prosequi. That power, however, operates in relation to criminal proceedings before a court. It does not confer upon the President an equivalent authority to terminate investigations or reverse investigative measures already undertaken by the EFCC pursuant to its statutory mandate.

Indeed, if it were accepted that the President could direct the EFCC to unfreeze an account whenever politically convenient, the practical consequence would be to undermine the independence and credibility of anti-corruption investigations. The same executive authority that appoints the leadership of the Commission would effectively become the authority capable of determining which investigations continue and which do not. Such a position would be difficult to reconcile with the rule of law and with the legislative purpose for which the EFCC was established.

This does not mean that the EFCC is beyond legal control. It is not. Its actions remain subject to constitutional limitations, statutory conditions, and judicial oversight. A court may declare a freeze unlawful, set aside a preservation order, or hold that the Commission exceeded its powers. The Attorney General may exercise constitutional powers where criminal proceedings have commenced. But an executive directive instructing the EFCC to abandon an investigative restraint, if such a directive were indeed given, would sit on uncertain legal footing and would raise serious questions about the institutional autonomy of Nigeria's principal anti-corruption agency.

THE BOTTOM LINE

The Osun controversy is often presented as a battle over constitutional immunity, but that framing is imprecise. Investigation is not prosecution. The Supreme Court's decision in Fawehinmi v Inspector General of Police remains the strongest authority for the proposition that section 308 does not bar the investigation of a sitting Governor, while the EFCC Act provides the statutory machinery through which such investigations are conducted.

The freezing of a state government account is not, without more, a proceeding against the Governor. It is an asset preservation mechanism that operates in aid of an ongoing investigation and is directed primarily at the funds themselves. The stronger legal question in the Osun dispute is therefore not whether a Governor may be investigated, but whether the EFCC complied with the statutory conditions governing the duration, procedure, and proportionality of the restriction imposed on the State's account.

Seen in that light, the constitutional issue is considerably narrower than the political debate suggests. Section 308 protects the Governor from prosecution while in office; it does not render public funds immune from investigation, tracing, or preservation where there is a legally sustainable basis for suspecting financial crime. Equally important, if the EFCC acted pursuant to powers conferred by statute, the resolution of that dispute belongs primarily to the courts and to the legal processes established by law, not to executive directives issued from outside the statutory framework. That distinction is not merely technical; it goes to the heart of whether anti-corruption enforcement in Nigeria is governed by law or by political discretion.