JUDGMENTS: COULD JUSTICE BE MISSING?

Abstract

The entire essence of law may be said to be justice. Justice in the simplest terms is fair treatment of people[1]. Judgment seeks to determine the rights (or wrongs) of parties according to law. The onerous task of decision making embodied in judgments notwithstanding it is within the province of the judge so to do. The work attempts a perusal of 'behind the scene and judges' mind' before arriving at a decision. The concept of justice is further stretched beyond the bounds of judgment of the court. It was found that equality before the law is a myth affected by the entire processes leading to judgment. This same myth is seen in varying degrees in the society. A just and fair administration of justice is of the essence if justice remains our focal point towards societal developments.

Keywords: Judgments, Justice, Law, Missing

2. Introduction

It has always been within the province of the judge to enter judgment in every suit heard and concluded before him.[2] The processes leading to judgment is not a fairytale. It is an adjudicative process of determining who is right or wrong in law. The impact of judgment on economic and social activities is enormous. The fate of hundreds of thousands of people and sometimes an entire nation may be dependent on such a decision. The dependency may not be on what is right or wrong based on law but whether justice was done and substantially too.[3] The decision may further affect the economic and social terrain or part of them in the state. The litigation process leading to judgment is sometimes a complex phenomenon. Before the stage of decision making by a judge, which decision is embodied in the judgment evidence is taken, upon evaluation irrelevant materials are sieved. The facts and evidence are then weighed or juxtaposed with the law. The assumption is that there can only be one correct conclusion not a range of them.[4] If this assumption is anything why are decisions overturned severally and sometimes a long standing principle of law is avoided, overruled[5] and at other times certain judgments incite unrest[6] leading to more damage in an already fractured society.

3. Competing Legal Rights

In every suit there is a legal right claimed by the plaintiff which the adverse party challenges. The challenge may range from 'Not being entitled to the claim at all' or 'Partially entitled' or 'Though entitled to some or all the claims the condition precedent to the entitlement is not fulfilled' etc'. Criminal matters start most often with complaints. The complainant may not be from an eyewitness. It could be a house holder who finds his house burgled. The aggregate of facts and evidence may point toward or give certain or uncertain accounts as to whether the defendant was the burglar. It is the duty of the judge to identify the cause of action first before the competing legal rights can be determined. Cause of action is the bundle or aggregate of facts which the law will recognize as giving the plaintiff a substantive right to make the claim for the relief or remedy being sought.[7] These aggregate of facts where they are not supported or recognized by law must necessarily fail. The non-disclosure of cause of action will result in dismissal.[8] In criminal courses it is within the province of the judge to determine whether the defendant is culpable in accordance with the applicable law. The judge has a duty to identify the applicable law to the Complaint, Charge or Information[9] irrespective of inclusion of the applicable to the Charge or Information. This applicable law is the prevailing law at the time the cause of action or charge arose, whether or not that law had been repealed at the time of action. Though cause of action and applicable law are identified by the judge, determination of the competing legal rights or whether the defendant is culpable cannot be undertaken save evidence is taken, evaluated and juxtaposed with the applicable law.

4. Evaluation of Evidence

The aggregate of facts the plaintiff relies on or prosecution presents in proof of the Complaint, Charge, or Information will not be sufficient to ground granting the claim or conviction except evidence in given in proof of same. Until evidence is received the claims and or Complaint, Charge, or Information are not activated. It is the

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[1] Oxford Advanced learners dictionary 6th ed. p. 648

[2] In Nigerian a judge of the High Court has 90 days within which to enter judgment in any matter heard and concluded. Section 291 (1) CFRN 1999

[3] *Oniye & Anor. v Vee Network Ltd & Anor* 2015 LPELR 11898

[4] Marcus Stone, Representing Clients in Mediation, Butterworths, 1998 P.6

[5] See *London Tramways Co. v London County Council* [1898] *AC 375, Duncan v Cammell Laird* 1942 AC 624

[6] *Rodney King, Koon v US* 94 +664) 518 U.S 81 (199

[7] *Cookery v Fombo* 22 NSCQR 411 @p 430

[8] *Thomas & 5 Ors v Olufosoye* (1986) INWLR 18, 669

[9] *Aremo II v Adekanya* 19 NSCQR 271 P. 285

evidence in proof thereof that adds flesh and blood and ultimately life to the claim and or Complaint, Charge, or Information. Taking evidence in support of the assumed legal right(s) may be simple. However, evaluating evidence is not an exact or mathematical science. Irrespective of the intellectual prowess a judge possesses the assessment of evidence is fraught with difficulty and the process remains a mystery in legal literature and practice.[10] The reason may not be unconnected with distortion of evidence; this could be by omitting material evidence or fading memory. It may also result from incomplete evidence weather deliberately or not. Then the approach of the cross examiner both in civil and criminal matters may pose great doubts in the mind of the judge as to who is to be believed in the circumstances. The cross examiner that sets out with destructive approach may create more doubt on the veracity of his evidence than another with contradictory approach. The judge determines which evidence to consider for evaluation and the ones that appear to him to be irrelevant are discarded. The judge must also not *pick and choose* between evidence of a witness.[11] The demeanor of a witness has no bearing in law or psychology.[12] A lying witness can raise such emotions within the court room that may take the judge off balance. Professional litigants also pose another problem to the already troubled situation.

The fact that there is always competition between two versions of the facts in issue leaves the judge to decide between the competing rights/facts. The effective challenge of a witness' evidence may further create doubt in the mind of the judge. However, this effective challenge creating doubt is determined from the angle of the cross-examiner. Where the cross examiner sets out with destructive approach of evidence instead of contradictory approach the judge may really not be moved. The question that faces the judge at that point would be 'why would he be leading destructive evidence instead of contradictory evidence? That if he has another credible version of evidence he ought to present them first before destruction of another party's evidence. In other words, contradictory evidence-in-chief in support of alternative story[13] most probably operates fairly in affecting the mind of the judge.[14]

There is also another onerous task of the examiner in showing the unreasonableness of evidence through leading alternative evidence or cross examination, that the earlier evidence is inconsistent, impossible, improbable, unrealistic, or contradicted by another evidence.[15]

The experience of the judge over time is a factor the judge also personally contends with. Through experiences certain judges' minds are made up over some issues especially in criminal cases. For instance in rape and other sexual related offences the fact that there was an attempt of settling the issue at the point of complaint at police office [Nigeria] and failure of ransom as part of settlement is a conclusive pointer for some judges that there was in fact rape or that a related sexual offence actually occurred. That approaching the court and damning the shame is in fact an evidence and reasonably too, of real emotional pain that cannot be compensated in monetary terms. This approach is completely illogical still.

In dealing with professional litigants that can raise serious emotions, how can a judge identify them? The threats to, and or fear of some possible witnesses who could have appeared but for the threats, are matters not within the province of the judge to determine especially where there is no such issue before the judge. The judge has an ample of discretion to make in matters before him. Judicial activism arose out of facts that judges take decisions based on their personal or political views instead of legal principles.[16] It has also been proven that judges rely on race to predict a felon's criminality in the absence of perfect information.[17] These are matters of social psychology

[10] Stone *Ibid* p. 7

[11] *Ezemba v Ibeneme* 19 NSCQR 352

[12]This may not go down well with judges and magistrates based on experiences. However how many of our judges and magistrates have made any inquiries about certain convictions or acquittals or even claims granted or denied litigants to verify after the judgment and decision(s) and or sentencing thereof the reaction withal the court room. Many have been deceived based on demeanor. This position will better be ascertained through judges and advocates' forum on the essence of justice. Many defendants facing criminal charges upon acquittal had disclosed to their counsel thus, '*I never believed I could be set free because I actually did it'*. There was no disclosure of this fact until after the judgment of the court. This is not to say that it is wholly based on demeanor that the defendant was set free, but the simulations ability and with comportment of the defendant/accused swayed the mind of the judge.

[13]Stone Ibid P.74

[14]Leading evidence only alternatively without debunking the version of the opposing party or prosecutor's evidence will not really work magic as that has never been the best approach. There are no hard and fast rules about it but understanding the judge's psychology will be apt.

[15] Ibid, p.74

[16] Ugur Nedim; Luck of the Draw: Can a Judge Personal View Affect the Outcome of a Case? Https://nwcourts.com.au. Accessed 22/8/2022

[17] K H Park; Do Judges Have Taste for Discrimination? Evidence from Criminal Courts. https://direct.mit.edu/rest/article. Accessed 22/8/2022

which sometimes the syllogism and conclusion are at variance. They fairly operate and affect the mind of the judge either way leading to absent of justice.

In *Richardson v Shaw*[18] Justice Holmes has this to say, 'Left to myself, I should have reached a different result and I have presented reasons for my view to my brethren but as it has not convinced them, *I suppose must be wrong*.[19] I therefore concur, but I cannot help feeling a lingering doubt'.[20] This statement far back in time is an obvious for some of our judges and magistrates not to be too hasty in relying on their personal experiences in dealing with certain matters before them. Even if it has always been proven that such matters that are settled at the point of complaint [Nigeria] actually took place the judge should not place much emphasis on his experiences over the years in believing that such offences really occurred other than proper evaluation of evidence before him. The stronger the influence of these factors on the judge the poorer the evaluation of evidence. The judge will always find a route to avoid certain evidences that would have inured in favour of the defendant/accused. These consistently will prevent the judge from directing his mind and attention to certain other credible and germane defences raised in proof of innocence of defendant/ accused and that the Charge was in fact a farce.

The role of the judge has always been to interpret the standard and decide whether or not it applies to the facts of the case. In doing this the judge must have the concept of doing justice at the back of his mind. This terrain of judicial fact-finding and judicial interpretation injects a significant element of uncertainty into the law.[21] However, knowing that the life of the law has not been logic but experience the judge while being guided by law must exert his experience over time in this hallowed duty. The judges willing to look to precedent with new eyes have taken one of the most profound strides forward in our society.[22] Law must not lose touch with needs of ordinary people and society, if it must remain relevant. For justice not to be missing and continuously too the judges must always critically scrutinize the existing precedents before their application to current issues.

This significant uncertainty in law made Benjamin Cardozo to write thus, 'I was much troubled in spirit, in my first years on the bench, to find how trackless the ocean on which I had embarked was. I sought for certainty. I was oppressed and disheartened when I found the quest for it was futile.[23] Though the trackless referred to laws [statutes], these *trackless-uncertainties* are almost always resolved by pieces of facts and evidence in any given matter in tandem with societal norms and standard.

In the course of evaluation of evidence certain facts and pieces of evidence may appear to be had and irreconcilable in the face of the law. Herein lies the wit and real application of ample discretion of the judge to do justice in a matter before him. The judge has the discretion to decide the case 'according to his own beliefs and values' and follow standards and give reasons for decision which are not dictated by law.[24] The standard or reason must be a reflection of societal norms and by no means short of it. My roof belief writes Lord Denning, is that the proper role of the judge is to do justice between the parties before him. If there is any rule of law which impairs the doing of justice, then it is the province of the judge to do all he legitimately can to avoid that rule – or even to change it – so as to do justice in the instant case before him'.[25] Similarly Robert J Sharpe wrote, '--- when I sit down to write my reasons, I find it difficult to describe my approach as being other than to do my best to come to the legally correct decision. It seems to me that correct results are what the legal system aspires to achieve and that my working hypothesis has to be that I am in pursuit of the right answer, even though I know that I may not be able to claim with confidence that I have found it'.[26]

The legal sociologists also hold the view that the only proper consideration of the court is whether the goal of its decision is an economic or socially valuable thing. Evaluation of evidence is the very critical point of divergence whether or not the decision strives in doing justice in conformity with current societal norms and standards. Failure of proper evaluation will lead to miscarriage of justice, hence the missing justice.

[18] 209 US. 365 (1908)
[19] Emphasis mine
[20] Max Radian: The Theory of Judicial Decision or How Judge think, P 358
[21]Robert J. Sharpe; How Judges Decide, https://oxford. Unversitypresscholarship.com/view. Accessed 22/8/2022
[22]Ramon A Abadin; The Life of The Law Has Not Been Logic; It Has Been Experience. *Florida Bar Journal,* Vol.90, No.1Jan.2016 p.6
[23] B N Cardozo; The Nature of Judicial Process, Yale University Press, 1921 P 166
[24] HLA Hart; *The Concept of Law*, Oxford University Press, 2012, p.273
[25] Lord Denning; *The Family Story*; Butterworths London, 1981, p. 174
[26] Robert J Sharpe *Ibid*

5. The Tranquil of Justice

The unequal treatment of citizens before the law results in crisis in diverse ways. The crisis is in no way incited by the citizen[s] who was disdained before the law that ought to protect him. The judge in a way cannot be said to have incited the citizens and the resultant unrest by reason of the judgment and reasoning thereof.[27] Could it be that the political elites incited the citizens? The answer is not far-fetched. The continual impunity displayed in social strata fueled by corruption, engineered by the ruling [political] class with sacred king makers [behind the scene], manifested through the judgment and decisions of court over time is the bundle of incitement. The *End SARS*[28] crisis that swept through Nigeria in October 2020 is very incisive. Who has been arrested and prosecuted following the several deaths that occurred on both sides of the divide during the protest? Even the several Panels of Inquiry set up, what has become of their recommendations?

Where several citizens lose their hard earned deposits in the bank either due to negligence of the bankers or otherwise and the victim could not get redress in the court, even with the existence of Nigerian Deposit Insurance Cooperation, more crisis will still erupt. Where government official was indicted and with overwhelming evidence in a Charge in court and the very person indicted was intentionally excluded or technically discharged, more crises will erupt. Ironically the person will either be in the office still or promoted to a higher ranking office.[29] The embodiment of federal character in Nigerian constitution whereby some citizens are entitled to certain rights and benefits to the exclusion of others, expect crisis. Justice was intentionally excluded in these circumstances.

It is obvious that concept of justice *per se* is not limited to justice properly so called as handed down in court judgment. As the common man suffers in the street, so his fate is sealed in the court. Justice T A Aguda has this to say, '…there is nothing like equality before the law, at least not the way the law is being operated today. It is nothing but a myth created by our political rulers … to give cold comfort to the 'common man' so that they …, can have a peace of mind.'[30] That the scales of justice are inevitably weighed in favour of the rich cannot be overemphasized.[31]

The Los Angeles uprising of 1992 stems from acquittal of officers of Los Angeles Police Department after they were indicted by jury for excessive use of force resulting in brain damage, fractures and loss of teeth of Rodney king.[32] The Rodney King riot was not really sparked off by that very one decision. The acquittal was a bubble burst of all the ill-treatment, discrimination and racism that had long been maintained in Los Angeles. In Callins v Collins[33] Justice Blackmun dissenting has this to say, 'From this day forward, I no longer shall tinker with the machinery of death. For more than 20 years I have endeavored – indeed, I have struggled – along with a majority of this court, to develop procedural and substantive rules that would lend more than mere appearance of fairness to death penalty endeavor.'

In one of the Punch Editorials, it is stated thus, 'I feel bothered about the following points concerning this judgment which I consider to be an insult to the intelligent of Nigerians… Do judges ever apply any mathematical or economic sense in the evaluation on the intensity of the offence committed by convicted persons, the agony and suffering faced by the people whose money had been looted and delivery of judgment against the convicted persons?'[34] So long as justice is missing in court and governmental judgments or decisions the tranquility expected in an orderly society will continue to elude us. There is urgent need to re-evaluate our concept of justice in meeting societal needs. If the regular court system and nature of justice it provides cannot meet the societal needs today then transitional justice application must be seen as an imperative in reordering our society towards achieving our target in pursuit of our developmental goals.

6. Conclusion

In a vast variety of ways justice has constantly been missing both in judgments of the courts so called and in our societies. The missing justice is orchestrated by the order of things within our society. That order brought about

[27]The hand of the judge may be tied by unseen forces.

[28]End SARS is a social movement resulting in several protests against police brutality in Nigeria. The movement simply called for disbandment of Special Anti Robbery Squad.

[29] The case referred to as the Apo 6 case in Nigeria where 6 civilians were extra judicially executed is an example.

[30] T A Aguda; The Crisis of Justice, Eresu Publishers Akure 1986, p.25

[31] *Ibid* 33

[32]A S Krbbechek, K G Bates; When Los Angelis Erupted in Anger: A Look Back at the Rodney King Riot. https://www.npr.org. Accessed 22/8/2022

[33] 510 U.S. 1141 (1994)

[34]https://punchng.com, Dauda v FRN 2018 10 NWLR PT 1626 P. 169. In that case Dauda was sentences to only 2years imprisonment after looting N1.4 billion in about 7 months in 2008. Accessed 22/8/2022

codification of federal character principle in our constitution through the instrumentality of the lopsided federation. The person of the judge and his outlook in the society shapes the nature of decisions emanating from his chambers and seen in the judgments. The institutionalization of corruption either tacitly or otherwise by the ruling class has brought much to bear on this. It is certainly true that in many judgments delivered by our courts that justice was completely missing. The idea of justice appears to have acquired another meaning different from the concept of equity and fairness which is what social justice is all about. Until the society reasonably anchors on the very essence of justice in her dealings with her citizens the coerced peace which is now corrosive will suddenly dissipate and very fast too.