

**A CRITICAL EXAMINATION OF THE CHALLENGES TO ETHICAL JUDICIARY IN NIGERIA\***

**Abstract**

*The present day Nigerian judiciary has been adjudged to be suffering myriad of challenges. These onerous challenges appear to be threatening the ethical values of this hallowed institution. This work therefore critically examined these challenges and made far reaching recommendations aimed at entrenching ethical standard in the Nigerian judicial service. The writers employed the doctrinal method of legal research and collated materials from primary, secondary and tertiary sources. We found that the Nigerian judiciary is burdened with multifaceted issues. These issues range from institutional to personnel's, corruption, mediocrity, lack of independence to inadequate funding. We recommended that the National Judicial Council should set up a committee to look into the perennial problems confronting the judicial sector and further recommended an immediate removal or retirement of judicial officers whose conduct and antecedents do not merit the ethical standard expected of judicial service men. Another recommendation is for the establishment of a body to be known as 'the Bar and Bench Joint Judicial Integrity Committee' whose primary duty will be to act as a watch dog on the integrity of lawyers and judges, and to make confidential reports either to the National Judicial Council or to the Nigerian Bar Association as the case maybe for the discipline of any of their members.*

**Keywords:** Judiciary, Discipline, Ethical, National Judicial Council, Nigerian judiciary

**1. Introduction**

In most societies, judges have powers that no other governmental officials have and the exercise of these powers impact on the lives and fortunes of those who come before them.<sup>1</sup> Generally, citizens will not wish these powers to be reposed on those whose honesty, ability or personal standards are questionable.<sup>2</sup> For this reason, judicial service is predicated on certain ethical standards and norms which comprise such matters as judicial independence, impartiality, integrity, confidentiality, etc.<sup>3</sup> Therefore, ethical judicial service requires the possession of the qualities of good conduct, discipline and moral.<sup>4</sup> These standards of conduct are necessary, both in and out of the court room. Judges should be free at all times to enforce, in a fair, predictable and impartial manner what the legislature intended, not what the executive wants. Sometimes, this involves that judges may decisively make pronouncements even where they appear unpopular to the other branches or arms of government or even among the general public.<sup>5</sup> In order to have public confidence in their decisions and not be accused of being biased or prone to influences when making such decisions, judges have the responsibility to serve as the moral compass and as an example of competence, professionalism and integrity to the society they serve.<sup>6</sup>

Judicial service is one of the three main powers of government; along with legislative and executive powers.<sup>7</sup> Judicial Officers exercise the power given to public officials to make decisions about specific cases that affect people's personal and property rights. This is different from ministerial power, which involves following instructions or laws without using judgment or discretion.<sup>8</sup> As Neshtaeva notes, creating ethical principles of judicial conduct activates the internal mechanisms of self-regulation and self-control of every judge.<sup>9</sup> Thus, from the nature of judicial service, stems the need to regulate judicial conduct in a way that would not allow judges to abuse their professional competencies and thus jeopardize the rule of law. This is essential, since a person's right to a fair trial can be hampered by unethical judicial service.<sup>10</sup> It is by embracing standard ethical judicial norms and having a professional and personal conduct beyond

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<sup>1</sup> J B Thomas, *Judicial Ethics in Australia*, (The Law Book Company Limited, 2<sup>nd</sup> edition, 1996).

<sup>2</sup> *Ibid.*

<sup>3</sup> S R Anleu, 'Judicial Ethics. Everyday Work, and Emotion Management' available at <<https://www.cambridge.org/article>> accessed 24<sup>th</sup> March, 2024.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> R. Tsyppeilius, 'Opinion of the First Expert Commission of the International Association of Judges regarding the Code of Judicial Conduct, its Implementation and Principles 2004, available at <<https://vkksu.gov.ua/page/role-judicial-ethics-regulation-judicial-professional-standards-theoretical-and-practical>>accessed 22/2/2024.

<sup>7</sup> W H Cowles, 'The Distinction between Legislative and Judicial Power' available at: <<https://scholarship.law.upenn.edu>> accessed 19<sup>th</sup> March, 2024.

<sup>8</sup> *Ibid.*

<sup>9</sup> T M Neshtaeva, 'Role of Judicial Ethics in Regulation of Professional Standards: Theoretical and Practical Aspects' available at <<https://vkksu.gov.ua/page/role>> accessed 22/2/2024.

<sup>10</sup> *Ibid.*

reproach, that judges will gain the moral authority, respect and confidence of the public.<sup>11</sup> This is because, ethical judicial service is the foundation upon which rests the ability of the judiciary, in any given country, to adequately and fairly protect the human rights provided for by the national and international documents.<sup>12</sup> Compliance with ethical requirements is an essential duty of a judge dictated by their constitutional and legal status. Ethical judicial service based on universal moral imperative, is an effective internal corporate mechanism to ensure judicial accountability to the society.<sup>13</sup>

Ethical judicial service in Nigeria is presently being challenged by myriads of problems.<sup>14</sup> These problems are now threatening the institution once known as incorruptible.<sup>15</sup> The problems appear intractable; hence they have eaten deep into the fabrics of the judiciary and diminished the esteem of the courts, as well as public confidence to submit their grievances for settlement using the regular courts.<sup>16</sup> Concerns are that even the international communities do not have confidence in the Nigerian justice sector, and that explains the disdain with which they treat Nigerian judgment and the entire justice sector.<sup>17</sup> This work seeks to examine critically some of the daunting challenges that disabled ethical standards of the judiciary in Nigeria and to proffer solutions.

## **2. Challenges to Professional Ethics in the Nigerian Judicial Service**

The Nigerian judiciary is suffering myriads of challenges, which are now threatening the ethical service of the very institution the masses go to ventilate wrongs done to them by anyone, including the State.<sup>18</sup> These challenges have been the subject of numerous meetings, debates, Litigation and even industrial actions.<sup>19</sup> Hereunder we shall critically examine these challenges.

### **Corruption**

Corruption means depravity, perversion, or taint; an impairment of integrity, virtue, or moral principle; especially the impairment of a public official's duties by bribery.<sup>20</sup> The *Oxford Law Dictionary* defines bribery and corruption as offences relating to the improper influencing of people in certain positions of trust.<sup>21</sup> It also means, an act done with intent to give some advantage inconsistent with official duty and rights of others. Official corruption refers to an act or acts which has unlawful or depraved motive and is usually influenced by bribery. Official corruption, by our law, involves asking for, receiving or obtaining property or benefit unjustly for oneself or for another person in the exercise of one's official duties.<sup>22</sup> It also includes the act of asking for reward or benefits by a person or persons in public service in the discharge of their duties beyond their expected pay or salary.<sup>23</sup> Corruption in judicial service, therefore, would seem to include all acts that seek to unfairly influence the administration of justice, those acts that circumvent or defeat the ends of justice. Corruption in the justice system denies people access to justice; it undermines the credibility of both the justice and political system and makes the country insecure for economic investment and relations, both national and international. The Nigerian judiciary is presently choking under the strangle-hold of corruption.<sup>24</sup> Justice is now an object for sale wherein the highest bidders have the day.<sup>25</sup> Cases in most courts, are no longer being decided using law and facts but, on the consideration, or benefit that goes to the arbitral institution (the courts and its officials), the common man in the street no longer has confidence in the justice system.<sup>26</sup> Only a few men of integrity in the bench are still holding unto the path of honour, justice and fairness.<sup>27</sup> The rest have derailed so much and now go out of their way to mortgage justice for social, political and collateral gains.<sup>28</sup>

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<sup>11</sup>N W Hamilton, 'Legal Scholars, Ethical Responsibilities Concerning Neutrality and Objectivity, Candor and Exhaustiveness' available at <<https://papers.ssrn.com/papers>> accessed 24/3/2024.

<sup>12</sup>ABA Joint Commission to Evaluate the Model Code of Judicial Conduct, 'ABA Activities in Judicial Ethics,' 2008, available at <[www.abanet.org](http://www.abanet.org)> accessed 22/2/2024.

<sup>13</sup>*Ibid.*

<sup>14</sup>O Oko, 'Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria' *Brook J. Int'l L* (2005), available at <<https://brooklynworks.brooklaw.edu/bjil/vol31/iss1/1>> accessed 29th June, 2024.

<sup>15</sup>*Ibid.*

<sup>16</sup>*Ibid.*

<sup>17</sup>*Ibid.*

<sup>18</sup>*Ibid.*

<sup>19</sup>*Ibid.*

<sup>20</sup> B A Garner, *Black's Law Dictionary*, 9<sup>th</sup> edn. (Thomson Reuters, 2009), 397.

<sup>21</sup> E A Martin (ed.), *Oxford Law Dictionary*, 5<sup>th</sup> edn. (Oxford University Press, 2002), 56.

<sup>22</sup> *S 98(ABC) of the Criminal Code Act, C38, 2004.*

<sup>23</sup> *S 99 of the Criminal Code Act, C38, 2004.*

<sup>24</sup>O Oko, 'Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria' *Brooklyn Journal of International Law Volume 31* | Issue 1, Article 1 (2005).

<sup>25</sup>*Ibid.*

<sup>26</sup>*Ibid.*

<sup>27</sup>Nnaemeka Agu, 'The Role of the National Judicial Council in the Administration of Justice Under the 1999 Constitution,' Paper presented to All Nigeria Judges' Conference 6 (Dec. 8–13, 2003).

<sup>28</sup>*Ibid.*

There are allegations of corrupt practices in several quarters against judicial officers, senior lawyers, court officials (registrars, clerks, bailiffs, police etc.).<sup>29</sup> The most pathetic and unfortunate participants in this disservice of corruption is the judges themselves.<sup>30</sup> For example, the National Judicial Council at its 87th meeting which was held on 3<sup>rd</sup> October 2018, recommended the removal, by dismissal from office, of Hon. Justice R. N. Ofili-Ajumogobia of the Federal High Court and Hon. Justice James T. Agbadu-Fishim of the National Industrial Court of Nigeria, pursuant to the findings by the NJC on the allegations of judicial corruption.<sup>31</sup>

Similarly, the National Judicial Council at its 78th meeting which was held on 29th September, 2016 recommended compulsory retirement from office of Hon. Justice Mohammed Ladan Tsamiya, Presiding Justice, Court of Appeal, Ilorin Division, Hon. Justice I. A. Umezulike, OFR, Chief Judge, Enugu State and the dismissal from service of Hon. Justice Kabiru M. Auta of the High Court of Justice, Kano State with immediate effect based on the findings of the NJC on allegation of judicial corruption.<sup>32</sup> In the case of Hon. Justice Kabiru M. Auta, he is to be handed over to the Assistant Inspector-General of Police, Zone 1, Kano, for prosecution.<sup>33</sup> All these cases and other incidences of corruption drag the image of the judiciary to the mud.

Previously, the concept of the incorruptible judge was more than a work of literature.<sup>34</sup> Today, the concept of corruption in the judiciary is so entrenched that government even attempts to rightly or wrongly discipline judicial officers anywhere, anyhow and anytime. In earlier days, people frowned at the appointment of candidates regarded as not sufficiently knowledgeable in law, weak in their commitment to the law, unfortunately nowadays candidates who are known to be openly corrupt manage to secure appointment as judges, even less scrutiny is made in the appointment of members of the lower bench. Some appointments are now made on the basis of sexual gratification with the result that seething immorality has now entered the judiciary.<sup>35</sup>

### **Poor Funding and Conditions of Service**

Financial autonomy and good conditions of service are very important factors which must be taken into consideration in determining the autonomy and efficacy of judicial functions and independence. Under the 1999 Constitution, the judiciary is said to have been guaranteed financial independence by empowering the National Judicial Council to collect, control and disburse all monies (capital and recurrent) meant for the judiciary, thus the judiciary is expected to be self-accounting.<sup>36</sup> Notwithstanding this beautiful provision however, a comprehensive reading of the relevant sections of the Constitution shows impracticability of any claim to financial autonomy of the judicial arm of government as there are inherent deficiency in the provisions of the Constitution. For instance, how much money would the judiciary get is nowhere provided for in the Constitution or in any other statutory instrument.<sup>37</sup> Thus, the judiciary ultimately is left at the pleasure of the President or the Governor as the case may be as the chief executive, since budgetary provision and fund allocations to the Judiciary are subject to the discretion of the executive.<sup>38</sup> The issue of financial autonomy and poor funding has led to the problem of poor remuneration of judges and poor conditions of service.<sup>39</sup> Many of them do not have official cars; some were denied same for political reasons and the few that have managed to afford vehicles which can only be described as a mere collection of metals.<sup>40</sup> In the same vein, the official residence of most of them (where available), is dilapidated and not in a habitable/tenantable condition. Salaries of judges are grossly inadequate given the economic realities of things in Nigeria and as such the standard of living of most of them is just slightly above the poverty line.<sup>41</sup> Similarly, some judges also take the pain of funding sundry needs of the court, especially the States' High Court Judges such as the provision of alternative power supply, purchasing printing accessories, etc.<sup>42</sup> As if these are not

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<sup>29</sup>*Ibid.*

<sup>30</sup>Anthony Aniagolu, At Nigerian Judges Congress; Constraints in the Administration of Justice 1<sup>st</sup> – 5<sup>th</sup> November, 1999 International Conference Centre, Abuja.

<sup>31</sup>E Okakwu, 'NJC Recommends Sack of two Corrupt Nigerian Judges' available at <<https://www.premiumtime.com/news/headlines/288310>> accessed 10th May, 2024.

<sup>32</sup>S Oye, NJC Explains why it sacked Enugu Chief Judge, Justice I AUmezulike, others' available at <<https://www.sharareporters.com/njc>> accessed 11<sup>th</sup> May, 2024.

<sup>33</sup>*Ibid.*

<sup>34</sup>*Ibid.*

<sup>35</sup>*Ibid.*

<sup>36</sup>See Sections 84 (3), 291 (3), 158 and Part I, 5<sup>th</sup> Schedule to the 1999 Constitution (as amended).

<sup>37</sup>I U Ononye, 'Independence of the Judiciary: Nigerian Experience' available at: <<https://journals.ezenwaohaetorc.org>> accessed 11<sup>th</sup> July, 2024.

<sup>38</sup>*Ibid.*

<sup>39</sup>A Abiodun and G O Awudumapu, 'Examining the Mutual Concepts of Judicial Fiscal Autonomy and Administration of Justice' RUNJJIL Volume 3 (1) 2023, 265-280.

<sup>40</sup>*Ibid.*

<sup>41</sup>*Ibid.*

<sup>42</sup>M J Graetz, 'Trusting the Courts: Redressing the State Court Funding Crisis' available at: <<https://scholarship.law.columbia.edu>> accessed 11<sup>th</sup> July, 2024.

enough, most court rooms and judge's chambers (especially those divisions outside the state capital) are nothing to write about, as they are less than a modern outfit for judicial activities.<sup>43</sup> Some judicial divisions are situated in the most remote quarters of the state and could take up to hours' drive for the judge to arrive there, given the state of Nigerian roads and it is not as if there are facilities within the court area that would encourage the judge relocating to the *situs* with his family.<sup>44</sup> It can be contended that when a judge is so poorly paid there is a real temptation for a judge to compromise his position.<sup>45</sup> In the same way, if he cannot save from his poor remuneration as a judicial officer, so much that his future economic survival is not guaranteed, he is susceptible to devising an unethical strategy for survival.<sup>46</sup> Although, some hold the view that appointment as a judge comes with it a prestige, which may compensate for fantastic or adequate pay; the fact remains that prestige alone may not be enough, to put food on the table.<sup>47</sup> More so, poor pay will discourage brilliant lawyers from aspiring to be judges.<sup>48</sup>

### **Lawlessness and Poor Enforcement of Judicial Decisions**

The executive is the arm of government that enforces and implements the law; the executive power is so enormous and far reaching. The executive powers of the Federation of Nigeria and its components units (states) are vested on the President of the Federal Republic of Nigeria<sup>49</sup> and the governors of the various states.<sup>50</sup> Nigeria has been under the agony of executive lawlessness, willful disobedience to court orders, usurpation of powers of other arms of government, *ultra-vires* actions and actions founded on might, impunity and illegality. These have been the case since the contraption of the segments that now form the Nigerian state. This was the case in *Governor of Lagos State v Chief Odumegwu Ojukwu*<sup>51</sup> where the court held explicitly that:

Executive lawlessness is tantamount to a deliberate violation of the constitution. When the executive is the military government which blends both executive and legislative powers together and which permits the judiciary to coexist with it in the administration of the country, then it is more serious than imagined. The essence of rule of law is that it should never operate under the rule of force or fear, to use force to effect and act and while under the marshal of that force seek the courts equity, is an attempt to infuse timidity into court and operate a sabotage of the cherished rule. It must never be.

Instances abound, where the executive paid deaf ear, defiled or neglected court orders in Nigeria. In 2015, Sambo Dasuki, a former National Security Adviser (NSA), and retired military officer, was detained by the Department of State Security (DSS) for an alleged diversion of armament funds, he was granted bail by the court, but the government refused to release him.<sup>52</sup> Similarly, the leader of the proscribed Indigenous People of Biafra (IPOB) Mazi Nnamdi Kanu is today being held in custody by the Department of State Security Service (DSS) in clear disobedience to numerous subsisting orders of the Federal High Court for his release.<sup>53</sup> Similarly, in 2023, the Federal Government of Nigeria brought two counts of illegal possession of a firearm and ammunition against the suspended Central Bank of Nigeria (CBN) Governor, Godwin Emefiele. He pleaded not guilty and was to be remanded at the Nigerian Correctional Service Centre, but the order was scuttled by the DSS who defiled the court order and rearrested Emefiele in the court premises.<sup>54</sup>

Another instance of reckless disobedience to court order was demonstrated in the case of *Admiralty Fleet Limited (BICS Garden and Anor v Attorney General of Lagos State and Ors*.<sup>55</sup> In this case the plaintiffs sued the defendants at the Federal High Court. On October 18, 2021, the court issued an order preventing the Lagos State Special Task Force Unit and the Attorney-General of Lagos State (the first and third defendants) from allocating any portion of the property at B20, Wole Olateju Crescent, off Admiralty Way, Lekki Phase 1 in the Eti-Osa Local Government Area until the substantive suit was heard.<sup>56</sup> The Lagos State Government appealed the ruling, but however sent back police officers and members of the Lagos State Task Force to the scene in violation of the injunction.<sup>57</sup> On October 20, 2021, they took a

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<sup>43</sup>*Ibid.*

<sup>44</sup>*Ibid.*

<sup>45</sup>E Okakwu, 'NJC Recommends Sack of two Corrupt Nigerian Judges' available at <<https://www.premiumtime.com/news/headlines/288310>> accessed 10th May, 2024.

<sup>46</sup>*Ibid.*

<sup>47</sup>G C Homans, 'Prestige or Status' available at <<https://www.jstor.org/stable>> accessed 11<sup>th</sup> July, 2024.

<sup>48</sup>*Ibid.*

<sup>49</sup>The President also doubles as the Commander in Chief of the Armed Forces of the Federation.

<sup>50</sup>S 5 (1)(b) & (2)(b) of the Constitution of FRN, 1999.

<sup>51</sup>(1986) 1 NWLR (pt 18) 550 at 590.

<sup>52</sup>T Adedokun, 'Major Court Orders Buhari Administration Disobeyed in His Eight Years' available at <<https://www.icirnigeria.org/major-court-orders-buhari-administration-disobeyed-in-his-eight-years>> accessed 29th August, 2024.

<sup>53</sup>*Ibid.*

<sup>54</sup>O Ogunseyin 'DSS Re-arrest Emefiele after Fight with Prison Officials' available at <<https://guardian.ng/news/dss-re-arrests-emefiele-after-fight-with-prison-officials>> accessed 29th August, 2024.

<sup>55</sup>FHC/L/CS/1384/21.

<sup>56</sup>W Igbintade, 'Disobeying Court Orders Recipe for Anarchy, Judge Warns' available at <<https://www.thisdaylive.com/index.php/2021/11/08/disobeying-court-orders-recipe-for-anarchy-judge-warns/>> accessed on 3<sup>rd</sup> September, 2024.

<sup>57</sup>*Ibid.*

bulldozer to the scene and destroyed buildings there in violation of the injunctive orders of the court, while being protected by police officers from the Lagos State.<sup>58</sup> Given the powerful nature of the executive arm of government, hence they are in control of all the security apparatus of the state, they tend to wield even powers unknown to the law.<sup>59</sup> The issue of executive lawlessness calls for urgent attention if our nascent democratic regime must be sustained.<sup>60</sup> The manipulation of the system and flagrant disobedience to court orders by the executive arm of government or anybody at all, have in no some measure endangered and almost about to cripple democratic tenets in Nigeria, if not checked. Governmental powers should be exercised according to law.

### **Mediocrity**

Mediocrity denotes a quality or performance that is below average, poor performance or poor quality as against excellence and achievements.<sup>61</sup> Globally, values of a judge define the quality of the bench. Judicial functions or office is reserved only for men and women of distinction, honour, integrity, dignity and high intellect, given their roles in the modeling of human society.<sup>62</sup> Judges are nowadays appointed on party, religious, quota system and ethnic considerations. Judicial office is now an object of mortgage and a means of compensating party faithful and consolidating political party platforms. The process of nominating judicial officers to the National Judicial Council for appointment as state judges has been embroiled in bribery and corruption. For example, just recently, a Magistrate in Abia State allegedly collapsed and died for not making the list despite paying fifteen million naira bribe she raised by mortgaging her family house.<sup>63</sup> Politicians are given the slot to nominate persons to be appointed into judicial offices.<sup>64</sup> Sometimes, the appointment is used as an appreciation for an immoral favour. Men and women who are morally bankrupt are allowed entrance into the hallowed temple of justice. Cultists, partisan politicians, ethnic and religious loyalists are randomly appointed and elevated to enviable judicial offices.<sup>65</sup> These go to demonstrate that the judicial arm of government today, consists of some men and women who ordinarily ought not, and do not fit, to be judicial officers but were made one because of a system complicit on mediocrity and demerit.

### **Interference in Judicial Independence**

Judicial independence refers to the ability of courts and judges to perform their duties free of influence or control by other actors, whether governmental or private.<sup>66</sup> The term is also used in a normative sense, to refer to the kind of independence that court and judges ought to possess.<sup>67</sup> Judicial independence postulates that no judicial officer should directly or indirectly, however, remote, be put to pressure by any person whatsoever, be it government, corporate body or an individual to decide any case in a particular way. Thus, he should be free to give binding orders which must be respected by the legislature, the executive and the citizens whatever their status may be.<sup>68</sup> Judicial independence cannot be complete unless the judge, on whose shoulders lies the responsibility for the dispensation of justice, is endowed with certain qualities and attributes for him to maintain his independence and command respect for his judicial decisions. A judge must not only be, but always seen to be learned in the law, a person of absolute integrity and disciplined both within and outside his court.<sup>69</sup>

Nigeria no longer holds firm to the ideology that a self-policing independent judiciary is necessary to strengthen administration of justice, promote public confidence in the judiciary manned by unbiased officers who owe allegiance only to the law and justice.<sup>70</sup> Judges are being persecuted by the Federal Government and their State counterpart.<sup>71</sup> Judges are publicly harassed, intimidated and ridiculed. Public confidence in the administration of justice has been reduced to lowest ebb. Disciplining of judicial officers is no longer driven by the need to maintain public confidence in the integrity,

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<sup>58</sup> *Ibid.*

<sup>59</sup> *Darman Shugaba v Minister of Internal Affairs* (1981) 3 NCLR 49.

<sup>60</sup> For example, Col Sambo Dasuki and Olisa Metu are both Nigerians alleged to have committed some offences against the state. The Court in exercise of its powers admitted them on bail and ordered their release from custody, but for years, the Attorney of the Federation and Minister for Justice paid deaf ear to the Court order, instead the government in the pretence of fighting corruption proceeded against the judges and justices that made the said order. Same is the case with Mazi Nnamdi Kanu.

<sup>61</sup> A Furnham, 'Overcoming Mediocrity' available at <<https://link.springer.com>> accessed 1<sup>st</sup> July, 2024.

<sup>62</sup> R H Fallon, 'A Theory of Judicial Candor' *Columbia Law Review* 117 (8) (2017) 2265-2318.

<sup>63</sup> C Unini, 'Recruitment Scandal: Abia State JSC Members Allegedly Demanded #15,000.000.00 from Applicants for High Court Bench' available at <<https://www.thenigerialawyer.com>> accessed 11<sup>th</sup> May, 2024.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> S L David, 'Judicial Independence' available at <<https://www.britannica.com/topic/judicial-independence>> accessed 22/3/2024.

<sup>67</sup> *Ibid.*

<sup>68</sup> A Oyeyipo, Commentary on the paper captioned 'Whether the Establishment of the National Judicial Council and the set up will bring a lasting solution to the Perennial Problem Confronting the Judiciary in this Nation' delivered at the 1999 All Nigerian Judges Conference, held at International Conference Centre, Abuja, between 1<sup>st</sup> -5<sup>th</sup> November, 1999, .5.

<sup>69</sup> B Ardo, *Independence of the Judiciary in Nigeria*, (Federal Ministry of Justice, 1990).

<sup>70</sup> G Sayan, 'Judicial Independence Under Threat in Nigeria' available at <<https://www.un.org/news/judicial>> accessed 6<sup>th</sup> March, 2024.

<sup>71</sup> *Ibid.*

independence and impartiality of the judicial arm of government. The law is today maliciously set in motion in Nigeria against judicial officers with a view to compelling their loyalty to the government in power or as a tool of vengeance for a verdict which did not favour the party under which a chief executive was elected. Judges are denied their entitlements, salaries, official car, allowances, etc; to ensure that they are impaired economic wise, giving room for frustration or depression as the case may be. In worst cases, families of judicial officers are attacked just to set emotional trauma on the officer. There are incessant cases of official misrepresentation and manipulation of facts and persecution of serving judges and justices,<sup>72</sup> just to score cheap political points and give room for a compromised judicial system that would in turn metamorphose to a puppet in the hands of the executive arm of government thereby eroding the bench the requisite independence, neutrality, fairness and dignity.<sup>73</sup>

### **Executive Harassment/Humiliation**

Harassment is a weapon of warfare deployed by the executive arm of government in Nigeria to psyche the enemy. This menace was introduced during the military era and has been carried over to the democratic milieu.<sup>74</sup> The Economic and Financial Crime Commission (EFCC), Department of State Security Services (DSS) the Nigerian Police Force and other sister security agencies have been and are being used as instruments of intimidation on political opponents of successive governments in power.<sup>75</sup> The anti-graft agencies are being employed and manipulated to proceed against judicial officers whose decisions negates the policies of the executive arm of government.<sup>76</sup> The federal government of Nigeria through the EFCC, DSS, the Attorney General and other agencies of government proceeded against the judiciary, laid siege on their homes, arresting, detaining and arraigning them before the Code of Conduct tribunal; a tribunal which is a creation of the executive arm of government without a prior resort to the National Judicial Council, a body under the judicial arm of government with the constitutional role of maintaining judicial discipline of judicial officers in Nigeria.<sup>77</sup> Not too long ago, a Chief Justice of Nigeria was arraigned before the Code of Conduct Tribunal and subsequently suspended by the Presidency and subsequently removed unconstitutionally from office.<sup>78</sup> Most judges are now afraid to hand down decisions on matters before them fearlessly and independently in accordance with law and facts, to avoid being pointed out and used as a scapegoat by the executive arm of government.<sup>79</sup> It will therefore be an understatement to state that the intimidation and humiliation of judicial officers in Nigeria affects justice delivery and needs to be checked lest the justice system is destroyed permanently. For example, a Divisional Police Officer supervised the beating up of Chief Magistrate Ngozi Onyenemezu for discharging her judicial function of granting bail to armed robbery suspects not too long ago.<sup>80</sup> This is an anomaly that should not be tolerated in any sane society.<sup>81</sup>

### **Judicial Abuse of Powers**

Judicial power refers to the authority given to courts and judges to hear and decide cases, and to make binding judgments on them.<sup>82</sup> This power allows them to interpret and apply the law when disputes arise over what has been done or not done.<sup>83</sup> By virtue of Section 6 (6) of the 1999 Constitution, the mandate of the Nigerian judiciary extends to all inherent powers and sanctions of a court of law and to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person. A lot of concerns have been expressed by lawyers and other stakeholders over the spate of some questionable judicial pronouncements, especially with the granting of conflicting *ex-parte* injunctions by some of these judicial officers in courts of coordinate jurisdiction. For example, the unconstitutional annulment of the June 12 Presidential Election with the attendant chaos it caused and the subsequent threat to the country's instability was carried out through the instrumentality of the Court.<sup>84</sup> In 2021, several orders and counter-orders were issued against the Independent National Electoral Commission (INEC), particularly, as it related to the November 6<sup>th</sup>, 2021 governorship

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<sup>72</sup>G Sayan, 'Judicial Independence under Threat in Nigeria' available at <<https://www.un.org/news/judicial>> accessed 6<sup>th</sup> March, 2024.

<sup>73</sup>*Ibid.*

<sup>74</sup>M L Uwais, 'The Evolution of Constitutionalism in Nigeria: The Role of Supreme Court under the 1979 and 1999 Constitution' (Lagos NIALS, 2006).

<sup>75</sup>M A Ikhariale, 'The independence of the Judiciary under the Third Republican Constitution of Nigeria' *Journal of African Law* (1990) 145.

<sup>76</sup>A F Koyi, 'Federal Government goes after Election Tribunal Judges, Others; Trails alleged #7Bn, Judgment Bribery Cash' *Daily Sun*, Tuesday October 11, 2016, p 8.

<sup>77</sup>*Ibid.*

<sup>78</sup>Jiti Ogunye, 'Suspension of CJN Onnoghen: An Illegal Executive Coup against a Recalcitrant Chief Judicial Officer' *Premium Times Online Newspaper* available at <<https://www.premiumtimesng.com>> accessed 1<sup>st</sup> February, 2024.

<sup>79</sup>*Ibid.*

<sup>80</sup>C Okeoma, 'DPO, Policemen beat Imo Chief Magistrate, Lawyers for discharging Robbery Suspects' available at <<https://www.vanguardngr.com>> accessed 11<sup>th</sup> May, 2024.

<sup>81</sup> See the case of *Ransome Kuti v Attorney-General of Federation* (1985) 2 NWLR (Pt 6) 211 at 236.

<sup>82</sup> O Bakiner, 'Endogenous Sources of Judicial Power' available at <<https://www.jstor.org/stable>> accessed 19<sup>th</sup> March, 2024.

<sup>83</sup>*Ibid.*

<sup>84</sup>C Unini, 'June 12; The Judges and Litigation' available at <<https://www.thenigerianlawyer.com/June-12-the-judges-and-litigations/>> accessed 11<sup>th</sup> May, 2024.

election in Anambra State. On one occasion, the court had ordered the electoral umpire to recognize a particular aspirant as the candidate of a political party and within a short while, another order of court of equal jurisdiction had directed INEC to drop that person and, in his stead, fill in another candidate.<sup>85</sup> Similarly, the leadership tussle with respect to the throne of the Emir of Kano has witnessed a number of injunctive orders and counter-orders from courts of coordinate or equal jurisdiction.<sup>86</sup> In this fourth Republic, the intervention of the court also made somebody, Rotimi Amaechi, who did not contest an election in 2007 to be Governor of Rivers State.<sup>87</sup> The court had hinged its decision on the grounds that it was a political party that contested election and not an individual.<sup>88</sup> Although the court has found a way of correcting itself, after it later held in another case that for a candidate to be declared winner, he must participate in all the processes of an election.<sup>89</sup> Black market injunctions are dished out on a daily basis, to the highest bidder. The courts no longer dispense justice. They merely dish out orders to whoever can afford them. It is obvious that the menace of indiscriminate issuance of injunctions and orders, if not checked, could derail the country's hard-earned democracy, especially now that the judiciary is fast losing its grip.

### 3. Conclusion and Recommendations

In conclusion, we submit that ethical judicial service in Nigeria is being impaired by the above enumerated challenges. Addressing the challenges, rather than managing them is, therefore, necessary for the enthronement of a reliable judiciary, manned by men and women of honour, character and astute legal knowledge. This paper appraised most of those challenges and suggested practical ways of remedying it, to restore the lost glory of the Nigerian judiciary. It is hoped that policy makers and stakeholders in the justice sector, will find this paper useful at a time like this, when redefining the justice sector has become a necessity. With a view to solving myriads of challenges currently ravaging the present day judiciary, the following recommendations are submitted. The National Judicial Council and the Nigerian Bar Association should take responsibility for a modest ethical judicial service. To achieve this, it is recommended that a body to be known as 'the Bar and Bench Joint Judicial Integrity Committee' be set in each state of the federation and the Federal Capital Territory, Abuja, to act as a watch dog on the integrity of lawyers and judges and to often make confidential recommendations either to the National Judicial Council or to the Nigerian Bar Association whenever necessary. By this, the integrity of the justice system would be strengthened, this is so because, the character and activities of each judge or that of a lawyer, to a reasonable extent is known by the branch of the NBA he or she practices or preside as the case may be. Ensuring that judicial offices are manned by dignified and honest people is the first step to achieving fairness and unbiased justice delivery. Therefore, appointment and promotion of judges in Nigeria should be driven by merit, competence and integrity. The current practice of using judicial office to compensate politicians and consolidate political structure is unhealthy for the society, therefore, merit and honesty should be the consideration for occupying judicial stool.

We recommend that the NJC should set up a committee to look into the perennial problems confronting the judicial sector and recommend for immediate removal or retirement of judicial officers whose conduct and antecedents do not merit continuing in office, as doing so, will do great damage to the Nigerian society. This approach will sanitize the bench, corrupt members fished out and shown the exit direction to salvage the image of the judiciary and restore public confidence in the administration of justice in Nigeria. This measure will signal to all, especially members of the Bar who would eventually climb to the Bench, who are inclined to corrupt tendencies, that it is no longer business as usual. Thus, whoever ascends a judicial office/stool ought to be reminded that his ultimate priority is to serve the end of justice and not for personal aggrandizement nor for other collateral or material considerations. Judicial interference and disobedience to court orders should be criminalized and made to carry the punishment of outright ban to hold political office for ten years or more. Obedience to lawful orders should be made a qualification to stand election and where a public officer (whether elected or appointed) had demonstrated ill fate on judicial decision. It should also be a sufficient ground for impeachment/removal as the case may be. There is an urgent need to amend the appropriate sections of the 1999 Constitution to provide for an autonomous judicial arm of government in Nigeria. Apart from amending the constitution to grant full financial autonomy to the judicial arm of government, we further recommend that judicial officers should be paid remuneration commensurate with their roles in the society. Their salaries should be made more attractive enough to attract the best and right class of lawyers into the bench. Their wages, bonuses and working conditions should be adjusted frequently to reflect the prevailing economic situation. By this, corrupt practices among them would be reduced and responsibility enhanced at its peak.

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<sup>85</sup>T Amodu, 'Anambra 2021: INEC, IPAC Decry Conflicting Court Orders' available at <<https://www.tribuneonline.com/anambra/2021>> accessed 11th May, 2024. By reason of the conflicting orders it was difficult to say between the present Governor, Chukwuma Soludo and Chukwuma Umeoji, who was the legitimate flag bearer of the ruling party in Anambra, the All Progressives Grand Alliance (APGA) save for the intervention of the Supreme Court. See I Opara, 'The Supreme Court Confirmed Chukwuma Soludo as the Governorship candidate of the All Progressive Grand Alliance (APGA) for Anambra 2021 Election' available at <<https://www.icirnigeria.org-anambra/2021>> accessed 11th May, 2024.

<sup>86</sup>Daily Trust 'Court Grant Conflicting Orders on Kano Emirate Tussle' available at <[dailytrust.com](https://dailytrust.com)> accessed 29<sup>th</sup> August, 2024.

<sup>87</sup>*Amaechi v INEC* (2008) 5 NWLR (Pt 1080) 227 at 315.

<sup>88</sup>*Ibid*

<sup>89</sup>See the cases of *CPC and Anor v Omgbugadu and Anor* (2013) LPELR – 21007(SC); *Ngige v Akunyuli* (2012) 15 NWLR (Pt 1323) 343; *Nwankwo and anor v INEC and Ors* (2019) LPELR-48862 (CA and *Haruna v APC and Ors* (2019) LPELR- 47777 (CA).