

## GO TO COURT MANTRA: AN ACCOLADE OR A MOCKERY OF THE NIGERIAN JUDICIARY

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### Abstract

*The judiciary all over the world has been identified as the last hope of the common man. This presupposed that it is the only place that justice can be dispensed to the satisfaction of the common man. Under the Nigerian legal system, administration of justice is anchored on the court, hence, the common man has always deemed it fit and appropriate to go the court to seek justice whenever any wrong is done to him. This article discovered that the steam of going to court has long been lost by the common man, resulting from corruption, ethnicity, lack of respect for rule of law and absence of independence of judiciary among others. It then concluded that the protection of rule of law and supremacy of the law by the court is the only safeguard to the rights of the common man. The article recommended the dispensation of justice in saner climes that do not have the judicial system infiltrated with corrupt practices.*

*Keywords: Judiciary, Justice, Court, Corruption.*

### Introduction

The Nigeria judiciary is made up of the Supreme Court, Court of Appeal, Federal High Court, National Industrial Court, Federal Capital Territory and State, High Court Sharia, Customary Court of Appeal, Magistrate Court, Sharia Area Court, Customary Court and other tribunals established by law such as the security and exchange tribunal, election petition tribunal<sup>1</sup> among others. The judiciary being the third arm of the government is saddled with the responsibility of hearing and determining disputes according to the dictates of the law.<sup>2</sup> Hence the challenge of determination of disputes and ensuring that it maintains a level of justice delivery that meets the universally accepted requirement has become imperative.<sup>3</sup>T

he role of the judiciary in promoting access to justice and its contribution towards attainment to justice has remained one of the attributes of a vibrant judiciary.<sup>4</sup> An independent, strong, respectable and responsible judiciary is indispensable, and responsible for administration of justice in any society.<sup>5</sup> It must be noted that the availability of the judicial system and the quality of justice it dispenses depends largely on the coordinated efforts of the judicial officers and other personnel of the court.<sup>6</sup>

Accessibility to court is one thing, while an appreciation and understanding of the needs of those who require the assistance of the legal system is another factor and of course an important aspect of access to court.

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<sup>1</sup> Egemonye, J.E., "Role of the Judiciary in Promoting Access to Justice in Nigeria" *eajournals.org*. Accessed 3/8/2024.

<sup>2</sup> See section 6 of the 1999 Constitution of Nigeria (as amended).

<sup>3</sup> *Ibid.*

<sup>4</sup> Chinwo, C.A.J., "Education for Judges and Pursuit of Excellence in Adjudication in Nigeria: (Eds) Chukwumaeze, U.U., Nnadi I. and Okorie C.K., Beyond Excellence, A Book of Reading in Honour of Honourable Justice Paschal O. Nnadi (Chief Judge of Imo State Judiciary) [2014-2020].

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

<sup>6</sup> *Ibid.*

It is of paramount importance that the judiciary must protect adequately all persons that come before it to seek justice, hence, the mantra, go to court should remain an accolade that will always portray ray of hope to the common man in the face of oppression, victimization and intimidation.

Apart from the traditional role of the judiciary as the dispenser of justice, it has another major role in the development of democracy.<sup>7</sup> Democracy entails the actual participation of the people in governance and the electoral process, while the people are regarded as the wheel of democracy, the judiciary is tagged as the grease in that wheel. The judiciary is like the watch dog in the society and the only professional arm of the 3 organs of government, hence the expectation in dispensing justice remains very high in the society.<sup>8</sup> The judiciary in Nigeria over the years has contributed to the rights of the citizens in all ramifications.<sup>9</sup>

The judiciary plays a critical role in upholding the rule of law, ensuring that justice is served and the right of citizens are protected regardless of one's status or background.<sup>10</sup> The judiciary ensures that the constitution is upheld, the law interpreted accurately and consistency, justice served fairly and individual rights and freedom protected.<sup>11</sup> A glamorous performance of these roles by the judiciary gives the common man the bragging to go to court whenever his right is breached, hoping that he gets justice and not otherwise which results to a mockery of the judiciary.

## Conceptual Issues

### Judiciary

The judicial powers of the Federation vested in the courts is derived from the 1999 Constitution of Nigeria (as amended).<sup>12</sup> The court plays a pivotal role in organization and maintenance of legal order,<sup>13</sup> peace, order, justice and development of a nation is dependent on.<sup>14</sup>

The judiciary represents the court system in Nigeria, it symbolizes judges and justice.<sup>15</sup> It is the third arm of the government of any modern day government.<sup>16</sup> Against this background, the French philosopher *Baron Montesquieu* propounded the doctrine of separation of powers to ensure that each arm of government would be largely independent to avoid tyranny and operation.<sup>17</sup>

The court system implies a judicial arrangement of graduated competence of hierarchical structural arrangement from lower to superior courts, courts of first instance to Supreme

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<sup>7</sup> Adegboruwa, E.U., "The Role of Judiciary in Development of Democracy" *guardian.ng*. Accessed 3/8/2024.

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

<sup>9</sup> *Ibid.*

<sup>10</sup> Nasirudeen, S., The Role of the Judiciary in Upholding the Role of Law in Nigeria. *www.sabilaw.org*. Accessed 3/8/2024.

<sup>11</sup> *Ibid.*

<sup>12</sup> See section 6 (1) (2) and (3) of the 1999 Constitution of Nigeria (as amended).

<sup>13</sup> Soferum, J. and Njoku, N., "The Court System in Nigeria: Jurisdiction and Appeal" *papers.ssrn.com*. Accessed 4/8/2024.

<sup>14</sup> *Ibid.*

<sup>15</sup> Enaruma, E., and Fenemigho, E.O. The Judiciary as an Organ of Government" <http://dx.doc.org/10.4314/afrrrev.v8i3.7>. Accessed 4/8/2024.

<sup>16</sup> OLL. "Montesquieu and the Separation of Powers" *oll.libertyfund.org*. Accessed 4/8/2024.

<sup>17</sup> Eranuma, E. and Fenemigbo E.O., *op. cit.*

Court, where appeals are heard and special tribunals which exist in modern democratic system.<sup>18</sup>

The primary function of the judiciary is that of adjudication, whereby a court determines guilt and administer punishment to the guilty party, and settles disputes between parties through the application of rules and procedures already laid down by the law. The judicial powers of the court extend to all matters between persons, persons and rights and obligations of persons.<sup>19</sup>

The courts are at the centre stage in the administration of justice. This is so because the judges who preside over these courts have the constitutional powers as well as the discretion to decide matters in one way or another, hence the discretion is expected to reward and punish any offending party both the rich and the poor in the spirit of justice. The judiciary is the only arm of government that has the power to adjudicate over disputes between any classes of persons and do justice accordingly.<sup>20</sup>

The judiciary holds a unique position among democratic institutions. It represents one of the last bastions of participatory democracy in which disputants go directly before a judge to resolve an issue. This direct interchange between the individual and the state is the heart of democratic process.<sup>21</sup> In a constitutional democracy like Nigeria, the judiciary can only fulfill its role in upholding the rule of law when independence, impartially and easy access to court is guaranteed.

The Judiciary seems to be one of the agencies that can easily defuse the time bomb which cases conceal.<sup>22</sup> The judiciary occupies a very unique position in a free and democratic society.<sup>23</sup> They are the watch dog of both the constitution itself and the rights of citizens entrenched in that constitution. The democratic nature of any constitution is therefore measured by the amount of independence of the judiciary. In United Kingdom for instance, the independence of the judiciary is sacrosanct, while same cannot be said of Nigeria.<sup>24</sup>

It is only when the judiciary is independent, that it can uphold the rule of law. Under the rule of law, the state is subject to the law and not above the law. The government on its own should respect the rights of the individual citizen under the law and provide means for their enforcement by way of legal aid. Judges should be guided by the rule of law, protect and enforce it without fear or favour and resist any encroachment by government, political parties or any other concentration of power on their independence to administer law and justice.<sup>25</sup> In *Passco Int'l Ltd V Unity Bank Plc*<sup>26</sup> the Supreme Court clearly stated among other things that the duty of a judge as an umpire in the temple of justice is to find out the truth and to administer justice according to law to the respective parties. The court further stated that the judge must be blind indeed to favour or prejudice, but clear to see which way lies the truth.

<sup>18</sup> Iwuorie, C., "Administration of Justice in Nigeria" (2021) Orient Law Journal (Vol. 4) 133.

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

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> Oputa, C.A., *The Law and the Twin Pillars of Justice*, Owerri Government House Publishers, Owerri, 1981, 7.

<sup>23</sup> Council of Europe, "The Position of the Judiciary and its Relation with the Powers of State in a Modern Democracy" *rm.coe.vatson*. Accessed 8/8/2024.

<sup>24</sup> Commonwealth of Lawyers Association, "Judicial Oversight and Accountability: the rise of the watchdog" *commonwealthlawyers.com/* Accessed 8/8/2024.

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

<sup>26</sup> [2021] 7 NWLR (Pt. 1775) 224.

By this position being observed by the court the *mantra go to court* will ultimately remain an accolade rather than a mockery of the judiciary in Nigeria.

## Justice

Yet another area of importance to the citizenry is proper administration of justice. Justice is defined as the fair and proper administration of law.<sup>27</sup> The Supreme Court in *Iloputaije V Orji*<sup>28</sup> clearly stated that justice is rooted in the confidence reposed in the *judex* that the court, as constituted would throughout maintain its independence, impartiality and integrity.

In Nigeria, the common man will be mocked by asking him to go to court because the rich and highly connected feels justice is to expensive for the poor, hence he resigns himself to a denial of it.<sup>29</sup> The whole idea behind *go to court mantra* was muted by certain class of political elite in Nigeria who are desperate to acquire power at all cost.<sup>30</sup> They carryout unspeakable acts, bizarre acts drained of logic, legality, constitutionality and morality and then tell you to go to court.<sup>31</sup> This is a sad sarcasm of their obvious devising pejorative and derogatory euphemism for the beleaguered justice delivery system.<sup>32</sup> The dissenting judgment delivered by His Lordship Hon. Justice Nweze of the blessed memory in *Ihedioha v Uzodinma*<sup>33</sup> is instructive here.<sup>34</sup> Similarly the dissenting judgment of justices Emmanuel Agim and Adamu Jauro of the Supreme Court in *Lawal v Machina* is also instructive to this article.<sup>35</sup>

The situation is different under the United Kingdom jurisdiction where the independence of the judiciary remains the corner stone of the constitution.<sup>36</sup> This means that the United Kingdom judiciary is not influenced by external pressure, be it by wealthy individuals, the media, powerful politicians or even the government.<sup>37</sup>

Judges are neutral and must decide cases based on the facts before them and strictly in accordance with the law, rather than based on any personal preference or prejudice. Under the United Kingdom jurisdiction, the constitutional principle of rule of law is maintained by the judiciary, hence every person is subject to the rule of law and no one is above it. In United Kingdom, there is no codified constitution as there is in Nigeria, setting out the role and powers of the judiciary,<sup>38</sup> yet the judiciary in United Kingdom is firm in its resolve to ensure that justice is dispensed according to the law.<sup>39</sup>

The South African justice delivery system can as well be likened to that of the United Kingdom where no one can be seen as being above the law. The imprisonment of former

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<sup>27</sup> Ganer, B.A. *Blacks Law Dictionary Seventh Edition*, West Group. St. Paul Minn. 1999, 869.

<sup>28</sup> [2021] NWLR (Pt. 19) Pg. 1755 Ratio 1.

<sup>29</sup> Oputa, C.A., *op. cit.*

<sup>30</sup> Ozekhome, M., "Go to Court" [www.thecable.ng](http://www.thecable.ng). Accessed 10/8/2024.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

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

<sup>34</sup> [2020] LCN/4905 SC.

<sup>35</sup> Guardian, Dissecting the Supreme Court in Lawan v Machina. [guardian.ng](http://guardian.ng). Accessed 6/8/2023.

<sup>36</sup> C.S., "The Judiciary: The Constitution Society. [consoc.org.uk](http://consoc.org.uk). Accessed 7/8/2023.

<sup>37</sup> *Ibid.*

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

<sup>39</sup> Murkem, J.P., and Mastorman R., The New Constitutional Role of the Judiciary. [eprints.ise.pic.uk](http://eprints.ise.pic.uk). Accessed 15/8/2024.

President Jacob Zuma for fifteen months for contempt of court<sup>40</sup> is instructive in this regard. This is not the position in Nigeria because the judiciary is challenged by numerous factors.

## Factors Affecting Proper Dispensation of Justice by the Judiciary in Nigeria

### Corruption

The integrity of the judiciary lies in its efficiency, productivity, trust and confidence reposed on it by the public.<sup>41</sup> Corruption has been noted as one of the factors that turned out to be harmful in the judiciary because it has the capacity of undermining the credibility of what gives the common man the hope in approaching the court for resolution of justice.

The judiciary is often referred to as the last hope of the common because it guarantees equal access to justice.<sup>42</sup> However the recent corruption related activities going on in the Nigerian judiciary has left many Nigerians in doubt to the capacity and credibility of the judiciary in justice delivery.<sup>43</sup>

The gross corruption in Nigeria judiciary undoubtedly left no one in doubt when it reflected in the majority judgment that affirmed *Ahamad Lawan* as the Senatorial Candidate for APC in Yobe North when he did not participate in the primary election.<sup>44</sup> In addition courts now have been engulfed into giving conflicting *ex parte* orders on same and similar political matters.<sup>45</sup> This has exposed the extent to which corruption has eaten deep into the fabric of the judiciary.<sup>46</sup> Hence the judiciary has been made an unwilling accomplice in corruption in Nigeria.

To get it right, the judges and other personnel of the judiciary must reform themselves by shunning conducts that bring dishonour to the judiciary as an institution.<sup>47</sup> Basic among conducts that are acceptable include, not living above means, prompt sitting at 9am, being fair to litigants, not minding the persons' standing in life and leading other staff under the judges supervision by example among others.<sup>48</sup>

### Executive Lawlessness

Another factor affecting proper dispensation of justice by the judiciary in Nigeria is the executive lawlessness. Incessant intimidation, harassment and molestation of judges. The judges and court officials have continued to suffer intimidation from the execution arm of the government.<sup>49</sup> The invasion of the house of Hon. Justice Mary Odili Rtd<sup>50</sup> is instructive here. Court orders are not obeyed by the executive arm of government who ordinarily has the burden of executing laws and orders made by the court.

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<sup>40</sup> BBC News, "Jacob Zuma: South African Court Orders Ex-President back to Prison" [www.theguardian.com>world>june](http://www.theguardian.com/world/june). Accessed 7/8/2023.

<sup>41</sup> UNDDC, Assessment of Justice System Integrity and Capacity in three Nigerian States. [corruption\\_nige....](http://corruption_nige....) Accessed 15/8/2024.

<sup>42</sup> *Ibid.*

<sup>43</sup> Abdulrauf, S.H. and Gholami, H. Corruption in the Nigeria Judiciary System: An Overview. [www.researchgate.net](http://www.researchgate.net). Accessed 1/9/2024.

<sup>44</sup> Businessday "Official Corruption in Nigeria Judiciary". [business.ng](http://business.ng). 1/9/2024.

<sup>45</sup> *Ibid.*

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

<sup>47</sup> Research Clue, Impact of Corruption in the Judicial System in Nigeria: [nariaproject.com](http://nariaproject.com). Accessed 1/9/2024.

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

<sup>49</sup> Independent. Odili: Intimidation Harassment of Judges, Signifies Impunity. [independent.ng](http://independent.ng). Accessed 1/9/2024.

<sup>50</sup> Ejekwonyilo, A., "Mary Odili's Home Invasion Driven by Greed" [www.premiumtimes.ng.com](http://www.premiumtimes.ng.com). Accessed 9/9/2024.

The lawless of the executive extends judiciary to harassment and intimidation of which truly shows that independence of the judiciary is only on paper. The use of security agencies to bully judges is a show of lack of independence of the judiciary.<sup>51</sup> If truly the judiciary is autonomous, indeed it should be autonomous to all intents and purposes.<sup>52</sup>

Hence the intimidation and harassment of the judiciary by the executive arm of government is an outright abuse of power by the executive arm. The rule of law entails and depends on the provision of adequate safeguard against the abuse of power by the executive.<sup>53</sup>

The rule of law further entails that the law will rule the affairs of men and the nation as opposed to the whimsical caprices of those who exercise power, be it legislature executive or judicial.<sup>54</sup> The doctrine of rule of law further connotes that decisions and orders of court must be obeyed by everyone and authority.<sup>55</sup> The remarkable significance of the role of the court in the maintenance of rule of law in any nation was well captured by a renounce jurist Oliver Wendell in his work "The path of the Law" where he stated among other thing that "the prophecies of what the court will do in fact and nothing more pretentious are what I mean by the law".<sup>56</sup>

The 1999 Constitution of Nigeria (as amended) is very emphatic on this aspect of the doctrine of rule of law.<sup>57</sup> It is the position of law that when a pronouncement of law is made by the court, it is the unqualified obligation of the parties concerned, be it citizens or government or agencies of the government to obey the decision or order of such court in due observance of the rule of law.<sup>58</sup>

Any deviation from this norm particularly by the executive simply constitutes an attack on the judiciary.<sup>59</sup> The rule of law is thus the badge of the free people, it stands for equality before the law, for independence of the judiciary, for the absence of arbitrary government and for established source of law.<sup>60</sup>

Established source of law in this connection refers to the law so to speak and its proper application for purposes of ensuring the protection and freedom of the citizen, as against representing primarily the specially interest of particular groups who can tell an opponent to go to court, in the event of any dispute arising between such persons belonging to such particular group and a person who does not belongs to any such group.

### **Lack of Independence of the Judiciary**

Absence of outright independence of the judiciary has affected the justice delivery system in very many ways. The principle of complete independence of the judiciary remains the foundation of the judiciary in every democratic system including that of Nigeria.<sup>61</sup> In

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<sup>51</sup> *Ibid.*

<sup>52</sup> UN News, "Judicial Independence under Threat in Nigeria, UN Right Expert Warns" [www.un.org](http://www.un.org). Accessed 9/9/2024.

<sup>53</sup> Oputa C.A., *supra*.

<sup>54</sup> Oyetibo, Is Judiciary under Siege by the Executive, [www.vanguradng.com](http://www.vanguradng.com). Accessed 10/9/2023.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> See section 289 of the 1999 Constitution of Nigeria (as amended).

<sup>58</sup> Oyetibo, T., *op. cit.*

<sup>59</sup> *Ibid.*

<sup>60</sup> Oputa, C.A., *op. cit.*

<sup>61</sup> Oputa, C.A., *op. cit.*, 135.

developing countries including Nigeria, independence of the judiciary have many difficult practical problems. One of the most acute of such problems is bridging the yawning gap between the *de jure* independence of the judiciary, its independence in theory, and *utter defacto* dependence on the executive.<sup>62</sup>

The *utter defacto* dependence on the executive by the judiciary manifests in very many ways. For instance, the involvement of the Federal and State governments in the budgetary process of the judiciary has negatively affected the independence of the judiciary in Nigeria.<sup>63</sup> Although sections 84 (2) (4) (7) and 121 (3) of the Constitution of the Federal Republic of Nigeria (as amended) grant financial autonomy to the judiciary stipulating that the recurrent expenditure of judicial officers of the Federation and States shall be charged upon the Federation or State Consolidated Revenue Fund, there is no provision for the capital expenditure of the judiciary.<sup>64</sup> Hence, it becomes a wanton opportunity for the executive arm to exploit and compel the judiciary into subservience for purposes of carrying out whatever instructions given to them as it relates to court matters.

### **Executive Approval of Policies of the Judiciary**

Again Executives approval of policies of the judiciary has also been identified as an affront to the independence of the judiciary in Nigeria. Some of the policies formulated by the judiciary for effective delivery of justice are subject to the approval of the President or Governor who is the head of the executive before implementation.<sup>65</sup> This further aids the executive to interfere on the independence of the judiciary in Nigeria. Hence the effect of this interference makes an average Nigeria to believe that going to court to carvass for a right whenever there is a deliberate breach of law by the government or by a highly placed persons in the country is a wide goose chase for justice.

### **Conclusion**

The idea of going to court by an aggrieved person is to challenge a breach of law, with *utmost good faith* that the court will dispense justice in a transparent and honest manner without leaning on either side. Courts are known not to be sentimental and would only adjudicate matters based on materials and submission before them.<sup>66</sup> However certain situations have arisen that has attributed partiality to judges, perhaps that explains the *mantra go to court* in Nigeria.

In Nigeria now, it is common to hear people daring anybody crying for justice to go to court. This set of people daring anyone who is crying for justice to go to court, this because of the influence they command or their wealth, hence judiciary, of course appears as mockery to the justice system, rather than an accolade.

### **Recommendations**

It is the recommendation of this article that the Nigeria judiciary should not allow the executive to easily manipulate its role in the tripod of separation of powers to interfere in her independence.

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<sup>62</sup> *Ibid.*

<sup>63</sup> Gwunierama, I., "The Executive and Independence of the Judiciary in Nigeria" Vol. (2) No. (1) Pinisi Journal of Art, Humanity and Social Studies, 2022, 63.

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

<sup>65</sup> Kehinde, L., Achieving Judicial Independence in Nigeria. [www.linkedin.com](http://www.linkedin.com). Accessed 10/10/2024.

<sup>66</sup> Ubanyionwu, C., and Josephat, C., The Paradigim Shift in the Adjudication of Cases in Nigeria: Through Artificial Intelligence: Issues and Challenges, [journal.unizik.edu.ng>article](http://journal.unizik.edu.ng>article). Accessed 12/10/2024.

Judges should be insulated from politics and political pressures and manipulations. They must be completely independent with nothing to influence or control them but God and their consciences. By this insulation from politics and politician, the judiciary will restore hope and confidence in the judicial system.

It is further recommended that salaries and allowances of judges at both the Federal and State levels be further reviewed upwards. It is an open secret that judges at both Federal and State levels are not paid the salaries deserved despite the recent review which makes them easily susceptible to accept bribes and other forms of appreciations from desperate politicians.

The letter duly signed by 14 justices of the Supreme Court of Nigeria, captioned “the state of Affairs in the Supreme Court of Nigeria” addressed to the immediate past Chief Justice of Nigeria, Hon. Justice Tauko Mohammed is instructive here.<sup>67</sup>

Finally, this article recommends that the 1999 Constitution of Nigeria (as amended) be further amended to include the establishment State Judicial Council to deal fast with issues relating to recommendation, appointment payment of salaries and punishment of erring judges rather than overburdening the National Judicial Council with herculean task of dealing with issues from courts in all the states of federation.

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<sup>67</sup> Olatunji, A.A., Securing Independence of the Judiciary; The way Forward. *guardian.ng*. Accessed 10/10/2024.