

JUDICIARY AND ADMINISTRATION OF JUSTICE: AN OVERVIEW OF THE PERSISTENT CHALLENGES TO JUSTICE DELIVERY IN NIGERIA

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Abstract

The authority for administration of justice rests with the judiciary.¹ The authority is encapsulated in the judges and magistrates in the exercise of their hallowed duties through the courts.² These duties encompass the determination of any question as to the civil rights and obligations of parties concerned³ as well as the necessity of maintaining societal order in the realm of criminal justice administration. However, the judiciary over the years has encountered persistent challenges in the course of performing the hallowed duties. Congested course lists thereto dilapidated facilities, corruption coupled with lack of continuing legal education for the justice administrators are just but few. Employing doctrinal approach the work found that while corruption may appear to be a major setback and clog in the wheel of justice, improved harmonized incentives thereto availability of modern justice administration equipment will be a great boost in justice delivery in Nigeria.

Keywords: Judiciary, Administration of Justice, Justice Delivery, Challenges of justice Delivery, Nigeria

1.0 Introduction

The judiciary being a product of law is itself subjected to the law.⁴ The judiciary appears long ago to have lost its quality before the saying, *why don't you go to court* or *you can go to court* started emerging in Nigeria's special parlance.⁵ This statement about the judiciary is not a positive compliment but a blatant mockery of the system of administration of justice and its delivery in Nigeria by some of her citizens. The character that before now was associated with the court and justice delivery in Nigeria has somewhat disappeared. It may not be out of place to say that majority who sit at the bench whether lower or higher bench got there through unequal opportunities. The embrace of corruption found its way through the constitution so much as to gag the judiciary from questioning certain *status quo ante bellum*, without justification.

The constitution also sets limits as to the questions upon which the court can be called to determine. Of particular interest is the provision that the judicial power vested in accordance with the constitution "Shall not, as from the date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966 for determining any issue or question as to the competence of any authority or person to make any law."⁶ However we may be here confined to the challenges of the judiciary towards delivery and attainment of real justice for development in our society. Where there is an infraction of law, the court will order sanctions to ensure that such societal order or values are not eroded.

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¹ Section 6(1) Constitution of the Federal Republic of Nigeria 1999 as amended (CFRN).

² The several Tribunals that are set up or may be set up by law are all encapsulated within this fora.

³ Section 6 (6) of the constitution as amended.

⁴ Chapter VII of the Constitution of FRN 1999 as amended.

⁵ You can go to court' in the ordinary parlance means that the court can decide and you will get justice. However its special parlance is not a positive accolade. It simply means that you cannot get justice even in the court because we or the person speaking in such a tone is in charge and can determine to a very large extent what happens in the court and its outcome.

⁶ Section 6 (6) (d) CFRN 1999. This paragraph of section 6 depicts the mindset of the makers of the Constitution. The insertion of the paragraph into the constitution clearly depicts the document as not the will of the people and would never had been in any circumstance. Such law ought not to be found within the walls of any constitutional democracy but in an authoritarian regime.

2.0 Judicial Strata

The Constitution of Federal Republic of Nigeria 1999 as amended has made ample list and status of the courts in Nigeria. It further classifies them into federal and state courts with varying jurisdictions. The superior courts derive their authority from the constitution as designated and so to their powers.

2.1 The Supreme Court

At the apex of the courts in Nigeria is the Supreme Court of Nigeria. It is measurably an appellate court and the final appeal court in the country. The Supreme Court however has original jurisdiction in matters involving Federal and State(s) governments and in matters between States *inter se*.⁷ The court also has original jurisdiction in any other matter the National Assembly confers jurisdiction on it by an Act save in criminal matters.⁸ It is the only body that can hear appeals from the Nigerian Court of Appeal.⁹ It comprises the country's Chief Justice and an additional 21 justices appointed by the President on the recommendation of the National Judicial Council subject to confirmation by the Senate.

2.2 The Court of Appeal

Following the Supreme Court in the hierarchy of courts in Nigeria is the Court of Appeal. The Court hears appeals from the following courts: Federal high court, High court of the FCT, Abuja, State high courts, Sharia court of Appeal of the FCT, Abuja, Sharia court of Appeal of States, Customary court of Appeal of the FCT, Abuja, Customary court of Appeal of the States, Court Martial and other Tribunals as may be prescribed by Acts of National Assembly.¹⁰ It also hears circumscribed appeals from the National Industrial Court. The court also has original jurisdiction to hear and determine questions as to whether any person has been validly elected to the office of the President or Vice President under the Constitution, or the term of the President or Vice President has ceased or the office of the President or Vice president has become vacant.¹¹ The Court of Appeal is one of the judicial bodies in which the country's three legal systems (English law, Customary law, and Islamic Personal Law) converge. The body should have at least three judges who are well-versed in Islamic personal law and three in Customary law. The court is comprised of the President of the Court of Appeal and any number of justices not less than 49. Their appointment is by the President on recommendation of the National Judicial council subject to confirmation by the Senate.

2.3 The High Courts

The other major superior courts of record are the High Courts. High court includes the federal high court, high court of the FCT, Abuja and high court of the several States in Nigeria. The Federal high court, FCT high court and States' high courts are courts of coordinate jurisdictions. Both courts are presided over by a Chief Judge and such other number of judges as may be determined by the National Assembly or House of Assemblies of various States as the case may be. The Federal high court¹² has original jurisdiction over civil cases connected with revenue of the Federal Government of Nigeria. Such other jurisdictions include admiralty, copyright, banking, excise duties, customs, and taxation. Banking and taxation are as it may be connected with the federal government or any of its agencies. The State high court¹³ is presided over by a Chief Judge and such number of judges determined by State House of Assembly. The State high court has the widest jurisdiction of judicial

⁷ Section 232(1) Constitution, *Ibid*.

⁸ *Ibid*.Section 232(2) .

⁹ *Ibid*.Section 233(1).

¹⁰ *Ibid*, Section 240.

¹¹ *Ibid*.Section 239 (1).

¹² *Ibid*.Section 249.

¹³ *Ibid*, Section 255

bodies in Nigeria on matters of civil and criminal law. There is also the high court of the FCT with coordinate jurisdiction with State high court in such matters as are within its jurisdiction.

2.4 The Customary Courts of Appeal

The Customary Court of Appeal is presided by the president and is constituted of any number of judges as may be determined by the National Assembly for the FCT, Abuja or House of Assembly of a State that has Customary court of Appeal. The body is provided for under Section 265¹⁴ of the 1999 Constitution of the Federal Republic of Nigeria. It exercises appellate and supervisory jurisdiction involving questions of customary law.¹⁵ It hears and determines appeals on questions arising from subordinate customary judicial bodies bordering on interpretation or application of customary laws.

2.5 Sharia Courts of Appeal

Sharia court of Appeal is entrenched under Section 260¹⁶ of the 1999 Constitution of the Federal Republic of Nigeria. It reviews cases involving the application of Sharia law, particularly in northern parts of Nigeria. The Sharia court of Appeal is among the constituent judicial bodies of the unified justice system of North-East Nigeria. This is the region in which Sharia law is widely practiced. The judicial body is presided over by a Grand Kadi and other Kadis. Its duties include reviewing cases relating to Sharia and Islamic personal law. It interprets Islamic customary personal laws. It handles Islamic litigation cases, especially where all the parties are Muslims, and the question of Islamic personal law regarding marriage or its validity or dissolution, family relationship, etc.¹⁷

2.6 National Industrial Court of Nigeria (NICN)

The National Industrial Court is provided for under Section 254A of the 1999 Constitution of the Federal Republic of Nigeria as amended. It is a specialized court established for industrial and labour matters. The NICN has original and exclusive jurisdiction over Industrial Arbitration Panel, Registrar of Trade Unions, Decision or Recommendation of any administrative body or Commission of Inquiry, arising from or connected with employment, labour, trade union or industrial relations, etc.¹⁸ The court has jurisdiction throughout the Federation.¹⁹ The court also exercises criminal jurisdiction in all matters it exercises civil jurisdiction.²⁰ NICN as stated earlier is a specialized court with exclusive jurisdiction in labour matters and matters ancillary thereto. The right of appeal in civil matters exists only in connection with fundamental rights arising from or connected with matters upon which the NICN has jurisdiction.²¹ The only other circumstance whereby an appeal can lie from NICN to Court of Appeal shall be by an Act of the National Assembly.²² The prescription of the National Assembly by an Act to enable a litigant appeal is with a proviso that such appeal can only be with leave of the Court of Appeal. This is a departure from the usual legislation and practice whereby it is the court whose decision may be appealed against that application for leave to appeal will first be made and heard. Whereby the application is refused the applicant can then make such application to the Court of Appeal.²³

¹⁴ *Ibid*, See also section 280.

¹⁵ *Ibid*, Section 267 & 282.

¹⁶ *Ibid*, See also section 275.

¹⁷ Section 262 & 277 CFRN 1999

¹⁸ Section 254C (1) (a)-(k), (2) and (4) CFRN as amended

¹⁹ Section 21(1) NIC Act 2006

²⁰ Section 254C (nn 5) CFRN 1999

²¹ Section 243(2) CFRN 1999

²² Section 243(3) CFRN 1999

²³ The Proviso to Section 243(3) CFRN 1999

3. 0 Determination of Courses

At the helm of affairs in the judiciary strata are the judges and magistrates. The power to determine the course or matter brought to the regular court is vested in the judges and magistrates. The period within which judgments will be delivered after conclusion of evidence and final address, and mode of delivery of judgments are spelt in the Constitution. Judgment shall be delivered not later than 90 days after the conclusion of evidence and final address.²⁴ This extended period within which to deliver judgment is an unusually long period for a litigant to wait for an outcome of a concluded course in court.²⁵ This provision *ipso facto* appears to be only applicable to superior courts of records. However same is deemed applicable to inferior courts by practice and procedure of courts in Nigeria.

4.0 Judiciary and Rule of Law in a Constitutional Democracy

The position occupied by an efficient judiciary and her role thereof in a constitutional democracy is germane to maintenance of social order and elevation of rule of law. The judiciary is one of the tripartite arms of government in the constitution. The role of the judiciary is mainly embodied or encapsulated in the judges and magistrates. The function of judges is more than acting as mere umpires in a game who are there to ensure that neither side commits foul. They must direct and control the trial according to recognized rules and procedures and ensure that justice is not only done but is manifestly seen to be done.²⁶ Law exists to achieve justice in a given case. So where the rule of law or procedure is strictly adhered to and absurd result is produced, that is justice according to law. Real and substantial justice in the real sense of it where it must be said that justice has been done objectively has not been achieved or done thereunder. It is absolutely technical and abstract justice that will leave both litigants and the judge(s) disappointed. It is immaterial that the judge handed down the judgment and unconcerned. Judges are concerned: the symbol of justice depicted in the popular statute of justice; *Iustitia* is immaterial. In African society such absurd judgment will ring bell for a long time.

Lord Denning rightly said, “My roof belief is that the proper role of a judge is to do justice between 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 do to avoid that rule – or even to change it – so as to do justice in the instant case before him. He need not wait for the legislature to intervene, because that can never be of any help in the instant case. I would emphasize, however, the word legitimately: the judge is himself subject to the law and must abide by it”.²⁷

The concept of justice is not in abstraction. One ought to feel its impact. A judge faced with the dilemma of rules of procedure that may lead to manifest absurdity will have no alternative than to fall back upon what he considers will meet the justice of the case through some technique of legal reasoning at which some are more adept than others.²⁸ Where he is unable to do this and rely much on technicalities the result may be catastrophic in developing countries like ours.²⁹ Similarly, it had been said that the criterion of judgment must adjust and adapt itself to the changing circumstances of life.³⁰ It must have some life in it thereby bringing to the fore the aphorism that justice should not

²⁴ S. 294 (1) CFRN 1999

²⁵ The trial of Derek Chauvin started on 29th March, 2021 and verdict was passed on April 20, 2021. In Nigeria such a case will last for several years.

²⁶ Role of Judges; Handbook for Criminal Cases, Zimbabwe Legal Information Institution <https://zimillii.org/content/section-1> Accessed 30/4/2021.

²⁷ Lord Denning, *The Family Story* (Butterworth London, 1981) P 174, See also footnote 3 ante.

²⁸ T. A Aguda, *The Crisis of Justice* (Eresu Hills Publishers, Akure 1986) P. 5.

²⁹ *Ibid*, P. 8.

³⁰ Lord Macmillan in *Donoghue v Stevenson* [1932] Ac 562 at p. 617.

only be done, but should manifestly and undoubtedly seen to be done.³¹ Nothing is to be done which creates even a suspicion that there had been an improper interference with the course of justice.³²

The competent and conscientious performance by judges of the duties of their office is the most way to maintain respect for the rule of law.³³ Could this assertion be magnified today in Nigeria and indeed in many African States? Today in Nigeria and indeed in many African States, how much respect do we have for the rule of law? Judiciary has always been viewed as the last hope of the common man against oppression and tyrannical government. Oputa JSC rightly observed when he stated thus, “The judiciary is the mighty fortress against tyrannous and oppressive laws. It is the judiciary that has to ensure that the state is subject to the law. That government respects the rights of the individual under the law. The courts adjudicate between the citizens *inter se* and also between the citizens and the state”.³⁴ This dictum of Justice Oputa appears to have vanished in today’s Nigerian jurisprudence. The hope appears not to exist anymore. *You can go to court*. What an irony of what the system of administration of justice used to be. People used to be afraid of contravening the law, but not anymore.

The delivery of justice in election petition suits appears to be an entirely different ball game. The restoration of the Governor Mutfwang³⁵ of Plateau State as Governor elect of the state and the holding of the Court of Appeal that certain members of the House in the state are disqualified beggars description. It’s a matter ordinarily the court of Appeal ought not to have delved into being an internal or intra party affair. If the Supreme Court rightly held that Court of Appeal had no jurisdiction to delve into the matter, how will the sacked members get justice in the circumstances knowing that they do not have constitutional right to appeal against the judgment of Court of Appeal?

No doubt, there ought and always is much praise for the judiciary in diverse ways. In *Nwanegbo V Oluwole*³⁶ the court has this to say, “clearly whenever the need arises for the determination of the civil rights and obligations of every Nigerian, this provision guarantees to such a person a fair hearing within a reasonable time...Which is synonymous with fair trial and as implying that every reasonable fair minded observer who watches the proceedings should be able to come to the conclusion that the court or other tribunal has been fair to all parties concerned”.³⁷

5.0 Concerned Challenges

Our judiciary and lawyers seem to have failed the common man in the street. The community is disenchanted with the court procedures and unending adjournments. Our courts are so congested that the time for determination of any course in regular court is indeterminate. The judiciary and the courts have always been viewed as the last hope of the common man. This confidence seems to have been lost if not completely to a certain reasonable degree. The resort to violence and jungle justice may not be unconnected with the lost hope in the judiciary and the courts.

So much as there are praises for the judiciary much also needs to be done and urgently too. In Nigeria judicial corruption is no longer an aberration or isolated conduct. It is disturbingly a dominant and recurrent feature of the Nigerian Judicial system.³⁸ He went further; interference with

³¹ Lord Hewart in *Rex v Sussex Justices* [1924] 1 KB 256.

³² *Ibid*.

³³ The Role of the Judge, A Paper delivered at National Judicial Orientation Programme, Novotel Northbeach, Wollongong by The Hon. Sir Gerard Brennan, AC KBE, Chief Justice of Australia on 13th October, 1996. (<https://www.hcourt.gov.au>) Accessed 30/4/2021.

³⁴ C. Oputa, ‘Understanding the Place and Role of the Judiciary in our Society’ cited in *The Judiciary and Democracy in Nigeria*, ed. E Amucheazi and O Olatawura; National Orientation Agency, Abuja 1988 P. 113, cited by J. A Yakubu in *Constitutional Law in Nigeria* (Demyaxs Law Books) 2003 p.317.

³⁵<https://www.vanguardngr.com/2024/01/breaking-supreme-court-reinstates-gov-mutfwang-of-plateau-state>.

³⁶ [2001] 37 WRN p. 101

³⁷ *Ibid*

³⁸K Umana, ‘Problems, Challenges and Failures of Nigerian Judiciary; (<https://researchcyber.com>) Accessed 1/5/2021

the judicial process is so deeply ingrained in the Nigeria culture that politicians continue to influence court proceedings. The observation of Justice Krishna of India judiciary is apt here. He said, “The disease of corruption, in its widest connotation, has affected all parties and even militant organizations although substantial differences in degrees and opportunity may exist. The purity and mentality of the judiciary itself is in jeopardy. A broad consensus on vital values enshrined in constitution and a basic integrity in the instrumentalities and the actors who operate, baffles my grasp.”³⁹ The manner of judicial appointments in Nigeria has almost become a family affair or more profoundly hereditary through affiliation with the government in power. The appointment of any member from such families or with political affiliation is almost always certain.

Beyond the issues of corruption of judiciary either by the executive or some wealthy public there are varying institutional bottle necks that have and will continue to pull down the judicial process save urgent steps are taken. The aphorism that justice delayed is justice denied has been part of Nigeria jurisprudence. The concept of fair hearing is not limited to affording parties all the opportunities available to them in search of justice but also that courses in court are dealt with expeditiously. The longer the course stretches in court the economic value of the result would have diminished so much that most often litigants abandon matters and blame lawyers for not wanting their matters to be concluded in the court.

Fair hearing further presupposes that pursuing a course in the court will not render a litigant bankrupt. If budgets are made by most litigants in Nigeria especially it will in most cases never be enough in the course of litigation. This is because the matters are almost always indeterminate. The level of congestion in the courts is alarming. This is further exacerbated by very poor infrastructure. The judge or magistrate will achieve almost nothing with the present infrastructure and other working conditions. The executive in the government is cruising in a luxurious vehicle from well furnished conditioned office while the judges and magistrates are expected to work from cubicles without air conditioners. What can such a judicial officer achieve in that environment? Surprisingly some of our judicial officers in the lower bench are yet to receive official vehicles long after they were appointed. Fair hearing encapsulates speedy dispensation of justice while issues in a suit are still very much alive.

Another disheartening circumstance is the giving of discordant orders by courts of coordinate jurisdiction over the same subject matter by the same parties and almost at the same time thereto disobedience to court orders by the executive. The first arm is most often seen in political courses where the parties’ forum-shop. If the integrity of the judiciary can be attested to, there would certainly not be need for the politician to forum-shop since the outcome irrespective of the forum will almost always be the same. If it is almost always easy to influence judicial officers, it is also inherent in the person who influences not to obey any order therefrom. The reason is not farfetched. The judicial officer’s worth is quantifiable in monetary terms.⁴⁰ Who pays the piper dictates the tune. This ought not to be so with the judiciary. This has always been a selfless service to humanity in maintenance of societal order and equilibrium. It appears that disciplinary measures put in place have been compromised by the very festering corruption.⁴¹

One other factor which its importance cannot be overemphasized is the independence of the judiciary. Elementary knowledge tells us that there are three arms of government which are independent of each other but work in synergy. The concept of independence appears to be in theory most especially in this country where the executive is the alter ego in all respects after all *you can*

³⁹ K Ayer; Law versus Justice: Problems and Solutions. Deep & Deep 1981 p. 13, cited by T.A Aguda , *Op Cit* p. viii,

⁴⁰ It has to be emphasized that not all judicial officers are corrupt. So it will be wrong to make a blanket or general deductions and apply same to all judicial officers.

⁴¹ The principle of abuse of court process needs to be reviewed. Where the order sought by same parties to a suit is the same sought by another party with the same facts save that there is an addition of a party who is inconsequential and merely added to hoodwink the judge to believe that parties differ, the court ought to declare that such process that is later in time is an abuse of court process. With this discordant orders may be reduced to the barest minimum.

go to court. Securing independence of the judiciary appears to us to be the beginning of securing proactive and strong judiciary. The judiciary cannot generate enough money to meet its needs towards administration of justice. Proper budgeting by the judiciary and its approval by the National Assembly together with disbursement of funds to judiciary without interference of the Executive will enhance administration of justice without interference.

The importance of continuing legal education is limitless. Times have continued to change and one has to be abreast of developments legally and globally. The duties and functions of the judiciary which are personified in the judges cannot be well delivered save they are vast in trends in the changing world of judiciary and administration of justice. Evidence evaluation and sentencing trends around the globe can be understood more through continuous legal education. Except the judiciary is involved in continuous legal education our jurisprudence may continue to lose flavor until the wordings *you can go to court* resonates daily to our detriment.

6.0 Conclusion and Recommendations

We have strenuously been able to avoid the concept of remuneration as part of the challenges affecting justice delivery and administration in Nigeria. Judges and magistrates cannot protest payment howsoever you consider it. Their remuneration is from a special account and not usually dealt with as labour matters. Getting judiciary off corruption may not be an easy task but minimizing corruption will bring about a radical positive transformation in our justice delivery and administration. We recommend reorientation and improved incentives for the justice administrators as well as provision of modern working facilities to aid in the administration of justice.