

LEVERAGING ON THE OMBUDSMAN AS A VERITABLE SYSTEM FOR DECLUTTERING THE COURTS IN NIGERIA*

Abstract

There is a saying that justice delayed is justice denied. This is most applicable in civil cases where facts get distorted by repetitions and delays. Evidences get destroyed by human factors and key witnesses may get deceased while a case is subjudice in court. It is well known that cases pending before the courts in Nigeria are delayed by several factors. The courts are in daunted with so many cases most not making headways because of one issue or the other. Most of these issues include but not limited to the archaic long hand writing by the judicial officers presiding over these courts, constant transfers of judicial officers from one judicial divisions to another without conclusion of cases pending before them resulting to cases starting de novo, lack of adequate funding of the judiciary making court sittings a herculean task in poorly furnished and lit courtrooms, delay tactics by some indolent lawyers etc. Case delays in courts are multifaceted and this article will shed some lights on the ways and means the ombudsman can be successfully leveraged as one of the channels to decongesting the courts in Nigeria.

Keyword: Ombudsman, Courts, Justice, judicial Officers, Delay

1. Introduction

In Nigeria, cases pending in the lower and superior courts have tendencies of being *subjudice* for up to two decades, some without even proceeding from the pre-trial stages before it starts *de novo*, and the cycle continues. It is not strange that while some cases are still pending before the courts, the key witnesses die and evidences disappear from the court possession. This is most tragic in civil cases where oral and documentary evidences are crucial for the amicable resolution of disputes. Some lawyers even go as far as being an engine of delays by filing irrelevant applications upon applications with an end to delay their clients' cases where they predict that the cases are clearly against them. There is no gainsaying that when a person resorts to court, it is with an intention for the case to be resolved speedily one way or the other. But sadly this is not so because most courts in Nigeria is now as slow as the turtle in their dispersion of justice to the common man. Clients and diligent lawyers wallow continuously under this pessimistic situation without resolution. The Ombudsman, it is posited in this article, should be one of such means to be purposely used over this agonizing gloom to reduce this sad situation in administrative proceedings.

2. Meaning and History of Ombudsmen in Nigeria

The word 'Ombudsmen' means appointed by governments to investigate complaints from citizens against large organizations¹ (e.g. public bodies, corporations, and the media). Typically, Ombudsmen have wide-ranging investigative authority, but their punitive powers tend to be limited². An Ombudsman is a government official appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials³. In other words, an Ombudsman is appointed to investigate complaints brought by individuals over the acts and conducts of administrative agencies in the course of their dealings while working for the government. The history of idea of Ombudsmen can be traced back because there are no perfect governmental agencies anywhere in the world that can provide perfect customer satisfaction. No matter how well managed and organized an agency is, there are some minute number of people who are not satisfied. In order to provide solutions to their dissatisfaction and non-contentment or injustice, the ombudsmen becomes an expeditious and formally created means of receiving and processing of grievances or complaints. This governmental agency charged with the responsibility of receiving and processing of grievance or complaint from members of the public against public servants for administrative excesses, abuse of law, and non adherence to procedures and administrative justice is known as the Ombudsman⁴.

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¹ Bryan A. Garner, *The Black's Law Dictionary* (10th ed, St. Paul West Publishing Co) 1260.

² *Ibid*

³ Merriam Webster Dictionary <<https://www.merriam-webster.com/dictionary/ombudsman>> accessed 11 February 2022.

⁴ Oyedele, Samuel O, 'The Ombudsman Bureaucratic Dictatorship and Democratic Rule in Nigeria' (2019). *Journal of Management and Social Sciences*, 551.

Ombudsmen worldwide are empowered to initiate investigations on matters within its competence, in addition to cases brought to it by aggrieved citizens⁵. The power to initiate investigations has proved very effective in curbing cases of repression and maladministration⁶.

The position of Ombudsman was originally created in Sweden in the 1800s. The Swedish parliament appointed an Ombudsman to resolve difficult problems in the absence of the Country's abducted king⁷. Other European states started following the footsteps of Sweden. For example, the institution of Ombudsman was established in Finland in 1919, Denmark created its own in 1955, while in 1961, Norway established her own⁸. No doubt, the Swedish government and other countries that followed suit established the Ombudsmen with the central intent of protecting citizens' rights and privileges.⁹ Their principal objective is nothing more than to initiate investigations on issues within their capabilities which include cases which are brought to their knowledge by aggrieved citizens. In Africa, a number of countries also embraced the establishment of the office of the Ombudsmen and they were granted their independence by inclusion in the Constitution and legislation. For example, it was adopted in Tanzania in 1965 and later adopted by a significant number of African States as an instrument for making government responsible to the governed.¹⁰

By the mid-1980s, Ombudsman like other institution had been established in three other sub-Saharan African (SSA) countries and by 2005, the number of countries that adopted it had risen to 26 and they spread across Central, Eastern, Southern and Western Africa.¹¹ Nigerian being one of the African countries that adopted the establishment of an office of Ombudsmen was not left out of the legal framework. The Public Complaint Commission is the official Ombudsman in Nigeria. The recommendation of the Udoji Public Service Review to examine the organization, structure and management of the public service brought out the establishment of Public Complaints Commission in the year 1972¹². This was accepted by the then Federal Military Government, who established the Ombudsman under the name 'Public Complaints Commission' in 1975 under Decree No. 31 of 16th October, 1975. It was later amended by Decree No. 21 of 1979 and now incorporated into the laws of the Federal Republic of Nigeria as Public Complaints Commission Act¹³. It was given a constitutional status by its establishment by the 1979 Constitution.¹⁴ Following the adoption of democratic rule in Nigeria in 1999, the commission was retained through the Public Complaint Commission Act. The law now also forms part of the 1999 Constitution of the Federal Republic of Nigeria under S. 315(5) (b)¹⁵. Its main objective being to investigate complaint brought by members of the public concerning the administrative action of any public authority and companies or their officials and other matters ancillary thereto¹⁶. The Commission which commenced work on 16th October 1975 is headed by a Chief Commissioner and other State Commissioners, Directors and other supporting staff. In addition, there were five (5) area offices and Abuja offices nationwide¹⁷. The age and qualification of the Chief Commissioner and other State Commissioners were also provided for in the Constitution¹⁸.

⁵Ayo A and Anthony O, 'An assessment of the cases of Ombudsman as a tool for Accountability in Nigeria', [2011] 13(4) *Journal of Sustainable Development in Africa*, 61-71.

⁶ *Ibid.*

⁷Office of the Ombuds, 'What is the origin of the term "Ombuds" and the Profession? University and College Ombuds Association handbook' < <https://ombuds.ucmerced.edu/content/what-origin-term-ombuds-and-profession> > accessed 11th March, 2022.

⁸ Benjamin O. Igwenyi, and Others, 'the Ombudsman in Nigeria: A jurisprudential Overview' *Global Journal of Human Social Science* [2020] (2) (3).

⁹ *Ibid.*

¹⁰Moshood Kayode Lawal, and Others 'The Ombudsman and Redress to injustice on Nigeria: Remedies for Improvement' *Journal of Humanities and Social Sciences*, [2019] (24) (5) 4.

¹¹ *Ibid.*

¹² Ayo Awopeju and Anthony Oyewole, 'An Assessment of the Cases of Ombudsman as a Tool of Accountability in Ondo State, Nigeria' *Journal of Sustainable Development in Africa*, (2011) (13)(4), 62.

¹³ Cap P.37 LFN 2004.

¹⁴ S.274 (5) and (6) CFRN 1979.

¹⁵ By virtue of S.315 of the Constitution which provides for the adoption of existing laws prior to the commencement of 1999 Constitution.

¹⁶ The Preamble of the Public Complaints Commission Act, Cap P. 37, LFN, 2004; E Malami, *Administrative Law* (4th ed), Princeton Publishing Co. 2012), 313.

¹⁷Oyedele, Samuel O. 'The Ombudsman Bureaucratic Dictatorship and Democratic Rule in Nigeria', *op cit*, 6, 5; Public Complaints Commission Act, Cap P. 37, LFN, 2004.

¹⁸ S.1 *Public Complaints Commission Act*, Cap P. 37, LFN, 2004.

3. A Review of Some Prominent Provisions of The Public Complaints Commission Act 2004

A quick glance of Public Complaints Commission Act Cap 37 Laws of the Federation of Nigeria, 2004 under which the Public Complaints Commission was established shows the Act has twelve (12) sections and have the role of improving public administration in the laws, procedures, practices, rules and regulations and standard behavior of officials.¹⁹ We shall now consider some of the provisions of the Act. Section 1 provides for the establishment of the Public Complaint Commission which has a Commissioner as its head and such number of Commissioners as the National Assembly may from time to time, determine.²⁰ The Public Complaint Commission Act may also establish such number of branches of the Commission in the states of the federation as the National Assembly may, from time to time determine²¹. Furthermore, the National Assembly is empowered by the Act to remove a Commissioner from office at any time without more.²² Under S. 5(2) of the Act²³, a Commissioner has power to conduct investigation either on his own volition or following a complaint lodged before him by another person, any administrative action taken by the following:-

- a. Any Department or Ministry of the Federal or any State Government;
- b. Any department of any Local Government Authority (howsoever designated) set up in any state in the federation;
- c. Any statutory corporation or public institution set up by any Government in Nigeria ;
- d. Any company incorporated under or pursuant to the Companies and Allied Matters Act whether owned by any Government aforesaid or by private individuals in Nigeria or otherwise howsoever, or
- e. Any officer or servant of any of the aforementioned bodies.

As can be deciphered above, the Commission has a wide range of power to conduct investigation on its own volition or in relation to a complaint brought before it. Such powers as can be seen even include the power to conduct such investigation on any corporate company whether owned by the government or by private individuals²⁴.

Again, every Commissioner is also expected to investigate, with special care, administration acts which are or appear to be:

- i. Contrary to any law or regulation
- ii. Mistaken in law or arbitrary in the ascertainment of fact.
- iii. Unreasonable, unfair, oppressive or inconsistent with the general functions of administrative organs.
- iv. Improper or based on irrelevant considerations.
- v. Under or inadequately explained or
- vi. Otherwise objectionable²⁵

In addition, a Commissioner shall be competent to investigate administrative procedure of any court of law in Nigeria²⁶Also, when concurrent complaints are lodged with more than one Commissioners, the Chief Commissioner's decision on who handles the matter is final²⁷.

Furthermore, under S.6 (1) (a)-(g),²⁸ a Commissioner has no power to investigate any matter that:

- a. Is clearly outside his terms of reference.
- b. Is pending before the National Assembly, the Council of State or the President.
- c. Is pending before any Court of law in Nigeria.
- d. Relate to anything done or purported to be done in respect of any member of the armed forces in Nigeria.
- e. The complainant has not exhausted all the available legal or administrative procedures in the opinion of the Commissioner.
- f. The complaint has no personal interest.
- g. Relating to any act or thing done before 29 July 1975 or in respect of which the complaint is lodged later than twelve months after the date of the act or thing done from which the complaint arose.

¹⁹ *ibid*

²⁰ S.1 (2) *ibid*.

²¹ S.I. (2) *Ibid*.

²² S.2 (3) *Ibid*.

²³ *Ibid*.

²⁴ S. 5(2) (d) *Ibid*.

²⁵ S.5 (3) (d) *Ibid*.

²⁶ S.5(3)(e) *Ibid*.

²⁷ *Ibid*.

²⁸ *ibid*

Under S.7 (1)²⁹, which deals with recommendations after investigation, a Commissioner may recommend to the appropriate person or responsible administrative agency, after due investigation of any complaint, any of the following steps, that is:

- a. That a further consideration of the matter be made.
- b. That a modification or cancellation of the offending administrative or other acts be effected.
- c. That an alteration of a regulation or ruling be effected.
- d. That full reasons behind a particular administrative or other act be given.

In S.7 (2)³⁰, where appropriate, a Commissioner may refer cases, where he feels that existing laws or administrative regulations or procedures are inadequate, to the National Assembly or the appropriate House of Assembly of a state or any other appropriate person or body. S. 7(3)³¹ provides that in every case where a Commissioner discovers that a crime may have been committed by any person, he shall report his findings to the appropriate authority or recommend that the person be persecuted. And further in S.7(4)³², in every case where a Commissioner is of the opinion that the conduct of any person is such that disciplinary action against such a person be taken, he shall make a report in that regard to the appropriate authority which shall take such further action as may be necessary in the circumstance. As can be deciphered above in Section 7, the Public Complaints Commission has only powers of investigation and recommendation of adequate actions or measures and nothing more. It does not have powers to enforce its investigation. Furthermore, in S.8 (1),³³ which provides for offences and penalties, any complaint lodged before the Commissioner shall not be made public by any person except a Commissioner and any person who contravenes the provision of this subsection shall be guilty of an offence and shall be liable on conviction to a fine of 500 Naira or imprisonment for a term of six months or to both such fine and imprisonment. S.8 (2)³⁴ provides that if any person required to furnish information under this Act fails to do so or in purported compliance with such requirement to furnish information knowingly or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and liable on conviction to a fine of 500 Naira or imprisonment for a term of six months or to both such fine and imprisonment. S.8 (3)³⁵ provides that any person who willfully obstructs, interferes with, assaults or resists any Commissioner or any other officer or servant of the commission in the execution of his duty under this Act or who aids, invites, induces or abets any other person to obstruct, interfere with, assault or resist any such commissioner, officer or servant, shall be guilty of an offence and liable on conviction to a fine 500 Naira or imprisonment for a term of six months or to both such fine and imprisonment. Finally, under S.8 (4),³⁶ on offences and penalties, any person who in respect of any complaint lodged by him knowingly makes to a commissioner any statement whether or not in writing, which is false in any material particular, shall be guilty of an offence and shall on conviction be sentenced to imprisonment for one year without the option of a fine.

4. The Public Complaints Commission and the Way Forward in the Speedy Administration of Justice in Nigeria

No doubt, the public complaint commission as formulated by the Public Complaints Commission Act has obvious advantages which can't be side tracked. However, its advantages will be greatly enhanced upon amendments to some of its provisions most of which will aid in no small measure to the ends of its objectives. It can't be over emphasized that the Ombudsmen and in this case the Public Complaints Commission provides a check on government activities in the interest of the citizens and oversees the investigation of complains of improper government activities in the interest of the citizens³⁷. In Nigeria, the Ombudsmen also act as a 'watch eyes' on the officers of government. Some of the officers out of sheer laziness and misuse of their job specifications purposely refuse to abide with their administrative powers. It is a well known fact that some of these governmental officers over exceed their administrative powers for their own personal aggrandizement. The 'who do you know' factor that goes on in some of the governmental ministries and establishments cannot be ignored. Most citizens have been subjected to these clandestine office monetary extortions just for them to have access to what ordinarily is free to be rendered to them. On this wise, it is proposed in this article that where properly used, the Public Complaints Commission will aid in the speedy administration of justice for the common Nigerians who may not be buoyant and patient enough to have access to the Nigerian courts of law. It is a known fact that access to the

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷Kunle Aina, 'The Relevance of Public Complaints Commission to Nigeria's Democratic Development' *International Journal of Advanced Legal Studies and Governance*, (2012) (3)(3) 2.

courts and being able to engage a lawyer normally bites hard in the pockets and the poor masses may not be able to go through the hurdles and snags of a court case. Again, it is not every case that must go through the whole haul of being a court case; some administrative issues can ultimately be resolved easily where the commission is not complicated and easily accessible to by everybody. The ends of the commission, it is proposed here will be greatly achieved when irritated citizens can go directly to the commission and have their issues resolved and such resolutions can be enforced. As colorful and simple as the above scenario is painted, clearly, going by the Public Complaints Commission Act, it is not possible and obtainable. Why is that so? Obviously because the Public Complaints Commission Act as presently constituted is an investigation agency only, and with powers to only make recommendations³⁸.

Again, S.6 (i) (e)³⁹ provides that a complaint should not be lodged to the commission except all the available legal or administrative procedures are exhausted. In other words, before a complaint can be laid at the Public Complaints Commission, the complainant must have exhausted all legal procedures or administrative procedures, for example, resort to the court of law for resolution of the issue(s). By this section⁴⁰, the Public Complaints Commission clearly is not a first resort to justice or resolution but a last resort. And in this case, a last resort with no power of enforcement. This, it is argued here is against one of the popular sayings which puts the judiciary (courts of law) as the last hope of the common man.⁴¹ As presently provided in the Public Complaints Commission Act, the complainant must have done every legal or administrative procedure before it can then approach the Public Complaints Commission. This it is submitted will not assist in the reduction of lawsuits in our courts of law. What then is the proposed way forward to salvage this position? First of all, the writer proposes that the Public Complaints Commission should have powers to enforce its investigations. A situation where its powers are only to 'investigate and recommend' means it is nothing more than a toothless dog that can bark but not bite. Nobody takes such a dog serious. Its recommendations may even be ignored by the authorities and there's nothing the Commission can do about that. Worst still, any report, statement or other communication or record of any meeting, investigation or proceedings which a commissioner, officer or servant of the commission may make in the due exercise of his functions is privileged in that its production may not be compelled in any legal proceedings unless certified by the Attorney- General to be in the public interest.⁴² In other words, such investigation is not even useful in the law court as court evidence. It is therefore proposed that an amendment of the Public Complaints Commission Act should be made to accord the commission authority to implement its decision when it concludes its investigation. It is a waste of administrative power that such a high rated commission granted power to investigate cases of corruption and political ineptitude etc can only make recommendations at the end of its investigations. It is a noteworthy that under the Arbitration and Conciliation Act⁴³ it is provided thus: 'An arbitral award shall be recognized as binding and subject to this section and section 32 of this Act, shall, upon application in writing to the court, be enforced by the court'.

5. Conclusions and Recommendations

There is no gain saying that the Ombudsmen operate as the watch eyes of government activities. Its importance in Nigeria cannot be over- emphasized but as can be gleaned from this write up, such an important commission in Nigeria is inundated with situations that when tackled will make its activities useful in the reduction of pending cases in the courts of law. It is not every issue that will get to the courts if some sections of the Public Complaints Commission Act are amended. In the light of bringing solutions to the issues as highlighted in the abstract, it is respectfully submitted and recommended as follows:

It is proposed by the writer that recommendations by the commission upon completion of their investigation, just like arbitral awards, under the Arbitration and Conciliation Act can be enforced as a court order when the High Court is resorted to by the complainant(s) where it is in their favour. This will greatly enhance the seriousness of the investigation of the commission wherein it can bark and also bite. The pending cases unresolved in courts will also reduce as complaints can be resolved finally by the commission. Again, it is recommended that there should be an amendment to the above stated S.6 (1) (e), that is, the provision of the Act that states that a complaint should not be lodged to the commission except all the available legal and administrative procedures are exhausted by the complainant. It is the writer's opinion that this section should be totally removed from the Public Complaints Commission Act. One then wonders, where a complainant has resorted to all legal and administrative procedures,

³⁸ S.7 *ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Editorial, 'The Judiciary, Common Man's Last Hope', Vanguard Newspapers, <https://www.vanguardngr.com/2019/03/the-judiciary-common-mans-last-hope/> accessed 14th March 2022.

⁴² S.10 (2) *ibid.*

⁴³ S. 31, *Arbitration and Conciliation Act* (Cap. A18).LFN, 2004.

whether such a complainant will still be motivated to approach the Public Complaints Commission, even when such a commission can only recommend and advice, after its investigation and nothing more. It is hereby suggested that any complainant should be allowed to approach the Public Complaints Commission without resorting first to any legal or administrative procedure. This will also lead to the reduction of the work load in the courts.

Further, the Public Complaints Commission should be widely advertised in the media. There should be TV jingles on its objectives such as is done by the National Drug Law Enforcement Agency (NDLEA), National Agency for Food and Drug Administration and Control (NAFDAC), etc. The social media should be used to disseminate its functions so that the citizenry can reap its benefits. It is appalling that such a necessary commission is not widely known in Nigeria when it has branches in all the states of the federation. The awareness campaign, it is suggested, should be geared towards making the citizens aware of its existence and functions as well as it relates to their activities. More still, S.8⁴⁴ which deals with offences and punishments should be amended with immediate effect. The payment of 500.00(Five hundred Naira) or six (6) months term of imprisonment upon conviction is laughable in the present Nigeria. The sum payable as a sanction should act as a deterrent to intending offenders. It is proposed that the sum be amended and increased to N200, 000.00 (Two Hundred Thousand Naira).

Furthermore, the provision of Ombudsman in Nigeria, that is the Public Complaints Commission, should be embraced as a veritable means of resolving administrative acts instead of constantly resorting to the courts, as a means of clearing out cases in the courts. S.6 (i) (e) of the Public Complaints Commission Act which provides that a complaint should not be lodged to the commission expect all the available legal and administrative procedures are exhausted by the complaint, be totally expunged from the Act. There should be an amendment of the Act that any such recommendations made under S.7 (1) of the Public Complaints Commission Act, upon completion of investigations by the commission, can be enforced as a court order as obtainable in the Arbitration and Conciliation Act under Arbitral awards. This will ensure that the commission is not reduced to a toothless dog that can only bark but not bite. There is need for wide publicity on the objectives and function of the Public Complaints Commission especially using the social media and TV jingles. This will greatly lead to increased public awareness on its benefits which are hitherto unknown to many people. Finally, S.8 of the Public Complaints Commission Act which deals with offences and punishments should be reviewed to bring it in line with the realities of our time, to enable it act as a deterrent to intending offenders. It is recommended that the sum of Five hundred Naira provided therein be increased that the sum of Two hundred thousand Naira.

⁴⁴*Ibid.*