

THE ROLE OF MAGISTRATES AND CUSTOMARY COURT JUDGES IN NATION BUILDING SAFETY AND SECURITY.

BY: DR MUIZ ADEYEMI BANIRE ON THE 11TH DAY OF DECEMBER 2023.

Before delving into the substance of discussion, I consider it apt to define or describe who the dramatist personnel in the topic are that is, who are the Magistrate and who are the Customary court judges.

By the Magistrate Law of Lagos Law of Lagos State which I shall use, section 4 precisely, the Magistrates are those appointed for the purpose of adjudication in both civil and criminal with certain threshold at the lower level.

Similarly, by section 5 of the customary court law of Lagos state, Customary Judges are those appointed for the purpose of administration of customary laws and local government matters and Bye laws passed by the Local Government, enforcement of Bye laws passed by the local government up to certain threshold. Essentially therefore, the categories of habitats, do practically the same thing except for the delimitation of their jurisdiction. It is important to know who then eligible people for appointment into these positions are. By section 4(2) of the Magistrate Court Law, they are legal practitioners of not less than 5 years post call with relevant experience. From the provision of the law, that is all that is required to become a Magistrate while by section 5 of the Customary Court Law, a person who can become member of the Customary Court must be a person of proven character and good standing in the society. He must be a person of adequate means, must be properly placed by his circumstances to perform the function as a member of the customary court, must be a person with educational qualification not below school certificate and lastly, must have attained the age of 50 years.

By the foregoing, it will seem that to a large extent, the prerequisite to become a Customary Court Judge is much more strenuous than becoming a Magistrate. But be that as it may, one wonders what has adequate means got to do with competence and integrity? This, we believe ought to be reviewed.

On the contrary there appear to be no provision for integrity or character as a vital component of being an arbiter in the recruitment of Magistrates. Strangely, by virtue section 6(3) of the Magistrate Court Law in naming the Chief Magistrate that will become designating Magistrate, competence and integrity becomes a prerequisite. I then wonder if somebody who lacks such qualification at the entry level can suddenly now acquire such! This is my general observation as far as the letters of the Law is concerned. Beyond the Law, except we want to pretend adherence even to the dictates of the Law is a challenge as political interference has taken the upper hand. I would have expected that in the recruitment process a list of short-listed candidates are even advertised for the purpose of verifying their integrity with this disposed what then are the roles of the respective officers, the Magistrates and the Customary Court judge? This can only be from the Law setting up the offices.

In terms of the roles, it is as for the Magistrates as specifies under sections 28 and 29 of the Magistrate Court Law which deals with the civil and criminal jurisdiction of the Magistrate Court. This is where the Magistrates roles are embedded. Essentially, in all ramifications, their jurisdiction does not exceed the sum of ₦10,000,000.00 (Ten Million Naira) while for the criminal jurisdiction, it is as specified in section 29 of the Magistrate Court Law. They are matters relating to Personal Income Tax, environmental sanitation, lotteries, urban and regional planning e.t.c.. However, a Magistrate cannot sentence a person to a prison term of more than 14 years (Fourteen Years), and of importance is the Administration of Criminal Justice Law which confers additional jurisdiction. These are all the roles of the Customary Justice. Section 22 of the Law provides for the roles they can play as specified in part 1 of the First schedule to the said Law and this relate to customary law, matrimonial matters, guardianship and custody under the customary law, inheritance upon intestacy and administration of intestacy under customary law of ₦500,000.00 (Five Hundred Thousand Naira) and matters involving Bye Laws of Local Governments not exceeding ₦500,000.00 (Five Hundred Thousand Naira) as involving Bye-Laws of Local Government except for contempt proceeding it does not appear in their customary court have jurisdiction in criminal matters or have jurisdiction in the enforcement of any criminal rules.

In summation, both Magistrate and Customary Court Judges play the role of Arbiters at the grassroot level because they are closest to the people and most of the issues that bothers on the populace are within their jurisdictions for example tenancy, recovery of possession. They are saddled with majority of the enforcement or conflict resolution issues. In addition, most criminal matters fall within the jurisdiction of the Magistrate thereby burdening them with the adjudication or administration of criminal justice.

Consequently, they are the primary point for the enforcement of law and order at the grassroot level which is the foundation of greater societies to a large extent they also assist in the maintenance of coercion above the grassroot people. It can be categorically stated that without peace at the grassroot level there cannot be National development. In other words, if anarchy rise at that level the center certainly cannot hold so, except there is enforcement of the law safety of any of person and cannot be guaranteed as the society will be the reminiscence of a jungle. thus, it is because the law is being upheld by the Magistrate and Customary court justices that human beings behave themselves otherwise there would have been a return to the obedience state of Thomas Hobbes. Similarly, what the rule is being upheld, security to a large extent will be guaranteed. Thus appreciating the vital role the Magistrate and Customary Judges play in the maintenance of law and order in the society. Recall that majority of the criminal cases are handled by the Magistrate and Customary Court Judges. With this in mind, the crucial question is how we regard and treat the occupier of this office in the light of the onerous responsibility placed on them above? This is the crux of our conversation today.

The beginning of the woes of the Magistracy and Customary court lies in the faulty and abusive recruitment process. As at date, we seem to have lost compliance with due process as the appointment procedure is largely interfered with politically. In some other states, corruption has contaminated the appointment process, the consequence of this is that we now found incompetent people being appointed coupled with the fact that some of them are outrightly corrupt. They engage in the

subversion of justice there by polluting the good ones. This is the first bane of the Magistrate and the Customary court in the perception of the people.

The second affliction is infrastructural deficit most of the supposed courts they use are ramshackle structures most, whether beaten with several leakages in fact, in some other jurisdiction roof already blown off short of saying that they administer justice under the trees.

Where there appears to be some semblance of court rooms, they are poorly ventilated with accidented prone benches at times no table provision or stationery and other office equipment remains a luxury. This is the state of most Customary and Magistrate courts. In addition, in the wake of the epileptic power supply, no alternative mode of powers provided. They are simply treated as the dregs.

WELFARE

In terms of welfare, their remuneration certainly cannot take them home an average Magistrate for example takes home about N215,000.00 (Two Hundred and Fifteen Thousand Naira) and maybe the highest is paid about N500,000.00 (Five Hundred Thousand Naira). There is no provision for them unlike the judges for accommodation, they are not given houses not even "rent to own", in some other states, no provision for transportation and they are struggling with criminals in buses endangering their lives. They receive a meagre sum of N35,000.00 (Thirty-Five Thousand Naira) for impress which I perceive should cover for paper and ink. Library for them will be a luxury.

CAREER PROGRESSION

The career progression is substantially within their own circle of Magistracy. In other words, getting elevated to the higher bench is like passing through the eye of the needle particularly if they are not the Chief Magistrate the probability is virtually lean. Notwithstanding, that such person has spent more than 10 years (Ten ears) on the lower bench. This is certainly unfair as private practice done out of 10years are appointed. This certainly needs improvement in a lot of jurisdictions particularly Lagos State.

My very strong view is that the Magistrate ought to be prioritized in the appointment of Judges. Again, that process ought to be insulated from politically interference again, rather than have multiplicity of Magistrate and Customary Judges having few well paid and well catered one will serve the end of justice particularly where there are no corresponding infrastructure. If it is now impossible to absolve most of them by way of elevation, is the time not ripe to scrape a full cadre for the Magistracy up to having an appellate level thereby relieving the High court of the burden from them.

I also believe that the appellate court might have to change from Magistrate to maybe District judges so as to also confer some measure of dignity on them.

Of vital importance also is the need as a matter of urgency to increase retirement age to minimum of 65years if not 70 years particularly in the light of the increment of the High Court judges which substantially seal the hope of majority of them as their might be no vacancy for quite a while.

Finally, in view of the contending rise of businesses, devaluation of the county's currency, a review of the scope of the jurisdiction might be necessary to 20-25 Million to accommodate more cases.

NOW CAPACITY BUILDING

The development of the capacity of the Magistrate that cannot be overestimated particularly by the stakeholders continuous training and retraining is very important particularly by the actors.

Now to also enounce the status of the Magistrate, a Magistrate/High court report should be developed to encourage them to write strong rulings for people to read them and be able to identify those of distinction.

Tagential to this, is the need to dispense with police prosecutors even where they are Lawyers. They have proven to be more of liability to the system than asset. They contaminate the processes and also largely account for the negative perception of the lower bench.

The Attorney General might want to address this which I know has been on the table for some time. These are some of the urgent areas of attention we need to deal with.