"O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relatives. Whether one is rich or poor, Allah is more worthy of both." *[Quran, 4:135].*

"You shall do no injustice in court. You shall not be partial to the poor or defer to the great, but in righteousness shall you judge your neighbour" Leviticus 19:15.

"Do not pervert justice; do not show partiality to the poor or favouritism to the great, but judge your neighbour fairly" Psalm 33:5.

INTRODUCTION

May it please My Noble Lords, I am Dr. Muiz Banire, SAN. I appear for Your Lordships. All other courtesies fully observed.

Having announced appearance as "counsel representing Your Lordships", I believe I am most confident to talk on the topic of today which is *The Challenges of the Judiciary in Contemporary Nigeria*. This gentle persuasion is necessary to mask my uneasiness in discussing the topic considering the unpalatable state of the judiciary in Nigeria as an arm of government and the indispensability of Judges in the business of government. My uneasiness stems from the fact that the state of the judiciary in Nigeria is neither exciting nor enticing, and an honest speaker on a topic of this nature cannot pretend that all is well with or about the judiciary. The prepositions "with" and "about" used in the previous sentence are carefully chosen, and the essence shall be demonstrated anon.

[1] Being text of a paper delivered by Dr. Muiz Adeyemi Banire, SAN, Principal and Founding Partner, M. A. Banire & Associates at the Annual Judges' Conference of Ogun State Judiciary on the 28th day of September, 2021.

On this note, I must first thank the organisers of today's event for considering it worthy that we x-ray the challenges confronting the judiciary in Nigeria knowing that the confidence the mass of our citizens and foreigners who choose the shores of our country for business or social visit, can have in our judiciary can only be as robust as the capacity of our courts to dispense justice and the quality of justice being dispensed.

However, upon the receipt of the invitation and seeing the topic, my initial reaction, considering the audience I am to address, was like an attempt to ridicule me. How in this circumstance does one preach to the converted? My Lords constitute the bastion of the judiciary and, therefore, are in the vantage position than my humble self to detail out the challenges confronting it. Consequently, I take the invitation to mean that of converting me into a spokesman on this occasion to re-echo what is of common knowledge to all stakeholders in the judiciary. By this, I mean that the challenges of the judiciary in contemporary times are simply a case of *res ipsa loquitor*.

As the third arm of government that is saddled with the interpretation of the law and the preservation of liberties, the judiciary in Nigeria has grown and transformed over the ages. Its impact on the affairs of man has become indispensable, both in the preservation of sanctity of contract, remediation of injury, regulating relationships among government, its agencies and governments and in all other spheres. Hence, in doing justice to this paper, we shall be discussing it under various sub-heads in the following: Part I shall be dedicated to a brief history of modern judiciary in Nigeria while in Part II, we shall review the constitutional position of the Nigerian judiciary. In Part III is where we shall critically lay out the meat of this lecture which x-rays the challenges confronting the judiciary in contemporary times while in Part IV, we shall attempt to proffer solutions to the challenges as a concluding part of this engagement.

Part I: Brief History of Modern Judiciary in Nigeria

The history of the modern judiciary in Nigeria can be traced to the colonial intervention in our local lives. That is not to say that the traditional ways and structures of adjudication were not in existence before the advent of the Europeans,[2] but the introduction of English law into Nigeria was a consequence of British rule with several Ordinances promulgated by the colonial governments.[3] Before the 19th Century, British and other foreign merchants, trading along the coasts of West Africa were forced to settle disputes with indigenous traders at the local traditional courts. These foreigners were not satisfied with justice dispensed in accordance with the customary laws of the areas of trade and hence, the British Government, in 1949, appointed Consuls for the purpose of regulating trade between the British and the indigenous merchants. The Consul's jurisdiction extended over Dahomey to the Cameroons thereby covering the entire coastal parts of what later became Nigeria.[4]

However, according to George Otunba-Payne,[5] the first Registrar of the Supreme Court, in January, 1862, a Police Court was established in Olowogbowo, Lagos. In what the British colonial government shortly thereafter tagged an effort towards providing "for the better Administration of Justice within the settlement of Lagos", by Ordinance No. 3 of 1863, a Court was established named "the Supreme Court of Her Majesty of Lagos".[6] This Court was presided over by a Chief Magistrate or his appointed Deputy and it was this Ordinance No. 3 of

[2] See Obilade, A. O. The Nigerian Legal System, Spectrum Law Publishing, 2003 (Reprint), p. 17.

[3] Elias, T. O., British Colonial Law, A Comparative Study of the Interaction Between English and Local Laws in British Dependencies, p. 18.

[4] Ibid, @ page 2.

[5] See George Otunba-Payne, Table of Principal Events in Yoruba History, 1893, page 12.

[6] See The Supreme Court of Nigeria, An Historical Sketch, preface to each volume of Nigerian Supreme Court Cases (Deji Sasegbon, ed),

1863 that introduced English law broadly into Lagos, and this is the body of laws generally administered in the practice of the English Court. Thus, it can be easily and convincingly concluded that this Ordinance introduced the rules of common law and the rules of equity as developed by the English common law courts and the English Chancery courts.[7] By Section 1 of the said Ordinance, the statutes in force in England on the 1st day of January, 1863 were made applicable in Lagos. The statutes were to be applied subject to the limitations permitted by local circumstances.

Following several other Ordinances[8], and until the enactment of the Supreme Court Ordinance No. 6 of 1914 which made the English law applicable to the whole of Nigeria upon the amalgamation of the various parts, statutes in force in England at different dates, the rules of common law and the doctrines of equity were incorporated into the laws to govern Nigeria as a colonial territory. It was by this Ordinance that a prototype of a Supreme Court having appellate jurisdiction over the Provincial Courts and the Native Courts came into existence.[9] The 1933 establishment of the High Courts, the Magistrates Courts, the reconstituted Native Courts and the West African Court of Appeal which was established in 1928[10] "culminated in the Supreme Court (Amendment) Ordinance No. 46 of 1933"[11] by which, with the hierarchical structure, the West African Court of Appeal became a higher Court. The Supreme Court Ordinance No. 33 of 1943 made the Supreme Court to have a coordinate jurisdiction with the High Court of

---

[7] See Jegede, M. I., Principles of Equity, Ethiope Publishing Corporation, 1981, p. 1.

[8] See Ordinance No. 4 of 1876; Supreme Court Proclamation No. 6 of 1900 which established the Supreme Court of the Southern Protectorate; Supreme Court Proclamation No. 4 of 1900 which established the Supreme Court of the Northern Protectorate; Ordinance No. 17 of 1906; Ordinance No. 3 of 1908.

[9] See Sasegbon, (supra) at page 2.

[10] See the West African Court of Appeal Order in Council, 1928; Obilade, (supra) at page 30.

[11] Ibid.

England and a superior court of record for the whole country called Nigeria. Appeals from the West African Court of Appeal lay to the Judicial Committee of the Privy Council by virtue of the West African (Appeal to the Privy Council) Order in Council, 1930.

Upon the adoption of quasi-federal constitution in 1952 and the regionalisation of the judiciary in 1954, a Federal Supreme Court, which replaced the West African Court of Appeal, came into existence. A High Court and Magistrates' Court were also established in each region of the country and the Federal Territory of Lagos.[12] The various laws establishing all these courts preserved the application of the statutes in force in England on the 1st day of January 1900, the rules of common law and the doctrines of equity to be applicable subject to local circumstances and this state of affairs persist till date.

The implication of the limitation as regards the local circumstances can be seen from the provisions of the various ordinances introducing English law into Nigeria which compelled the observance and enforcement of the people's native laws and customs[13] by the various courts established by the colonial governments. Thus, every High Court has provisions in its Laws that enjoin the observance of native laws and customs of the people of the areas subject to rules of repugnancy to natural justice, equity and good conscience on one hand and incompatibility with any law in force for the time being[14] on the other hand. In addition to the above are provisions applying the received English laws.[15]

By the 1960 Independence Constitution, the court system basically remained the same with the Judicial Committee of the Privy Council

[12] See Jegede, M. I. (supra) at page 2.

[13] For instance, Ordinance No. 4 of 1876.

[14] See, for instance, Section 13 (1) of the High Court Law of Ogun State, Laws of Ogun State of Nigeria, 1978; and Section 13(1) of the Laws of Osun State of Nigeria, 2002.

[15] For instance, Section 14 of the High Court Law of Osun State and Section 14 of the High Court Law of Ogun State.

remaining the highest court of the land. October 1, 1963 birthed a new Constitution which abolished the monarchical government of Her Majesty in Nigeria and made Nigeria a republic. This led to the judicial Committee of the Privy Council being abolished as the highest court in Nigeria. A new Supreme Court came into being with the abolition of the Federal Supreme Court.

The above structure was retained till 1976 when the Court of Appeal was established as an intermediate appellate Court between the High Court of a State and the Supreme Court.[16] This is the structure retained till date under the 1999 Constitution of the Federal Republic of Nigeria, 1999 (as amended).

PART II: CONSTITUTIONAL POSITION OF THE JUDICIARY

The doctrine of separation of powers is well entrenched in the constitutions of many nations of the world the reason being that powers should not be concentrated in one organ of government so as to avoid arbitrariness and tyranny. This doctrine was developed by English writers and controversialists of the 17th Century who vociferously canvassed for the need to separate legislative powers, executive powers and judicial powers, one from another.[17] According to John Locke who first developed this theory in his *Second Treatise of Civil Government* (1690), the power of the state should be divided into three (3) different factions namely; legislative power (which he considers sovereign), executive power and the federative power.[18] Montesquieu

[16] See the Constitution (Amendment) (No. 2) Decree No. 42, 1976.

[17] See Colin Turpin, British Government and the Constitution, Text, Cases and Materials, 2nd Edition, 1990, pp. 42 – 54.

[18] See Dr. Chukwuma John Nnaemeka, Separation of Power in John Locke, A Critique, an article published online at http://www.internationaljournalcorner.com/index.php/ijird_ojs/article/viewFile/128667/89240 and accessed on 27/08/2021 at about 3.09 pm.

in *The Spirit of Law* (1784)[19], advocated that the powers of law making, execution of the law should be vested in two different persons and the judicial powers should be separately vested in another person. By this he advocated for the independence of the judiciary and concluded that "All would be lost if the same man or the same ruling body, whether of nobles or of the people, were to exercise these three powers, that of law-making, that of executing the public resolutions, and that of judging crimes and civil causes."

The above doctrine has been enshrined in the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter referred to as "the Constitution" or "the 1999 Constitution"). By Section 4, the legislative powers of the Federation are vested in the National Assembly and the legislative powers of the State are vested in the States' Houses of Assembly. Section 5 of the Constitution vests the executive powers of the Federation in the President while the executive powers of the State are vested in the Governor of the State. In furtherance of guaranteeing clear separation of the judicial powers from the previous powers of state, Section 6 of the Constitution vests the judicial powers of government in the courts[20]. The said powers of adjudication, subject to limitations contained in Section 6(6)(c) and (d)[21], are to extend,

a. notwithstanding anything to the contrary in the Constitution, to all inherent powers and sanctions of a court of law;
b. 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 persons."[22]

---

[19] The Spirit of Laws, Book XI, Ch. 6.

[20] Section 6(1) and (2) of the Constitution.

[21] These are the non-justiciable provisions of Sections 13 – 24 of Chapter II of the Constitution and "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 such law."

[22] Section 6(6)(a) and (b) of the Constitution.

The above provision of Section 6(6)(a), with respect to inherent powers of a court of law established by the Constitution, has been interpreted in *Nwaogu v. Atuma (No. 2)*[23] to mean such powers that are "inborn in the court" and "enables the court to deal with diverse matters over which it has intrinsic authority such as procedural rule making, regulating the practice of law and general judicial housekeeping." It has further been described as "powers which enable it (the court) effectively and effectually to exercise the jurisdiction conferred upon it."[24]

The Courts in which these powers are vested are detailed out in Section 6(5) of the Constitution to be the following:

a) the Supreme Court of Nigeria established pursuant to Section 230 of the Constitution;
b) the Court of Appeal established pursuant to Section 239 of the Constitution;
c) the Federal High Court established pursuant to Section 249 of the Constitution;
d) the High Court of the Federal Capital Territory, Abuja established pursuant to Section 255 of the Constitution;
e) the Sharia Court of Appeal of the Federal Capital Territory, Abuja established pursuant to Section 260 of the Constitution;
f) the Customary Court of Appeal of the Federal Capital Territory, Abuja established pursuant to Section 265 of the Constitution;
g) a High Court of a State established pursuant to Section 270 of the Constitution;
h) a Sharia Court of Appeal of a State established pursuant to Section 275 of the Constitution;
i) a Customary Court of Appeal of a State established pursuant to

---

[23] *Nwaogu v. Atuma (No. 2)* [2013] 9 NWLR (Pt. 1358) 182 @ pages 193 – 194 paras F - D; See also *Prince Yahaya Adigun & ors v. A.-G., Oyo State* [1987] 4 SC 272 at 277, [1987] 2 NWLR (Pt. 56) 197.

[24] (Supra)

Section 280 of the Constitution;

j) such other courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and

k) such other court as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.

The idea of separation of powers in the constitutional role of the court in reviewing the exercise of power by public authorities can best be appreciated at the instance of private individuals whose interests are or may be affected. It is in this context that it is easier to appreciate the essence of separation of powers with respect to the rule of law.[25] According to Tom Bingham,[26] the principle of supremacy and independence of the law distinguishes the rule of law and requires acceptance of the principle of the separation of powers, which is the idea that the law applies to all, including the sovereign, and that there must be provisions for an independent institution, such as a judiciary, to apply the law to specific cases.

However, the notion of separation of powers, as desirable as it is, does not yield to rigid theoretics or application as there are many instances that such separation becomes blurred. There must be interaction and overlap occasioned in some instances as cases of executive legislation,[27] judicial legislation[28] or administrative adjudication[29] which cannot be

---

[25] See R. M. Unger, Law in Modern Society, 1977, p. 177.

[26] T. Bingham, The Rule of Law 3 et seq. (Allen Lane Penguin 2010); Ricardo Golsabo-Bono, "The Significance of the Rule of Law and Its Implications for the European Union and the United States", University of Pittsburgh Law Review, Vol. 72, page 231.

[27] For instance, the power of the executive authorities to make rules and regulations pursuant to specific enabling laws. See *FRSC v. Ofoegbu* (2014) LPELR-24229(CA) pp 36 – 37.

[28] Powers of Heads of Court to make Rules of Procedure as preserved in Section 236, 254 and 272 of the Constitution.

[29] Powers vested in administrative bodies to sit in quasi-judicial capacities.

totally dispensed with.

However, in dispensing its constitutional role as indicated above by the Constitution and opinions of jurists, the judiciary is confronted with certain challenges which are inhibiting its performance. Such limitations or challenges are not peculiar to Nigeria but we shall, in this paper, be primarily concerned with the Nigerian judiciary and the atmosphere under which it is operating while we may refer to such challenges in other jurisdictions as may highlight the universality of such challenges and the approach adopted towards overcoming them.

PART III: CHALLENGES CONFRONTING THE JUDICIARY

The contemporary Nigeria has presented a number of challenges to the judiciary. It is with a big sigh of relief that this topic is being treated under a civil regime otherwise the context would have been more difficult and fearsome if it were under a military regime with the tyranny of which the judiciary has experienced in this country for more than twenty-nine years of the country's sixty-one years as an independent nation. I chose the expression "civil regime" carefully bearing in mind that I am supposed to be addressing this issue under a democratic dispensation. However, such relief cannot be appropriated to the present context in the sense of the current happenings in the nation the details of which shall be addressed anon.

However, papers of this nature are usually dedicated in a small part to conceptual clarifications which we consider appropriate here in order to understand the key words and the context in which we are going to be addressing the topic. Hence, we shall undertake a brief description, and not definition, of the following words, namely "challenges", "contemporary" and "judiciary" considering the natural tendency for inaccuracy in meanings of words as explained by Niki Tobi, JSC of blessed memory[30] thus:

[30] Olafisoye v. FRN [2004] 4 NWLR (Pt. 864) 580 at 647, paras E.

> Definitions of words, including ‘federalism’ or a federal government, by their nature, concept or content, are never fully accurate all the time, like a mathematical solution to a problem. Definitions are definitions because they reflect the idiosyncrasies, inclinations, prejudices, slants and emotions of the person offering them. While a definer of a word may pretend to be impartial and unbiased, the final product of his definition will, in a number of situations, be a victim of partiality and bias.

Contextual Clarifications

Challenge

The word “challenge” has been described by The New Webster’s Dictionary of the English Language[31] to suggest

> /n/ a question called out by a sentry to halt someone approaching and check his right to be there // a calling in question (of the truth of statements, rights, authority etc.) // something which tests a person’s qualities // a calling out to a duel // an invitation to play a game or accept a match // an objection made against someone in respect of his qualification to vote, serve on a jury etc.

On the other hand is the Black’s Law Dictionary[32], which describes the word “challenge” as

> 1. An act or instance of formally questioning the legality or legal qualifications of a person, action, or thing…

Based on the above descriptions, we can surmise that a “challenge” is something that halts one’s progress or curtails one’s smooth efforts in accomplishing a goal. To this extent, we can say that a challenge to the judiciary in this instance should be seen as an impediment to the judiciary in the performance of its functions and which questions its

---

[31] International Edition, Revised and Updated in 1994 at page 162.

[32] Black’s Law Dictionary, 11th Ed. (Brian A. Garner Ed) page 287.

competence to administer justice.

Contemporary

Another critical word in addressing this paper is the word "contemporary" which according to The New Webster's Dictionary of the English Language[33] is described as

> 1. adj. belonging to the same time, contemporaneous //(pop.) modern, contemporary furniture 2. N. pl. contemporaries a person living at the same time as another, he was my contemporary at college // a person of the same or nearly the same age as another…

The above description of the word "contemporary" can simply be utilised in the context of what is "modern" which means that the challenges to be considered herein are those being faced by the judiciary of modern times and not necessarily in the past save and except as such challenge may be relevant in modern times. In this wise, we shall consider the challenges of modern judiciary in the following context.

Judiciary

The word "judiciary" has been described by Collins Dictionary as "*the branch of authority in a country which is concerned with law and the legal system.*"[34] The above description being somewhat colloquial, it is considered imperative to look at other lexical definition of the word "judiciary" and in this wise we turn to the American Dictionary which describes the word "judiciary" as "the part of a country's government that is responsible for its legal system and that consists of all the judges in its courts of law."

---

[33] International Edition, Revised and Updated in 1994 at page 211.

[34] https://www.collinsdictionary.com/dictionary/english/judiciary accessed on 03/09/21 at about 3.50 pm.

A critical question to ask is can the meaning of the word "judiciary" be limited to only the judges as far as its components are concerned or does it extend to such officials of court like the registrar and others? In this regard, solace may be found in the content of the Black's Law Dictionary which defines the judiciary to mean "a system of courts"[35] by which it may be inferred that the entire system of courts cannot be limited to judges alone but inclusive of other offices that make up the system.

The efforts above are to give context to our discussion about the institution concerned and why it is important to understand the involvement of non-judges but who work in the judicial sector, in the struggle for the betterment of the judicial system.

INDEPENDENCE OF THE JUDICIARY

We must state from the outset that central to addressing the challenges confronting the contemporary judiciary is the need to understand the importance of the concept of the independence of the judiciary. A strong pillar for the prevalence of rule of law is the independence of the judiciary. It is only in the presence of an independent judiciary that the confidence of the public can be sustained in the administration of justice. The idea of "rule of law" or "supremacy of law is regarded as part of modern democratic system of governance. According to Dicey,[36]

> The rule of law means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, or prerogative, or even of wide discretionary authority on the part of the

[35] Black's Law dictionary, 10th Edition, at page 997.

[36] The Law of the Constitution, pp. 202 – 3. See also Colin Turpin, British Government and the Constitution, Text, Cases and Materials, 2nd Edition, 54 – 55.

> government. Englishmen are ruled by the law, and by the law alone; a man may with us be punished for a breach of law, but he can be punished for nothing else.
>
> It means, again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts; ‘the rule of law’ in the sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals. (Emphasis ours)

Of fundamental importance, if other branches of government would not be allowed to assume the status of a monster, is to ensure the existence and independence of the judicial authorities “so that their decisions are reached in accordance with law and not in submission to the wishes of government or upon other extraneous considerations.”[37] To this extent, we shall treat the challenges confronting the modern judiciary from the perspective of independence without which nothing is guaranteed. Thus, we shall adopt the statement of principle as recently espoused by W F B Kelly in his paper, *An Independent Judiciary, the Core of the Rule of Law*[38] thus:

> All systems should be capable of providing impartial judges and an independent judiciary if the country concerned incorporates the UN’s Basic Principles into its constitution or laws, and implements them. Specific principles to be upheld are:
>
> - The separation of powers: The judiciary must not have any contact with political parties—especially the party in power—and must limit contact with the executive

[37] See Colin Turpin, British Government and the Constitution, Text, Cases and Materials, 2nd Edition, 65.

[38] Published at https://gsdrc.org/document-library/an-independent-judiciary-the-core-of-the-rule-of-law/ accessed at about 1.59 pm on 28/08/2021.

branch to security, financial and administrative matters

- Security of remuneration: The salary of judges should be fixed and secure
- Guaranteed tenure until retirement or expiry of office: Judges should only be removed or suspended for reasons of 'incapacity' or 'behaviour that renders them unfit to discharge their duties'
- An open court: Members of the public should have the right to enter the court at any time a trial is in progress and have access to decisions. Guidelines and principles should be applied to the media about what they can report in order to ensure a fair trial
- An imperative to communicate the law to the public
- A judicial appointment process that is fair: The selection of judges should be made from people with 'integrity' and 'ability', with 'appropriate training and qualifications' and without discrimination.

This encapsulates the thoughts around independence judiciary and some of which we shall address in the course of this engagement in discussing the challenges confronting the modern judiciary and in proffering solutions to the challenges. Thus, we must bear in mind from the onset that anything that impairs the independence of the judiciary constitutes a challenge to it.

1. Appointment of Judges

Necessary to guarantee independence of the judiciary is the need to wean the appointment process of judges from the over-bearing influence of the executive and the legislature. Aside from fiscal autonomy which most people have mistaken for the summary of judicial autonomy, it is certain that judicial independence or autonomy will be meaningless if the process of appointing judges is retained under the

present status quo. It is to be noted that without qualified judges, there cannot be a judiciary.

Traditionally, appointment of Judges was always at the pleasure of the executive as shown in the Stuart King regime in which Judges were dismissed at will.[39] The regime over time changed and most Constitutions have inbuilt in them processes for appointment of Judges aimed at ensuring at least a façade of independence to the extent that by the 21st century, it has come to be taken for granted that an independent and impartial judiciary was always an indispensable part of national legal polity.[40]

The role of the international community in ensuring the independence of the judiciary as played by the United Nations in the 20th Century cannot be over-emphasised. Thus, the adoption of such instruments as 'the Basic Principles of the Independence of the Judiciary' were part of the efforts taken as a means of strengthening judicial independence and integrity. To this end, certain structures have been put in place to ensure a measure of integrity in the Constitutions of various nations. In Nigeria, by Section 231(1) and (2) of the Constitution, the appointments of the Chief Justice of Nigeria and Justices of the Supreme Court are made by the President on the recommendation of the National Judicial Council subject to confirmation of such appointment by the Senate.

While the appointment of the President of the Court of Appeal follows the same pattern as that of the Chief Justice of Nigeria,[41] appointment of a Justice of the Court of Appeal is made by the President on the recommendation of the National Judicial Council without confirmation by the Senate.[42] The appointment of the Chief Judge of the Federal High

[39] See Sir Fred Phillips, CVO, QC, The Modern Judiciary – Challenges, Stresses and Strains, Wildy, Simmonds & Hill Publishing, 2010, page 2.

[40] Ibid at page 7.

[41] Section 238(1) of the Constitution.

[42] Section 238(2) of the Constitution.

Court is by the President on the recommendation of the National Judicial Council and subject to confirmation by the Senate[43] while the appointment of a Judge of the Federal High Court is done by the President on the recommendation of the National Judicial Council simpliciter.[44]

With respect to State High Court, the appointment of the Chief Judge is made by the Governor on the recommendation of the National Judicial Council subject to confirmation by the House of Assembly of the State. The appointment of a Judge of the High Court, on the other hand, does not require confirmation of the House of Assembly once made by the Governor upon recommendation by the National Judicial Council.

As sound as the procedures above may look, it is unfortunate that the process is now fraught with palpable errors in which political influences have brought unto the Bench persons of less than noble character and poverty of legal knowledge. The circuitous method of appointment of the Chief Justice, President of the Court of Appeal and Chief Judge of the High Court by the executive and confirmation by the Legislature has made it a purely political process which politicians exploit to be lobbied by desperate appointees. They also use the opportunity to secure the appointment of their loyalists as Chief Judges of the High Court as the case may be. Since it is the President or the Governor that appoints, the appointor who is a politician can desire to make a capital political gain out of the process just as often happened in which Governors of some States decided to pick a judge junior in rank while a most senior judge was on the queue. It is a political preference, short and simple. In addition to that is the fraudulent practice of procuring negative security report to disqualify eligible, qualified and independent-minded applicants to the Bench. Another debacle in the appointment process is the consistent potential and real conflict

[43] Section 250(1) of the Constitution.

[44] Section 250(2) of the Constitution.

between the two, or among the three bodies saddled with different responsibilities towards appointment. A good example is the recent scene in Cross River. Before that, we had had same in Rivers, and at present, it is playing out in Gombe. This destroys the judiciary and remains a challenge.

Again, some Governors refuse to provide necessary pre-requisites for appointment of judges. It is known that before Judges are appointed, the government must have ensured that accommodation, cars and other infrastructure are in place. The reason behind this is to ensure that new judges are not subjected to degrading treatment of having to trek or take public transportation to work which expose them to danger, or are made to live in places that endanger their safety as judges or cause them undue exposure. Thus, some Governors capitalise on this by refusing to make adequate provision for necessaries in order to delay necessary appointments to fill vacant slots on the Bench or force through their nominees by way of compromise.

In the past, appointment of Judges used to be on pure merit. It was not a post people applied to occupy but rather, sound Judges simply identified brilliant lawyers who have appeared before them and recommended for appointment as Judges. This used to be the case in the UK as "Lawyers of 20 to 30 years' experience who had attained the rank of Queen's Counsel constituted the pool from which judges were chosen. The candidate did not however apply for the position – a view expressed by Lord Goddard, former Lord Chief Justice, who is said to have commented that the safest way to avoid being asked to be a judge was to make a formal application for a judgeship."[45] The same used to happen in Nigeria as attested to by the legendary Afe Babalola, SAN[46]

---

[45] Sir Fred Phillips, (supra) pp. 15 – 16.

[46] https://www.vanguardngr.com/2021/06/appointment-promotion-and-remuneration-of-judges-in-nigeria-the-need-for-a-change/ article published in the Vanguard newspaper online edition of June 3, 2021 and accessed on 28/08/2021 at about 7.43 pm.

in the following words:

> In the sixties…, appointment to the Bench was strictly on merit. At that time, appointments were by invitation, after, at least, 10 years in practice. Sitting Judges were always quick to identify legal practitioners who possessed sterling qualities suitable for appointment to the Bench.

Today, the process has become over-politicised. Incompetent individuals have seen appointment unto the Bench as an open sesame to three square meals and a ticket to assured pension. The valedictory speech of The Honourable Justice Samson Udemwingie Uwaifo in 2005 is a testimony to this evil practice as having started long ago[47]. According to His Lordship,

> However, at the moment in this country, a situation exists where many lawyers who could not cope with the intricacies and intellectual demands of the profession seek the High Court as a haven and, unfortunately, arrive there. This is bound to be counter-productive. What do we sometimes find? Some Judges loathe being bothered about legal principles and will ignore them if they manage to listen. There are those who will not want judicial authorities from other jurisdictions cited to them. The Privy Council not too long searched for authority over an obscure legal problem and was delighted to examine one it found in an equally obscure Nigerian decision.

The process of selection of judges is now dominated by desperate applications and politicians who often mount pressure for appointment of political surrogates who have not been in practice for years or whose knowledge of the law is below the standard required. In April 2021, there was an agitation which nearly exposed the process of appointing

---

[47] See the online page https://dawodu.com/uwaifo1.htm accessed on 29/08/2021 at about 7.08 pm.

judicial officers to the Court of Appeal bench to ridicule as the competence of some of the appointees were openly challenged and the basis of appointment said to be nepotistic. As a member of the National Judicial Council, I believe the criteria for appointment onto the Bench need to be more stringent if we are going to bring integrity back into the appointment process. I am not convinced that we have genuinely provided an answer to the query of integrity raised by Justice Uwaifo in His Lordship's earlier referred speech that *"It is not at all clear what verifiable criteria are used to ensure the suitability and capability of those appointed."*

The political and other pressures on the Heads of courts in the appointment is so daunting that a lot of them are reluctant to appoint new judges even where there exist vacancies.

Due to influence of Governors in appointing some Judges, judicial process in many of our Courts has become a payback time whenever cases involving government are assigned to some Judges. As a result of being the one who facilitated the appointment of such Judges, they feel obliged to play the game not according to the rules but according to the whims of the facilitator or the appointor. To a large extent, this may tell much about the integrity of the Judges and not about the over-bearing influence of the political actors.

Some State Judicial Service Commissions are guilty of fraudulent practices of packaging false qualification documents for some "sacred" applicants. False judgments are arranged for applicants who do not have enough number of judgments, and they are presented for appointment. Some Chief Judges, too, do not help matters. We have seen cases at the level of the National Judicial Council in which more qualified applicants would be shortlisted as reserved candidates only to have the less competent ones presented as most qualified and preferred. This presentation is done by the Chief Judges of the High Courts. In fact, a very disappointing occasion arose recently in which an applicant was 62 years old as at the time she was being presented

to the NJC for appointment to the High Court Bench. This was apparently after she had retired from service in the corporate world without any practice experience to show for qualification for the appointment sought.

Quality of appointment unto the appellate Bench has been affected by the use of quota system. This has, in many cases, relegated merit and competence to the background simply because a particular State or section of the country ought to have its quota filled. The quota system has become an albatross which has reduced quality in our civil service and also in the judicial sector.

It must be noted that where incompetent persons are promoted to the Bench for motives other than constitutional, which is the need to dispense justice fairly to all, the court is not properly constituted as per the qualification of the judicial officer. The implication is that in all cases decided by such incompetent judicial officers, the court lacks jurisdiction to decide the cases. It must be noted that the *locus classicus* case of *Madukolu v Nkemdilim*[48] has laid down the conditions for the jurisdiction of the court and these are:

i. the Court must be properly constituted as regards numbers or <u>qualification of its membership</u>;
ii. the subject matter of the case must be within its jurisdiction, and there is no feature in the case which prevents the Court from exercising its jurisdiction; and
iii. the case or matter comes before the Court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

A judge whose knowledge of the law is suspect cannot be said to have the capacity to exercise the jurisdiction of the court competently. His incompetence is a question mark on his qualification and, hence, the

[48] [1962] 1 SCNLR 341.

capacity to determine the cases before him fairly. A recent case that is playing out and questions the legal knowledge of the Judge involved is the ex parte ruling of His Lordship, Hon. Justice Nusirat I Umar of the High Court of Kebbi State delivered on the 26th day of August 2021 in Suit No. KB/HC/M/171/2021 between *Yahaya Usman & 2 Ors. v. Prince Uche Secondus & PDP*. It is a ruling in which the Claimant's prayer for

i. an ex parte order staying the "purported suspension of the 1st Respondent (Prince Uche Secondus) pending the hearing and determination of the motion on notice;
ii. an order granting leave to the first respondent (Uche Secondus) to continue exercising all the constitutional powers of the office of Chairman of People Democratic Party (second defendant)… pending the hearing and determination of the motion on notice
iii. and any further order(s) as this Honourable Court may deem fit to make in the circumstances

were all granted.

That it was the Claimants who were seeking such orders on behalf of the 1st Defendant should have sounded some warnings to His Lordship. Why did the 1st Defendant not approach the court for such orders if he so really desired them? The complaints of the Claimant must have shown some undesirable circumstances in which the 1st Respondent must have been removed, and if anyone would have a ground to complain, it ought to be the 1st Respondent himself. Why didn't His Lordship just direct that the Defendants/Respondents be put on notice without making any such interim orders that are so ridiculous that the omnibus prayer of "any further order(s) as this Honourable Court may deem fit to make in the circumstances" was also granted by His Lordship? Further comment is absolutely superfluous in this circumstance.

The composition of the Judicial Service commissions and the National Judicial Council could in some instances be a problem. It will be observed that in respect of the State's judicial service Commissions,

except the Chief judge, all other members are usually appointed by the Governor while at the Federal level, by the President. While at the Federal level the Nigerian Bar Association is consulted to nominate candidates to fill the positions reserved, the reality however is that if these nominees fail to fit into the agenda of the of the government and the ruling party, the nomination may never see the light of the day. This probably accounts for the absence of legal practitioners in the federal commission in the last few years. In most instances, those mostly appointed by the Executive are either politicians simply or persons with sympathy for the ruling party of the Governor or the President. In the circumstances, their votes often overwhelm the Chief judge disposition, thereby subjecting the recruitment process to political interference. Invariably, less than qualified candidates eventually emerge as nominees to the National judicial Council. The Council hardly tampers with the Commission's recommendations except in cases of obvious indiscretion. As for the Council, although the Constitution specifies who to be nominated by the Chief justice of Nigeria, the Chief justice remains the singular authority to appoint. Whilst this will appear not to be a challenge so much as appointed members are presumed to be independent and competent, our reservation lies in the Chief justice presiding over both the Federal judicial service commission and the Council. It is difficult seeing the resolution of the Chief justice at the Commission level being reversed at the Council level. The natural and human disposition, even without the chief justice breaking it down the neck of the council members, is to be reluctant to effect such reversals. It is in this regard that such may constitute a challenge to the recruitment process.

2. Lack of Financial Independence

This is a major problem confronting the Nigerian judiciary which is rooted in the determination of its fate by the executive. A fight has been on for a long time with respect to fiscal autonomy for the judiciary

which has led to litigation between the Judicial Staff Union of Nigeria (JUSUN) and the executive at both the national and the state levels in Nigeria. This is based on the financial allocation meant for the judiciary being provided at the pleasure of the President or the Governor as the case may be.

In a particular State, some Magistrates have become jailors in the hands of some tyrannous Governors who use them to punish political opponents. Whenever government prosecution of political opponents come up, such cases are influenced to be assigned to such Magistrates who, it is certain, would ensure that the accused would not go home by refusing to grant him bail for the simplest of all offences. Where the Magistrate even grants bail to such accused person, His Worship would simply disappear after granting bail in order to frustrate perfection of the bail conditions. This is all in order to impress the Attorney General and, invariably, the Governor. That practice has been in place for many years and the reward is to promote such Magistrate to become a Judge of the High Court. While on the superior Bench, the atrocity continues. The recent experience in Cross Rivers is another where appointments into the Magistracy by the Governor's predecessor was reversed. This is usually used as oppressive tools to make the judges, particularly the Chief Judge, pliable.

The above is made possible because of the penchant for and possibility of subverting the rule of law by the Executive. The executive arm of government has violated all principles of judicial autonomy most especially as regards the financial entitlements of judicial officers.

By section 81(3) of the Constitution,

> Any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the Federation shall be paid directly to the National Judicial Council for disbursement to the heads of the courts established for the Federation and the State under section 6 of this Constitution.

Further to the above is Section 121(3) of the Constitution as altered by

the Fourth Alteration Act which provides that any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the State shall be paid directly to the heads of the courts concerned.

As at date, there are three pronouncements of courts upholding the autonomy of the judiciary most especially with respect to funding. There was the decision in *Olisa Agbakoba v A.G., Ekiti State; Olisa Agbakogba v Federal Government of Nigeria; The National Judicial Council and the National Assembly*; and the last one, *Judiciary Staff Union of Nigeria v. National Judicial Council and Governors of the 36 States*. Thus, beyond the strike actions and various other advocacies done by the Judicial Staff Union of Nigeria (JUSUN), the Union is still armed with the judgments of court mandating the implementation of financial autonomy for the Judiciary. In a sane clime, by the very pronouncement of the court, the issue would have been resolved. The Governors were party to the suit and ought to comply as they are bound by the judgment. But for the immunity clause in the Constitution shielding the Governors, they ought to have been held in contempt of those decisions. However, since the Governors swore to uphold the provisions of the Constitution of the country, Sections 81(2), 84 (1), (2), (3), (4) (7) and 121(3) being part of the Constitution, the violation of such as pronounced by the Court ought to trigger impeachment of the respective Governors. Regrettably, this can only happen in a sane clime with an independent legislature. Little wonder there is silence on the part of the legislators as they themselves are usually at the mercy of the executive. By the constitutional provisions of Section 84 of the 1999 Constitution, the Judiciary's budget ought to be submitted directly to the Legislature and not through the present practice of going through the Executive who hands over any figure it deems fit to the Judiciary. Again, the sum due and payable ought to be remitted directly to the National Judicial Council from the Consolidated Revenue Fund for onward distribution to the Heads of Courts. The attempt to distinguish recurrent and capital expenditure in the construction of the provision as being done by the executive is untenable as most times,

most expenses in the Judiciary can be classified under recurrent. Without financial autonomy, the judiciary remains a shadow of itself.

In order to do justice to the plight of the judiciary in the hands of the executive when it comes to financial autonomy and conditions in which our judges dispense justice, I do not think I can put it in a better language than I did in one of my publications[49] recently where I observed as follows:

> As at date, there is no pretending about the fact that the infrastructure of courts is in a state of comatose. Most court rooms are uninhabitable with some in the shape of a storage facility. It is a show of shame to exhibit what passes today as court rooms as a place for the dispensation of justice. Most staff are not well trained as a result of paucity of funds for capacity development of the staff. The stationeries essential for running the courts are lacking. Notwithstanding that litigants pay for filing of cases and equally pay for service of originating processes by the Bailiffs of the court, litigants still end up paying again for files and service of processes to activate the cases filed.
>
> Judges still largely write in long hands as modern technological devises are lacking. Most times, courts are unable to transact businesses due to lack of power, and in cases of alternate sources, lack of diesel to power the generating sets obtains. Several times, chairs, in the nature of benches, have collapsed during court sessions whilst lawyers and litigants, are sitting. Most court rooms are badly lit.
>
> What about logistics for Judges? Constitutionally, Judges are expected to deliver judgments within three months of

[49] See Muiz Banire, Ph.D, "Judiciary Financial Autonomy: JUSUN Is Right" published in The Sun, 15th April 2021 and published online at https://www.sunnewsonline.com/judiciarys-financial-autonomy-jusun-is-right/.

concluding trials in the face of the daunting challenge of lack of electricity supply to their various homes. I am not unaware that in some States, generating sets are provided but to last, if possible, till eternity. Little or no diesel supply is made. What am I even saying? What about even power supply in the court? I have attended a trial before a Judge who, out of his passion and commitment to the dispensation of justice, had to procure from his meagre renumeration, a 5 kva generating set and buy fuel to conduct cases. This was for a period of almost nine months without power supply to the court as a result of theft of external cable supplying electricity to the complex. The Judge in question, at the risk of embarrassing him, is the Honourable Justice Okorowo of the Federal High Court. I only pray that in the nearest future such judges are appropriately rewarded.

In another scenario witnessed by several senior lawyers during the hearing of the election petition cases in the Federal Capital Territory High Court Complex in Apo, I had to draw the attention of the then Chief Judge to the state of sanitation in the court infrastructure, no water supply much less any functional toilet system. In fact, lawyers and litigants were compelled to approach the nearby bushes to answer the call of nature. For how long are we going to be waiting on the executive without appropriate financial autonomy for the Judiciary to address these?

Is it the health of the judges we want to talk about? I have witnessed instances of judges being denied financial support for treatment simply because such judges are considered anti-government in their judgments. Little wonder these days that litigants believe they cannot win cases against the government in State courts. This is an erosion of the confidence which ought to be reposed in the

Judiciary.

> Have you seen judges' vehicles break down on the road? Whilst other government officials cart away huge sums under vehicle allowances and still purchase and make use of high-grade vehicles tagged utility vehicles, judges' vehicles, at times, have to be maintained for more than ten years as against the four-year rule of serviceability. Provision of security for judges and the court rooms is another thing entirely. Cases of invasion of court rooms abound, even while the court is sitting, much less when the court is not in operation.

In another of my discourse titled "Save Our Judges",[50] I observed as follows:

> Yes, our judges need to be saved from their present precarious positions and ultimate perilous end. Judges are, by their callings, expected to be righteous, upright, independent, impartial and, of necessity, incorruptible. What this implies is that at all times, they must be above board in all their dealings, particularly in the adjudication of cases. As an enablement, the State is expected to provide conducive atmosphere for their operations. These range from infrastructural support that will make the judges deliver or perform to the conditions of service generally. This onerous duty of fairness and impartiality must be discharged regardless of the prevailing circumstances.
>
> It is in this context that I am engaging the system that is not only tempting the judges, but impoverishing them. As at date and by the legal framework of Nigeria, the Certain

[50] Published in The Sun, 13th August 2020 edition and published online at https://www.sunnewsonline.com/please-save-our-judges/.

Political, Public and Judicial Office Holders (Salaries and Allowances, Etc.) (Amendment) Act, 2008 governs the determination of the amount payable to judges as salaries and other allowances. This Act, as indicated, was made in 2008, the date in which the last review of judges' salary packages was made. This was about twelve years ago when the exchange rate of American dollar to naira was one hundred and seventeen naira (N117.00). As at date, the exchange rate is about four hundred and seventy-five naira (N475) to a dollar. The implication of this is that a judge's salary has been static in the last twelve years. This is in spite of all economic variables in the country.

When it comes to independence of the judiciary, the absence of which constitutes the major problem being faced by the judiciary in Nigeria, should we be able to solve it, we would have succeeded in reducing the dependence of the judiciary on the executive and guarantee greater prospects for quality dispensation of justice. A situation where the Judiciary goes cap in hand to the Executive is unhealthy for the administration of justice. The situation of he who pays the piper, dictates the tune must not be allowed to continue. Without financial autonomy, there cannot be judicial independence.

3. Infrastructural Decay

It is poor funding of the judiciary that impacts negatively on the quality of infrastructure being used in courts. In fact, in many courts across Nigeria, there are no quality chairs for judges and the public to use. Some courts use wooden benches while furniture provided in some would tear one's clothes. Compounding the above is the absence of technological infrastructure with which modern services are promptly and adequately provided. Most courts do not have internet services and hence cannot go online to do research. It is the Covid-19 pandemic that exposed the weakness of our judiciary in providing online and virtual

hearing. As most courts do not have virtual technology, and in some where virtual technology is present, judges and staff are too poorly trained to be able to adequately make use of it for service delivery. Ordinary court recording devices still remain a luxury in most courts. Thus, the deficiency in technological capability remains a major challenge to efficient administration of justice in Nigeria.

4. Poor Remuneration of Judges

A major tragedy afflicting the judiciary is poor remuneration of judges. It is indisputable that a judiciary that is tied to the apron strings of the executive for financial support can never be independent. In the Federalist 79, Hamilton was reported to have said:

> Nothing can contribute more to the independence of the judges than a fixed provision for their support… in the general course of human nature, a power over a man's subsistence amounts to a power over his will.[51]

This problem of making the judiciary to be dependent on the pleasure of the executive has been with us for a long time and the situation has witnessed terrible cases of the judiciary being paid peanuts and completely impoverished. The inimitable Chief Gani Fawehinmi, SAN in 1992, published a comprehensive analysis of judges' emoluments in Nigeria[52] a compendium which exposed the poor salaries of our judges all over Nigeria. It was his conclusion that

> Hardly a day passes without some Judges of some of our inferior and superior courts being accused of corruption or bribe taking by members of the public.
>
> I do not condone corruption but the absurdity of the salary structure of our judiciary invites corruption. There is no

[51] See Louis Fisher, Constitutional Dialogues - Interpretation as Political Process, Princeton University Press, 1988, page 149.

[52] Courts' System in Nigeria - A Guide [1992], Nigerian Law Publications Ltd, 1992.

> Judge whether of the inferior courts or of the superior courts who can keep his day-to-day obligations to himself, to members of his immediate family or to his extended family or even to his community at large and adequately plan his future within the means provided by his present salary. And yet, we expect the same Judge to have a perfect concentration with a confused financial mind dictated by an absurd salary to dispense justice without losing his respectable balance as a human being.

Due to poor funding of the judiciary, aside from judges being paid peanut and subjected to excruciating poverty which is promoting corruption on the bench, it is the case that the conditions of services in terms of infrastructure they are made to use, can only be said to be abysmal. An average Judge sits in terribly suffocating conditions and his emoluments, at the end of the day, can hardly sustain him. The Governors seem to enjoy this as a means of subjecting the judiciary to their whims and caprices and that is why when many Judges have the opportunity of participating in election petitions in which corrupting influences of politicians are perpetrated to the highest level, such Judges cave in. It is clear that the Governors perpetrate the atrocities of subjecting the finances of the judiciary to their control contrary to the Constitution in order to make their Lordships subservient to the political will of the executive.

By Section 84(1) and (2) of the Constitution, remuneration, salaries and allowances of judicial officers shall be paid to them as may be prescribed by the National Assembly, but not exceeding the amount as shall have been determined by the Revenue Mobilisation Allocation and Fiscal Commission and such remuneration, salaries and allowances shall be a charge upon the Consolidated Revenue Fund of the Federation. It is also the position of the Constitution that *"The remuneration and salaries payable to the holders of the said offices and their conditions of service, other than allowances, shall not be altered to their*

disadvantage after their appointment."[53] By sub-sections (7) of section 84 of the Constitution, *"The recurrent expenditure of judicial officers in the Federation (in addition to salaries and allowances of the judicial officers mentioned in subsection (4) of this section) shall be charged upon the Consolidated Revenue Fund of the Federation."*

Just as observed earlier, the last time we had review of the judges' salaries was in 2008. Since that year and up till now, the renumerations of judges, as specified in the Certain Political, Public and Judicial Office Holders (Salaries and Allowances, Etc.) (Amendment) Act, 2008, have remained static. In between that year and now, the public servants have enjoyed not less than three upward reviews. Little wonder, therefore, that virtually all Chief Registrars of courts earn more than the judges in their courts today. The worst scenario is the existence of no graduated steps for the judges, notwithstanding the years of service. A judge that has served for twenty years would earn the same renumeration as a newly appointed judge. This obtains not in the civil service and it constitutes a disincentive to performance among judges. I am not revealing the exact amounts earned by our judges so as not to serve as an invitation to treat to litigants. Certainly, it cannot take the judges home.

5. *Security of Tenure/Removal from Office*

Another challenge that has always confronted the judiciary in most countries of the world is insecurity of tenure. Formerly in England, Judges held office only subject to the pleasure of the King, and they could be removed at the snap of the fingers by the King. This state of affairs was changed as a result of the Revolution settlement by the Act of Settlement of 1700[54] which provided that

> judges' commissions be made *quamdiu se bene gesserint*,

[53] Section 84(3) of the Constitution.

[54] See Elias, British Colonial Law (supra), page 60.

> and their salaries ascertained, but upon the address of both Houses of Parliament it may be lawful to remove them.[55]

Colonial Judges were also alleged to have suffered from the executive[56], and there were deliberations by the Colonial Secretary, Mr. Oliver Lyttleton when his attention was drawn to the *Terrell v Secretary of State for the Colonies*[57] in this respect by Sir Herbert Williams. In any case, the imperative was that judges should be protected from arbitrary removal. Thus, over time, judges became secure with respect to tenure of office and this seems to be the intendment of the provision of Section 292(1) of the Constitution which codifies the law as follows:

> 292.(1) A judicial officer shall not be removed from his office or appointment before his age of retirement except in the following circumstances
>
> (a) in the case of -
>
> i. Chief Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court, Chief Judge of the High Court of the Federal Capital Territory, Abuja, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and President, Customary Court of Appeal of the Federal Capital Territory, Abuja, by the President acting on an address supported by two-thirds majority of the Senate;
>
> ii. Chief Judge of a State, Grand Kadi of a Sharia Court of Appeal or President of a Customary Court of Appeal of a State, by the Governor

---

[55] R. J. Walker, The English Legal System, Fourth Edition, Butterworth & Co (Publishers) Ltd., 1976, 196.

[56] See Elias, Ibid @ p. 60.

[57] [1953] 2 Q. B. 482; [1953] 3 W.L.R. 331; [1953] 2 All E. R. 490. See also Elias (supra) at page 60.

acting on an address supported by two-thirds majority of the House of Assembly of the State, praying that he be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct;

(b) in any case, other than those to which paragraph (a) of this subsection applies, by the President or, as the case may be, the Governor acting on the recommendation of the National Judicial Council that the judicial officer be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct.

The above provisions of the Constitution are meant to protect the heads of courts particularly from unlawful removal until he attains the mandatory age of retirement in accordance with Section 291 of the Constitution. While a judicial officer appointed to the Supreme Court or the Court of Appeal may retire voluntarily upon the attainment of 65 years of age, the Constitution makes it mandatory that such judicial officer must retire upon attaining 70 years of age if he serves at the Supreme Court or the Court of Appeal. A judicial officer appointed to any other court may retire upon attaining the age of 60 but must mandatorily retire upon attaining the age of 65.

The implication from the above is that where a head of court is to be compulsorily removed before attaining the age of retirement, it must be by the President acting upon an address supported by two-thirds majority of the Senate in case of a Federal Judge and by the Governor upon an address by two-thirds majority of the House of Assembly of the State. As seemingly stringent as that removal provision is in terms of discipline, issues arising in this respect have to do with lack of

concurrence between the recommending body and the removal body thereby rendering the provision lame. We have instances of National Judicial Council (NJC) recommending removal of judges and the appointing authority not consenting. In such instances, such judges stay in limbo, but the recent story of Justice Yinusa in which the NJC recalled the judge is interesting to say the least. This calls for urgent address if our disciplinary measures must be potent otherwise an erring judge only needs to be in the good book of the appointing/removal authority. That ends the story.

Sometime in 2018, despite the presence of the above provisions in our Constitution, an aberration occurred in the removal of the Chief Justice of Nigeria in which the executive, without an address by the Senate, rushed to the Code of Conduct Tribunal, obtained an *ex parte* order, removed the Chief Justice of the Federation and brazenly carried out what amounted to an intimidation and violation of security of tenure against a sitting judicial officer. Immunity conferred by the constitution on a judicial officer from being subject to court proceedings while he is acting in judicial capacity was also violated. If that could happen to a Chief Justice of the Federation, other Judges should be careful of what toe to step on in the executive. No reaction from the NJC in that regard as it seems incapacitated. Lawyers equally did not take any action that could protect the rule of law.

Equally, there was an invasion of the residences of some judges by the officers of the Department of Security Service (DSS) in 2018 and in the process of which the sacredness of judicial officers was exposed to ridicule in the prying eyes of the public. No search warrant was obtained in executing same I understand. These are cases of intimidation from and by the executives.

The above cases are instances of executive intimidation and interference with the independence of judicial officers as far as security of tenure is concerned. Such is an instance of external interference and threat. This intimidation threatened, if not sapped

the free will and independence of the judicial officers. Another instance where lack of independence must be considered is where the threat to judicial independence is coming from within the judiciary itself. This is a situation considered by the duo of Shehu and Tamim[58] in their paper titled *"Suspension of Justice Isa Ayo Salami: Implications for Rule of Law, Judicial Independence and Constitutionalism"* in which the learned authors considered the events leading to the removal Justice Ayo Salami being a disagreement with the then Chief Justice of the Federation, Justice Katsina-Alu, as a threat to the independence of the judiciary and one arising from the judiciary itself. The above case of Justice Isa Ayo Salami had the support of the executive as President Goodluck Jonathan bluntly refused to reinstate Justice Salami despite the exoneration of His Lordship by the National Judicial Council and the later recommendation of reinstatement by the same body. It is frightening!

The sacredness of judicial position and the need to protect same from intimidation from all quarters cannot be better captured than in the words of the inimitable Lord Denning, M. R. in *Sirros v. Moore*[59] where His Lordship stated as follows:

> "Every judge of the courts of this land – from the highest to the lowest – should be protected to the same degree, and liable to the same degree. If the reason underlying this immunity is to ensure 'that they may be free in thought and independent in judgment', it applies to every judge, whatever his rank."

Lastly on the subject is the threat to judges by the National Judicial Council. Several frivolous petitions find their ways into the Council and

---

[58] https://www.researchgate.net/publication/311858220_SUSPENSION_OF_JUSTICE_ISA_AYO_SALAMI_IMPLICATIONS_FOR_RULE_OF_LAW_JUDICIAL_INDEPENDENCE_AND_CONSTITUTIONALISM accessed on 28/08/2021 at about 1.52 pm.

[59] (1975) Q.B. 118; (1974) 3 All E.R. 776.

multiple of which are eventually dismissed. Regrettably, however, the aftermath of such decision does not compensate the victim judge in any way whatsoever. The judge must have used his resources to travel back and forth to answer the baseless allegations, apart from the trauma and waste of judicial time he must have experienced, no compensation comes to the exculpated judge. This has made the judges, in a lot of instances, to lose the control of their courts, not wanting to see any petition come their way. In this way, lawyers have capitalised on same to bully judges into submission at times. This challenge must be addressed if the judicial courage must be boosted.

It is, therefore, imperative, if there is going to be respect for rule of law that judges are protected from threat or unlawful removal by the executive or interference by the legislature, and insulated against internal aggression.

Capacity Building

That judges and court officials need continuous training and development is merely stating the obvious. However, due to the challenge of paucity of funds arising from unlawful seizure of the judiciary's fund by the Executive, capacity building has remained impaired. The Executive mainly determines courses to be attended by judicial and court officials and the number of beneficiaries through the control valves of fund releases. This has painfully and unfortunately led to Executive bodies and Agencies directly funding the capacity development programmes for judges. It is no news again that the Asset Management Corporation of Nigeria (AMCON), Nigeria Deposit Insurance Corporation, Economic and Financial Crimes Corporation, etc of this world now sponsors such trainings. The propriety or otherwise of this is best left to us all but I am of the view that it is certainly improper. It does not only affect impartiality, it breeds corruption. I know that notwithstanding that the trainings are organised under the banner of National Judicial Institute, agencies of government mobilise the judges in the process. These are institutions with cases before the same set of

judges. It may well be best to allow all litigants or potential litigants to train the judges. Be that as it may, the fact remains that capacity development of judges and other court officials is still not great and constitutes a challenge.

6. Conflicting Judgments

This is another source of worry and a threat to the integrity of the judiciary in modern times. Whilst to a certain extent, it may be indulged at the High Court level, I am not too sure it is admirable at the appellate level. Unfortunately, it is at this level that it is mostly prevalent. This has largely made the law unpredictable and now assuming the nature of equity at its development stage. Appellate court decisions are now informed by the personality of judicial officers presiding at the material time. There seems to be no form of coordination amongst the various divisions of the Court of Appeal nor even amongst panels of the apex court. The resultant effect is that judges at the lower court are now thrown into state of confusion and now have to choose whichever is amenable to their reasoning. Of interest again as a challenge is the damage continuously done to our jurisprudence by the election petition judgments. What transpired and led to a lot of these aberrations is a matter of common knowledge now. I need not say more!

7. Corruption and Abuse of Office on the Bench

A cankerworm that has destroyed the reputation of the Bench in Nigeria today is the rampant and notorious allegation of corruption among judges. While the NJC, on a number of occasions, has found some judges wanting due to corrupt practices and has recommended their removal, there is the need to do more. The members of the public have lost confidence in our judicial process, and this is not presenting us in good light to the public and the international community. Time was in the past when judicial decisions from Nigeria were fondly considered in the

UK and other commonwealth jurisdictions. The Privy Council, not too long, was said to have "searched for authority over an obscure legal problem and was delighted to examine one it found in an equally obscure Nigerian decision."[60] Today, we may not be able to boast of leaving the same legacy for the future.

In the speech of The Honourable Justice Samson Odemwingie Uwaifo referred to earlier,[61] a sad note was sounded which reverberated across the land among men of conscience and national love for Nigeria. The vices we are discussing today with respect to corruption and abuse of office on the Bench was decried by His Lordship. In the words of His Lordship:

> Times are changing in every sense and we cannot deny this. The Judiciary is no longer serving the Nigerian society of the 1960s, 1970s, 1980s or even 1990s. It is the 21st century society. The constitutional challenges which the Supreme Court had had to meet in the last 6 years are more profound, in my view, than those it coped with in the last two decades put together. There are indications either from comments made by the public or from personal experience that there is need to be concerned about the lowering of standards in the Judiciary of this country. It was once thought to be only in the magistracy because of the disturbing way some of the personnel tended to abuse their office. It gradually crawled to the High Courts and would appear to have had a foothold among a noticeable number of Judicial Officers there. It is not unusual for even senior members of the Bar to complain about the general disposition of those High Court judges. There is the aspect of their attitude and orientation to duty: late sitting, laziness, incompetence, doubtful integrity,

[60] https://dawodu.com/uwaifo1.htm accessed at 7.37 pm on 29/08/2021.

[61] Ibid.

> impertinence towards counsel. Now, there is real apprehension that the appellate court may soon be infested if not already contaminated with some of these vices. Some recent events seem to sound an alarm bell.

Corruption and abuse of office is a fact that has permeated our judiciary. In the past, it was rare to hear of an accusation of corruption against a judicial officer. In a paper delivered by Chief Wole Olanipekun, SAN,[62] the luminary considered it a taboo to hear of an allegation against a judex in the past and that in a research work published in respect of British judges, notwithstanding that the judiciary in Britain had been of close to a millennium in age, only one instance of allegation of corruption was levied against a Judge and same was dismissed as frivolous upon investigation. Just as the learned Senior Advocate lamented in the said paper, he mentioned many cases of corruption reports and allegations from notable individuals like The Honourable Justice Kayode Eso, Chief Afe Babalola, SAN calling on the then "Attorney-General of the Federation (AGF) & Minister for Justice to expedite action in investigating the various financial allegations rocking the various Election Petition Tribunals across the country."[63] The report alleged that election petition judges are "trading judges" and had suddenly become millionaires and billionaires.

The irony of it is that the Attorney General & Minister for Justice of that time that these two legal luminaries were calling on to investigate allegations of corruption against Judges is himself currently being prosecuted by the Economic and Financial Crimes Commission (EFCC) for corrupt practices in connection with the scandalous OPL 425 1.1 billion dollars diversion of payment payable to Nigeria. It is disturbing!

A 2020 publication titled *"Nigeria Corruption Index: Report of a Pilot*

---

[62] Wole Olanipekun, SAN, "Relationship Between the Bar and the Bench: The Way Forward" published in The Voice of Law and Social Change, Speeches and Thoughts of Wole Olanipekun, SAN, Volume 1, 2011, page 426.

[63] See This Day Newspaper edition of 17th June, 2010 at page 8.

Survey"[64] by the Independent Corrupt Practices and Other Related Offences Commission (ICPC), has created ripples in the sea of public opinion. The report indicated that the Judiciary is on top of the Nigeria Corruption Index between 2018 and 2020 as it claimed that about N9.458 billion was offered and paid as bribe by lawyers to judges. The Commission further clarified that six female judges reported that they were offered ₦3,307,444,000 (Three Billion, Three Hundred and Seven Million, Four Hundred Thousand Naira) and five male judges reported ₦392,220,000 (Three Hundred and Nine-two Million, Two Hundred and Twenty Thousand Naira). The anti-corruption agency explained that cases of outright demand and offer of bribes were mostly linked to election matters. The allegations made by Justice Eso and Chief Afe Babalola ten years earlier came to hunt us in 2020.

While it must be noted that a corrupt judge is worse than a pirate on the high seas, it is also the case that no judge approaches or receives bribe from litigants directly, but in most cases, bribery is facilitated by some unscrupulous members of the Bar. The implication from the above is that it takes two to tango. Hardly does a judicial corruption take place without an influence from the Bar. The Bar today is dominated by lots of sharp practices with many senior lawyers who want to win cases at all costs. Do not be surprised then if your client walks up boldly to you and, without batting an eyelid, queries why you cannot see the judge. Such is the conviction of the public that no case is won except someone knows the judge. At least, a joke still circulates among lawyers today about a First Republic politician of immense oratory, wit and colour to the effect that when he was told that his opponent had briefed a legal giant of those days who was highly reputed to be sound in legal knowledge, the politician retorted that while counsel to his opponent knew the law, he had briefed another legal giant who knew

[64] See The Guardian newspaper online edition of 26 January, 2021 reported at https://guardian.ng/features/law/icpc-corruption-verdict-unsettles-judiciary/ and accessed on 29/08/2021 at about 8.38 pm.

the Judge. It did not start today.

However, caution is the word! We must not paint all Judges with the same tar. We must realise that among Nigerian judges are men and women of impeccable character. To this I can personally testify. In fact, those delinquent elements in the judiciary are, in my view, less than ten percent of the judicial personnel in this nation. There are Ermine robes that have remained untainted since their appointment and against no one can make an allegation of abuse of office or privilege. It is an unfortunate minority of ignoble orientation and descent that, like the proverbial orange fruit which attracts pellets against its mother, that has been subjecting the majority to public opprobrium. Among Nigerian judges are many that have met Caesar's wife's standard by consistently being above board. To those judges we say, the general opinion is mere occupational hazard. Kindly continue wearing your robes of dignity without fear or favour. Regrettably, however, the perception is not good for the system even where it does not exist and it constitutes a challenge.

8. Delay in Judicial Process

One very terrible situation our nation and the judiciary have found themselves is delay in determination of cases. Cases in our courts stay for decades undecided. In some situations, litigants die, their children inherit the cases. Delay in judicial determination of cases in Nigeria has become an albatross that is destroying the confidence of the public in judicial process. The problem therefore is not accessing justice in Nigeria but exiting justice, in the words of Fidelis Odita, SAN, QC.

The long time it takes to get fresh cases assigned to judges that will hear them could be quite embarrassing. When cases are assigned, woe betide you if your zodiac sign allots your case to a lazy or undisciplined Judge. Your case may never be heard until the Judge retires. Some Judges do not have any sense of time as they do not sit on time and even rise early. Some adjourn cases on frivolous opportunities and

palpable lack of readiness to work. While some of our Judges are dying of high volume of work that has made them older than their ages, you still find some moonlighting on the Bench and giving others a bad name.

The problem or delay in the dispensation of justice is not due to the fault of judges alone. The members of the Bar are more culpable. Lawyers file frivolous applications when their cases are bad. They seek irresponsible adjournments to frustrate the other party. Some lawyers are so irresponsible that they will lie brazenly even in the face of obvious facts all in a bid to take advantage of an otherwise lazy system to the detriment of the judicial system and the economy. The court's infrastructure equally compounds the problem. Associated with this is the quality of judgments due to huge dockets before the judges. We need technology and efficient rules that can effectively counter this. The aphorism remains that justice delayed is justice denied. This has with time propelled resort to self-help. All these must be addressed if the judiciary must regain its respect in the society.

(9) Retirement Packages

The point needs to be made that due to the paltry retirement package and pensions that judges are entitled to, it imposes a sense of future insecurity on them. To this end, it impairs not only their reasoning and objectivity, it saps their peace of mind to concentrate on the job. Where a judge is unsure of settlement plan, it weakens his focus in all ramifications. The present situation of constitutionally permitting the payment of basic salary, excluding allowances, as pensions leave much to be desired. This challenge equally deserves paying some attention to.

10. Retreat of Judicial Courage

Although to some commentators, the judiciary has betrayed the Nation over time, particularly due to its legitimisation of the various military

Governments. This, however, may not be entirely correct as discussed below. The Nigerian judiciary has stood firm in defence of the common man against tyranny of government in some instances. It takes a lot of courage at a point in the history of this nation to do that as the military jackboot that crushed the legislature during the military days could only tolerate the judiciary as a special arm of government. To that end, the military government, by various decrees, suspended fundamental rights but retained the structure that could just make a government function. To this end, the judiciary has performed averagely well considering the circumstances it has found itself right from the colonial days to the present. The challenge, however, remains lack of courage on the part of some judicial officers.

The defence of the rule of law has been firmly upheld in cases like *Lakanmi & Kikelomo Ola v. AG Western State,*[65] *Ojukwu v. Military Governor of Lagos State,*[66] *Adamolekun v. The Council of University of Ibadan,*[67] *Garba v. University of Maiduguri*[68] and so many other cases protecting students' right to protest, *Governor of Lagos State v. Ojukwu,*[69] *Nasiru Bello v. AG Oyo State,*[70] *Attorney General of Abia State v. Attorney General of the Federation*.[71] In all the above cases, the judiciary did not bat an eyelid in upholding the rule of law and rejecting arbitrariness.

There are many High Court decisions in which brave judges have shown the light to the world that Nigeria is not part of an uncivilised world where might is right. I can re-collect the decision of the Honourable Justice Dolapo Akinsanya of the Lagos High Court which declared the interim government of Ernest Shonekan as illegal despite the military

---

[65] (1971) UILR 201

[66] [1986] 3 NWLR (Pt. 26) 39 CA.

[67] (1968) NMLR 253.

[68] [1986] 1 NWLR (Pt. 18) 550 SC.

[69] [1986] 1 NWLR (Pt. 18) 621 SC.

[70] [1986] 5 NWLR (Pt. 45) xxx

[71] [2002] 6 NWLR (Pt. 763) 264

might that produced it. In the *ipssisima verba* of His Lordship, "President Babangida has no legitimate power to sign a decree after August 26, 1993, after his exit, so the decree is void and of no effect" and His Lordship then ordered that a civilian constitution, which was drawn up under Babangida in 1989 but never implemented, should go into effect.[72]

The same was the case in *Minere Amakiri v. Iwowuari,*[73] where in reference to the barbaric act of a Military Governor of Rivers State, the Court held categorically that "We are not in a Police State, so the rule of law in the country should not be trampled upon. Any monster who uses his power arbitrarily would not be spared."

However, there have been cases in which the Nigerian judiciary cannot be said to have been courageous enough to prove its own mettle. All the military governments that have ever ruled in this country knew they were in power by coup de'tat but sought legitimacy from the people. For this purpose, they turn to the judiciary and the pronouncements of the courts in locating the grundnorm during military regimes have always upheld the superiority of Decrees over the unsuspended parts of the Constitution. Thus, legitimacy of military governments was obtained through the judiciary.

A more recent misdeed from the judiciary is the contradiction that characterised the decision of the Supreme Court in the case of *Attorney General of the Federation v. Attorney General of Abia State & Ors.*[74] as regards the determination of the ownership of the Nigerian territory up to 12 nautical miles from the low water mark and the revenue derivable therefrom, cannot be said to borne out of ignorance of the law but rather the shrinking courage of a judex in pronouncing against

---

[72] See https://www.washingtonpost.com/archive/politics/1993/11/11/nigeria-ruled-illegally-says-judge/c81a51e2-2b54-4ca5-a2bd-0d1c74aa9093/ accessed on 30/08/2021 at about 12.14 pm.

[73] (Unreported) Suit No. PHC/222/73 of 4/4/74.

[74] [2002] 6 NWLR (Pt. 764) 542.

the executive. In that case, the littoral states contended that Nigeria as a federation was made up of 36 States and can only have territory in total of what made up the 36 States and not beyond. Where that is the case, the territory of Nigeria, and *a fortiori*, the littoral States, shall extend to 12 nautical miles from the low water mark with its bed and subsoil and the income derivable therefrom ought to form part of which 13% payment is payable to the littoral States.

While the Supreme Court upheld the contention of the Federal Government that the territory of Nigeria would not extend to the 12 nautical miles offshore and that the littoral States are not entitled to any share of the oil revenue derived therefrom, the web entangled the Federal Government as the implication is that the Federal Government itself cannot be entitled to any revenue from the territory in contention. The only safety route was to turn around to rely on the provision of Article 1 of the UN Law of the Sea Convention, 1982 which vests in a coastal State the ownership of territories "beyond its land territory and its internal waters to a belt of sea adjacent to its coast…up to 12 nautical miles from the low water mark…" with its bed and subsoil. This decision has been severely criticised by the learned icon, Prof. Ben Nwabueze, SAN[75] as one of highly questionable reasoning[76]. We agree with the learned Prof.

Today, we have many Chief Judges who literally worship the Governors of their States. They go prostrate to the executive to seek favours and, hence, find it impossible to resist corrupting demands of State Governors for judicial favours in cases before the Courts. Such Chief Judges too have identified pliable Judges in their courts who will be ready, able and willing to grant the pleasures of the Governor. Judges that are not amenable to such influences will be punished by posting to rural areas and denial of certain privileges that their mates enjoy as

[75] See Ben Nwabueze, The Second Justice Kayode Eso Lecture: The Judiciary as the Third Estate of the Realm, Gold Press Limited, Ibadan, 2007, pages 205 - 218.
[76] Ibid @ page 216.

of right. In such situations, we find the timidity and corruption of the Head of Court influencing judgments in favour of the executive. The independence of the judiciary is, therefore, corrupted from within as well. Just as said earlier, it is not a problem that only has an external source without an internal influence too.

PART IV: SOLUTIONS AND CONCLUSIONS

It is imperative that we must find solutions to the challenges we have highlighted above. A nation without an independent judiciary cannot guarantee effective dispensation of justice. It can never be a safe haven for both citizens and foreign visitors. It can never be an attraction to genuine foreign investors except rogue investors who may want to exploit the corrupt state of such a country. It creates a state of insecurity and converts such state into a jungle.

Thus, in suggesting solutions, we shall proffer the following:

1. *Judicial autonomy*. It is important that the judiciary is made independent in all sense of the word. To this end, we submit that
    a. Fiscal autonomy is critically important to an independent judiciary. That is why the provisions of Section 81 and 84 of the Constitution must be strictly observed and even improved upon to grant the judiciary total financial autonomy. A beggar judiciary can only give a begging justice. Thus, any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the Federation should be paid directly to the National Judicial Council for disbursement to the heads of the courts established for the Federation and the State under section 6 of this Constitution and not to be paid to the executives of the States.
    b. The efforts of President Muhammadu Buhari in insisting on fiscal judicial autonomy by enacting Executive Order No. 10 is quite commendable. By Section 121(3) of the Constitution

as altered by the Fourth Alteration Act No. 7 of 2017, both the House of Assembly of a State and the judiciary are to enjoy financial autonomy. The original Section 121 of the Constitution only covers the judiciary alone. It was to implement the provisions of the new Section 121(3) of the Constitution that the President has promulgated the Executive Order No. 10 in order to give effect to the Fourth Alteration Act, No. 7 of 2017. The Governors must respect the Constitution they campaigned (before election) and swore (after being elected) to protect and uphold. They must remember that it is to the same judiciary they turn for protection of their personal interests after leaving office. Thus, learn to dig your grave well as that is the beginning of your paradise or hell after transition. Attorneys-General of States should be held accountable for implementation or else they resign or be disciplined by the Bar. The potency of the outcome of the recent JUSUN strike is yet to be ascertained as it is still work in progress. I must, however, not fail to acknowledge the defeatist tendencies of some chief judges along the line. I leave that to posterity to deal.

c. Salaries and other emoluments of judges must be made attractive. A hungry judge is a reckless target for the devil of corruption. In saner climes where the economy is stable and the values of their currencies are respectable, their agitation for fixed and attractive revenue for judges is agreeable. In a country like ours where the rate of inflation and value of naira are determined by unidentifiable forces, it is imperative that salaries and other benefits of judges must be a matter of constant review. The value of naira today has made the salary package of five years ago a pittance. The emolument scheme must be taken out of the Act but if it must be retained, must be appropriately indexed to the inflationary trend and other factors. The

review must be made automatic based on the indicated parameters while equally providing for graduated scales.

d. While the judiciary should be able to handle its own infrastructural developments through its budget, it is important that judges are insulated from award of contracts to avoid allegations of embezzlement or misappropriation of contract funds. To this end, this duty should be assigned to court managers who are to be responsible for the award and supervision of contract performance and render accounts accordingly.
e. The issue of training of judges should be handled by the judiciary itself. The idea of some executive institutions organising training for judges could compromise independence of the judges as they are exposed to patronage from those institutions who invariably would have cases before their Lordships at one point in time or another. For instance, the corporations or agencies are very notorious for this illicit practice of training judges and thereby gratifying them with unlawful perquisites. The same bodies would prosecute cases before the court and the perception of bias from the public cannot ruled out. Sponsorship fund can be made available to the Institute without their presence at such trainings nor even in dictation of the source.
f. *Retirement Package*: Judicial officers, after years of meritorious service ought to be well packaged for the future. The retirement package must be sufficient to address their needs after retirement. Not only must housing be guaranteed, health support is a must. Whatever sums payable must be able to meet their future needs. The present situation of paying the basic salary is a challenge to the administration of justice as judges' future remains uncertain and bleak. By way of immediate adjustment,

judicial officers must be allowed to retain all allowances presently enjoyed by them whilst in active service. The Constitution must be amended in this regard. In a jurisdiction like South Africa, surviving spouses even enjoy such patronages. This is still a challenge to the judiciary and by ensuring that their retirement package is assured, judicial autonomy is guaranteed.

2. *Appointment Process*. Our process of appointment of judges needs to be sanitised. It must be merit-based, pure and simple and to that end, the following must be urgently done:
    a. The current process of appointment of Judges right from the qualification requirement is too porous and highly politicised. Section 271 of the Constitution and other provisions dealing with appointment of Chief Judges and Judges of the High Court must be reviewed and amended. The process of appointment should be de-politicized. Right now, it is the Governor and the President that appoint Judges with only a recommendation from the NJC. Where we intend to have courageous Judges who can uphold the rule of law, executive determination of appointment of Judges must be de-emphasised. Of significance in this regard is the need to amend the composition of the various commissions in a manner that insulates them from the executive and legislature. This is equally not exempting the NJC whose members are practically appointed solely by the Chief justice of Nigeria. New appointment mechanism, certainly not in the hands of the Executive or the Legislature, must be devised to produce independent members.
    b. The simple requirement of having qualified for a minimum of ten years to be appointed a Judge as contained in Section 271(3) gives room for a mediocre to be appointed to the Bench. The NJC ritual should be made more meaningful as recommendations from Chief Judges of States should be

carefully scrutinised. There must be a minimum number of of quality judgments in cases of magistrates, or contested cases in case of practitioners, that an aspirant to the Bench must possess and which must be rigorously scrutinised to ensure that the current practice of “packaging” judgments for applicants is deterred.

c. In appointing judges, the process is too shielded from proper scrutiny. While the requirements and appointment process of lawyers to the prestigious rank of Senior Advocates of Nigeria are so rigorous, appointment process of judges is somewhat below what proper standard requires. The number of cases required to qualify to be a judge ought to be strictly observed and the need to allow the public to comment on the suitability of an aspirant to the Bench ought to be included in the process. It is the members of the public who can attest to the character of an applicant just as it is done in the case of applicants to the rank of Senior Advocates. Thus, names of shortlisted candidates should be published for public comments. By this, the integrity of an applicant can be properly assessed.

d. Appointments should be made to the appellate Courts from the Bar as well. It should not be a turn-by-turn graduation from the High Court to the Court of Appeal and, henceforth, to the Supreme Court as it is being done now. Quality appointments is made to the Bench in the UK from among the Queen’s or King’s Counsel as stated above. Senior Advocates whose forte of knowledge and strength of character have been proven can be elevated to the Bench. This is subject to a comprehensive review of the current salaries and emoluments of Judges as no successful Senior Advocate would like to subject himself to “inhuman and degrading treatment” of poor salaries as our Judges are made to suffer. This I know might be unpopular view

amongst My Lords for obvious reasons but certainly it is not novel to our appointment process.

3. *Security of Tenure*. The Constitution has provided for security of tenure for Judges. It must be rigidly observed and a Judge should only be removed in cases of misconduct gross enough to warrant removal. Based on this, we observe as follows:
    a. The penchant for ridiculing Judges by state security officials like EFCC, DSS, ICPC and the Police Force is shameful. An invasion of a judicial residence is desecration of judicial office. No matter what, there is a procedure for reporting judicial misconduct which is to the NJC and this cannot be waived no matter how powerful a security or government official can be. There are decent and dignifying ways of unmasking a corrupt judge that should be employed. Furthermore, a Judge can be invited for interrogation and not to have his residence invaded like the Navy Seals invading the residence of Osama Bin Laden. A judge is not in the category of a terrorist, for God's sake!
    b. The incidences surrounding the removal of Justice Ayo Salami and Justice Onnoghen constitute a blot on our sense of official rectitude. It also shows how desperate a tyrannical executive can be in order to have its way with the judiciary. No nation on earth will respect our Judges and their judgments due to the way we treat Judges in the likes of gangsters. The Bar and the Bench in the future must resist such incursion and take a stand in the future.
4. *Judicial Intimidation and Influence*. Intimidation of Judges both from within and without is condemnable. To this end, we say:
    a. Our governments must learn civility and the sacred office of a Judge must be held in high esteem. Our Chief Judges too should desist from the beggarly attitude of worshipping Governors and should learn that the three arms of government are equal and none is sovereign above the

other. Comportment is the solution in this regard. Chief Judges must respect themselves in order to be respected by the others. Hobnobbing or flirting with the Executive must be reduced, if not avoided. Some Chief Judges descend so low as to be calling the Governor "Oga". There is no way the Governor would not become swollen-headed as to disrespect such a Chief Judge.

b. Internal intimidation of judges from within the judiciary is equally condemnable. A Judge should be able to perform his duties unfettered and uninfluenced. The practice of senior judges breathing down the necks of junior ones with importuning influences is destructive of judicial independence. Let a Judge decide a case before him according to the law and his conscience. Where he is wrong, the appellate courts and processes are there. He can be reversed on appeal. May God forbid that a Judge should even be right in all cases as he is human and can never be perfect. The essence of appeals will no longer be relevant. In addition, complainants to the National judicial council must be made to deposit reasonable sum against the probable frivolity of their petitions. It is from this that at the barest minimum, a victim judge can be adequately compensated with letter of exoneration, decently worded to such judge.
c. Politicians should be made to realise that influencing judicial process is like urinating in a stagnant but otherwise clean pool. Such pollution does not retain the cleanliness of the pool but rather destroys it. There is need for the judicial code of ethics and that of Code of Conduct to adhered to.

5. *Judicial Fearlessness*. Our judges should be more courageous as well. A lily-livered Judge is incapable of guaranteeing justice. Do your work according to the law and your conscience only influenced by what is right. Heavens shall not fall and where an

upright judicial officer is made to suffer, know that such nation is being condemned to perpetual lack of progress. There is, however, a way God compensates such judges beyond their imagination, here and in the hereafter.

6. *Delay in Judicial Process*. Our Judges must wake up to the responsibility of quick dispensation of justice. This is a virtue that promotes both the economic life of a nation and the confidence of the people in the judicial process. To this end:
    a. irresponsible applications should be treated with dispatch and the cost regimes should be made more deterrent. The application of wasted costs doctrine should be deployed. This is provided for in our Rules of Courts by which costs are awarded against lawyers personally for unnecessary delays in the proceedings of the court. Such lawyers should be notified to the Nigerian Bar Association as causing delays in judicial process which is an act incompatible with the status of a legal practitioner and is an infamous conduct. Judges must take charge of their courts and be decisive always;
    b. unethical conduct by lawyers should not only be condemned by Judges but must be notified to the Nigerian Bar Association for necessary actions. Such lawyers found wanting risk the jeopardy of never attaining the highest rank in the legal profession and they may even lose their right to practise as lawyers. This will serve as deterrent to others;
    c. Judges must know the importance of time and the need to accord respect to lawyers. Where a Judge is not going to sit, he must notify counsel so that they will not travel long distances only to come and pick dates.
    d. There is the need for urgent deployment of technology to enhance efficiency and speed in the disposal of cases.

PART V: CONCLUSION

It is clear that the situation the contemporary judiciary has found itself in Nigeria is not enviable at all. While its counterparts in other nations have transcended primordial challenges that we are grappling with here, our judiciary is still at the mercy of human-created problems of executive ego, infrastructural decay, poverty-inducing remuneration and frightening intimidation from within and without. Notwithstanding the excellent human and natural resources we are blessed with as a nation, problem of leadership decay has inflicted on us a judiciary that is suffering from lack of independence and whose services are disrupted by incessant strikes while its judgments are thought to have been procured in all cases by a public that is daily losing its patience for even mere perception of corruption.

The notion of rule of law has become too well entrenched in human consciousness and affairs that any nation, where rule of law is trampled upon, can neither birth substantial human capacity development nor attract sufficient foreign investment that can galvanise it into the future of prosperity that all nations desire. Whereas rule of law is touted by all governments as the cornerstone of their services to the people, rule of law cannot be proper under a judiciary that is in shackles. Nigerian leaders need a rethink. In all, the Nigerian judiciary must be rightfully accorded its status as an independent arm of government and not a parastatal under the Executive. If this is achieved, substantial portion of the challenges confronting the judiciary in modern times Nigeria will vanish.

Thank you.