

## **AN ASSESSMENT OF THE JUDICIARY ON ADMINISTRATION OF JUSTICE AND GOVERNANCE IN NIGERIA**

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**Abstract:** *The Judiciary plays dominant role in the administration of justice. A country can hardly develop without good governance and a perfect judicial system revered by the people. Attributes of democracy are good governance, rule of law anchored separation of powers and independence of Judiciary. Independence of judiciary inter-alia includes appointments, salaries, allowances, discipline and retirement benefits, which made it distinct from other arms of government. The Nigerian Judiciary however has come to Public domain lately with crisis that tends to question their integrity and independence. The October 2016 incident and the 2019 removal of the Chief Justice of Nigeria paint a picture of Nigerian Judiciary in Public view that tends to undermine the so much referred institution. The actions that followed leave so much to be desired of the sacred arm of the government. This work x-rays the Nigerian Judiciary, the constitutional provisions for its duties and independence in a global democratic arena. The paper examined relevant international and regional instruments and other local statutes. The method of the paper is qualitative and exploratory in nature. By way of descriptive analysis of secondary sources, the paper draws insights from scholarly exegesis and empirical historical evidences and cases. The paper concludes by recommendations that could restore the dignity of the Judiciary and respect for Nigerian democracy.*

### **INTRODUCTION**

The judiciary is not just the hope of the common man but hope of everybody and the country as a sovereign nation. The judicial powers of a nation are given to its judiciary. It is the arm of Government enthroned in the temple of justice to dispense justice as provided by the constitution. Its functions can only be realized when there is independence of the judiciary as noted in the dictum of Winston Churchill that the principle of complete judicial independence from the executive is the foundation of a lot of things in life. Shokefun J.A. (1999), This will go a long way for a nation to achieve proper implementation of the rule of law, separation of power and fundamental human right regimes. The rule of law is very important to every nation. It is fundamental to the sustainability of economic development of a nation. The advancement of the rule of law is essential globally and within a nation so as to inter alia achieve economic growth, development, and for poverty and hunger eradication. Maximum guarantee of human rights is a prerequisite for freedom which invariably assists development.

Development can be achieved through the protection of citizens and rights given to the people to own personal properties; equality and fairness in enforcement of human rights; formation and implementation of equitable labour laws and extension of equal opportunity to women, the poor, the illiterates and those marginalized. Pole Alliance (2016): A Nation can attract investors when it protects right to hold private properties with existence of good legal system that is strong enough to enforce contracts and control corruption among Public officers. Rule of law is effective when there is honesty in keeping agreed contract terms and enforcing it without reneging. If this culture can be built in a nation, it will attract investors locally and internationally. Martin O.N. (2008)

## **STATEMENT OF THE PROBLEM**

For Democracy to be practiced and protected there must always be an application of fairness and due process at all levels. The rule of law determines the stability of an economy. It has a lot to do with the equality of people in the eyes of the law in a nation. It is a situation whereby law rules and not rule pronounced by discretion of men. This has made Andrew S. Natsios to conclude that:

- Without good governance and a strong commitment to the rule of law and a genuine will to control corruption, all of which are essential for accountable government, development would be difficult if not impossible.
- The foundation of Strong economies has been constructed to accommodate strict adherence to the rules at the beginning of its nationhood. Martin O.N. (2008)

## **LITERATURE REVIEW**

Ameh S.A 2012 maintains that independence of the judiciary is an arm of Government in which the courts in modern era should have freedom to adjudicate without any person interfering. He excludes financial independence because the judiciary relies on fund appropriated annually by the legislature.

Yakubu J.A (2003) maintains that a country is governed through law hence each government should respect rights of every individual through the rule of law. Besides, effective instruments should be provided to enforce the law. He adds that judges need proper guidance of the rule of law which they are to use to insulate and enforce fearlessly and without any encroachment by party politics or any government that intervenes. The contrary, according to him must be resisted. Lawyers globally protect the independence attached to their profession and uphold protection of rights of the people embedded in the rule of law while ensuring that application of fair hearing is sacrosanct because every individual is entitled to it. With reference to declaration of Delhi of January 1959 which affirmed Act of Athens, the author adds educational and cultural framework to civil and political right.

A. Akintola (2010) maintains that separation of powers is an attribute of the rule of law. When adjudicating, law should be separated from government, politics and religion. This will give room for the purpose of law to be achieved as regulator of powers of the government.

Rout, S.K. and Morthy, P (2017) argue that good governance survives when the rate of corruption is infinitesimal. He points out that in history of the world, corruption is

manifested in every state of civilization. Relying on Kantiliya's Arthasastra and Aristotle's postulations that corruption adversely affects a nation and every poor person. It is much pervasive in every society. It is manifested in the rate of employment and affects the poor severely. He maintains that good governance needs fair legal regimes that are enforced without partiality. Besides, there should be independent judiciary and the police force that is impartial and incorruptible which are dreams of most societies.

Jibuze, J (2 016) writing on corruption in the judiciary maintains that there is no other ugly thing or dangerous thing than corruption by a Judge. It is a sacred duty to be dispensed with trust. Corruption in dispensation of justice affects people's confidence and it is dangerous in maintenance of peace and stability of a nation. For a judge to be Corrupt after taking oath against favouritism and justice and even fearlessly, it is a shame and disgrace to the builders of the legal profession.

### **RELEVANT LEGAL FRAMEWORK**

Right to Fair Hearing is an international legal framework to protect the people from arbitrary and illegal restriction or prevention from being properly heard or defended. It is also the important features of democracy which imbibes rule of law. The political system in Nigeria whereby the ruling parties want to be in total control and perpetuate themselves in office has resulted to despotic rule which affects people's liberty. Democracy needs good legal framework to succeed. The effect of politics in the rule of law has made many people to believe that western judicial system has failed in Nigeria. The police and the Economic and Financial Crimes Commission handling trial of former office holders proves that there is existence of deliberate abandonment of the application of fair hearing and disobedience in the judiciary.

Section 36(1) of the 1999 constitution provides that there should be fair hearing of every person when determining civil rights and obligations which include any question or determination by or against government or authority within a reasonable time by a court or tribunal so as to ensure independence and impartiality.

In *Isiyaku Mohammed V Kano Native Authority* (1968) necessary guideline for fair hearing is that:

- The true test of fair hearing is the impression of the reasonable man who was present at the trial whether from his observation; justice has been done in that case.
- Section 35 of the 1999 constitution is on Right to Personal liberty and it strongly prohibits unlawful arrest.
- Article 7(b) of the African Charter on Human and People's Rights provides that every person is presumed innocent until the contrary is proved. Article 5 provides that every person is entitled to the dignity inherent in every human being and to the recognition of his legal status. It is provided under Article 26 of the African charter on human and People's rights that state party shall guarantee the independence of the Courts.
- Article 9 of International Covenant on Human and Political Rights provides for liberty and security of persons. It prohibits arbitrary arrest and detention. Arrest is to be done only on grounds and in accordance with the procedure established by the law.

- Article 9 of Universal Declaration of Human Right provides that no one shall be arbitrarily arrested, detained or send on exile. Article 10 provides for full equality of fair hearing by an independent and impartial tribunal when criminal charge(s) are brought against him.

## **THE JUDICIARY**

### ***Appointment of Judges***

Section 6(1) of the 1999 constitution of Nigeria gives the courts power to administer justice in every state in Nigeria. The Chief Justice of Nigeria is appointed by the President of Nigeria on the recommendation of the National Judicial Council and subject to the confirmation of the Senate. This is done in conformity with the provision of Section 231(1) of the constitution. Section 238(1) provides that the appointment of the President of the Court of Appeal of Nigeria shall be done by the President on the recommendation of the National Judicial Council and subject to the confirmation of the Senate. Section 238(2) also provides that appointment of Justices of the Court of Appeal shall be done by the President on the recommendation of the President of the Federal Republic of Nigeria subject to the confirmation by the Senate.

The Chief Judge of The Federal High Court is appointed by the President on the recommendation of the National Judicial council and subject to the confirmation of the Senate as provided by Section 250(1) of the 1999 constitution. Section 250(2) provides for the appointment of other Justices of the Federal High Court. It shall be done by the President on the recommendation of National Judicial Council subject to the confirmation by the Senate. The Chief Judge of the Federal High Court of the Federal Capital Territory Abuja shall be appointed by the President on the recommendation of the National judicial Council and subject to the confirmation by the senate as provided by Section 256(1) of the constitution. Section 256(2) provides for the appointment of other Judges of the Federal High Court of the Federal Capital Territory Abuja to be done by the President on the recommendation of the National Judicial Council.

Section 261 (1) provides for the appointment of Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and it shall be done by the President on the recommendation of the National Judicial Council subject to the confirmation by the Senate. Other Kadis of the Sharia Court of Appeal of the Federal Capital Territory, Abuja shall be done by the president on the recommendation of the National Judicial Council as provided by Section 262(2) of the Constitution. The President of the Customary Court of Appeal of the Federal Capital Territory Abuja shall be appointed by the President on the recommendation of the National Judicial Council subject to the confirmation of the Senate as provided by Section 266(1) while by provision of Section 266(2) of the Constitution, the appointment of Judges of the Customary Court of Appeal shall be made by the President on the recommendation of the National Judicial Council.

On the appointment of the Chief Judges of the states in Nigeria, Section 271(1) of the 1999 constitution provides that the appointment shall be done by the Governor on the recommendation of the National Judicial Council but subject to the confirmation of the House of Assembly of the State. Section 271(2) provides for the appointment of the High Court judges of the States to be done by the Governor on the recommendation of the National judicial Council. The appointment of the Grand Kadi of Sharia Court of Appeal

of states is to be done on the recommendation of the National Judicial Council and is subject to the confirmation by the House of Assembly of the State as stipulated in Section 276(1). Section 276(2) provides that the Kadis of the Sharia Court of Appeal shall be appointed by the Governor of the State on recommendation of the National Judicial Council. Section 281(1) provides that The President of the Customary Court of Appeal shall be appointed by the Governor of the State on the recommendation of the National Judicial Council and subject to the confirmation by the House of Assembly of the states. Section 281(2) stipulates that other Judges of the Customary Court of Appeal shall be appointed by the Governor of the State on the recommendation of the National Judicial Council.

### ***Funding of the Judiciary Nigeria***

The judiciary may be subjected to abuse and lack of required dignity when it financially depended. It has constitutionally been taken care of with the provisions of sections 84(7), 81(3) and 162(9) of the 1999 amended constitution on provision for recurrent expenditure, funding through consolidated revenue and payment of amount standing to the credit of the Judiciary to the National Judicial Council respectively. (Nwakwo O, 2019)

This is seriously impairing the judiciary in the states. Despite the constitutional provisions that the states are to receive fund from the consolidated revenue fund, the Executive arm usually breach this without any stringent measure. They are often starved of funds. Inadequate funding affects efficiency of the courts in every state. It is provided in Section 81(3) and 81(4) of the 1999 amended constitution that the judiciaries in the states are to present two budgets. The salaries and allowances of superior courts in the states and recurrent expenditure should be submitted to the Federal government through the National Judicial Council. The Federal Government is to provide the funding. The second is on Capital budget for the judges and recurrent expenditure and capital budgets for Magistrates, Judges of lower courts and support staff which should be submitted to the State Government in conformity with Section 121(3) of the constitution. When the Judges of superior courts gets their salaries and allowances regularly, the salaries of support staff delays and makes them go on strike often. This affects the performance of the judiciary. Textbooks, computers, generating set and other important things needed for good performance are not provided for them. Chief Judges do go to State Governors for fund. These dent the office of state judiciaries. (Abdulrahman S.2019)

### ***Discipline and Removal of Judges***

Paragraph 21(b) Part 1 of the Third Schedule provides that the National Judicial Council shall be exercising disciplinary control and shall have power to recommend to the President, the removal of the Chief Justice of Nigeria, Justices of the Supreme Court, The President of the Court of Appeal, Justices of the Court of Appeal, the Chief Judge of the Federal High Court and Judges of the Federal High Court. Paragraph 21 (d) Part 1 of the Third Schedule stipulates that the National Judicial Council shall have power to exercise disciplinary control and to recommend to the Governor, the removal of Chief Judges of the States and other High Court Judges of the States, the Grand Kadis and kadis of Sharia Courts of Appeal of the States and President and Judges of Customary Courts of Appeal of the States.

On October 14<sup>th</sup> 2016, around 1:00 am, some Judges including two Supreme Court Judges were arrested in their houses. They were arrested and detained with huge sums of money including both local and foreign currencies. They were later granted bail on self recognition. The Judges are not above the law of the land but there are laid down procedures for them to be disciplined. The import of granting them bail by the DSS meant that the Judges' position is significant to the law which means that they cannot run away from being disciplined. Since they could be granted the bail why then going to their homes at midnight contrary to the stipulation of the law that arrest should be done between 6am and 6pm. Besides, the DSS does not have jurisdiction to arrest and prosecute in this case. Vanguard, (2017)

Charges of fraudulent non-declaration of asset were taken to court against the Chief Justice of Nigeria, Justice Walter Onnoghen on the 10<sup>th</sup> January 2019. It was claimed that the charges were brought within 14 hours of receipt of petition. Another account revealed that it was within three days. It was believed that the prosecution was hurriedly commenced because it would take time to investigate allegation since the investigation would have to commence from 2005 when the CJN was still a justice of the Supreme Court. A petition for the CJN to set aside while an acting CJN is sworn in pending the outcome of the case was opposed by the defence Counsel on the ground that the tribunal has no jurisdiction to try the Chief Justice until the National Judicial Council (NJC) authorized by Law on discipline judges has performed its duty. The case was adjourned to 22<sup>nd</sup> January 2019 while the CJN which had not been served should be properly served and should appear in court. On the 22<sup>nd</sup> January the argument of lack of jurisdiction persisted with disclosure that a High court in Abuja, the Federal High Court Abuja and the National Industrial Court Abuja had issued an interim order to the Code of Conduct Tribunal in a hearing notice that the chairman should stay proceedings. It was further disclosed that there was a pending ruling in the Court of Appeal Abuja on jurisdiction of the CCT on the case.

The Code of Conduct Tribunal refused to grant the application for indefinite adjournment of the proceedings as ordered by the three courts because it was maintained that they were not superior to the Code of Conduct Tribunal. It further maintained that the Code of Conduct Tribunal was established by the 1999 constitution to adjudicate on matters of assets declaration by public officers. The tribunal allowed the CJN's motion challenging the jurisdiction of the tribunal but argument on it was postponed till January 28. On the 23<sup>rd</sup> January the motion ex-parte dated 9<sup>th</sup> January was moved and it was granted by the CCT. The Court of Appeal on 24<sup>th</sup> January also finally issued stay of proceedings to the CCT till 30<sup>th</sup> January when it will decide on the appeal to stay proceeding and on jurisdiction.

On the 25<sup>th</sup> of January, the President suspended the CJN claiming to have acted on the order of the CCT. He therefore swore in the most senior Judge, Justice Tanko Mohamed as acting CJN. It was claimed that the order was for the Chief Justice to step aside as the Chief Justice and Chairman of NJC pending determination of motion on notice dated 10<sup>th</sup> January. (Odugbemi G, 2019). The CJN's suspension contrary to stepping aside order granted in the ex-parte generated a lot of arguments. Diego Garcia- Sayan , the United Nations Special Rapporteur on the independence of judges and lawyers reported that the International human rights standards is that Judges may be dismissed only when there is serious misconduct or incompetence. If there is any decision to suspend or remove a judge

from office such should be fair and it should be a decision of an independent authority such as judicial Council or a court. UN news, (2019)

In *Nganjiwa V FRN* (2018) There was an action against Justice Hyeladxira Ngajiwa of the Federal High court in December 2017. The provision of section 158 of the constitution was considered and the court held that only the National Judicial Council (and not the E.F.C.C. or Code of Conduct Bureau) is empowered by the constitution to adjudicate on corruption charges against a serving judge. The court added that a judge in active service cannot be investigated or tried in a court of law unless such judge is first removed from the Bench.

In *Justice Okwuchukwu Opene V National Judicial Council & ors*, (2011) Judges including the Appellant were petitioned when handling an election petition. They were alleged to have obtained bribe. A panel of enquiry by the National Judicial Council recommended dismissal of the judges for misconduct and they were dismissed after approval of it by the President.

In *National Judicial Council v Hon justice Iyabo Yerima & Anor.* (2014) Relying and referring to the interpretation of Section 158(1) of the Constitution by Okoro J.C.A (as he then was) in *Manuwa V National Judicial Council* (2013) that the National Judicial Council should be independent and should not be subjected to interference, directive, control or influence or authority when it is exercising its constitutional powers.

Countries need mechanism for removal of judges in the world. The legal framework should ensure a framework is not applied to castigate or threaten judges. The Common Wealth Latimer House Principles is that judges should be removed only when there is incapacity or misbehavior which can impede them from carrying out their duties. The common legal administration of justice principles require that there should be presumption of innocence, sufficient time to prepare for defence, legal representation, cross examination among others. There are different approaches in Common Wealth countries for removal of judges. In some common wealth jurisdictions an ad hoc tribunal is formed to determine issues arising from investigation which can result to removal. There is permanent disciplinary council for the purpose of discipline of judges in some nations. Some jurisdictions have parliamentary removal mechanism. In few countries there is parliamentary process for removal of some judges while other judges are removed by a council. Common Wealth Bingham Center for Rule of Law, (2015)

## **FACTORS INHIBITING RULE OF LAW AND GOOD GOVERNANCE IN NIGERIA**

There are many challenges affecting rule of law and good governance in Nigeria. The Attorney General gives legal advice to the President at the Federal level. He represents the Government in some cases. He is to ensure that the administration of Justice is done in conformity with the Law. The Minister of Justice is under the Executive arm and he assists in developing policy for the Government. Akpedeye D, (2017). Contrary to the notion of Separation of Powers, the office of the Attorney General of the Federation and that of the state is not separated from that of Minister of Justice. The same position is applicable to the Commissioner for Justice in the states.

The judiciary is the third arm of government to interpret the law and not to perform the duty of other arm of government. This can be expressed as *jus dicere non jus dare*.

Which is to declare the law and not to make the law which means *Judicis est jus dicere non dare* in Latin. It was confirmed by Bairamin F in the Supreme Court case of *Okumagba V Egbe* (1965) that the Chief Magistrate felt that the appellant should be punished. He therefore replaced “another candidate” “by any other candidate” which enabled him to punish the appellant. Consequently, he amended the regulation meanwhile amendment is the duty of the legislature and not the judiciary. He succeeded in amending the regulation to be in the way he thought it should be. The judge made reference to Lord Bacon’s essay on judicature that the office of a judge is not to give the law but *jus dicere non dare* which is to state the law. (Abdulahi I, 2014)

There are judicial officers who have abused their judicial oath of office by engaging themselves in activities that are inconformity with the standard expected of their prestigious office. They engage in corruption and contradictory interlocutory injunctions. The atrocities of corrupt judges are detrimental to the image of the judiciary. (Lawal I.B, 2005)

The Chief Justice of the Federation and the Chief Judge of the State are still being appointed by the President and Governor of the States respectively on the recommendation of the National Judicial Council. This can give opportunity for political influence in the appointment of Judges whereas the most senior judges can be directly appointed by the National Judicial Council. The Constitution has stipulated that the National Judicial Council is to exercise disciplinary control on the Judges at both Federal and State levels. The Council is also empowered to recommend removal of the President and that of the Judges of the High Court of the State to the Governor. Judges are still being subjected to arrest and trial contrary to the stipulation of the law.

## **CONCLUSION**

The country which is well blessed with enough human and natural resources lacks respect for due process and the rule of law. When there is independent judiciary, the rule of law will be properly implemented. When this is done, people will respect the law and the rights of everybody will be properly protected. The country will enjoy peaceful coexistence. Besides, the rate at which swindlers operate in the country will reduce because of fear of facing the wrath of the law. Besides, local and international investors will be attracted to invest in the country. This will give room for the nation to enjoy the benefit of good governance which will assist it to economically develop.

## **RECOMMENDATIONS**

The Attorney General of the Federation should be different from the Minister of Justice while the Commissioner for Justice of the State should be different from the Attorney General of the state. This will give room for Judicial Independence and application of rule of law. Besides, it will also give room for proper separation of power whereby the Judiciary will be separated from the Executive.

Appointment of Judges should not be done by the Governor but the National Judicial Council should appoint the most senior Judge subject to the confirmation by the Senate and Houses of Assembly of the States for Chief Judges of the Federation and Chief

Judges of the States respectively. This should also be done when appointing Judges for the states.

The judges should not be subjected to any influence of the Executive. All fund of the state judiciary should be promptly paid through the NJC. The Judges should have nothing to do with the Executive on salaries, recurrent and capital fund. Judges are not above the law of the land, the National Judicial Council should continue to handle discipline of Judges and the law should ensure retrieval of any corruptly earned wealth from the Judges.

The law should be expressly stated on suspension pending investigation and removal. The President should act to suspend pending investigation by the National judicial Council on an address supported by simple majority in the senate while the status quo should remain removal of a serving Chief Judge. Continuous training through workshop, Seminars and Conferences should be sponsored locally and internationally for Nigerian Judges.

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