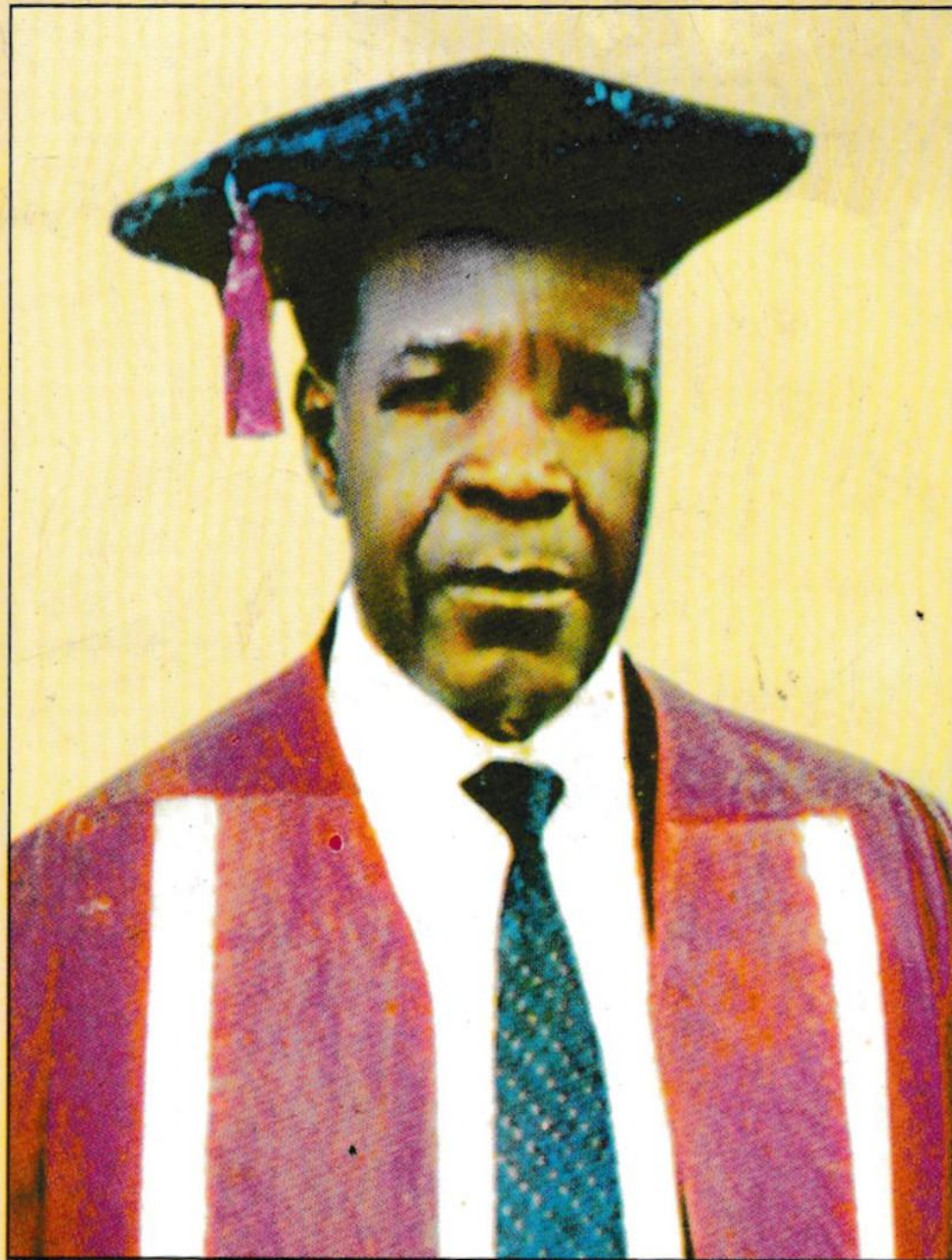


# LAW: ALL-ROUND EXCELLENCE

Essays in Honour of Professor Peter Umana Umoh, PhD (London)



*Edited by*  
ENEFIOK ESSIEN

**LAW:**

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## JUDICIAL REFORMS AND DEMOCRACY IN NIGERIA\*

...the judiciary has a sacred albeit arduous task to salvage the nation. And as Judges, we must rise up to that sacred duty. Only then can we earn the eternal gratitude of the citizenry and as priest in the temple of justice, the eternal blessing of the Almighty God.<sup>1</sup>

Ours is a burgeoning democracy and nothing outward should be done to destabilize this upward and aggressive progression of the nation to join the comity of nations in the so-called first world. All must stand up to be counted in this phenomenal and formidable but very worthy effort<sup>2</sup>

### Introduction

The title of this chapter is contemporary and sets a socio-legal agenda. For those who like long titles, the title can be reframed as: “Reforms in the Judiciary and the potential impact in the development of Democracy in Nigeria”. However, no matter which title is chosen, the key words are Judiciary, Reforms and Democracy.

“Judicial” is simply the adjective from “judiciary”. We know the judiciary as an arm (or a leg!) of government that is endowed with the authority to interpret and apply the law, adjudicate legal disputes and otherwise administer justice. It refers to the court system or the judges collectively. The courts hold a unique position among our democratic institutions. In a sense, they represent one of our last bastions of

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1 *Sullivan Chime v. Onyia & 2798 Ors* (2009) 2 NWLR (Pt. 1124) 1 at p. 77 G-H.  
2 *Adams v. Umar & Ors* (2009) 5 NWLR (Pt. 1133) 41, at 135 C-D, *per* Sankey JCA.

participatory democracy, in which disputants go directly before a judge (sitting as judge and jury) to resolve an issue. In no other governmental context does an individual have the opportunity to take a problem to a decision maker who represents the full force and power of that particular branch of government. This direct interchange between the individual and the state is at the heart of democratic process.<sup>3</sup>

Reforming the judiciary therefore means the removal of faults or abuses and malpractices in the judiciary. The *raison d'être* of judicial reforms is the realization that there is a direct relationship between democracy, its practice and the judiciary. The Judiciary is the guardian of the constitution, and by extension the guardian of democracy. The constitution makes the Judiciary the “watchdog” of other arms of government, so that it checks each arm and keeps it within the confines of its power. The constitution therefore creates a social responsibility for the Judiciary: “to ensure that the powers that have been delegated to the other two arms of government are used for the good of the society. In other words, it is necessary to the intendment of the constitution that the judicial determination of the issue raised before it should have a bearing on democratic values, developmental policies and programme”.<sup>4</sup>

### **The Good news**

In the last decade or so, the Judiciary has done a lot to enhance and stabilize democracy by its many landmark decisions in political cases. These decisions and the new activist role of the judiciary which produced them, have helped to reinforce the role of the judiciary as a vital instrument of political control and democratic consolidation, thus impacting positively on the development of democracy in Nigeria.

Since the return to democracy on 29 May, 1999, the stance of the courts has caused a major behavioural shift among Nigerian politicians. While

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3 Rose E Bird, American jurist; chief justice, Supreme Court of California, in *Los Angeles Times*, November 16, 1977.

4 I. A. Ayua : “Delivery of Justice: Examining Legal and Social Justice”, in E. Amacheazi and O. Olatuwura (eds), *The Judiciary and Democracy in Nigeria*, Abuja, N O A, 1988, p. 117

some politicians continue to practice violence and political thuggery, many more now prefer to embrace judicial channels for conflict resolution. This change springs from the reform within the judiciary itself which has since 1999 played an increasingly assertive role as a courageous and impartial arbiter in the country's democratic politics in general, and electoral disputes, more specifically. The clearest evidence of this is the large number of judicial decisions that have upturned the results of several rigged elections not only in favour of the ruling party, but also in favour of opposition parties or individuals opposed to the government and the ruling political party.<sup>5</sup> The judiciary has helped to protect the citadel of democracy in some of the monumental decisions.

Right from the judicial intervention in Anambra State that brought in Peter Obi of APGA as Governor,<sup>6</sup> to the declaration that INEC had no power to disqualify former Vice President Atiku Abubakar from contesting the April, 2007, Presidential elections.<sup>7</sup> The Supreme Court also held that unlike the Ministers, the Vice President cannot be removed from office by the President, and that, the 1999 Constitution does not provide that the President or Vice President of Nigeria shall be removed or is removable from that office if he defects from the political party on whose platform he was elected to that office and joins another political party.<sup>8</sup> There is also the restoration of Senator Ifeanyi Ararume as the candidate of PDP in the April 14, 2007, Imo Governorship election<sup>9</sup> (even though he was finally subverted by his own very Party); the declaration that Rt. Hon. Rotimi Amaechi was the candidate of PDP that won the Rivers State April 14, 2007, Governorship election<sup>10</sup> thereby causing him to be sworn in. In this case the court was called upon to decide who of the two candidates was PDP's nominated candidate for the April Governorship election. The court held that "there is simply no room for a candidate who never contested a primary election in such setting to emerge a party

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5 David U. Enweremadu, "Judicial Reform and Democratic Consolidation in Nigeria: 1999 – 2009, at <http://www.polis.leeds.ac.uk/assets/files/ev> accused on 15/12/11.

6 *Peter Obi v. INEC* (2007) 11 NWLR (Pt. 1046) 565 (SC)

7 *A-G of the Federation v. Atiku Abubakar* (2007) 10 NWLR (Pt. 1041) 1 (SC)

8 *Ibid.*, held 9, 13.

9 *Ugwu v. Ararume* (2007) 12 NWLR (Pt.1048) 367 (SC)

10 *Rotimi Amaechi v. INEC* (2008) 5 NWLR (Pt. 1080) 227 (SC)

candidate”.<sup>11</sup> As the court rightly noted, this is no doubt a praiseworthy attempt to enthrone intra-party democracy in order to ensure that our democracy is truly reflective of the people’s choice.

It should be quickly added that the *Amaechi v. INEC* and *Ugwu v. Ararume* cases<sup>12</sup> cannot be taken as vesting in the courts a general or limitless power to pry into the domestic or internal affairs of a political party in nominating or appointing a candidate of its choice as its flag bearer at an election. In these cases, the need to scrutinize how the candidates in the cases emerged and especially whether or not the provisions of the constitution of the affected political party were adhered to in the emergence of the candidates was necessitated because a pronouncement had to be made as to which of the two candidates the political party ended up nominating was so nominated by due process.<sup>13</sup> In other words, the position of the law under the Electoral Act 2006 was that unless in a situation where the provision of 34 of the Electoral Act, 2006, was activated by the action of a political party in substituting a candidate whose name had earlier been forwarded to INEC with another, the courts still did not possess the jurisdiction to look into how a political party came to put up its candidate for an election. Section 34 of the Electoral Act, 2006 provided:

- (1) A political party intending to change any of its candidates for any election shall inform the Commission of such change in writing not later than 60 days to the election
- (2) Any application made pursuant to subsection (1) of the section shall give cogent and verifiable reasons.
- (3) Except in the case of death, there shall be no substitution or replacement of any candidate whatsoever after the date referred to in sub-section (1) of this section.

As can be seen, section 34 of the Electoral Act, 2006, was designed to check the excesses of the political party arbitrarily substituting

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11 Ibid., held 3.

12 See also: *Ehinlanwo v. Oke* (2008) 19 NWLR (Pt. 1113) 357

13 *Per Abba Aji, JCA in Ozigbo v. PDP* (2010) 9 NWLR (Pt. 1200) 601, held 9.

candidates who have fought for and worked hard to emerge as the party's candidate in the primary elections. The section sought to put sanity in the political system. It put confidence in a successful candidate from the primaries that once he was elected, his party could not on its own whims and caprices substitute him for a less popular, less credible candidate without adducing cogent and verifiable reasons for such substitution. This is why section 34 was declared justiciable.<sup>14</sup>

There is again the declaration that Adam Oshiomole and Segun Mimiko were the rightful winners of the April 14, 2007, Governorship elections in Edo and Ondo States respectively, etc. Again, to the glory of democracy, the judiciary held emphatically that there can be no substitution of candidate after an election, because there is no provision for such in any Nigerian electoral laws. In the words of the court, it is "political recklessness" for a party to change its candidate after an election or to deprive a winning candidate of the certificate of return.<sup>15</sup> With all these, it becomes obvious that the Judiciary is the very foundation of democracy in Nigeria. Oshiomole's confidence in the judiciary, even when his case was still pending,<sup>16</sup> is a testimony to the role of the judiciary in strengthening democracy. He said:

The good news is that we are running a system that is based on the principles of separation of powers. So, the President could use the INEC, Police or even the army, but he does not have control over the judiciary – and there is enough evidence that a number of judicial pronouncements have embarrassed the federal government.<sup>17</sup>

The judiciary thus became seen as an impartial and credible arbiter of political disputes. The fear of the judiciary became the beginning of political wisdom in Nigeria, just as the judiciary became a reliable partner in Nigeria's strive for a free and fair electoral process. With this confidence, Nigerian politicians increasingly look up to the judiciary to resolve their differences, and have come to accept court judgments, no

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14 *Odedo v. INEC & PDP* (2008) 17 NWLR (Pt. 1117) 554 at 630 (SC).

15 *Olofu v. Itodo* (2010) 18 NWLR (Pt. 1225) 545, held 9.

16 i.e., when he did not yet know in whose favour the decision would be.

17 *Saturday Tribune*, 22 March, 2008.



matter in whose favour the judgments are. This judicial contribution largely explains the longevity of Nigeria's present democracy.

The *rationes decidendi* in some of the above landmark cases no doubt partake of judicial legislation. For instance, before the Ararume case what prevailed was the supremacy of the political party, whereby the courts would not interfere in internal or domestic affairs of the party: it was the exclusive right of the party to choose a candidate for itself and when it chose a candidate, the courts were not empowered to do anything about those candidates. It was, in fact, in *RBK Okafor v. Onuoha*<sup>18</sup> that the Supreme Court first laid the grand principle that the court will not inquire into who represents the party in an election, because representation of a party is one of the internal affairs of party politics which the party, not the court, is more competent to handle. Another reasoning is that since a person has freely given his consent to be bound by the rules and regulations of a political party, he should be left alone to be governed by such rules and regulations. Once a person freely mortgaged his conscience to a situation, courts of law should not interfere.<sup>19</sup> In the *Okafor v. Onuoha* case, the Nigerian Peoples Party (NPP) had substituted the man who won the party primaries with another candidate for the election. The Supreme Court confirmed this exercise of discretion by the party. This judicial deference to the discretion of political parties on the basis of "internal affairs" no doubt narrowed the aperture of electoral justice and weakened democracy. It was no doubt based on section 23 of the Electoral Act, 2002, which did not require any reason to be given by the political party for the substitution.<sup>20</sup> As stated earlier, the Electoral Act, 2006, then stepped in to provide a lee way. By Section 34(2) it required that the party wishing to substitute its candidate must provide "cogent and verifiable reason" for doing so. The Supreme Court then held onto it in the case of *Ugwu v. Ararume*, where it held unanimously that the PDP failed to give cogent and verifiable reason and so it could not validly substitute Ugwu for Ararume.

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18 (1983) SCNLR 244. See also *Dalhatu v. Turaki* (2003) 15 NWLR (Pt. 843) 310

19 *Ozigbo v. PDP* (2010) 9 NWLR (Pt. 1200) 601, held 12,

20 For other cases based on section 23 of the Electoral Act, 2002, see: *Jang v. INEC* (2004) 12 NWLR (Pt. 886) 46 (CA); *Anietie Okon v. Effiong Bob* (2004) 1 NWLR (Pt. 854) 378 (CA); *Uba v. Ukachukwu* (2004) 10 NWLR (Pt. 881) 224

In Ararume's case the reason the party gave for substitution was that his name was submitted in error. The court found this reason not cogent and therefore said it was not the exclusive preserve of the party, that the court could step in where there was injustice, where there were irregularities in the selection or emergence of a candidate at the primary level, during the primary election. Also, in *Rotimi Amaechi* the court said it must intervene to restore a candidate who was unjustly treated during the primary election and it restored Amaechi as governor of Rivers State. Here again, the reason the political party gave for the substitution was that the candidate's name was submitted to INEC in error. The National Assembly probably took the judicial decisions into consideration when they amended the Electoral Act. It is now clearly stated in the Electoral Act that courts are entitled to look into the affairs of the parties as far as election of candidates is concerned. The judiciary has therefore helped to strengthen our democracy process.

The approach of the judiciary may be offensive to those who argue that "the duty of a judge is to administer the law, not to make it".<sup>21</sup> John Austin has an early word for these people: The part of the law of every country which was made by judges has been far better made than the part which consists of statutes enacted by the legislature.<sup>22</sup> The 37th American President, Richard Milhous Nixon, also realized the superior nation-building role of the Judiciary over the executive arm of government. He asserted: "Our chief justices have probably had more profound and lasting influence on their times and on the direction of the nation than most Presidents have had".<sup>23</sup> This goes to buttress the assertion by Aderemi, JSC in *Rotimi Amaechi v. INEC*<sup>24</sup> that "in modern democratic societies, Judges occupy a privileged position, ...that privilege springs from public recognition that democratic government and society as a whole can only function fairly and properly within a framework of laws, justly, fearlessly and fairly

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21 Latin Legal phrase, W. Gurney, Benham, Putnam's *Complete Book of Quotations, Proverbs and Household Words*, 1927.

22 John Austin, *Austin's Jurisprudence*, 1832.

23 Richard M. Nixon, Television broadcast, May 21, 1969, quoted in David Shrager and Elizabeth Frost, *The Quotable Lawyer*, 1986, p. 148 para 68.89

24 *Op. cit* at pp.453-454.

administered by men and women who have no obligation save to justice itself”

The insistence of the Judiciary on “cogent and verifiable reason” for substitution of a candidate by a political party led to further legislative action on the Electoral Act, 2006. It gave birth to Electoral Act, 2010, which expressly repealed the Electoral Act, 2006, and omits the provisions contained in section 34 of the 2006 Electoral Act. Change of candidates by political parties is now governed by section 33 of the Electoral Act, 2010, as amended, which provides simply:

33. A political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to section 31 of this Act, except in the case of death or withdrawal by the candidate.

By the provisions of section 33 of the Electoral Act 2010, as amended, therefore, it is safe to say that the political party can no longer substitute a candidate for any reason whatsoever, whether cogent, verifiable, or otherwise. Under this provision, once a political party has submitted a candidate’s name to the Independent Electoral Commission under section 31(1) thereof, it can only replace or send another candidate’s name where the initial candidate has died or has withdrawn, so that there is physically and practically no candidate. In such case we can really not talk of substitution *strictu sensu*, since that would suggest the continued existence of two people and one is given the place of another. In *Ugwu v. Ararume*,<sup>25</sup> the Supreme Court, quoting from *Black’s Law Dictionary*,<sup>26</sup> explained “substitution” to mean “a designation of a person or thing to take the place of another or thing. It is the process by which one person or thing takes the place of another person or thing”. What is obtainable now is a replacement. This legislative intervention is no doubt due to judiciary’s developmental interpretation of the substitution clause in the 2006 Electoral Act, and our democracy has been the better for it. In all, it can be said that the Judiciary in Nigeria has recorded commendable successes in the

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25 (2007) 12 NWLR (Pt. 1048) 367, held 13.

26 8th edn., pp. 505-506

development of democracy and stabilizing the country. Why then do we have the hue and cry about judicial reforms in Nigeria?

### **The bad news**

In recent times the judiciary in Nigeria has suffered severe image crisis due largely to alleged corrupt practices by some judicial officers and due also to internal wrangling. The internal wrangling arose from a recent crisis which was unprecedented in the history of Nigeria's judiciary. For the first time in the history of Nigerian judiciary a sitting President of the Court of Appeal (Justice Salami) accused a sitting Chief Justice of Nigeria's apex court, the Supreme Court (Justice Katsina-Alu), of interfering with the course of justice. Justice Salami had accused Katsina-Alu of attempting to influence the course of justice in the appeal involving the Sokoto governorship election petition. Katsina-Alu denied the allegation. There were also counter allegations against Salami. These allegations and counter allegations raised public concern about the ability of the judiciary to dispense justice. Confidence in the judiciary waned considerably. According to a commentator, "the open brawl between the CJN and the PCA that culminated in lawsuits eroded whatever positive achievements the sector (judiciary) recorded", and "for the first time, public confidence in the sector seen as the last hope of the common man, was visibly shaken."<sup>27</sup> The President of the Nigerian Bar Association was more alarmist. For him, "we are witnessing the slide into anarchy and lawlessness, which history will record as having been fired up by the judiciary".<sup>28</sup>

On alleged corrupt and anti-democratic practices by judicial officers, a lot of ink has been spilt on it. A whole issue of *Tell* newsmagazine was dedicated to it, with the cover story: "Justice for Sale".<sup>29</sup> A sorry picture is painted at page 28 of the newsmagazine, where it is alleged that "judges allegedly take bribes from both parties to an election petition and give judgment to the higher bidder. Lawyers complain that

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27 "Nigerian Judiciary in 2011: Active, Controversial, Determined" in *The Guardian*, Tuesday, January 24, 2012, page 83.

28 *Ibid.*

29 *Tell*, No. 46, November 16, 2009.

even when you have a good case you still have to ‘settle’ to make assurance doubly sure, or you will be in deep trouble”. An instance is alleged where “the judges sent a message to a governor whose case was being heard complaining that ‘we have not seen you’”. Even for some Senior Advocates of Nigeria (SANs) the paper reports that their success at election cases is alleged to be dependent on their “connections”, as the judges only accept money from dependable sources. The scandal of bribery of judges that sat on the 2003 governorship election petitions in Akwa Ibom State cannot be easily forgotten. Large sums of money were traced to the accounts of the judges by the investigative panel set up by the Chief Justice of Nigeria.<sup>30</sup> After that incident, a factor allegedly considered by judges before accepting money for judgment is said to be a “safe payment plan” that will not be discovered.<sup>31</sup>

A judge in Kano State was recently said to have been retired from service following his alleged romance with Boko Haram, a dreaded terrorist group.<sup>32</sup> Even if this is not seen as a facet of corruption, it is certainly a conduct incompatible with his judicial oath, as such affiliation would engender bias and interest in related cases which would come before him. A judge, like Caesar’s wife, should be above suspicion.

Some have argued defensively that bribery and corruption by judicial officers is not peculiar to Nigeria, and has not just started today. It is true that Francis Bacon, the Lord Chancellor of England, was convicted for bribery and corruption as long ago as 1620. He had collected money and presents from litigants whose cases were pending before him. Bacon himself had hoped that after the punishment he suffered, “judges will fly from anything that is in the likeness of corruption ... as from a serpent”.<sup>33</sup> Lord Denning reports that long before Bacon’s time judges had been taking bribes.<sup>34</sup> This, probably, is why Bishop Hugh Latimer generalized:

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30 Ibid, at p. 28.

31 Ibid.

32 *The Nation*, Wednesday February 1st, 2012 at p. 4.

33 Lord Denning, *Landmarks in the Law*, 1984, OUP at pp. 43 – 49.

34 Ibid, at p. 49.

*Omnes diligent munera.* They all love bribes. Bribery is a princely kind of thieving. They will be waged by the rich, either to give sentence against the poor, or to put off the poor man's cause. This is the noble theft of princes and magistrates. They are bribe-takers...<sup>35</sup>

Corruption is therefore an old and pervasive judicial temptation. One is minded to agree that the more courts are asked to handle political issues, the more their fragility is exposed.<sup>36</sup> It must be stressed that this is not to say that all, or even most, of the judges are corrupt. We cannot paint every judge with the same tarred brush. Far be it. It is just like the story of the twelve disciples in the Holy Bible: eleven of them were impeccable, but who do we hear of the most? It is the only one (Judas Iscariot) who strayed by betraying The Master, Jesus Christ.<sup>37</sup> But is it not equally biblically true, that just "a little leaven leaveneth the whole lump"?<sup>38</sup> One would agree with Justice Uwaifo who, in his speech at a special valedictory session held in his honour as a retiring justice of the Supreme Court of Nigeria, reportedly<sup>39</sup> opined that "a corrupt judge is more harmful to the society than a man who runs amok with a dagger in a crowded street. He can be restrained physically. But a corrupt judge deliberately destroys the moral foundation of society and causes incalculable distress to individuals through abusing his office, while still being referred to as 'honourable'".

Against this background, and against this ugly threat to justice delivery and democratic development, it has become a consensus that the judiciary is "in urgent need of radical surgical reform".<sup>40</sup> The Honourable Chief Justice of Nigeria (Musdapher, CJN) pointed out the challenges confronting the judiciary to include court inefficiencies,

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35 Ibid.

36 Rose E. Bird, American jurist; chief justice, California State Supreme Court. San Francisco Examiner and Chronicle, October 22, 1978, in *The Quotable Lawyer*, *op. cit.*, at p. 149, para 68.100.

37 See: Matthew 10:4, 26:24-25, 26:48; John 18: 2.

38 *The Holy Bible*, King James Version, 1 Corinthians 5:7

39 "Judiciary and Democracy in Nigeria: way forward – Hon S. O. Uwaifo, JSC (rtd)", *Community Pulse* newspaper, Thursday 26, July 2012 at page 8.

40 per Justice Musdapher, CJN, in *Vanguard*, <http://allafrica.com/stories/20111241086.html>, accessed on 13/12/11.

poor infrastructure, condition of service, decay of intellectual capacity and reasoning content of delivered judgments, and corruption. He added that judicial independence, adequacy of resources for the courts, media and societal pressures also affect the judiciary. Though not exhaustive, these are undoubtedly pointers to some of the areas that need reform in the judiciary if our nascent democracy is to grow. In specific terms, some of the areas for reform are:

**(i) Independence of the judiciary**

Constitutional provisions exist to ensure judicial independence. Sections 231(1), 238(1) and (2) and 250(1) and (2) of the 1999 Constitution, as amended, provide for appointment of justices of the Supreme Court and other federal justices. The State Governor is also given power under section 271(1) and (2) to appoint State judges. The National Judicial Council (NJC) is, by Section 158(1), autonomous and insulated from government control. By Section 157, the justices/judges cannot be dismissed or removed before their retiring age except for inability to discharge the functions of the office or on grounds of official misconduct.

By Section 81(3), the 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. At the State level, Section 121(3) similarly 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”. No doubt this would lead to better improved conditions of service of all staff of the judiciary, both judicial and judiciary staff, and thus guarantee the independence of the judiciary. A situation where the judiciary has to continually look up to the executive as a matter of favour, does not promote democratic practices. Once the judiciary has its own funds directly disbursed to it, some of the setbacks like poor infrastructure, condition of service, remuneration, and institutional autonomy would have been addressed. With financial independence would follow independence of thought and of judgment, to a large extent. One cannot agree any less, that next to permanency in office, nothing can contribute more to the independence of the judges than a fixed

provision for their support.<sup>41</sup> In practice, however, the enforcement of this clear and unambiguous constitutional provision poses great challenge particularly at the State level where the provision is observed more in breach than in observance. Many State Governors consider this provision an affront to their imperial powers and prefer to see the Chief Judges and other heads of courts tremble before them, cap-in-hand, to beg for funds to run the States' judiciaries.<sup>42</sup> This explains why one often hears some Chief Judges thanking the Governor for being "kind" and "generous" to the judiciary, or being "judiciary-friendly" by approving the release of some money or some items, whereas it should be a matter of constitutional right on the part of the judiciary, and constitutional duty on the part of the Executive to disburse the funds. Such judicial kowtow can never make for independence of the judiciary, which is a *sine qua non* for the development of democracy in Nigeria, nay, everywhere.

## (ii) Intellectual capacity/reasoning content of judgments

The reform in this area has two dimensions. The first has to do with initial eligibility for appointment, and the second has to do with continued suitability for the office, by continuing education for judges. The point must be made that our judges generally show intellectual depth and robust reasoning in their judgments. However, if we are to expect sound and well-reasoned judgments from all our judges, the appointment must not be politicized or based on favouritism, patronage, political/parental affiliation, or "man know man" - where some big shot would say: "Oh! I have a brother there; he is not doing well in his job. Let him go to the Bench", and that is it! The Bench is not, and should not be seen as, a place for those who are not doing well in legal practice or other endeavour. Indeed, as used to be the case in the not-too-distant past, lawyers should be invited to the higher bench based on their performance, not they themselves applying and lobbying for it. That way, the good lawyers would be invited to the higher bench, be they from the academia, the bar, or bench. Such invitation should be the first stage in the appointment process. The second stage is that the invitees

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41 Alexander Hamilton, *The Federalist*, 1788.

42 "Funding the Judiciary under the 1999 Constitution: Matters arising", *The Nation* newspaper, Tuesday, April 24, 2012, pp.30-31.



should be tested and interviewed. The best should be attracted to the bench, as part of judicial reform. Some may, however, argue that such invitation would involve too much subjectivity and promote patronage, just as the present practice where judges are appointed based on nomination.

In the alternative therefore, and this is preferable, even if the lawyers are to apply for appointment as judge, this would require that the vacancy is advertised rather than treat it in hush tones as is presently the case. All those interested would then apply, and are then short-listed. Those short-listed are tested/interviewed, and the best is appointed. The view is wholly subscribed that after the interview, the name of the person(s) to be appointed should be advertised so that everybody will be able to make comments.<sup>43</sup> The culture of silence and secrecy that pervades the vacancy of judicial positions should be eliminated.

It is sad that quota system has crept into appointment of judicial officers. Judges are now being appointed on quota basis based, e.g., on local government area, or on State of origin – in the case of federal courts. Merit is discarded. Mediocrity is enthroned. You may ask: Am I saying that in a local government area no lawyer would be qualified on merit to be appointed judge? My answer is an emphatic “yes”. Take an example: if an examination is set for about 100 people in which 10 will be needed, is it possible that the 10 will pass according to local government area? The answer is a definite “no”. Then why don’t we go for the best 10 rather than base it on local government area or State of origin? In an open and transparent process, the best candidates would emerge. All human beings have intelligence quotients which are independent of gender, tribe or geographic location. If we are to get the very best onto the Bench, the argument that the best from each gender, and the best from each geographical zone should be appointed, is ideally unacceptable, because the best in one zone may be a mediocre in another zone. The same can be said about gender. The problem is that in Nigeria, the euphemistic “federal character” has permeated even the judiciary.

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43 “NBA played politics with judicial reform report, says Olanipekun”, *The Guardian*, Tuesday, February 14, 2012 at page 83.

Still on eligibility for appointment, these days people are out of school very early. Many lawyers make 10 years post-call even before they reach 34 years of age. While not subscribing to the view that "A judge should not be a youth, but old",<sup>44</sup> I strongly believe that a judge needs to have had reasonable experience, not necessarily from himself/herself, but from happenings around him/her, and that takes time. As Plato also put it:

The Judge should not be young; he should have learned to know evil, not from his own soul, but from late and long observance of the nature of evil in others: knowledge should be his guide, not personal experience.<sup>45</sup>

Again, the Bench should not be for those who want to begin life. In earlier days, a lawyer who aspired to the bench prepared himself for it, by working hard so that he created for himself a good reputation at the bar. He would have acquired a house in his village and possibly another in town from which he will collect rent. In other words, he had a settled home. The reverse is generally the case today. Today, once a lawyer clocks 10 years post-call he wants to jump onto the bench. Apart from impacting negatively on intellectual capacity and reasoning content of judgments, it also makes such judge less resistant to corruption. One is wont to ask, as Kurland once did: "if the judiciary is to be the primary agency for social reform, shouldn't we be more concerned about the quality of the people we choose for judges?"<sup>46</sup>

It is for the reason and with the aim and purpose of injecting flavour, intellectual depth and mental excitement into the judiciary that we should, as part of the reform, look beyond the bench to fill appellate courts. This would create a vibrant bench. Right now, from High Court to Court of Appeal is seen as a promotion. From Court of Appeal to the Supreme Court is also seen as a promotion. It is to be conceded that competent and suitable judges of the High Court and Court of Appeal

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44 Plato, *The Republic*, c. 370 BC

45 Ibid.

46 Philip B. Kurland, American educator; professor, University of Chicago Law School, *US News & World Report*, January 19, 1976.

should be encouraged by promotion to the next court, so that they would bring their wealth of experience to the next court. However, in the dynamic multi-tasked world of today which Nigeria is a part, it makes sense to harness competent hands from everywhere in the legal profession in order to enhance justice delivery and meet democratic challenges. If we take the best, it would no more be a matter of automatic promotion from one court to the next. If there is a vacancy in the Court of Appeal, those who want to go to the Court of Appeal from the High Court would apply and contest along with others from outside the judiciary who want to go straight to the Court of Appeal. The same with appointment to the Supreme Court: those in the Court of Appeal who want to go there would apply and contest along with other applicants from outside. This would even help to improve the quality of judgments of the High Courts and Courts of Appeal, to strengthen their contest for appointment to the next court. There is no reason why capable and trusted Senior Advocates of Nigeria and seasoned Professors of law with law practice experience in superior courts should not be considered for appointment to the appellate courts to provide the rejuvenating tonic for the judiciary. There is nothing in the constitution or in any law preventing this. By Sections 231(3) and 238(3) of the 1999 Constitution, the requirement for appointment of a person as a judge to the Supreme Court and to the Court of Appeal is 15 years and 12 years respectively after call to Bar. There is no requirement that the post-call years must be within the rank and file of the judiciary alone. The appellate courts will do 'juster' justice with a robust bench made up of the best from the bench, the bar and the academia. At the level of the appellate courts the judgments should have high research and intellectual content where all facets of each case are explored, analysed and satisfactorily resolved. If one is looking for precedent this can easily be found in America, Britain, Europe and Canada, where appointment to the apex court is not by mere promotion from the lower court.<sup>47</sup> Even in Nigeria, we have had the late Dr. Elias

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47 See generally: "Appointing CJN outside Supreme Court would promote stability", *The Guardian*, Tuesday, August 23, 2011, p.81; "Now time to look beyond the Bench to fill appellate courts", *The Guardian*, Tuesday, September 27, 2011; "Report of NBA Committee on crisis in the Judiciary", *The Nation*, Friday, August 5, 2011; "Best of the Bar plus best of the Bench will make the best Bench", *The Guardian*, Tuesday, May 31, 2011; "Reforms should outlive new

(as he then was) who was appointed straight to the Supreme Court as Chief Justice from the academia. He was no doubt a pride of the judiciary. Late Augustine Nnamani was appointed to the Supreme Court after he finished his tenure as Attorney General (official Bar). And he did well. Professor Okay Achike was appointed straight from the academia to the Court of Appeal, and thereafter to the Supreme Court. He also acquitted himself creditably.

After appointment, judicial officers should be afforded continuing legal education in the form of conferences, seminars and workshops and other programmes related to judicial education, at which the judicial officers are not mere passive listeners but rather are involved interactively to imbibe current trends and best practices. In this respect, the National Judicial Institute<sup>48</sup> needs to be more proactive and interactive. This way, the writing and research skills of the judges would be sharpened for better productivity. They should be acquainted with new research technologies and may be given research assistants. This will improve intellectual capacity and increase the reasoning content of their judgments.

### **(iii) Extermination of corruption**

There remains the most touchy question of all. May not the judges themselves sometimes abuse or misuse their power?...So we come up against Juvenal's question, *Sed quis custodiet ipsos custodiet?* (But who is to guard the guards themselves?)<sup>49</sup>

Lord Denning's answer to the above question is that someone must be trusted. Let it be the judges.<sup>50</sup>

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CJN", *The Guardian*, Tuesday, October 11, 2011; "Nigeria's Judiciary and election year 2011", *The Guardian*, Tuesday, January 11, 2011, cf.: "SANs just can't be appeal court judges", *The Guardian*, Tuesday, March 31, 2009; "The Judiciary needs no reform", *The Guardian*, Tuesday, October 4, 2011.

48 Established under the National Judicial Institute Act 1991, Cap. N55 vol. 11 Laws of the Federation of Nigeria, 2004.

49 Lord Denning, *What Next in the Law*, London: Butterworths, 1982, at page 330.

50 *Ibid.*

The Nigerian Bar Association (NBA) described the face-off between the President of the Court of Appeal and the Chief Justice of Nigeria as “a ‘tip of the iceberg’ of the problems of the judiciary”. For the Association, it is “the deep-rooted malaise of corruption in the judiciary which has directly or indirectly manifested into (sic) the face-off”.<sup>51</sup>

Allegation of corruption in the judiciary brings to mind the advice that, if we are to keep our democracy, there must be one commandment: Thou shall not ration justice.<sup>52</sup> This is why the Chief Justice of the Federation, Justice Dahiru Musdapher recently advised Judges, at the inauguration of 12 judges of the Federal High Court:<sup>53</sup>

One of the most important rules of conduct for a judge is to guard against bribery and **all forms** of corrupt practices. Doing the contrary would amount to unlawful gain, unfaithful conduct, divine transgression and offending the judicial oath and the trust of the common man. (Emphasis mine)

As alluded to in the above quotation, judicial corruption may take many forms, but in all the cases it obstructs justice. It may be actuated by bribery, prejudice, affinity, hope of reward, promotion or appointment, or other interest. Some have also included laziness among judges, bad habit of not sitting regularly and punctually<sup>54</sup> as facets of corruption. The Lord Chancellor of England was said to have accepted bribes and afterwards decided against the bribers.<sup>55</sup> As Lord Denning mused, it is not known if the successful parties also bribed him. They may have done. They would not complain. Even when justice is done, a corrupt judge does not allow justice to be seen to have been done. This is because he has refused to heed the advice of Charles Bowen, the English jurist, that “Judges, like Caesar’s wife, should be above suspicion”.<sup>56</sup>

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51 “Judiciary is corrupt, says NBA”, *The Nation*, Monday, February 21, 2011.

52 Learned Hand, Address, legal Aid Society of New York, February 16, 1951.

53 *Punch* newspaper, Tuesday, May 29, 2012 at page 12.

54 *The Guardian*, Tuesday, December 20, 2011.

55 Lord Denning, *Landmarks in the Law*, at p.46.

56 *Leeson v. General Council of Medical Education and Registration* (1889) LR 43 CD 385.

Where a judge is corrupt, one is reminded of the Russian proverb that the thing to fear is not the law, but the judge.<sup>57</sup> Even as a barrister, it is tough to appear before a corrupt judge. No matter your practice skills and expertise, and no matter how good your case is, the Judge just does the briber's bidding. Even when the Judge is overturned on appeal, he would just shrug off and tell you that he was simply wrong, and was entitled to be wrong, otherwise there would be no need for appeal courts! I recall here the delicate wit and insight of Cyril Asquith, the gifted son of the British Prime Minister, as recounted by Lord Denning in *The Family Story*:

The ideal judge of first instance is one who is short, simple and wrong; but that is not to say that the Court of Appeal should be long, tedious and right: because that would be to usurp the prerogative of the House of Lords.<sup>58</sup>

Judicial corruption is a character and attitudinal problem, though it may also be symptomatic of a systematic failure. It therefore requires serious individual and national soul-searching. A man (and this includes woman) must realize that being a judge makes him/her answerable to God, who is the ultimate judge. People's character, reputation, disposition and pedigree must be thoroughly screened and scrutinized before appointment to the bench. Allegations of corruption on the bench should be investigated by an impartial and independent panel. Where guilt is established, maximum punishment should be meted out to serve as a deterrent to others. Part of the problem with judicial corruption in Nigeria is that even where it is established, it is treated with kid-gloves, say by retiring or demoting the judicial officer. An example of stiff punishment may be found in the Lord Chancellor's case who, despite his voluntary confession, was fined £40,000 (as at the year 1620!), imprisoned, and declared unfit for any office or employment throughout the Commonwealth. Other judges in England

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57 Quoted in Jonathan Roth and Andrew Roth, *Poetic Justice*, Nolo Press, Berkeley (1988), p. 107

58 At page 171. A similar statement appears in Editorial Comment of *Yearbook of the Canadian Bar Association*, 1963: "it is the duty of a judge of a district court to be quick, courteous and wrong, but it must not be supposed from that that the court of appeals must be slow, crapulous and right, for that would be to usurp the functions of the supreme court."

must have learnt from this. Nigerian judges should learn as well. Apart from structural reform therefore, much of what is needed in Nigerian judiciary is the reform of the judicial officers themselves. It is only when this is achieved that one can agree that, indeed, someone must be trusted. Let it be the judges.

#### (iv) Delay of cases

Some have said that “Justice delayed is worse than injustice”. Others say that “Justice delayed is justice denied”. Yet, others say that “Justice delayed is not only justice denied – it is also justice circumvented, justice mocked and the system of justice undermined”.<sup>59</sup> Delays in court are generally not caused by the judge. Delays are sometimes caused by the lawyers in the case or even by litigants themselves. One aspect of delay which has become prevalent in Nigeria with the advent of democratic rule is the one caused by election cases. Election Petition Tribunal constituted under section 285 of the 1999 Constitution, as amended, is vested with exclusive jurisdiction to hear and determine election petitions under the Electoral Act. By virtue of section 285(2) of the 1999 Constitution, an Election Petition Tribunal is not an all-purpose court that can entertain all sorts of claims or reliefs. It is created for election matters alone. That is because election petitions are *sui generis*: the suits are in a unique and peculiar class of their own. They are neither civil nor criminal.<sup>60</sup> It was in order to expedite the disposition of election cases that paragraph 1(1) & (2) of the Practice Direction 2007 (ie, Election Tribunal and Court Practice Directions, 2007, as amended) encouraged “front-loading” as a principle of modern civil procedure system to ensure speedy administration of justice.<sup>61</sup>

As a further step to expedite matters, a distinction is drawn between pre- and post-election cases, so that each is brought before a different forum. By constitutional arrangement, election matters are the exclusive concern of election tribunals and not the regular courts. Thus, any matter relating to undue return, a post-election matter, falls within

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59 Richard M. Nixon, *New York Times*, March 12, 1971.

60 *Uba v. Etiaba & 653 ors* (2008) 6 NWLR (Pt. 1082) 154, held 6.

61 See further: *Independent National Electoral Commission & Ors v. Iniama* (2008) 8 NWLR (Pt 1088) 182 at 200, held 6, 7.

the jurisdiction of the election tribunal and not that of the State High Court. However, where the matter involves the issues of pre-election, the regular High Courts have jurisdiction to handle them.<sup>62</sup> Issue of late or improper nomination of a candidate, withdrawal and substitution are pre-election matters and therefore are ventilated either in the High Court of a State or Federal High Court.<sup>63</sup> Before now, election petition cases have lasted for almost four years in court, with the result that a petitioner would watch the whole term served out by his opponent, before the petitioner got a pyrrhic court victory. The Electoral Act 2010, as amended, now appears to have effectively abridged the delays by setting time frames within which specific steps should be taken, or particular acts should be done, so that the judiciary would dispose of election petitions expeditiously. The problem, however, is that normal court cases now suffer insufferable delays because of the assignment of many judicial officers to election tribunals to speedily dispose of election matters.<sup>64</sup>

The statutory setting of time frame for disposal of electoral disputes has for long been rebuffed by the judiciary. In *A-G Abia State v. AG of the Federation*<sup>65</sup> the Supreme Court stated, per Uwais CJN:

Section 25 subsection (10) (of the Electoral Act, 2010) seeks to limit the period within which any judicial proceedings must be concluded. This infringes on the principle of separation of powers as entrenched in the Constitution. The National Assembly has no power to dictate to the Judiciary how to conduct its affairs, just as the Judiciary cannot fix a time limit for the proceedings in the National Assembly.<sup>66</sup>

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62 *Olofu v. Itodo* (2010) 18 NWLR (Pt. 1225) 545, held 19 (SC)

63 *Sullivan Chime v. Onyia & 2798 Ors* (2009) 2 NWLR (Pt. 1124) 1, held 18; *ANPP v. Argungu* (2009) 17 NWLR (Pt. 1171) 445, held 10.

64 The controversy has raged whether it is not an infringement on the doctrine of separation of powers, for the legislature to set time limits for judiciary to conclude cases, be it election cases or not. See the next two foot notes.

65 (2002) 6 NWLR (Pt.763) 264

66 *Ibid* at page 397 paras C – D. also: *Paul Unongo v. Aper Aku* (1983) 9 SC 186, (1983) 2 SC NLR 332.



In the earlier case of *Paul Unongo v. Aper Aku*<sup>67</sup> the Supreme Court had to consider Section 129(3) of the Electoral Act, 1982, which is in *pari materia* with Section 25(10) of the Electoral Act, 2010. The said Section 129(3) provided:

Proceedings before a High Court in the case of a petition in respect of the office of President or Vice President, governor or deputy governor or in respect of any of the Legislative Houses shall be completed not later than 30 days from the date of the elections concerned.

The Supreme Court held<sup>68</sup> that section 129(3) of the Electoral Act, 1982, constitutes a fetter and a clog in the exercise of the jurisdiction of an election court and is inconsistent with the provisions of sections 4 and 237 of the Constitution and therefore void *pro tanto*. In the present legal regime, however, the Electoral Act 2010, as amended, provides that election petitions must be determined within (ie, must not remain pending for longer than) 180 days from the date it was filed. In the words of the Electoral Act 2010, as amended,

134 (2) An election tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition

(3) An appeal from a decision of an election tribunal or court shall be heard and disposed of within 90 days from the date of delivery of judgment of the tribunal.<sup>69</sup>

To foreclose any argument by the judiciary about infringement on the doctrine of separation of power, the legislature has also altered the 1999 Constitution (First and Second Alterations) to reflect the time limit of 180 days for delivery of judgment in an election petition, computed from the date of filing the petition,<sup>70</sup> and 60 days from the date of delivery of judgment of the tribunal or Court of Appeal, for disposal of appeal.<sup>71</sup> The result is that while the judiciary would have

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67 *Ibid.*

68 *Ibid.*, at p. 353 paras G-H.

69 The time limit for filing an election petition is 21 days from the date of declaration of the results of the election: Section 134(1).

70 Section 285(6) of the Constitution, as amended.

71 Section 285(7), *ibid.*

objected to the legislature fixing a time limit for determination of cases under the Electoral Act, it cannot do so because the *grund norm*, ie the Constitution, similarly so provides. A judge therefore has no discretion in the matter, and has to bow compulsorily to the clear constitutional provision.

The Supreme Court has stuck to the letter<sup>72</sup> and adopted a grammatical and ordinary-sense-of-the-word interpretation of this constitutional provision, and accordingly held that whatever the circumstances, “an election tribunal shall deliver its judgment in writing within 180 days from the date of filing the petition”. In the consolidated appeals Nos. SC1/2012 and SC2/2012, *ANPP v. Alh Mohammed Goni & Ors*,<sup>73</sup> the Supreme Court was emphatic that:

180 days provided by Section 285(6) of the Constitution is not limited to trials but also to *de novo* trials that may be ordered by an appeal court. For avoidance of any lingering doubt, once an election petition is not concluded within 180 days from the date the petition was filed by the petitioner as provided by Section 285(6) of the Constitution, an election tribunal no longer has jurisdiction to hear the petition and this applies to re-hearings. 180 days shall at all times be calculated from the date the petition was filed.

This stance by the Supreme Court appears to have sacrificed justice on the altar of technical adherence to what appears to be “clear wordings” of the statute, and this has occasioned great hardship on many election petitioners. While there is need to abide by the stipulated time for election petitions, the Supreme Court expressly disregarded cases where, following interlocutory appeal from the tribunal, the Court of Appeal would order a retrial. In such cases, would it not be a more humane interpretation to say that the time should start to run from when the retrial was ordered? The statute does not provide for this, but

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72 Lord Denning rightly noted that on rare occasions it may serve the ends of justice to stick to the letter: as when Portia argued that “a pound of flesh” gave “no jot of blood” She was justified in thus sticking to the letter because she was interpreting a forfeiture clause, and the courts always lean against forfeiture. See: Lord Denning, *The Closing Chapter*, Oxford: OUP, 2008, page 98.

73 Delivered on 17/2/2012 by the Supreme Court.

the legislature cannot be expected to foresee and provide in detail for all future contingencies that might arise. For the court to fill the gap in the circumstance cannot amount to “a naked usurpation of the legislative function”.<sup>74</sup> A judicial interpretation which leads to virtually all pending election petitions being struck out on the narrow, technical ground of 180 days, without going into the merits at all,<sup>75</sup> can neither be socially satisfactory nor democratically developmental; it muzzles petitioners and may lead to undemocratic means of venting their grievance. The Court of Appeal recently acknowledged that the grammatical interpretation “may be difficult and unpalatable to some of the parties and their counsel”, but advised the parties that “as law abiding citizens of Nigeria, they should have the grace and courage to bow to the law no matter how harsh they may see it today”.<sup>76</sup>

Such strict and inflexible interpretation reminds one of the way in which the Pharisees interpreted the Fourth Commandment about the Sabbath Day. It ordained that on it “Thou shalt do no manner of work”. It so happened that, on the Sabbath Day, as the disciples went through the cornfields, they began, as they went, to pluck the ears of corn. The Pharisees said to Our Lord: “Behold, why do they on the Sabbath Day that which is not lawful?” He replied: “The Sabbath was made for man, and not man for the Sabbath.” St Paul made the same point about the need to de-emphasize the letter of the law. He said: “The letter killeth, the spirit giveth life”.

Would it have been the intention of the legislature to disregard interlocutory appeals? Would it have been the intention of the

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74 *Magor and St Mellons Rural District Council v. Newport Corpn* [1952] AC 189, per Lord Simonds.

75 E.g., the National and State Houses of Assembly Elections Tribunal sitting at Uyo, Akwa Ibom State, ruled *suo motu*: “This Tribunal is aware of the Supreme Court Judgments in the consolidated appeal No. SC1/2012, SC2/2012 and appeal SC23/2012 delivered on the 14th and 17th day of February, 2012. Sequel to the decisions therein this Tribunal hereby declines jurisdiction in the following petitions: (1.) Petition No. EPT/AKS/SEN/18/2011, (2.) Petition No. EPT/AKS/HR/1/2011, (3.) Petition No. EPT/AKS/HA/17/2011, (4.) Petition No. EPT/AKS/SEN/2/2011.

76 Appeal No. CA/C/NAEA/43/2012: *Obong Nsima Umoh v. Hon Ita Enang & Ors*, judgment delivered on 4/4/ 2012 at the Calabar Division.

legislature that no election petition be heard and determined on merit? Would it have been the intention of the legislature that election tribunals be turned into the final court in election matters?<sup>77</sup> If the answers to the three questions are in the negative, should the court not effectuate legislative intention? A judicial way out of the legal quagmire could lie in a Practice Direction to the effect that all interlocutory matters should be heard by the trial tribunal and the decisions on them would be incorporated in the eventual judgment, and this would afford the appellate court the opportunity to consider the interlocutory matters in the appeal. This could keep the trial within the stipulated 180 days. Alternatively, the legislature would have to amend the law to clearly state their intention.

The question of time limit for appeals in election matters fell for judicial determination in *Peoples Democratic Party v. Congress for Progressive Change & Ors.*<sup>78</sup> The Supreme Court held that the provision of section 285(7) of the 1999 Constitution, as amended, is specific and designed to fix the time for hearing and determination of an appeal in election matters at sixty days. It held further that the provision is a constitutional imperative and therefore sacrosanct and must be accorded its due effect.<sup>79</sup> Accordingly, any action purported to be filed outside a statutorily limited period is time barred.<sup>80</sup> This strict, natural, ordinary or grammatical interpretation is wholly justified with regard to appeals, because in such case, generally speaking, there is no interlocutory appeal arising. Indeed, any such interlocutory appeal should be roundly discouraged. This is because, subject to well-defined exceptions, appeal is normally restricted to issues earlier canvassed in the lower court or tribunal.

Perhaps it is as well that special election tribunals are created to hear election cases. The only problem is that judges in the regular courts are assigned to those tribunals, thus delaying non-electoral cases. Perhaps it

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77. Because as it stands, even if the tribunal decides to dismiss a petition without even a hearing there is not much the petitioner can do, because if he goes on appeal by the time he comes back to the tribunal the 180 days would have passed!!

78 (2011) 17 NWLR (Pt. 1277) 485.

79 Ibid., at pages 512 paras A-B, 514 paras E-F.

80 Ibid., at pages 514 paras F-G, 517 paras A-B.

would make sense to leave the serving judges alone so that normal cases can progress speedily for public good. Rather, retired judges, clergymen, political scientists and sociologists could constitute election tribunals. This would be analogous to a Judge sitting with a jury. This way, two birds would be killed with just one stone: delay would be reduced in regular cases, and allegation of corruption against judicial officers will be minimized. Fear may be entertained that since retired judges would not have their integrity at stake, they would more easily fall prey to monetary temptations and other inducements. This view would appear to give the, perhaps unintended, impression that retired prominent judicial officers who have carefully created unblemished reputation for themselves would suddenly disregard that reputation just because they have retired from office. I should imagine that a retired judicial officer who would engage in corruption would probably have done worse when he had not retired – when he was younger, had more worldly desires, and perhaps more commitments. Everything would depend on the person, rather than whether (s)he is retired or serving.

#### **(v) Special courts**

For three reasons, any reform in the Judiciary should give attention to the establishment of special courts. The reasons are speed (avoidance of delay), quality of judgment (research content) and high intellectual capacity. This is because the special courts will be manned by specialists in the respective areas who would better and easily appreciate the issues involved. America, Germany and many other democracies, for instance, have Constitutional Court, presided by intellectuals with amazing qualifications. Commercial courts too would be welcome relief to businesses as it would fast-track justice delivery. In England, the commercial court is a specialized subsidiary of the Queen's Bench Division of the High Court, and its establishment is attributable partly to the dissatisfaction with the handling of a commercial case by a judge<sup>81</sup> who was not versed with commercial law matters. Ghana also has established Commercial Courts.<sup>82</sup>

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81 J. C. Lawrence, J., described by Lord Justice F. D. Mackinnon in "The Origin of the Commercial Court" (1944) 60 LQR 324 as "a stupid man, a very ill-equipped

## **Conclusion**

Other areas for consideration for reform include a possible decentralization of the Supreme Court so as to provide greater access to people. There can be no arguing that access to appellate justice is central to democracy. For most appellants, Abuja is not just around the corner. Their lawyer has to pay for flight to and from Abuja, pay for hotel lodging and local runs. This is on top of professional fees. Decentralization of the Supreme Court would impact positively on money, time, safety, convenience and access to justice. Otherwise it would appear that the Supreme Court is basically for the rich. Besides, the growing population of Nigeria and the increasing number of courts of first instance support the need for a decentralized apex court to make for easy access, speedy justice delivery, at reduced cost. This would not be too removed from what used to happen at one time even here in Nigeria, when the apex court rotated sitting venues so as to afford litigants easy access to the court.

It is noteworthy that some countries have multiple Supreme Courts, with each being the court of last resort for a particular geographical region or on a particular area of law. The United States, having a federal system of government, has a single Supreme Court of the United States but each state, in addition, has its own Supreme Court (called High Court) over which the United States Supreme Court only has jurisdiction on issues of federal law. The Supreme Court of United States is really a Constitutional Court. The States of Texas and Oklahoma divide subject matter jurisdiction among two separate courts of last resort, with one hearing criminal cases and the other civil cases. In Finland, Sweden, Czech Republic, Poland and Taiwan, there is a separate Supreme Administration Court which decisions are final and which jurisdiction does not overlap with the Supreme Court.

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lawyer and a bad judge". Also: V. V. Veeder, QC.: "Mr. Justice Lawrence: 'True Begetter' of the English Commercial Court" (1994) 110 LQR 292.

82 *The Ghanaian Banker*, 3rd Quarter, July – September 1996, vol.v, pp.11-31 at p.30.

**Decentralizing the Nigerian Supreme Court should not be scaring at all. The administrative head would still be the Chief Justice of Nigeria, just as the Court of Appeal is decentralized but one person is still the President. Or, just as the Nigerian Law School is decentralized but with one person as the Director-General. In both cases, standard and uniformity are not compromised. Instead, more access is created, convenience is promoted, and a lot more people are accommodated.**

**On the whole, it is clear that even the Police must be policed; the judiciary as a watchdog of democracy also needs a watchdog. To this end, the National Judicial Council (NJC) needs to be restructured and repositioned to ensure confidence and ensure that the judiciary lives up to expectation. It is, for instance, awkward that the Chief Justice of Nigeria (CJN) is the chairman of the Judicial Service Commission at the federal level, and also chairman of the NJC. This creates the anomalous situation that when the CJN as chairman of Judicial Service Commission makes recommendation to the NJC for the appointment of judges, he is actually making a recommendation to himself because he is the one who sits as the Chairman of the NJC. Clearly, too much power is concentrated in the hands of the CJN. It must be remembered that power will intoxicate the best of hearts, as wine the strongest heads. No man is wise enough, nor good enough to be trusted with unlimited power. Needless to add the better known all-time quote that, power corrupts and absolute power corrupts absolutely. A leaf may be borrowed from the constitution of the Police Service Commission, which is headed by a retired senior police officer and not the serving Inspector General of Police, and it functions effectively.**

**The judiciary has done well but can do a lot better. In addition to the recommendations herein, the Retired Justice Uwais committee on reform of the Judiciary has recently submitted its report. The report has not been made public but it is to be expected, going by his pedigree, that the committee has done a thorough and comprehensive job which, if fully implemented, will enable the judiciary to realize its full potential in the development of democracy in Nigeria.**