



REVIEWING THE PAST, PROJECTING THE FUTURE.

PROCEEDINGS OF THE



47th
**ANNUAL CONFERENCE OF THE
NIGERIAN ASSOCIATION
OF LAW TEACHERS (NALT)**



HELD 2ND - 6TH JUNE, 2014
AT EBONYI STATE UNIVERSITY, ABAKALIKI - NIGERIA.

Edited By:
PROF. C. A. OMAKA

CHAPTER 10

THE NIGERIAN JUDICIARY SINCE AMALGAMATION; STRENGTHS AND WEAKNESSES*

Prof Enefiok Essien, PhD
Michael Hanson LLM
Mfon Jonah LLM
Richards Ekeh, PhD
Etefia Ekanem, PhD

Abstract

The judiciary, being the third arm of government in a democratic government, plays a fundamental role of justice dispensation. From the amalgamation of the Northern and Southern Protectorates to what later became Nigeria, the Judiciary has, on the one hand, been characterised by several ills against which it has been, is being and will continue to be criticised; and on the other hand, it has been severally celebrated as the bastion of democracy in Nigeria. It is not uncommon in Nigeria that a Judge in delivering a judgment will make bold to say “my hands are tied”. This expression, which is pregnant with several meanings, is capable of putting the judiciary more in bad light than in good light. It opens the floodgate for suspicion that the judiciary is either interfered with or that the judiciary cannot but be bound to do justice in the case before it in accordance with the law. The Nigerian Judiciary has, over the years, witnessed tremendous challenges in performing its functions as it survives all forms of governments, from amalgamation till date, in the course of which its strengths and weaknesses have been exposed. The ills with which the Nigerian Judiciary is associated tend to showcase these weaknesses, successes, strengths. This paper discusses these strengths and weaknesses of the Nigerian Judiciary since amalgamation.

1. Introduction

The word “Judiciary” has been defined as the court system of a country.¹ It is the branch of Government vested with judicial powers. It is generally regarded as the third arm of government. The function of the judiciary is the interpretation of the

*Being a paper presented by Professor Enefiok Essien, PhD (Birmingham), Dean of Law; Michael Hanson Esq, LLM (Uyo), Lecturer; Mfon Jonah Esq, LLM (Dundee), Lecturer; Dr. Richards Ekeh, PhD (Jos), Lecturer, and Dr. Etefia Ekanem, PhD (Nigeria), Lecturer, all of the Faculty of Law, University of Uyo, Nigeria, at the Ebonyi 2014 Centennial Nigerian Association of Law Teachers Conference.

¹ Yusuf Ali, “The Evolution of Ideal Nigerian Judiciary in the New Millennium,” *Bar Journal* Vol. 1 No.1 August 2001, pp. 39-56 @ p. 40. Also at www.yusufali.net/article, last visited 6/5/2014.

laws enacted by the legislature.² A discourse on the Nigerian Judiciary is a discourse on that arm of government concerned with dispensation of justice in Nigeria. This includes the Nigerian courts system, the judges, magistrates, khadis and members of customary courts. The judiciary is the base or bedrock of any government in the world where democratic government is in practice. The wind of change blowing across the world today, in the nature of democracy, has unsettled most undemocratic governments, manifesting itself in prolonged protests and calls for the removal or change of such government by the people.³

Amidst the case arising from these demands from people against the resistance of the government in power to continue, is the judiciary being caught in the crossfire of the tussle. Whereas the government may intend to use it to crush the people and their demands on one hand, the people on the other hand resort to it, believing as it were that “the judiciary is the last hope of the common man”. Like the Catholic Catechism that is heard from the mouth of every adherent to the faith, so is this statement heard in the mouth of every adherent to the faith in democratic government. It is to this extent that issues of the judiciary have provoked tremendous concern globally and drives our interest in the call to discuss this topic.

Where the word “amalgamation” is used in relation to the nation state called Nigeria, it normally refers to the 1914 exercise that brought together or merged the then Northern and Southern protectorates of Nigeria that had hitherto remained as separate entities. The merger of these two separate geographical locations meant the merger of administrative exercises or activities as it concerned the judiciary within these locations now called “Nigeria”. Since amalgamation, Nigerian Judiciary has witnessed unfolding events in various areas both in arithmetical and geometrical progressions.

The judiciary is usually associated with the concept of the rule of law. This rule is founded on the basic fundamental principles of the supremacy of the law, equality before the law and respect for fundamental human rights or the protection of same from being abused by arbitrary government. It is the requirement of the rule of law that the judiciary be independent of other arms of government. It is this independence that gives the judiciary the latitude to perform its functions of dispensation of justice by determining disputes as between individuals, and individual and government, as provided for in the Constitution of the Federal Republic of Nigeria, 1999, as amended (CFRN). This paper discusses the areas of the strengths and weaknesses of the Nigerian Judiciary since amalgamation till date. But before that is done we shall first discuss, and briefly too, the history of Nigerian Judiciary.

2. History of Nigerian Judiciary

²*Ibid.*

³ This is the case in most Arab countries in the world today.

It has been argued that the Nigerian Judiciary has had a history of 4 distinct era,⁴ - the period before 1842, 1845-1912, 1914 to 1953 and 1954 to date. Before the advent of the Europeans, the various indigenous people of Nigeria had various methods of dispute resolution mechanism. Among the Yoruba and Ibo, the system revolved around their traditional family institutions, which has at its apex the Oba and the Family Head respectively. In the North existed a bit of formalization, founded on Islamic legal system - the Sharia. Here, there was an elaborate court system, the hub of which was the Alkali system, the Emir sitting as the ultimate appellate judge.

Before the amalgamation, the power to administer and dispense justice in Nigeria was mainly vested in native courts. These courts in dispensing justice, fashioned out systems of taxation, civil laws and procedure, penal law and sentencing policies. These Native Courts are the forerunners of the Customary, Area and Sharia Courts we have in Nigeria today. With the advent of the colonialists in the Southern part of Nigeria between 1843-1913, the British through a combination of Foreign Jurisdiction Act of 1843 and 1893 established law under which various courts were set up. Between 1854 and 1886, there were the Courts of Equity established by the British in the Southern parts of Nigeria particularly Brass, Benin, Okrika and Opobo, with the principal agents of trading firms, consular or other administrative officers acting as the judges, and courts established by the Royal Niger Company with power to govern and administer justice in its areas of operations, until the Charter was revoked in 1899. Side by side with the British Courts, were native courts which were still allowed to function, in so far as the native law and custom they administered were not repugnant to natural justice, equity and good conscience.

In 1863, by Ordinance No 11 of 1863, the Supreme Court of Lagos was established, it had both civil and criminal jurisdiction. By 1900, the Supreme Court Proclamation Order No.6, established for the first time the Supreme Court for the Southern protectorate of Nigeria to exercise same powers and jurisdiction as were vested in Her Majesty's High Court of Justice in England. Thus the common law, the doctrines of equity and statutes of general application in England were to be administered in the court in so far as local circumstances permitted. Sharia Law in all its ramifications was also in operation in most parts of Northern Nigeria. By the Protectorate Courts Proclamation of 1900, a Supreme Court, Provincial Court and Cantonment or Magistrate Courts were established for the Northern protectorate. And by the Native Courts Proclamation Order of 1900, a new system of Native Courts for the territory presided over by an Alkalis and Emir was established. It is this arrangement that endured until 1914 when the Northern and Southern Protectorates of Nigeria were amalgamated.

⁴ Yusuf Ali, *op. cit.*, at 41.

Upon amalgamation in 1914, Provincial Courts were abolished and in its place were established High courts which consisted of Chief Judges, Judges and assistant Judges. Below these High Courts were Magistrate Courts, then Native Courts which remain at the bottom of the judicial hierarchy. The Supreme Court exercised appellate jurisdiction over the High Courts. Between 1934 and 1954 appeals from the Supreme Court went to the West African Court of Appeal. Appeals from the West African Court of Appeal went to the Privy Council. However, from 1954 appeals from the Supreme Court of Nigeria went direct to the Privy Council. However, in 1954, a Federal Supreme Court was established and was presided over by a Chief Justice of the Federation. Nigeria then consisted of regions, each region then had a High Court presided over by a Chief Justice. Appeals from each of the High Courts of the regions lay to the Federal Supreme Court. While appeals from Magistrate Courts, Customary or Native Courts Grade A, went to the regional High Courts.

When in 1967, Nigeria became a Federation of 12 States; each State had its own state judiciary. The Western State, by the Court of Appeal Edict No 15 of 1969, established a Regional Court of Appeal. The Supreme Court ceased to have direct jurisdiction to hear and determine appeals in any matter from the High Court of the state (including appeals in any proceeding pending in any court in the State) except in any case in which notice of appeal to the Supreme Court had been filed 1st June 1967. In order to meet the need for cases involving the revenue of the Federal Government to be expeditiously determined, the Federal Revenue Court (now Federal High Court) was established by the Federal Revenue Court Decree No 13 of 1975. In 1976, 19 states were created in via the Constitution (Amendment No 2) Decree No 42 of 1976. The law setting up the Western Court of Appeal was replaced.

Under the present CFRN, the Courts recognized as constituting the judiciary are: the Supreme Court, the Court of Appeal, the Federal High Court, the High Court of the Federal Capital Territory Abuja, the National Industrial Court, the Customary Court of Appeal, Abuja, the State High Courts, the Sharia Court of Appeal of the States and the Customary Court of Appeal of the states.⁵ These courts are vested with the functions or duties of dispensing justice in accordance with jurisdictions vested in them. It is against this historical background of the Nigerian Judiciary that we shall now proceed to discuss the strengths and weaknesses of the judiciary.

The strengths and weaknesses of the Nigerian judiciary appear to outplay themselves on the same areas, but with minor variations, from 1914 till date. Our discussion here focuses on the strengths and weaknesses of the judiciary in various areas of discourse in the pre-independence era (colonial era), the post-independence era (1960-1966), the military era (1966-1979) and the 2nd Republic till date (1983-

⁵ S. 6 of the CFRN.

2014). These areas include the Constitutional Application, the Independence of the Judiciary, Continuing Legal Education, Funding of the Judiciary, Judicial precedence, Access to justice, Delay of cases, Absence of Special Courts and Corruption in the Judiciary. In the course of our discussion, the Judiciary and its activities between 1914 and 2007 shall be referred to as the Judiciary yesterday, whereas those ones between 2007 till date shall be referred to as the judiciary today.

3. The Strengths

i. Constitutional Application

The power of the judiciary is to be found in the Constitution.⁶ It has been argued that the greatest challenge of the judiciary at all times has been how to keep the other arms of government in check, by ensuring that they operate within the limits prescribed for them by the Constitution, and to minimise abuses inherent in the exercise of power with relation to constitutional guarantee of individual rights.⁷ It is this power that gives the courts the boldness and the strength to dispense justice without fear or favour, through their interpretative jurisdiction. During the colonial era, this interpretative exercise of the judiciary through the courts was without doubt tilted towards the dictates and advantage of the colonial masters, since power on judicial matters was still being wielded by the colonial masters.⁸ In the post-colonial era, the Nigerian judiciary, it has been argued, adopted an unduly restrictive and austere approach to the interpretation of the provisions of the 1960 and 1963 constitutions⁹ and other statutes. This passive attitude of undue restraint and deference to legislative wisdom of the courts in this era outplayed itself in plethora of cases¹⁰ showing how restrictive the courts were in the protection of Human Rights that were put to questions. This attitude of judicial interpretation continued until the 1st Republic and could not check the excesses of the politicians of that period. This had been posited as one of the reasons for the fall of the First Republic.¹¹ Under the military era, our judges, however, became bold and courageous especially in the face of tyranny prevalence during the military regimes. Thus relying on the Constitution the judiciary through its courts was able to declare a number of acts of the then military government null and void whenever they were against the dictates of the Constitution.¹² This was the position of the Nigerian Judiciary yesterday.

⁶*Ibid.*

⁷ T. Nasiru and B. Valentine, "The Judiciary and the Challenges of Good Governance in Nigeria: An Evaluation" *Journal of Private and Commercial Law*, Vol. 1, 113-133 at 120.

⁸*Ibid.*

⁹*Ibid.*

¹⁰ *Adegbenro vs Akintola* (19 63) 3 WLR 63.

¹¹ Generally, C.C. Nweze & B. O. Okere, (eds): *Essay in Honour of Professor Okonkwo* (2000AD), Jite Books, Port Harcourt.

¹² *Lakanmi v A. G West* (1971) U.I.L.R 201; *Gov. of Lagos State vs Ojukwu* (2001) NWLR (Pt. 41)1948.

The Nigerian Judiciary, today, has done a lot in enhancing and stabilising democracy through the Constitution and other Statutes by many of its landmark decisions particularly in election cases. These have helped to reinforce the role of the judiciary as a vital instrument of political control and democratic consolidation, thereby impacting positively on the development of democracy in Nigeria.¹³ Large numbers of election petition decisions have been given which operated to remove a number of members of the executive and legislature from office, which would otherwise have been a rape of democracy, had the Nigerian judiciary abdicated from its responsibility of upholding justice.¹⁴ Thus the excesses of political parties' arbitrarily substituting candidates who won the primaries for other candidates have also been frowned upon by the judiciary. This, it is argued,¹⁵ is why section 34 of the Electoral Act 2006 was declared justiciable.¹⁶ This active role of the Judiciary has imbued tremendous confidence in the citizens as evidenced in the words of the present Governor of Edo State Adams Oshiomole when 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 of the judiciary – and there is enough evidence that a number of judicial pronouncements have embarrassed the federal government.*¹⁷

Thus the Nigerian Judiciary has now shown the world that it is an impartial and credible arbiter of political disputes and this explains the longevity of Nigeria's present democracy.

ii. *Independence of the Judiciary*

The Judiciary also derives its strength from its independence from the other arms of government. Although some may argue that the Executive arm of government still maintains a strong influence over the appointment and removal of Judges and over the control of the nation's resources, the Judiciary has been able to check the excesses of both the Legislature and the Executive arms of government. As was earlier stated, the 1999 Constitution (as amended) is the champion of the Independence of the Judiciary in Nigeria and has achieved this firstly, through granting financial autonomy to the Judiciary. Section 84 (2), (3), (4) and (7) of the Constitution, provides that the remuneration, salaries and recurrent expenditure of

¹³ Enefiok Essien, "Judicial Reforms and Democracy in Nigeria" in Enefiok Essien (ed): *Essays in Honour of Professor Peter Umama Umoh*, Top Law Publishments Ltd., Lagos (2012) 1-28 at p. 5.

¹⁴ *Peter Obi v INEC* (2007) 11NWLR (Pt. 1041) 1 SC; *Rotimi Amaechi vs INEC* (2008) 5 NWLR (Pt. 1080) 227 SC.

¹⁵ Essien, *op. cit.*, at p.5.

¹⁶ *Odedo v Itodo* (2010) 18 NWLR (Pt. 1225) 545, held 9.

¹⁷ *Saturday Tribune Newspaper*, Saturday, 22 March, 2008 cited in Essien, *op. cit.*, at p. 5.

Judicial Officers shall be made a direct charge on the Consolidated Revenue Fund, to exclude them from the annual budgetary and appropriation processes and also from the control which those processes give the Legislative and Executive arms of government. This provision should enhance improved conditions for judicial officers and thus overcome a situation where the judiciary has to look up to the executive for funding.¹⁸ The benefit of financial independence is the freedom of thought and of judgment by judges. In practice, however, the enforcement of the provisions of the Constitution granting financial autonomy to the Judiciary poses significant challenges particularly in state judiciaries where it is kept more in breach than in observance. Many state governments consider the provision as an affront to their imperial powers and prefer to see the Chief Judges in those states beg for funds to run their offices.¹⁹ The Executive arm must realise that it is the Constitutional right on the part of the Judiciary to have the funds released to them and it is a corresponding obligation on the part of the Executive to release the funds.

The second means by which the constitution has championed the Independence of the Judiciary is through the mode of appointment of Judicial Officers. The Constitution provides, by virtue of Sections 231(2) and 238(2), that Justices of the Supreme Court and Court of Appeal respectively, shall be appointed by the President only upon the recommendation of the National Judicial Council. By virtue of Section 231(1), where the appointment is to the office of Chief Justice, Justice of the Supreme Court or President Court of Appeal of Nigeria, the appointment will be subject to confirmation by the Senate. In the various states, by virtue of Section 271 (2) the governor appoints a judge of the High Court upon the recommendation of the National Judicial Council and where the appointment is to the office of the Chief Judge of the state, Section 271 (1) provides that the appointment shall be subject to confirmation by the State House of Assembly. Thus, the power to appoint a judge is not left solely in the hands of Executive. Furthermore, the NJC is also charged with responsibility to discipline erring judicial officers. With the CJN as the Chairman of the NJC, one therefore wonders if the powers of the CJN are not onerous, given that the same NJC recommends persons for appointment into judicial offices, and the fact that Council's membership is largely composed of Judicial officers who look up to the CJN as the first amongst equal. The likelihood can, therefore, not be ruled out that members of the Council may easily be swayed or influenced by the CJN.²⁰ Such fears could be assuaged where the CJN is only but a member of the Council, while someone else, like a retired CJN or a JSC, chairs the Council.

¹⁸ Essien, *op. cit.*, atp 12.

¹⁹ *Ibid* at p. 13.

²⁰ The prospect of a member of the Council having being recommended by the same Council under the chairmanship of the CJN for a higher appointment may exert enough pressure on a member.

iii. *Judicial precedent*

Another area of judicial strength is in the area of judicial precedent otherwise referred to as case law. The appointment of late Justice Adetokunbo Ademola as the nation's first indigenous Chief Justice ended the colonial dominance of Nigerian judiciary in manning this exalted judicial position and gradually paved way for the weeding out of foreign influences from the personnel of the Nigerian judiciary and on judgments delivered from then, which hitherto were all reflections of the colonial past. This is so because prior to Nigeria becoming a Republic, decisions and cases decided in England were largely binding on Nigerian courts by virtue of the influence of the Privy Council on the Nigerian judicial hierarchy. However, since 1963 till date, Nigerian courts are no longer bound by decisions made in English courts or any foreign court for that matter. At best, these decisions can only be persuasive in Nigerian courts. It is this application of judicial precedent, otherwise referred to as *stare decisis*, that makes for predictability of the outcome of court decisions in her strive to do justice to all manners of persons in Nigeria. It is also in this area of jurisprudence and the exposition of the legal principles, that Nigerian courts have taken advantage of opportunities offered by some Nigerian cases to propound legal theories to suit our social, economic and political dynamics. The metamorphosis of the issue of *locus standi* now has Nigerian cases, such as *Fawehinmi v. Akilu*,²¹ *Abraham Adesanya v. President of the Federal Republic of Nigeria*²² and *Fawehinmi v. President of the Federal Republic of Nigeria*, decided on the applicability of the doctrine in Nigeria, as against the former practice of relying on British cases and foreign jurists' opinion on such matters.

Today, the *rationes decidendi* in some of the landmark cases, it has been argued,²³ partakes of judicial legislation. Before Ararume's case,²⁴ the supremacy of the political party in respect of its internal affairs or domestic affairs was the practice.²⁵ Thus it was the exclusive rights of the political party to choose a candidate for an election and to change same for any or no reason at all.²⁶ This was the practice of the Nigerian Judiciary yesterday. The Nigerian Judiciary today has stepped in to provide a leeway by its interpretation and application of section 34(2) of the Electoral Act 2006 to the effect that a political party wishing to substitute its candidate must provide "cogent and verifiable reasons" for doing so. Thus the court now steps in whenever there was injustice, irregularities in the selection or emergence of a candidate at the primary level, during primary election. This remains

²¹ (1987) 4 NWLR (Pt. 67) 794.

²² (1981) 2N.C.L.R 358.

²³ Essien, *op. cit.*, at p. 6.

²⁴ *Ugwu v Ararume* (2007) NWLR (1048) 367, RATIO 13.

²⁵ *RBK Okafor v Onuoha* (1983) SCNLR 244. See also *Dalhatu v Turaki* (2003) 15 NWLR (Pt. 843) 310; and *Ozigbo v. PDP* (2010) 9 NWLR (Pt. 1200) 601 Ratio 12.

²⁶ *Anietie Okon v Effiong Bob* (2004) 1 NWLR (Pt. 854) 378; *Uba v Ukachukwu* (2004) 10 NWLR (Pt. 881) 224. *Okafor v Onuoha* (*supra*).

the precedent today, an authority that has now been accommodated by section 33 of the Electoral Act, 2010 as amended.²⁷

In the same vein, the issue of judicial integrity and bias, has also bowed to the strength of the judiciary as the practice before independence was to rely on the views of English jurists, especially Lord Denning's view in such cases like that of *Metropolitan Properties Co. Ltd v. Lannon*.²⁸ But, today, Nigerian jurisprudence has evolved and cases such as *Adigun v. A.G. Oyo State*.²⁹ *L.P.D.C v Fawehinmi*,³⁰ has witnessed Nigerian courts propounding brilliant theories on the subject of judicial bias and integrity such that recourse to English jurisprudence on the subject matter today is absolutely not obtainable.

iv. *Continuing Legal Education*

Continuing Legal Education is one aspect of strength of the Nigerian judiciary today since amalgamation in 1914. It is this continuous legal education that enhances the standard of excellence in the work of our judges today. This has seen the Nigerian Judiciary through a process of total overhaul in the area of procedure via the introduction of frontloading for quicker dispensation of justice. The Nigerian Judiciary has now been largely computerised and the benefits cannot be overemphasised. This was not the case in the colonial, post-colonial and even up to the 2nd Republic. Lord Denning in emphasizing the importance of continuing legal education of a judge said thus:

Law does not stand still, it moves continually, once this is recognized then the task of the judge is put on a higher plain. He must constantly seek to mould the law so as to serve the needs of time. He must not be a mere mechanic, a mere working mason, laying brick on brick without thought for the overall design. He must be an architect, thinking of the structure as a whole, building for society as a system of law, which is strong durable and just. It is on his work that civilized society depends.

The Ibrahim Babangida Administration was the trailblazer in ensuring Continuing Legal Education for Judges. On Monday, the 15th day of May 1989, the then Chief Justice of the Federation, Mr Justice Mohammed Bello launched the Continuing Education Induction Program for the Judiciary in Nigeria. This paved the way for the establishment of the National Judicial Institute in 1991, and which serves as the principal focal point of judicial activities relating to the promotion of efficiency,

²⁷ Essien, *op. cit.*, at p. 8.

²⁸ (1963) 3 All ER 304 at 310.

²⁹ (1987) 1 NWLR (Pt.53) 678 at 719 – 720.

³⁰ (1985) 2 NWLR (Pt.7) 300 at 346-347.

uniformity and improvement in the quality of Judicial services in the superior and inferior courts. Recently, the Lagos state judiciary has blazed the trail by introducing audio- recording facilities in the court system after the judges were made seized of the Knowledge of ICT.³¹

v. *Access to Justice*

The judiciary is obliged to defend the Constitution and all tenets of the rule of law in its pristine nature. The survival of democratic polity depends on the state of the law and any society in which the rule of law is stifled may be dislodged by the rule of force or even be taken over by anarchy. The sustenance of the rule of law equals the sustenance of the judiciary. The judiciary in the colonial period up till the post-colonial period was coerced into the application of retroactive laws and laws in retrospection. But from the 2nd republic, the judiciary became up against the application of these laws and condemned in strong terms extra judicial punishment while insisting on punishment in accordance with due process at all times.³²

In the area of protection and preservation of Fundamental Human Rights, it has been argued that the Nigerian Judiciary has displayed a commendable activism.³³ This is an area where the judiciary has made a positive mark from the post-colonial period till date.³⁴ In 2008, the supreme court gave succour to Nigerians to enjoy their Fundamental Right to freedom of Association when it held that the Public Order Act, to the extent that it affects the right of citizens to assemble freely and associate with others the sum of which is the right to hold rallies and processions or demonstrations, is an aberration to democratic society.³⁵ Also in preventing the government from stampeding the rights of citizens in respect of the use of State apparatus against individuals in the guise of commission of crime, the court in *State v Arthur Nwankwo* while holding the accused not guilty of sedition stated thus:

Those who occupy sensitive post must be prepared to face public criticisms in respect of their office so as to ensure that they are accountable to the electorate. They should not be made to feel they live in ivory tower and therefore belong to a different class. They must develop thick skin and if possible plug their ears with cotton wool. If they feel too sensitive, they are within their constitutional right to sue for defamation but they should not use the machinery of government to invoke criminal proceedings to gag their

³¹ Yusuf Ali, *op. cit.*, at p.56.

³² *AG Oyo State v Bello* (1986) 5 NWLR (Pt. 45)828.

³³ Wahab O. Egbewole and Ibrahim Imam, Parliament and the Power of Public crime Investigation. *University of Jos LawJournal*, Vol. 8 No.2, 2009.

³⁴ *Gani Fawehinmi v. Sani Abacha* (1996) 7 NWRL 475 at 701. *Umoh v The State* (2001) 6 WRN 48.

³⁵ *IGP v All Nigeria Peoples Party & 11 Ors.* (2008) 12 WRN 65.

*opponents as the freedom of speech guaranteed will be meaningless.*³⁶

It has been argued that in the 2nd Republic, the Nigerian Judiciary appeared to be more bold and assertive in terms of their recognition of the important role of the constitution in democratic governance by embracing the broad and liberal policy in the interpretation of the constitution.³⁷ A renewed commitment by the courts to protect and sustain democratic governance in Nigeria has been since 1999.³⁸ However, it failed to relax its attitude on the issue of *locus standi* in human right cases generally and in election cases in particular.³⁹ This attitude of the judiciary worked against democracy as it operated to deny well-meaning Nigerians access to justice. The judiciary having been subjected to sever criticism on this issue had to relax the position of the law in *Fawehenmi vs Akilu*⁴⁰ where the court distinguished between standing to sue to protect a private right and standing to sue where public law is involved.

In the Nigerian Judiciary today, the issue of *locus standi* has been made very unpopular by the courts as access to justice, now having been granted by the constitution,⁴¹ is given vent to by various court rules thereby giving access to justice to everyone concerned.⁴² In addition to making access to justice amenable to Nigerians, the Nigerian Judiciary has made great attempt to ensure quick dispensation of justice once the access is obtained and utilized. Thus through various Court Rules,⁴³ there is in vogue the practice of “Frontloading” where a litigant who approaches the court praying for any relief is required to file alongside his summons, other documents containing all the facts he/she intends to use and/or rely on in the course of the matter. Any party who intends to defend such action is, on his/her part, required to do the same while filing his/her defence. This practice by the Judiciary has attempted to take away the problem of delay in disposing of matters in our courts which hitherto existed as a serious weakness of the Nigerian Judiciary.

Notwithstanding the above, in ensuring that access to justice granted is sustained, the courts is constantly now frowning at litigants who are in pursuit of

³⁶See also expressions of C. A. Oputa, “Judicial Ethics, Law, Justice and the Judiciary”, (December, 1990) Vol. 1 No. 8 *Justice Journal*, 41, at p. 43; and the description of the roles of judicial officers by Justice Anthony-Aniagolu (rtd) in a lecture to mark his 85th birthday on October 25, 2007, in the News Magazine, November 12, 2007, at p. 12.

³⁷ Nasiru Tijani & Valentine B. Ashi, *op. cit.*, p.128. On the application of the broad and liberal policy of interpretation by the court, see *Attorney General of Bendel State v Attorney General of the Federation & Ors.* (1980) 9SC 1; and *Obayuwana v. Government of Bendel State* (1981) NCLR 174.

³⁸Etefia E. Ekanem, “The Judiciary and Democratic Governance in Nigeria: So Far, How Far?” (2013) Vol. 2 No. 1 *Uyo Bar Journal*, 153, at p. 158.

³⁹*Adesanya v. The President* (1981) 2 NCLR 358.

⁴⁰(1987) 4 NWLR (Pt. 67) 794.

⁴¹S.6(6)(b) CFRN.

⁴²See for example The Fundamental Right Enforcement Procedure Rules 2009.

⁴³Order 3 Rule 2 and 8 of Akwa Ibom State High Court (Civil Procedure) Rules, 2009.

technical justice as against substantial justice of which the court is now poised to do.⁴⁴ Thus the court will not at any stage of the proceedings terminate such proceedings but shall treat as an irregularity anything not done in strict compliance with the rule of procedure so as to continue to hear and determine the case on the merit.⁴⁵ For the court to terminate such proceedings, an application to so terminate the proceeding must have been brought within a reasonable time, and before the party bringing the application must not have taken any fresh steps after becoming aware of the irregularity.⁴⁶ These conditions are meant to discourage frivolous applications that could be used by litigants albeit their counsels to frustrate the course of justice by denying a party to a case access to justice.

4. Weaknesses

i. Judiciary Funding

Judiciary funding has been one of the intractable weaknesses with which the Nigeria Judiciary has had to contend with for decades now. The judiciary has not been provided with adequate funds to operate. During the colonial period judiciary funding was controlled by the colonial government. The post-colonial period witnessed the recognition of the funding of the judiciary by the Nigerian government, though poorly met. During this period and up till the end of the 2nd Republic, the judiciary was poorly funded such that there were no enough facilities to work with, as Judges were themselves looking up to the other arms of government for sustenance, succour and support, financial or otherwise before it can executive any of its programmes. Judges by this time were living in dilapidated houses, some of them made use of rickety cars of the Ministry of Justice (mostly 504 Peugeot Car). The experiences of magistrates were even worse as most of them made use of public transport to go to work. This was highly precarious considering the sensitive nature of their work.⁴⁷ This weakness of the judiciary during this period was antithetical to the Nigerian Judiciary and the expectations of judicial officers and Nigerian people. From the 3rd Republic, the funding of the judiciary began to be worth its troubles and thus progressed geometrically till date. Thus, the CFRN has provided for the funding of the Judiciary. Section 80(1) of the Constitution provides thus:

All revenue or (other moneys raised or) received by the federation (not being revenues or other moneys payable under this Constitution or any act of the National Assembly into any other public fund of the federation established for specific purpose) shall be paid into and form

⁴⁴ *Ibid.*

⁴⁵ Order 5 of Akwa Ibom State High Court (Civil Procedure) Rules, 2009.

⁴⁶ *Ibid.*, Rule 2. The application could be by Summons or motion. See Rule 2(2).

⁴⁷ See generally Yusuf Ali, *op. cit.*

one consolidated revenue fund of the federation.

Section 81(3) goes further to state that:

Any amount standing to the credit of the judiciary in the consolidated revenue fund of the federation shall be paid directly to the National Judicial Council for disbursement to the heads of courts established for the federation and the states under section 6 of this Constitution.

From these provisions, it is crystal clear that the days the judiciary has to always go cap in hand to the executive and beg for funds to execute its projects seems to be over. This is more so as Section 84 of the Constitution also provides for the payment of salaries of judicial officers from the consolidated revenue fund. Today, the funding of the Judiciary appears is guaranteed. But it may be argued and rightly to that this guarantee is more theoretical than practical. Where the money is not released to the judiciary by the executive from the State account, the judiciary cannot get it. Also, the need of the judiciary today still outweighs the funds provided and this makes nonsense of the funds.

ii. *Delay of Cases in Courts*

It has been argued that 'Justice delayed is Justice denied'. Similarly, that Justice delayed is not only Justice denied but also justice circumvented, Justice mocked and the system of justice undermined.⁴⁸ The delay in dispensing justice experienced in Nigerian Courts is a function of several factors. The actors in the delay of cases within the Nigerian Judiciary include; the court, the lawyers and the litigants. Election Petition Tribunals are set up as special courts for quick disposal of election matters which before now used to cripple in courts for well over four years by which time the whole term would have been served out by the incumbent. But the Electoral Act 2010 and the altered provisions of the 1999 Constitution pegged the time limit within which judgment in an election matter must be delivered at 180 days from the time of filing the petition at the tribunal and 60 days from the day of delivery of judgment of the tribunal for appeal.⁴⁹ In order to meet this date line, Judges sits consistently at the tribunal while abandoning matters at the various regular courts from where they were appointed. This causes delay by the courts. Similarly, upon filing of processes in court the assessment of the processes covers service of such processes by the court bailiffs. These processes have never, in practical realities, been served by the bailiffs unless the lawyers or the litigants "facilitate" the service of such processes. Thus where the lawyer or the litigants fails to additional money to give to the bailiff, the case cannot be heard on the date fixed for hearing. Lawyers

⁴⁸ Richard M. Nixon, *New York Times*, March 12, 1971, cited by Essien, *op. cit.*, at p. 20.

⁴⁹ S. 134(2) & (3) of the Electoral Act 2010; and S. 285(6) & (7) of CFRN.

falls short of their public posture on corruption each time they personally or encourage their clients to “facilitate” government official, like court bailiffs and clerks to do their work. This yet again is the delay caused by the court.

On the part of the lawyer, filing of frivolous interlocutory applications is the means used to cause delay. Applying for and obtaining adjournments for one reason or the other by writing to the courts while staying away from same on the hearing date of a matter, is yet another means of delay by lawyers.⁵⁰ Delay frustrates a party to a case and causes him to lose confidence in the Judiciary and sometimes to abandon the case. It sometimes forces parties to a dispute to resort to self-help which is frowned upon by the courts.⁵¹ Where this delay is successfully used by the Respondent in election matters, it does not only frustrate the litigant and the cause of justice, but the entire democratic process.⁵² The enjoyment of both the civil and political rights of the Respondents would be terminated after the expiration of the time provided for the hearing and determination of the matter. This is the delay by the lawyer.

A litigant, just like the court and the lawyer can cause delay of cases. Thus he may use several means including pretending to be ill and to obtain medical treatment outside the country. Not just being well and strong enough to testify on the hearing date or not being well coordinated to continue and conclude his testimony on the hearing date. These attitudes help to delay cases in courts. This delay constituted one of the weaknesses of the Nigerian Judiciary yesterday as they do today despite measures put in place by the judiciary today to eliminate it.⁵³

iii. *Absence of Special Courts*

The establishment and use of Special Courts, without doubt, is not prevalent in Nigeria. The various courts that exist exercise their powers in respect of all matters brought within their jurisdictions, be it commerce, education, religion, art and/ or science. The absence of special courts means absence of speed in justice dispensation (delay), absence of judgment of high quality (research content) and absence of high intellectual capacity in different area of endeavour within the judiciary.⁵⁴ Special Courts are manned by specialists in various areas of life who appreciates issues involved in any matter before them better and easier than others in so far as it is within their specialty. The use of special courts in the administration of justice has helped the judiciary in countries like Germany and United States of

⁵⁰To attend this Conference, many Law Teachers, who are also in private practice, have written adjournment letters to courts. Such letters would no doubt occasion delay in such matters.

⁵¹*Ojukwu v Lagos State Governor (op. cit.)*

⁵²*ANPP v. Alh. Mohammed Goni & Ors*, Consolidated Appeal Nos. SC1/2012 and SC2/2012 delivered on 17/2/2012 by the Supreme Court. See also *P.D.P. v C.P.C & Ors.* (2011) 17 NWLR (1277)485.

⁵³ See for instance the Frontloading Procedure in Courts today.

⁵⁴ Essien, *op. cit.*, at p. 26.

America (USA) to uphold justice as they enjoy proceedings in matters affecting their constitution that are heard and determined in their Constitutional Courts. There is in existence Commercial Court in England and Ghana.⁵⁵ It has been argued⁵⁶ that this court is a specialised subsidiary of the Queen's Bench Division of the High Court and that its establishment is attributable partly to the dissatisfaction with the handling of a commercial case by a judge who was not versed with commercial law matter.

The Nigerian Judiciary has appreciated the importance of special courts hence the establishment of courts like the Juvenile Courts and Family Courts for adjudication of matters involving children in criminal and civil matters respectively. These courts in some parts of Nigeria do not exist at all. Where they exist, it could be argued that they exist in theory and not in practice. For instance in hearing juvenile matters, it is the magistrate Court that is used and the same magistrate that sits in regular magistrate court that sits to hear and determine the case. This is the same case of Family Court in Akwa Ibom State. Thus whenever the Family Court sits, the Magistrate cannot at the same time sit at the Magistrate Court to hear and determine matters thereat. This obviously leads to delay in justice dispensation and constitutes yet another weakness of the judiciary today as it was yesterday.

iv. *Corruption*

The fourth area of discourse here would be on corruption in Nigerian judiciary which obviously showcases the weakness of the Nigerian Judiciary. This undoubtedly appears to be the most potent weakness of the Nigerian judiciary over the years from amalgamation till date. Generally, the question of the competence and integrity of judges with relation to or in connection with corruption was hardly in doubt in Nigeria as at the time of independence. But it appears that as the years declined, system declined with it and so did the judiciary also commence its downward slope into corruption. Several reasons have been advanced to have contributed to the decline in both competence and integrity of the Nigerian judiciary since independence. One of such is the process of appointment of judicial officers. At independence, merit was considered more important than place of origin. It was such merit that saw T. O. Elias, appointed to the Supreme Court and later to the World Court as Nigeria's representative on the International Court of Justice' Bench.⁵⁷ Over the year and until today, appointments in the judiciary have been afflicted by the turn-by-turn syndrome of a decaying bureaucracy that appears to be influenced by the constitutionally supported quota system. This practice is an

⁵⁵ See *The Ghana Banker*, 3rd Quarter, July - September 1996, vo. 5, pp. 11 - 31 at p. 30 cited by Essien, *ibid.*, at p. 27.

⁵⁶ See J.C. Lawrence, J., described by Lord Justice F. D. Mckinnon in "The Origin of the Commercial Court" (1944) 60 LQR 324 as "a stupid man, a very ill equipped lawyer and a bad judge"; also see V.V. Veeder, QC., "Mr. Justice Lawrence, "True Begetter' of English Commercial Court" (1994) 110 LQR 292; all cited by Essien, *op. cit.*, at p. 27.

⁵⁷ See generally Yusuf Ali, *op. cit.*

unhealthy one as it gives rise to the primordial sentimental considerations which have caused a steady decline in the quality of judges albeit judgments delivered and the society is the worse for it as it cultivates corruption within the judiciary.

The Nigerian judiciary, as a result of corruption, during the post-colonial period up till the end of the First Republic, had been involved in partisan bias in favour of the government and the ruling parties. In almost all cases involving the government and the individual, the government was always winning, and this according to Professor Ben Nwabueze represented a real tragedy in Nigeria's political experiment.⁵⁸ During the military era, military rule contributed to the corruption of the judiciary. The military decrees usually abrogate and oust the jurisdiction of the courts. The military, it has been argued, largely turned the courts to toothless bull-dogs and even where judgments were handed down against arbitrary government actions, they were hardly obeyed thus contributing to the peoples' apathy towards the capacity of courts to do effectual justice.⁵⁹ This period usually witness the rape of the constitution in the nature of suspension of some provisions; modification of others or a complete abrogation. This consequently resulted in the setting aside of all hitherto existing democratic institutions established by the constitution except, the judiciary which is left to exist though albeit emasculated and severely ripped of its powers of judicial review through the ouster clauses.⁶⁰ However, faced with the ouster clauses, the courts in this era had always resorted to a rule of interpretation that enabled aggrieved citizens to seek redress under the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act held to be superior to the military Decrees and not affected by the ouster clauses.⁶¹ It is no longer news in Nigeria that corruption in the Nigerian Judiciary cuts across judicial officers in Nigeria and even Nigerians holding judicial appointments outside Nigeria.⁶² Recently in 2013, a senior Nigerian judge who was serving as the Acting Chief Justice of the Gambia, Joseph Wowo, was sacked for soliciting a N2.5 million (500,000 Dalasi) bribe from a Gambian-based Dutch businessman, André

⁵⁸ B. O .Nwabueze, *Judicialism in Commonwealth Africa*, Enugu & Lagos, C. Hurst & Co. et al, 1977 p.244.

⁵⁹ *Ibid.*

⁶⁰ In *Lakanmi v A. G West* (1971) U.I.L 201 the Supreme Court made effort to wrestle itself free of the shackles of the ouster clause of the military Decree to hold that the court competent of determining whether or not its jurisdiction is ousted or not. See also *Nwosu v. I.S.E.S.A* (1992) 10 S.C.N.J.1.

⁶¹ *Fawehenmi v. Abacha* (2000)6 NWLR (Pt. 660)228 @292.

⁶² Nicholas Ibekwe Nigerian Judge caught on tape negotiating bribe to skew justice. *Premium Times*, July 28, 2013.

The removal of Judges from office for being involved in corruption, rightly or wrongly, is prevalent and rampant in Nigerian Judiciary. Where the rationale for removal itself is tainted with corruption, the judicial officer involved would be suspended sometimes *ad infinitum* and/or until retired. A ready instance is the case of Justice Salami, a former President of the Court of Appeal.

v. *High Cost of Legal Education*

The cost of training a lawyer graduate through the Nigerian Law School appears to be very high in a country where the minimum wage is N18,000.00. As at 2014, a prospective student of the school is expected to purchase scratch with the sum of N21,000.00⁶⁴ and pay fees of N295,700.00 for the one year Bar II programme. With bank charges, a student for the programme would need approximately N325,000.00. This amount appears to be far above the reach of many Nigerian, considering that fees in public tertiary institutions in the country range between N10,000.00 and N100,000.00. In a country where research has shown that only one out of every ten persons can be said to “non-poor,”⁶⁵ the option left for the many who may have difficulty in raising such fees would be to turn to the very few money bags around, mostly politicians, for assistance to raise such money. On completion of the Law School programme, the students, now lawyers, see themselves eternally indebted to these politicians. Time to reciprocate such gratitude may well avail itself for such lawyers who make it to the bench as magistrates and judges, when their erstwhile benefactors appear before them as litigants.⁶⁶

5. The Way Forward

In spite of the seeming problems and challenges facing the Nigerian Judiciary, the fact cannot be disputed that it still remains a vital instrument of political control and democratic consolidation and has impacted positively on the development of democracy in Nigeria.⁶⁷ Despite its weaknesses there is still hope that the Judiciary will manifestly remain the last hope of the common man. In this regard, it is suggested herein that a number of reforms may be expedient. The main areas of reform will be in the areas of judicial corruption and funding as these two areas are the foundation of all other problems and weaknesses facing the judiciary today.

To eliminate corruption in its entirety, allegations of corruption on the bench should be investigated by an impartial and independent panel. Where guilt is

⁶⁴The scratch card is used for online registration.

⁶⁵ D. C. Gaye, “Conflicts in Nigeria” *In Defence of Marxism*, available at <http://www.marxist.com/nigeria-ethnic-conflicts2002.htm>, accessed on December 23, 2013.

⁶⁶The Academic Staff Union of Universities in its 2014 National Delegates Conference held at University of Ibadan between 16th and 18th May, 2014, identified the high fees charged by the Nigerian Law School, as one of the possible causes of corruption by judicial officers.

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established, maximum punishment should be meted out to serve as a deterrent to others, it may be insufficient to merely remove the erring judge from office as stipulated by Section 292 (1) (a) (ii). Apart from punitive measures, there is also the need to reform the judicial officers themselves in order to instil confidence in the populace of their ability to remain impartial and independent.⁶⁸ This could be done through sensitization and continuing education programs. In addition, the consideration for appointment of Judicial Officers should be based strictly on merit and should transcend Federal Character or ethnic considerations. It may be necessary to amend the Constitution in order to exclude the appointment of judicial officers from the ambit of Sections 14 (3) and (4).

In the area of funding of the Judiciary, there should be serious activism by the bar and other stakeholders to compel the executive to uphold the provisions of the constitution by prompt disbursement of the funds accruing to the Judiciary. To achieve this, the entitlements of the judiciary as provided for by sections 81(3) and 121 (3) of the CFRN should be demanded. Instances abound where Chief Judges are heard to thank the Governors of their states for their 'magnanimity' and for being 'judiciary friendly.' Such act disparages the judiciary and should be strongly condemned. Why is it that we have never heard the Legislature thanking and describing the Executive as 'magnanimous' when funds due to the former are released by the latter?

Other measures such as the automation of the court system to eliminate the tedious task of taking notes in long hand, will fast track justice delivery and enable transparency, efficiency and accuracy. However, even the automation process is still dependent on sufficient funding of the Judiciary. Another area of reform as a way forward for the Nigerian judiciary will be in the creation of Special Courts presided over by specialists. This will also help in speedy dispensation of justice and will also ensure that judgement delivered is of high quality.

6. Conclusion

The judicial powers in Nigeria reside exclusively on the judiciary except where same is legitimately delegated. With these powers, the judiciary receives, entertains and determines disputes between individuals and individuals, and between individuals and government. The success of every democratic nation depends on the judiciary, which is the fountain of Justice. The judiciary is therefore saddled with enormous responsibility of dispensation of justice to all manner of persons without fear or favour. This, the Nigerian judiciary has done as it outplays itself in the areas of the application of the constitution, Judicial independence, judicial funding, judicial precedence and access to justice. Indeed, the judiciary appears to be the legendary Knight in shining armour, that has rescued, not only the practice of politics in the country from the intractable corruption, arbitrariness and allied vices that had

⁶⁸ Essien, *op. cit.*, p. 20

hitherto characterised Nigerian politics,⁶⁹ but has positioned itself as the last hope of the common man. Consequent upon the prevalence of human factor in judicial reasoning the Nigerian judiciary, like the judiciary in other parts of the world, have been caught in the web of corruption and other ills which threatens not only the judiciary but our nation and the very existence of our democracy and makes nonsense of us within the international community.

As the judiciary is clamping down on corrupt executives and legislators in her bid to rid these arms of government of corruption, it is hoped that the same would be intensified within the judiciary so that the strength of the judiciary would erode its weakness. The way forward herein posited, if implemented, will without doubt cleanse and strengthen the Nigerian judiciary.

⁶⁹ Ekanem, *op. cit.*, at pp. 155-156.