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POTENCY OF JUDICIAL POWERS AND CHALLENGES OF INDEPENDENT JUDICIARY IN FOCUS

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Abstract

Law exists in a society to create rights and impose duties, the observance of which will make for a good society. However, the verdict of history has been that laws have not been observed to provide for orderliness. Essentially, this calls for an institution charged with responsibility of seeing that society's laws are obeyed and of adjudicating over disputes resulting from non-observance or breach of these laws and of awarding redress. While we can neither appreciate nor advocate both in theory and in practice the complete independence of judiciary if we do not understand the extremely important role and power of this third arm of government, this paper examined the powers of the judiciary under the 1999 Constitution of the Federal Republic of Nigeria (as altered). It further discussed the independence of the judiciary in our democratic system. While challenges of independent judiciary in our contemporary time were identified, useful recommendations are made to strengthen judiciary for the development of Nigeria's economy.

Keywords: Judiciary, Court, Independence, adjudication.

1.0 INTRODUCTION

Judicial power is constitutionally guaranteed in Nigeria. Given the potency of judicial power, Judiciary has been correctly described as a mighty fortress against oppressive and tyrannous laws. It is judiciary that will compel the Legislature to act within its constitutional limits by striking down as unconstitutional all laws that the Legislature either has no power to enact or else that conflict with the spirit and letter of the Constitution. It is Judiciary that has to ensure that even the State is subject to the laws and that government should respect the right of the individual under the law.

The Nigerian Judiciary has been classified as the court and all those who work in the temple of justice.¹ It is evident from this that the most significant role of the judiciary is the adjudication on disputes through the application of law to the matters before it.² And it must be noted that without a proper forum to resolve disputes between persons and governments and between government and governments, society will become a place fit only for the strong and mighty.³

In a free democratic society, the judiciary serves as the people's final line of defense and best hope. It represents the dividing line between constitutionalism and totalitarianism. It serves as the cornerstone upon which democracy expands and matures,⁴ a bastion of the people's hope, as it offers a solution to the sufferings of the masses. And whenever the judiciary fails to play its stabilizing role in the society, peace is bound to be threatened or truncated.⁵

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¹Ebun- Olu Adegboruwa, "Judiciary's Challenges in Modern Nigeria", (2021), (accessed on 13thOctober 2024). See also Hon.Chukwudifu Oputa 'The Independence of the Judiciary in a Democratic Society- Its Needs,Its Positive and Negative Aspects' in T.O Elias and M.I Jegede (eds) Nigerian Essays in Jurisprudence(1stedn,MIJ Professional Publishers Ltd1993)228. For further reading,see Hon. Justice Niki Tobi ' Law, Judiciary and the Nigeria Democracy' in I.AAyua(ed) Law, Justice and the Nigerian Society(NILS Publication 1995)123.

²*Ibid.*

³*President, F.R.N.v. National Assembly, (2023), 3NWRL (pt. 1870), 1-220.*

⁴ Nnaemeka – Agu, 'Judicial Powers: Quo Tedimus'(MIJ Publishers Limited, 1993) p. 256.

⁵*Ibid.*

The role of the judiciary in any democratic society cannot be over- emphasised. Consequently, an independent judiciary is the backbone of any democratic society under rule of law. Therefore, it must be noted that from the onset in regard to judicial attitude in the interpretation of law and the Constitution, that under the 1999 Constitution, the authority of a court to interpret the law or Constitution is derivable from the specific subject to which the court has power to adjudicate in relation to other courts on the subject matter.

Granted that judicial power is the power which the courts exert in the administration of justice, in contradistinction from that which the state possesses to make law and execute them, therefore, what distinguishes judicial power from other types of governmental power is the authority of the courts to create between the parties, enforceable rights and obligations by a binding decision, which disposes of the matter in a dispute. By the foregoing, this power rests primarily on the finality of judicial decision and in the expectation that in finality of the decision, justice and fairness would prevail and the mandate of the law realised and achieved.

What is apparently clear from the above is that judicial power is potent and necessary in checkmating other arms of government, hence, judiciary as an organ of government is indispensable. Thus, the judiciary must discharge its functions in the context of the system of government and laws under consideration and should aim at the attainment of public good.

The focal point of discussion in this paper is to examine the nature of judicial power under the 1999 Constitution and the classification of judiciary power in ensuring dispensation of justice. Also, very essential is the examination of independence of judiciary in the administration of justice. While concerted effort would be made to consider appointment and removal of judicial officers within the purview of the Nigerian Constitution, challenges to independence of judiciary shall also be considered.

2.0 Nature of Judicial Powers under the 1999 Constitution

Simply put, "Judicial Power" refers to the judiciary's authority.⁶ In accordance with section 6 of the constitution, the courts established by it are given judicial authority⁷. This is comparable to Article III of the United States Constitution, which grants judicial authority to the

⁶Nnaemeka – Agu, *Judicial Powers: Quo Tedimus, op. cit.*

⁷ The 1999 Constitution of the Federal Republic of Nigeria (as altered).

United States Supreme Court and other courts established by the Congress. Under Section 6 of the Nigerian Constitution, it states that:

- 6(1) the judicial powers of the federation shall be vested in the courts to which this section relates, being courts established for the Federation.⁸
- (2) the judicial powers of a state shall be vested in the courts to which this section relates, being courts established, subject as provided by this constitution, for a state.⁹
- (3) the courts to which this section relates, established by this constitution for the Federation and for the states, specified in subsection-

5(a) to (i) of this section shall be the only superior courts of record in Nigeria, and save as otherwise prescribed by the National Assembly or by the House of Assembly of a state, each court shall have all the powers of a superior court of record.¹⁰
- (4) nothing in the foregoing provisions of this section shall be construed as precluding;
 - (a) the National Assembly or any House of Assembly from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of a High Court;
 - (b) the National Assembly or any House of Assembly, which does not require it, from abolishing any court which it has power to establish or which it has brought into being.¹¹
- (5) This section relates to –
 - (a) the Supreme Court of Nigeria;
 - (b) the Court of Appeal,
 - (c) the Federal High Court;
 - (d) a High Court of the Federal Capital Territory, Abuja;
 - (e) a High Court of a State;
 - (f) the Sharia Court of Appeal of the Federal Capital Territory, Abuja.

⁸Section 6(1) of 1999 Constitution Federal Republic of Nigeria (as altered).

⁹*Ibid*, Section 6(2).

¹⁰*Ibid*, Section 6(3).

¹¹*Ibid*, Section 6(4).

- (g) a Sharia Court of Appeal of a State,
- (h) the Customary Court of Appeal of the Federal Capital Territory, Abuja;
- (i) a Customary Court of Appeal of a State;
- (j) such other courts as may be authorized by law to exercise jurisdiction or matters with respect to which the National Assembly may make laws; and
- (k) such other courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.¹²

Once the courts make a decision on a matter, it is expected that all parties, be the government, authorities, corporations or private citizens are bound by such decisions. The courts are part of the government. It would amount to executive lawlessness for the government to refuse an order made by its own court.¹³

3. Classification of the Judicial Roles

According to Section 6 of the constitution, the courts are empowered to perform the following roles:

3.1 Power to Stop Crime and Corruption in the Society

The judiciary is empowered by the Constitution to adjudicate on contentious issues and upholding the rules of law.¹⁴ Going by the conviction and sentencing of some notable personalities accused of corruption, the judicial system in Nigeria is trying to reduce crime in the country to minimum level.¹⁵ However, their efforts to eliminate crimes in the country are not enough.¹⁶ Corruption is rooted in Nigeria in recent time, and this is a key concept in the country seeking for sustainable democracy, good governance and independence of judiciary.¹⁷

3.2 Power of Interpretation

The courts established under the Constitution have the authority to interpret the laws of the federation, with the Supreme Court serving as the apex of the judicial hierarchy and the ultimate interpreter of our laws.¹⁸ The Supreme Court demonstrated this power when it

¹²*Ibid*, Section 6(5).

¹³ Nnaemeka – Agu, Judicial Powers: Quo Tedimus, *op. cit.*

¹⁴ Section 6 of the 1999 Constitution (as altered) and also see Crime Control in Nigeria and Judicial Impact, available at <https://nairaproject.com> (accessed on 1st May 2023).

¹⁵*Ibid.*

¹⁶*Ibid.*

¹⁷*Ibid.*

¹⁸*Ibid.*

interpreted section 162 of the 1999 constitution (as altered) on local government autonomy. The Attorney-general of the Federation, Mr Lateef Fagbemi, SAN instituted an action before the Supreme Court of Nigeria for the autonomy of the local government in Nigeria. In July 2024, the apex court ruled on the financial autonomy of 774 local government in Nigeria. The court decided that payment of local government allocation into joint account was a gross misconduct.¹⁹ Also in *Ude Jones Udeogu .v. Federal Republic of Nigeria, Slok Nig. LTD. and Kalu Orji Uzo*,²⁰ the Supreme Court interpreted section 396(7) of the Administration of Criminal Justice Act 2015, which provides:

notwithstanding the provision of any other law to the contrary, a judge of the High Court who has been elevated to the Court of Appeal shall have dispensation to continue to as a High Court Judge only for the purpose of concluding any part-heard criminal matter pending before him at the time of his elevation and shall conclude the same within a reasonable time.

On 2nd of July 2018, the President of the Court of Appeal, purportedly acted under section 396(7) of the Administration of Criminal Justice Act 2015, in a case between the *Federal Republic of Nigeria.v. Kalu Orji Uzo and 2 others*, pending before the Federal High Court in Lagos, issued a fiat to Hon. Justice M.B. Idris to conclude the case. The President of the Court of Appeal ostensibly acting under section 396(7) of the Administration of Criminal Justice Act 2015. By virtue of this, Justice M.B. Idris was mandated to conclude the case by the end of September 2018.²¹ The Supreme Court ruled that the Federal High Court Chief Judge should reassign the case to another judge for a new trial to start *de novo*, because Justice Mahammed Idris was found to have lacked jurisdiction when he convicted Kalu, his company, Slok Nigeria Limited, and a former director of finance in Abia, Jones Udeogu.

The court held that Justice Idris was no longer a judge of the Federal High Court as of December 5, 2019, the date on which he convicted the defendants of alleged stealing of N7.1 billion from the Abia State Treasury. Prior to that, Justice Idris had been elevated to the Court of Appeal and thus lacked the authority to reassume his position as a judge of the High Court. According to the court's ruling, the fiat granted him by the President of the Court of Appeal in

¹⁹Bayo Onanuga, "In Accordance with Constitutional Federalism; Nigeria's Supreme Court Protects Local Governments Autonomy", <https://constitutionnet.org>, (accessed on 20th October 2024). See also, *Attorney-General of the Federation v. Attorney -General of Abia State and Others*(2024)17 NWLR(Pt.1966) 1

²⁰SC/ 622^c / 2019.

²¹*Ibid.*

accordance with the Administration of Criminal Justice Act Section 396(7) of 2015 was unlawful. The court ruled that no Nigerian statute authorized the Court of Appeal's President to grant a Justice of the appellate court a leave to appear in the High Court for a criminal case. When she granted the approval, the Court of Appeal President went outside the scope of her authority. Therefore, the Supreme Court said that the charge in suit No. FHC/ABH/CR/2017 should be sent to the Federal High Court's Chief Judge for reassignment to another judge so that the trial can commence *de novo*.²²

In a related development, the National Assembly approved the Electoral Act 2001, which added additional requirements beyond those already set forth in section 222 of the 1999 constitution. In *INEC and Anor. v. Balarabe Musa and Ors.*²³ The respondent approached the Court of Appeal because he was dissatisfied with some provisions of the Electoral Act 2001. The court ruled that many provisions of the Act were unconstitutional, void, and invalid. The Supreme Court ruled that section 79(2)(c) of the Act was unlawful because it was in conflict with section 40 of the constitution.

In *Abacha .v. Fawehinmi*,²⁴ Chief Gani Fawehinmi was taken into custody without a warrant by members of the State Security Services and the Police. He instituted an action at the Lagos State High Court to enforce his fundamental human right guaranteed by Articles 4, 5 and 12 of the African Charter on Human and Peoples' Rights, as well as sections 31 and 38 of the 1999 Constitution.²⁵ The court dismissed the case and he appealed to the Court of Appeal. In his further appeal to the Supreme Court after being dissatisfied with the Court of Appeal's decision. The status of the African Charter in Nigeria was one of the matters that came up for interpretation before the Supreme Court. The Supreme Court noted that international statutes have "more vigour and strength" than other domestic statutes after being signed by a country. In delivering the ruling of the Supreme Court, Ogundare JSC, said all Nigerian authorities and those in positions of authority are ordered to implement the African Charter.²⁶

²²*Ibid.*

²³ (2003) 13 NSCQR 39.

²⁴(2000) 6NWLR 228 SC.

²⁵Ratification and Enforcement Act Cap. 10., Laws of the Federation of Nigeria, 2004.

²⁶Section 6(1) 1999 Constitution Federal Republic of Nigeria.

In previous decisions, the Supreme Court has stated that it will take a liberal stance when interpreting the law. The court is more concerned with content than purely formal aspects. Justice can only be done by taking the matters' content into account.²⁷

3.3 Power of Adjudication

The courts in Nigeria are empowered by section 6 of the constitution²⁸ to settle all disputes between individuals or between the government and any individual. The judiciary is distinguished from the other federation authorities by this provision of the constitution.²⁹ A person's civil rights and obligations are part of the authority given to the courts by the constitution for adjudication.³⁰ The existence of rights and obligations ultimately determines whether a case can be brought before the courts, and if there are no rights or obligations that are recognized by law, there is no bases for adjudication.³¹

3.4 Sanctions and Inherent Powers of the Courts

The court of law derived its powers directly from the statutes generally or inherently. Where the constitution³² or other statutes give directly to the court to exercise certain powers, these are statutory and the outcome is binding on all authorities and persons. The inherent powers of the court are the power given by the constitution to the court to regulate, control its processes and to fulfill its jurisdictional functions in the administration of justice.³³

It is difficult to set the limits on how court can exercise its inherent jurisdiction, because it has extended to all stages of proceedings from pre-trial, trial and post-trial. This power is often used to complement the statutory powers of court, and it must not contradict the statutory powers of court.³⁴

3.5 Power to Protect the Constitution from other Arms of Government

²⁷*Ibid.*

²⁸*Ibid.*

²⁹Halimah Yahaya, "Orji Kalu's conviction is overturned by the Supreme Court, and a new trial is mandated", <https://www.premiutimes.com>, (accessed on 8th May 2024).

³⁰Eso, JSC in the *State. v. Gwazo*, (1983)1 SCNL 142, P. 160.

³¹Section 6 of the Federal Republic of Nigeria's 1999 Constitution (as altered).

³²*Amadi. v. Nigerian National of Petroleum Corporation*, (2000)6 S.C (pt. 1) 66, 95; see also Karibi-concurring Whyte's opinion.

³³*Hon. J.E. Jegede. v. Okitipupa Oil Palm Co., Ltd.*, (1982) 3 NCLR 663, at 672.

³⁴*Alhaji Isa Aliyu Makarfi. v. Hon. Edwin Ume Ezeoke*, (1982) 3 NCLR 663, at 672.

The Constitution under section 272 empowers the judiciary to oversee legislative actions.³⁵ The Judiciary has always stepped in when necessary to declare any legislative action that violates the Constitution to be unconstitutional, illegal, null, and void, and of no effect. For example, Justice Olarewaju Akeredolu, former Chief Judge of Ondo State, rejected the State House of Assembly's attempt to remove former Deputy Governor of the State, Mr. Alfred Agboola Ajayi from office because he decamped to the opposition party in the state. According to the Chief Judge's letter to the House of Assembly rejecting the request on the grounds that the House of Assembly did not have the two-thirds majority required by section 185(5) of the 1999 Constitution for the setting up such an investigative panel.³⁶

Also three members of the State House of Assembly in Ondo State were suspended in August 2020 by the leadership of the House. The suspension was nullified by the Ondo State High Court in Akure. In his decision, Justice Ademola Bola, now a Justice of the Court of Appeal, ruled that the House of Assembly's action to prevent an elected legislator from duly representing his or her constituency was illegal. According to the court, the suspension of the lawmakers was against sections 90, 91, 106, and 117 of Nigeria's 1999 Constitution. He ordered the reinstatement of the lawmakers and the prompt payment of sum of N5 million in compensation for each of them.³⁷

The Nigerian courts have the powers under the Constitution to ensure that the exercise of legislative authority is not oppressive. If such violation occurs, the courts will declare it invalid and unconstitutional.³⁸ Section 4(8) of the 1999 Constitution does not empower the judiciary directly to supervise the activities of the executives. That is, the president and the governors.³⁹ But since the executives are to maintain laws and orders in the country, it is the judiciary's responsibility and duty to check the executive arm of government anytime the action of the executive contravenes the obligations and civil rights of the citizen. The courts are empowered to

³⁵ Section 6(6)(a) of the 1999 Constitution (as altered), where it was provided that the Judicial powers shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of Law.

³⁶ Nnaemeka – Agu, *op.cit.* At p. 258.

³⁷ Section 4(8) of 1999 Constitution provides that where it was provided that the exercise of legislature powers by the National Assembly or by a House of Assembly shall be subjected to the jurisdiction of courts of Law and of Judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a Court of law or of a judicial tribunal established by law.

³⁸ Dayo Johnson, "Ondo Chief Judge Rejects Impeachment move against Deputy Governor", (2020), available at <https://www.vanguardng.com>, (accessed on 1st August 2023).

³⁹ The Judicial powers must extend, notwithstanding anything to the contrary in this Constitution, to the inherent powers and sanctions of a court of Law, according to Section 6(6)(a) of the 1999 Constitution (as altered).

adjudicate on such executive actions if they are challenged by an affected citizen.⁴⁰ The courts have done this in a number of cases as follows:

In the case of the *Attorney General of the Federation and 2 Others. v. Alhaji Atiku Abubakar, 3 Others*,⁴¹ where the Special Assistant to the President on Public Affairs, Mallam Uba Sanni announced that the office of the Vice President of Nigeria was vacant, his immunity had been withdrawn and all his privileges, entitlements, rights and benefits of the office had also withdrawn. In addition, he said the Vice President defected from the People's Democratic Party (PDP), of which he and the President had both been members at the time of the election, and openly pledging allegiance to the Action Congress made him lose his position.⁴²

In accordance with section 239 of 1999 Constitution, the Vice President approached the Court of Appeal to declare that the President's proclamation that his position was vacant and that he had been removed from office was invalid.⁴³ He urged the court to reinstate him and grant him an injunction so that the President would not undermine or break his constitutional immunity as Vice President.⁴⁴ The Court of Appeal ruled in the Vice President's favour and stated that the President lacked the authority to declare the Vice President's office vacant and that the proclamation of the office's vacant status was unconstitutional, null, and invalid.⁴⁵ The President appealed to the Supreme Court after being dissatisfied with the Court of Appeals' decision, and the Supreme Court unanimously dismissed the appeal.⁴⁶

Also in *General Sanni Abacha & Others .v. Chief Gani Fawehinmi*,⁴⁷ Chief Gani was arrested without a warrant on Tuesday, January 30th 1996, around 6 a.m. And brought to the DSS office, where he was detained. He was not informed of his offence, and was later transferred to the Bauchi Prisons. As a result of this, he approached the Lagos Federal High Court for the following relief:

⁴⁰Peter Dada, "Court reverses suspension of three Ondo Lawmakers", the Lawmakers are the Deputy Speaker, Mr. Ogundeji Iroju; Mrs. Favour Tomomowo and Mr Wale Williams, Published on 20th August 2020, available at [punchng.com. politics](http://punchng.com/politics/), (accessed on 6th of September 2023)

⁴¹ SC/31/2007 (20th April 2007).

⁴² Nnaemeka – Agu 'Judicial Powers' Quo Tendimus. *Op. cit.* p. 256.

⁴³*Attorney General of Bendel State. v. Attorney General of the Federation and 22 Ors. (1972) 3 N.C.L.R. 1, at p. 40* Fatai-Williams, C.J.N.

⁴⁴(2007) 6 NWLR (Pt.1031) 626.

⁴⁵*Ibid.*

⁴⁶*Ibid.*

⁴⁷ 28 April 2020 (SC. 45/1997), NGSC 17 (SC. 45/1999), and NGSC 1 (SC. 45/1960) (27 April 2020).

That the applicant's incarceration and prolonged imprisonment without trial since his arrest by the DSS constituted a grave violation of his constitutional rights under section 33 of the 1979 constitution as well as Article 7 of the African Charter on Human and People's Rights. An order of mandamus forcing the DSS to present the Gani for trial before a court or tribunal that had jurisdiction over the case.⁴⁸ And (N10, 000,000) compensation for the applicant's unjustified and unconstitutional arrest and detention.⁴⁹

In a preliminary objection, the appellants' attorney argued that the State Security (Detention of Persons) Decree No. 2 of 1984, as revised by the State Security (Detection of Persons) Decree No. 11 of 1994, gave the Inspector General of Police the authority to detain someone. And the African Charter on Human and Peoples' Rights provisions were void to the extent of their inconsistency because they were inconsistent with Decree No. 107 of 1993, and the legality of the detention order cannot be questioned by the court because it was made by the appropriate authority under the decree. The Federal High Court upheld the respondents' objection, and the case was dismissed.⁵⁰ On appeal to the Court of Appeal, the appeal was partially upheld, and the court mandated that the case be sent back to the trial court for further consideration of the applicant's detention, which was not addressed by the lower court's ruling.⁵¹ The Court of Appeal's ruling was contested by both parties, who then appealed to the Supreme Court. In the primary appeal, the appellants criticized the court's rulings on the African Charter on Human and Peoples' Rights and the decision to send the case back to the Federal High Court for a re-trial on the detention issue.

Regarding the African Charter,⁵² the Supreme Court, presided over by Ogundare JSC, ruled that an international agreement entered into by the Government of Nigeria does not become enforceable until it is ratified and enforced by the National Assembly.⁵³ The treaty was enacted into law by the National Assembly. On the respondent, Chief Gani Fawehinmi, who was held

⁴⁸*Ibid.*

⁴⁹*Ibid.*

⁵⁰*Ibid.*

⁵¹The African Charter on Human and Peoples Rights (Ratification and Enforcement) Act 1983, passed by the National Assembly in 1983, served as Nigeria's formal adoption of the treaty (Later Cap. 10 Laws of the Federation of Nigeria, 1990).

⁵²According to Section 12(1) of the Constitution from 1979, a treaty between the Federation and any other nation only has legal force to the extent that it has been adopted into law by the National Assembly. Section 12(1) of 1999 Constitution re-enacted several constitutional provisions.

⁵³SC. 45/1997, (2000) NSC 17.

pursuant to a detention order issued by the Inspector General of Police in the exercise of the authority granted to him by Section 11 of the State Security (Detention of Persons) Act, Cap. 414, Laws of the Federation of Nigeria 1990 (formerly Decree No. 2 of 1984). The Supreme Court ruled that Nigerian courts have the authority to investigate how discretionary powers are used. It falls within administrative law, which forbids the abuse or wrongful use of authority. The detaining authority did not provide any justifications for why a person constituted a threat to the state. The court's attempts to order the detainee's release on a Habeas Corpus application were stymied by Decree No. 22 of 1986 since this is regarded as a matter of state security that cannot be addressed by the courts.⁵⁴ These are instances where courts have stepped in to protect citizens' rights and obligations when the executive misused its power.⁵⁵

4.0 The Independence of Judiciary

Judicial independence is a primordial principle of liberty and efficacy of the Constitution especially the limitations contained therein is dependent on the independence and vitality of the courts. Judicial independence means that judges will decide cases fairly, impartially and in line with the facts and law.⁵⁶ The decisions of judges are not to be influenced by prejudice, fear, or the latest opinion poll, neither should pressure from either the legislature or the executive have an impact on the judicial decision-making process.⁵⁷

Judicial independence is for the benefit of the public and not for the judges' benefit as often misunderstood.⁵⁸ The public must develop confidence that a judge will be impartial.⁵⁹ Judges must not have personal interest in a case before him, whether due to bribery and corruption, or as a result of public pressures.⁶⁰ For the judiciary to effectively carry out its duties. It must be separated from the other branches of government. The notion of separation of powers

⁵⁴ See *Shogaba Abdulraman v. The Federal Ministry of Internal Affairs* (1981) 2N.C.L.R. 549, and *Ojukwu v. The Governor of Lagos State, 1986 (N.W.L.R., Part 18), 621.*

⁵⁵ *Ibid.*

⁵⁶ S SShikyil 'Judiciary Under the 1999 Constitution of the Federal Republic of Nigeria' in Akin Ibidapo -obe and T.F Yerima(eds) *Law, Justice and Governance ,Essays in Honour of Hon. Justice Ajakaiye* (Petoa Educational Publishers 2003) 267. see also, Montesquieu, "The spirit of the Laws", Book XI, Vol. 3, Fourth Edition, London (accessed on 26th September 2020).

⁵⁷ *Ibid.*

⁵⁸ Funke Adekoya SAN, "Independence of the Judiciary – A pathway to Democratic Development", Lecture Delivered at Chief Judge's Seminar Series Organized by the Ondo State Judiciary, vol. 3, between 29th – 30th October 2019, p. 7.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

by Montesquieu is where judicial independence first emerged.⁶¹ The rights and liberties of citizens can only be guaranteed by a free judicial system.⁶² A judge must act in total independence, and can only be restrained by his conscience and God.⁶³ Judges need to be protected against political and executive aggression.⁶⁴ Judges must be above passion, public outcry, and the politics of the day in order for disagreements to be resolved in court on the basis of merit and not expediency.⁶⁵ This is judicial independence.

Every action of a judge must be justified by law. Judiciary independence does not mean that judges should have unlimited powers. It is a judicial lawlessness for the judge to sit or rise when he likes, and leaving backlog of cases in his court without attending to the matters.⁶⁶ It is also a judicial irresponsibility for a judge to treat counsel and witnesses with disdain. No case can be adequately tried without the aid of a counsel. Judicial independence does not give the judge license to treat counsel and witnesses anyhow. They deserve respect, because in justice delivery, these people are stakeholders.⁶⁷

5.0 Areas of Judicial Independence

In order to ensure the independence of the court, the General Assembly of the United Nations established guidelines, which were subsequently recognized as fundamental principles in 1985. This reflects a common understanding of what judicial independence should entail⁶⁸.

- . a. Appointment and Removal of Judicial Officers
- b. Remuneration of the Judicial Officers
- c. Security of Tenure
- d. Budgetary Provisions
- e. Freedom from Interference with Judicial Process by other Arms of Government.

A. Appointment and Removal of Judicial Officers

⁶¹Judicial Independence in Nigeria: Between Global Trends, Domestic Realities, and Islamic Law,' by Ibrahim Sule, "Nigerian Law School, Kano Campus, November 2018.

⁶²Observe John Marshall, the third US Chief Justice.

⁶³Only NJC recommendations can remove CJ, the court informs Bello and Kogi Assembly, according to Ibrahim Obasa (2019), The Kogi State House of Assembly recommended to the State Governor that Justice Nasir Ajanah, the State's chief judge, be fired.

⁶⁴Nigerian Essays in Jurisprudence, MIJ Publishers Limited, 1993, p. 230, Hon. Chukwudifu Oputa, "The Independence of the Judiciary in a Democratic Society - Its Need, Its Positive and Negative Aspects."

⁶⁵*Ibid.*

⁶⁶Section 231(1) Federal Republic of Nigeria's 1999 Constitution (as altered).

⁶⁷*Ibid.*, Section 231(2).

⁶⁸ Ibrahim Sule, *op. cit.* p. 4.

According to Nigeria's 1999 Constitution (as altered). The appointment of Supreme Court Justices,⁶⁹ the Court of Appeal President,⁷⁰ the Court of Appeal Justices⁷¹, the Chief Judge and Judges of the Federal High Court⁷², the Chief Judge and Judges of the Federal Capital Territory's High Court in Abuja,⁷³ the Grand Kadi and Kadis of the Federal Capital Territory's, Sharia Court of Appeal,⁷⁴ and the President and Judges of the Customary Court. The President of the National Industrial Court shall be made by the President on the recommendation of the National Judicial Council and subject to confirmation of the appointment by the Senate.

The Governor of a State appoints the Chief Judge and Judges of High Court of a state,⁷⁵ the President and Judges of the Customary Court of Appeal of a State⁷⁶ on the recommendation of the National Judicial Council, subject to the confirmation by the State Assembly. Care must be taken to nominate qualified, intellectual, bright, and highly trained men and women to the bench when the President and Governors exercise the powers given to them by the Constitution. Judges must not be dishonest.⁷⁷ He must be a person of complete independence with nothing to influence him but God and his conscience.⁷⁸

According to Uwaifo JSC, a judge who is corrupt is worse for society than a man who runs amok in a busy street with a dagger.⁷⁹ The Judges of the courts as trustees of law, justice, truth, and social conscience must, like Caesar's wife, be above board. Beyond acquiring such virtue, they must be among the best citizens on earth, which the hemisphere can and is able to offer. There should be no compromising on the calibre of the men and women nominated to the bench.⁸⁰ On the basis of an address given by at least a two-thirds majority of the relevant

⁶⁹Section 231(1) of 1999 Constitution Federal Republic of Nigeria.

⁷⁰*Ibid*, Section 238(2).

⁷¹*Ibid*, Section 250(162).

⁷²*Ibid*, Section 256(152).

⁷³*Ibid*, Section 266(1 & 2).

⁷⁴*Ibid*, Section 271(1 & 2).

⁷⁵*Ibid*, Section 281(1 & 2).

⁷⁶*Ibid*, Section 292(1).

⁷⁷*Ibid*.

⁷⁸Eric Ikhielae, "Onnoghen convicted", The Nation Newspaper, Vol. 13, No. 4645, Friday 19th April 2019, p. 7. Also IkecukwuNnochir, Onnoghen's CCT conviction: 100 days before the guillotine dropped, IkecukwuNnochir, www.vanguardny.com, 2019.

⁷⁹ See Uwaifo JSC Valedictory speech, reproduced in (2005), 1 SCNJ at 20. See also Taiwo Kupolati 'Revisiting Appointing Process to Supreme Court' in TaiwoKupolati(ed), *verses for Legal Revolution Renaissance Law Publishers limited* 2006) 252.

⁸⁰According to Section 292 of the Nigerian Constitution of 1999, the President of the Court of Appeal may only be removed from office by the President of Nigeria acting in accordance with an address that has the support of two-thirds of the Senate. In the Justice Salami case, this was never done.

legislative body calling for the removal of a judge due to misconduct or failure to carry out the duties of the office, the President or Governors may remove a judicial official in Nigeria.⁸¹

Politicians in Nigeria have made attempt to remove judges from offices without adhering to the prescribed procedures or in violation of the constitutional requirements. In *Maigari Dingyadu .v. Aliyu Wamakko*,⁸² the executive recklessness under former President Goodluck Jonathan was exposed when Justice Isa Ayo Salami, former President of the Court of Appeal was removed. Also, former President Muhammadu Buhari removed Justice Walter Onnoghen as Chief Justice of Nigeria in accordance with an ex-parte order issued by the Code of Conduct Tribunal (CCT) on January 23th 2019. President Buhari appointed Justice Ibrahim Tanko Muhammad in replacement as Nigeria's Chief Justice. The public responded to this development in various ways.⁸³ These removals demonstrated the fragility and dead of independence of the judiciary.

B. Remuneration of the Judges

In Nigeria, before the recent 300 per cent increment of salaries of judicial officers, Judges' salaries and benefits were reviewed last in 2008.⁸⁴ That is about 16 years ago when the exchange rate was ₦117 to \$1 as against almost ₦ 1700 to \$1 now. The monthly pay of Supreme Court Justices then was ₦753, 000 and the Court of Appeal got ₦607, 000 monthly.⁸⁵ This poor salary could expose the greedy one among the judicial officers to corruption and lack of seriousness to work.⁸⁶

Justice is a precious commodity, Nigeria should ensure that the bench command finest men and women that the country can proud of.⁸⁷ This is a price which England had paid. There was a time a High Court Judge in England earned more than the Prime Minister.⁸⁸ In October 2018, the Senior Salaries Review Body (SSRB) of England published its major review of the

⁸¹ Section 292(1) 1999 Constitution.

⁸²(2008) 17 NWLR (Pt. 116) at 395; *Dingyadi .v. INEC* (No. 2) (2019)18 NWLR (Pt. 1224) p. 154.

⁸³Azimazi Momoh Jimoh, "Poor Remuneration Exposes Nigerian Justices to Temptation, Senate Declares", *m.guardian.ng.newspoor-remu*, (accessed on 18th October 2024).

⁸⁴Certain Political, Public and Judicial Office Holders (Salaries and Allowances) (Amendment) Act 2008. The Law repelled 2002 Act to create room for the increase of Judges' basic salaries, allowances and fringe benefits in 2007.

⁸⁵This was stated by the Chairman of Committee on Judiciary, Human Rights and Legal Matter, Opeyemi Bamidele (APC, Ekiti Central).

⁸⁶Ministry of Justice Judicial Salaries from 1st October 2019 – *assets.publishing.service.gov.uk*,pdf,(accessed on 29th November 2023).

⁸⁷Chukwudifu Oputa, "The Independence of the Judiciary in a Democratic Society – its Needs, Positive and Negative Aspects", (1993), edited by T. O. Elias and M. I. Jegede, MIJ Publishers Limited, p. 232.

⁸⁸Chukwudifu Oputa, *op. cit.* p. 232.

Judicial salary structure in June 2019, and by this reports, the Justices of the Supreme Court in England earns €234,184.⁸⁹ Under the rule of law, it is the responsibility of the Nigerian Bar Association to ensure the adequately remunerated judiciary.⁹⁰

C. Security of Tenure

Section 292(1) of the 1999 Constitution addresses the security of tenure of judicial officers in Nigeria.⁹¹ Under this provision, a judge can only be dismissed if justification can be shown in accordance with the constitution. The section states that:⁹² A Judicial Officer may not be dismissed from his position before reaching retirement age, with the exception of the following situations:

- (a) In the case of –
 - (i) Chief Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court, Chief Judge of the High Court of the Federal Capital Territory, Abuja, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and President of Customary Court of Appeal of the Federal Capital Territory, Abuja, by the President acting on an address supported by two-third majority of the Senate;
 - (ii) Chief Judge of a State, Grand Kadi of a Sharia Court of Appeal or President of a Customary Court of Appeal of a State by the Governor acting on an address supported by two-thirds majority of the House of Assembly of the State.⁹³
- (b) In any case, other than those to which paragraph (a) of this subsection applies, by the President or, as the case may be, the Governor acting on the recommendation of the National Judicial Council that the Judicial Officer be so removed for his inability to discharge the functions of his office or appointment (Whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct⁹⁴.

⁸⁹ 1999 Constitution of Federal Republic of Nigeria.

⁹⁰*Ibid.*

⁹¹ 1999 Constitution of Federal Republic of Nigeria.

⁹²Eric Ikhilae, “NJC recommends dismissal of Justice Offili – Ajomogobia, Agbadu – Fishin”, (2018), The Nation Newspaper, p. 9. Also available at thenationline.ng.net/news/njc.slmissal-justices.njunogobic=fishin, (accessed on 28th November 2023).

⁹³Premium Times, “Why we sacked Justices Naron, Archilong - NJC”, available at www.preminutime.org.com, (accessed on 29^h November 2023).

⁹⁴*Ibid.*

The primary complaint about Section 292(1) of the 1999 Constitution of Nigeria (as altered) is that it placed the removal of judicial officers in the hands of politicians. Aside from the Judges and Justices who were recommended for removal from their positions by the National Judicial Council (NJC). To dismiss judicial officers for misconduct or infraction of the Code of Conduct, the President or the Governor merely requires 2/3 of the political votes in the Senate or House of Assembly.

D. Budgetary Provisions

Judicial independence is compromised by funding. This is because judiciary has no real input in the budgeting preparations. The executive prepares the appropriation bill and pass into law by the legislature. This bring Judiciary at the mercy of other two arms of government.⁹⁵ It is very sad when the judiciary as the third arm of government, goes to the executive cap in hand begging for fund. The statutory allocation to the judiciary in Nigeria is to be a first line charge of the consolidated revenue of the federation.⁹⁶

The framers of Nigeria constitution wanted to make the judiciary independent of other arms of government by inserting Sections 80, 81, 84(4) and 121 in our constitution. These provisions of the constitution give the judiciary power and control over its own funds.⁹⁷ Section 80 of the constitution provides for the consolidated revenue fund.⁹⁸ Section 80(2) states how monies are withdrawn from the consolidated Revenue Fund of the Federation i.e.both directly charging the fund and appropriating it,⁹⁹ by section 84(4) of the constitution.¹⁰⁰

At the state level, section 121 made an attempt to ensure independent finance for the state judiciary.¹⁰¹ Inadequate funding at the state level is one of the greater challenges confronting the judiciary in this country. Sometimes, judicial officers and other court staff did not get their salaries and allowances in the state for months. This will definably expose them to corruption and unnecessary adjournments of cases.¹⁰² In order to improve the welfare of the state judiciary, on May 22, 2020, former President Muhammadu Buhari issued Presidential Executive

⁹⁵Robert Egbe, "Judiciary: Buhari's scorecard", (2019), *The Nation Newspapers*, 10th May 2023, Vol. 13, p. 20.

⁹⁶*Ibid.*

⁹⁷*Ibid.*

⁹⁸*Ibid.*

⁹⁹Ibrahim Abdullahi, *op. cit.* p.

¹⁰⁰Joseph Onyekwere, *op. cit.* p.

¹⁰¹Nigeria's Federal Republic of 1999 Constitution (as altered).

¹⁰²The Supreme Court ruled in *A.G. Federation v. A.G. Abia State & Ors.* (2002) 6 NWLR (Pt. 764) 542 at 688 that the Federation Account, not the Consolidated Revenue Fund of the Federation, is where the salaries of the Federation's judicial officers are charged.

Order No. 10 of 2020. The intention of the order is to provide financial independent for the judiciary at the state level.¹⁰³ Also in 2018, the President signed the Fourth Alteration Bill into law. Financial independence was provided to the state courts under the Fourth Alteration Act of 2018. Section 121(3) of Constitution was altered by the Act to read as follows:

‘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’.¹⁰⁴

Judicial autonomy is a critical component of our democratic development, the federal and state governments must ensure that it happens by implementing the provisions of the constitution on fiscal independent.¹⁰⁵ On 17th March 2023, former President Buhari signed fifth alteration Bill No. 9 of 2023 in to law that gives financial independence to the state’s judiciary.¹⁰⁶

E. Freedom from Interference with the Judicial Process by Other Arms of Government and Senior Judges

The court of law must be independent in decision making and the Governors of states must not be allowed to use their positions to influence the decisions of courts. In *Ikechkwu. v. Nwoye*,¹⁰⁷ the Supreme Court defined the phrase “Judicial Powers” as the ability of a court to decide a dispute brought before it, delivered a judgment, and carry it into effect between the parties involved without outside interference.¹⁰⁸

The biggest obstacle in the history of the legal system worldwide has been the interference from other arms of government and senior judicial offices¹⁰⁹. The Chief Justice of a nation or the Chief Judge of a state are regarded by the President or Governor as member of their parties who must do their biddings. They wanted most court decisions to be in their favour where they are interested in a matter. This mindset poses a serious threat to Nigeria's judicial

¹⁰³Nigeria rebuffed criticism over Chief Justice Onnoghen's suspension, according to BBC News, (2019).

¹⁰⁴Sebastine Tar, “Constitutional and Nigerian Law: In Nigeria”, (2016) Pearl Publishers International Ltd. p. 175.

¹⁰⁵“Independence of The Nigeria’s Judiciary: A Reality or Myth” by Ibrahim Abdullahi? (2014), Inter. Jour. of Public Adminis. And Management Res, Vol. 2, No. 3.

¹⁰⁶ Deji Elumoye and Sunday Aborisade, “Buhari signs 16 Constitutional Amendment Bills; states can now Generate, Distribute electricity, own Railway”, available at www.thisdayline.com. (Accessed on 18th April 2023).

¹⁰⁷(2014) All FWLR (Pt. 724)101 at 109, SC.

¹⁰⁸Akinkwuotu Eniola, “Timing of Onnoghen’s Removal wrong”, available at <https://punch.com/>, (accessed on 20th May 2023).

¹⁰⁹*Ibid*.

independence.¹¹⁰ In February 2019, the Chief Justice of Nigeria, Walter Onnoghen was suspended just three weeks to the general election by former President Muhammadu Buhari who was seeking a second term in office.¹¹¹

The Chief Justice of Nigeria as head of the judiciary is crucial in resolving election-related disputes, and this has led to questions from observer groups whether due process was followed in Walter Onnoghen's removal.¹¹² Some said Buhari hurriedly removed Onnoghen, because he did not want Onnoghen to inaugurate 250 Judges that were to sit over the disputes which could arise over 2019 election in Nigeria.¹¹³

The court must be independent to take decision in a matter before it without any interference from senior judicial officers. This was an experience in the Maigari Dingyadi and Aliyu Wamakko.¹¹⁴ Under section 246(3) of the 1999 Constitution of Nigeria (as altered) the Court of Appeal was the final court for determination of governorship election petition then.¹¹⁵ The petition against Aliyu Wamakko was the first case which the Supreme Court heard and determined an application in a matter over which it had no jurisdiction. Because the matters before the Supreme Court comes by original jurisdiction or appellate jurisdiction. The Sokoto State election petition did not arise from either original or appellate jurisdiction of the Supreme Court. The Supreme Court hear the matter which constitutionally stopped at the Court of Appeal

¹¹⁰Adamu Aboh, "APC says Sacked CJN is PDP's, Atiku's trump card", (2019), available at <https://www.vanguardngr.com>, (accessed on 10th January 2023).

¹¹¹*Ibid.*

¹¹²(2008) 18 NWLR (Pt. 116) at 395; *Dingyadi. v. INEC* (No. 2) (2019) 18 NWLR (Pt. 1224) p. 154.

¹¹³Daily News headlines, "The Big Conspiracy against A Nigeria Top Judge", Wednesday 31st August 2011. Available at <http://www.pinnewsnigeria.com/catway/headlines>, (accessed on 10th January 2023). The case was as a result of face – off between the two Justices, (Katsina – Alu and Ayo Salami) as contained in the affidavit filed by Justice Salami began on 18th February 2010. Justice Ayo Salami, said the CJN told him to disband the five man appeal panel he constituted in the Sokoto Division of the Court of Appeal on the Petition filed by Maigari Dingyadi of the Democratic People's Party (DPP), against the election of Aliyu Wamako of the People's Democratic Party (PDP) as governor of Sokoto State in 2007 elections. He said CJN told him that if the panel allowed the appeal and removed the governor, the ripple effect would lead to the removal of the Sultan of Sokoto, and that the judgment had leaked. He said he refused to do that and the CJN also told him in the alternative to direct the panel of justices to decide against Dingyadi (the appellant), he said he we refused this option and insisted that he would not do anything to pervert the cause of justice. In an unprecedented move, the CJN issued a letter to the justices of the Court of Appeal hearing Sokoto appeal and directed that further proceeding be halted. The Supreme Court thereby arrested the judgment.

¹¹⁴OsariyekemwenIgiebor, 'Political Corruption in Nigeria, Implications for Economic Development in the fourth Republic', (2019), Journal of Developing Societies, available at <https://doi.org/10.1177/0169796x19890745>, (accessed on 13th April 2023).

¹¹⁵Alege O., Adamu M. and Muhammad S. A., (2014). "Effects of Corruption on Economic Development in Nigeria", Global Journal of Interdisciplinary Social Science, Vol. 3, (3); 209-215.

at that time. The Supreme Court dismissed appeals pending before a lower court without record of appeal before it.¹¹⁶

Many factors tend to militate, endanger or completely obstruct the exercise of judicial powers by the Courts, such as ;general difficulties of enforcement of court's decisions, systemic impotence of judiciary, complete ouster of court's jurisdiction ,doctrine of locus standi, and non-justiciability among others.¹¹⁷

6 Recommendation

Given the various analyses about the powers and independence of the judiciary in Nigeria, the judiciary that is free from other arms of government will be bold enough to fight corruption in the country and sustain our developmental plans. While funding, remuneration of judges and inadequate infrastructures for speedy adjudication have been the major challenges of independent judiciary in Nigeria, it is submitted that for there to be independent judiciary the quality of lawyers being appointed as judges must be without political interference, so that only those qualified in character and leaning are allowed to sit as *judex*.

Accordingly, it would seem that the most important measure towards establishing a viable judiciary is to put in place a selection process aimed at ensuring the appointment of fearless, upright judges who would never available for kow-towing to the executive either out of fear of sanction or expectation of reward.

Another recommendation is in the area of funding of the judiciary without the interference of the executives. Today, cars, houses and other perks of office are still subject to the approval of Mr. President and State Governors. These need to be reviewed, for there to be independent judiciary. Judges cannot rely on the allocation of fund from the state Governors and still be able to perform their functions without fear or favour.

In view of the fact that law is dynamic and there is globalization of technology, there must be continuous education for our judges, since various complaints from the members of the public are submitted for adjudication before them. The decisions of our various courts of record must meet the end of justice and promotion peace in the society.

¹¹⁶*Ibid.*

It is also recommended that Nigerian judges should avoid giving conflicting decisions on the same subject matter. Judges at the Federal High Court and National Industrial Court in exercising their judicial powers must ensure that there is a synergy among them by ensuring that decisions of higher court on the same subject matter are not different from what to be decided by them, to avoid judicial rascality.

It is noted that the salaries and remunerations of judicial officers at the court of records in Nigeria have just been increased by 300 % under the Judicial Office Holders (Salaries and Allowances, etc) Act. This increase should be made applicable to magistrates and other staff of the judiciary to promote dispensation of justice.

The process of appointment of judges should also be based on merit and competence. No one should expect a positive delivery from a bench that is populated by judges who got the job because of their filial affiliation. No one should expect a virile judiciary where senior judges lower the criteria for appointment to make it easier for their sons and daughter to be appointed as judicial officers.

7. Conclusion

By the above submission, it is apparent that the whole circumstance for the exercise of judicial power in our country is not in a happy state. It is still affected by serious constraints and disabilities earlier proffered. The government must therefore give our judges the conducive and enabling environment to exercise their judicial powers while competent and men of impeccable character are appointed to the temple of justice.

Protection from powers is thus the necessary role of the courts, this is why the courts are the citizen's last line of defence in their unequal combat with power. Therefore, it is only an erudite, courageous and fearless and independent Bench that can protect all of us from abuse of power.

The function of the judges is to construe the law constant with the economic, social and political development of the subject matter. While exercising judicial power, the peculiar predictions and subjective views of the court are clearly irrelevant, what is paramount is the protection of the object of the legislation, principle of law, predictability, certainty and the interest of justice in the administration of justice.