Unveiling the Hurdles to the Actualization of Judicial Autonomy in Nigeria

Akaa Imbwaseh,[*] Matthew Atonko[**] and Rachel N. Imbwaseh[***]

Abstract

The judiciary is the third arm of government. It has the responsibility to apply the laws to specific cases and settle all disputes brought before it. One of the major functions of the judiciary is to interpret and apply laws to specific cases. In the cause of deciding disputes that come before it, the judges interpret and apply the laws. The law means what the judges interpret it to mean. In order to effectively carry out its mandate, the judiciary deserves autonomy. This paper, adopting the doctrinal method of research, examines the hurdles in actualizing the autonomy of the judiciary. It has been established that financial autonomy alone cannot determine the independence of the judiciary. Though the law has made provision for autonomy of the judiciary, implementation is the main hurdle. Other hurdles include, the procedure for appointing substantive Heads of courts of record, discipline of judges, salaries and payment of pensions, autonomy from public pressure, the undue adherence to stare decisis and alleged corruption. It is recommended that the Executive arm of government should give effect to judicial autonomy by complying with the extant constitutional provisions.

Key Words: Unveiling, Hurdles, Actualization and Autonomy

1. Introduction

Judicial autonomy is a central goal of most Legal Systems. The mere mention of judicial autonomy in Nigeria connotes financial autonomy to an average Nigerian lawyer or judge. It is the quest for financial autonomy that led to the strike embarked upon by the Judiciary Staff Union of Nigeria (JUSUN) on the 6th day of April, 2021. The Union pressed home its demand for financial autonomy of the Judiciary at the state level. While conceding that financial independence is a veritable tool in ensuring the autonomy of the

[*] LLB, LLM, PhD, BL, Professor of Company Law, Faculty of Law, Benue State University, Makurdi

[**] LLB, LLM, PhD, BL, Lecturer, Faculty of Law, Benue State University, Makurdi

[***] LLB, LLM

judiciary, there are other variables that drive home the independence of the judiciary. These include the following:

(1) The procedure for the appointment, promotion and remuneration, and discipline of judges.
(2) Independence of judges from the other branches of government or politicians
(3) Independence from political ideology or public pressure more broadly defined (including ethnic or sectarian loyalties)
(4) independence of the individual judge from superiors in the judicial hierarchy so that the judge can decide each case on his or her best own base view what the law requires [1] and
(5) Independence from social pressures.

2. Financial Autonomy

Financial autonomy simply means the ability of the Judiciary to determine its own internal financial affairs and manage its funds independently. Financial autonomy and financial independence are used interchangeably as they are synonyms. Financial autonomy of the judiciary in Nigeria is a constitutional mandate. Sections 81 (3) and 162 (9) of the constitution of the Federal Republic of Nigeria 1999 (as amended) provide 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 the courts established for the federation and the states. Furthermore, section 121 (3) of the constitution of the Federal Republic of Nigeria, 1999 (as amended) (hereinafter referred to as the 1999 constitution of Nigeria) provides that any amount standing to the Consolidated Revenue Fund of the State shall be paid directly to the Heads of the courts concerned.

Pursuant to the provisions of section 5 of the 1999 constitution of Nigeria, the president of Nigeria issued Executive order 10 on the 10th day of May 2020 wherein His Excellency directed that:

> Without prejudice to any other applicable laws, legislations and conventions at the state tier of Government, which also provide for financial autonomy of state Legislature and State Judiciary allocation of appropriated funds to the State Legislature and state judiciary in the state appropriation laws in the annual budget of the state shall be a charge upon the

[1] United Institute of Peace, 'Judicial Appointments and Judicial Independence'. <https://www.usip.org>accessed 18th September, 2021

> Consolidated Revenue Fund of the State, as a first line charge.

Section 1(1) (2) of the 1999 constitution of Nigeria provide for the supremacy of the constitution to the effect that "the Federal Republic of Nigeria shall not be governed, nor shall anyone or group of persons take control of the government of Nigeria or any part thereof, except in accordance with the provisions of this constitution".

Despite the constitutional provisions, the judiciary is still dependent on the executive at the State level for its funding. The judiciary is funded through the state ministry of finance.

A chief judge does not have the right to employ or replace workers except with the approval of the State Governor.[2] In *Jusun and Ors v National Judicial Council and Ors*[3], the Federal High Court per Adeniyi Ademola held inter alia that "the 2nd-74th defendants' failure, neglect and/or refusal to pay the funds/amount standing to thecredit of the states' Judiciary is a constitutional breach which has to be abated forthwith; that the State Piece-meal payment/allocations of funds through the states ministry of finance to the States' Judiciary at the 2nd - 74th defendants' pleasure is unconstitutional, unprocedural, cumbersome, null, void, and be abated forthwith". His Lordship also made an order mandating the 2nd-74th defendants to comply with the provisions of section 162 (9) of the 1999 constitution of Nigeria in the disbursement of funds to the Heads of courts forthwith.

Some Governors claimthat because they buy vehicles for judges, or sometimes give money for them to go abroad for treatment, this amounts to granting autonomy to the State Judiciary[4] but autonomy means total independence to disburse funds for recurrent and capital expenditure of the judiciary.

In a similar vein, the Federal High Court sitting in Abuja in *Jusun v NJC*[5] held that the Government at all levels were bound to obey the provisions of sections 83 (1), 121 (3) and 162 (9) of the 1999 constitution of Nigeria which are clear and unambiguous. The

---

2 Bolanle Olabinitam "what financial autonomy means for judiciary and how it affects you ", the cable, Explainer https://www.thecable.ng assessed on 18th September, 2021

3 Unreported. FHC/ABJ/CS/667/13 decided on 14th January, 2014

4 Bolanle Olabinitam (n2)

5 Unreported FHC/ABJ/CS/663/2013

Court Further held that "the Attorneys-General of the Federation and the state should act responsibly and promptly to avoid a constitutional crisis in this country by ensuring financial autonomy for the judiciary"

Inspite of the clear constitutional provisions and the position of the courts on the autonomy of the Judiciary, the refusal by the state governors to grant financial autonomy to the judiciary, speaks volume of the level of the unconstitutionality, lawlessness and impunity Nigeria deals with. The State Governors should not be allowed to cherry-pick what aspect of the constitution to obey neither shouldthey set a particular time to obey the constitution. The governors have subjugated the other two arms of government for decades. They fear that if the other arms no longer had to make recourse to the executive for their financial needs, they would look the governors in the eyes and check their excesses with great daring and gusto.

3. Procedure for Appointment of Judges

The 1999 Constitution of Nigeria has made provisions for the appointment of judicial officers. Though the Constitution has not defined a judicial officer, reference to a "judicial officer" means, Justices of the Supreme Court and Court of Appeal, judges of the Federal High Court, National Industrial Court, the High Court of the Federal Capital Territory, Abuja, Khadis of the Sharia Court of Appeal of the Federal Capital Territory Abuja, judges of the Customary Court of the Federal Capital Territory, Abuja, judges of the High Court of a State, Khadis of the Sharia Court of Appeal of a State and judges of the Customary Court of Appeal of a State.[6] Magistrates, Sharia and Customary/Area Courts are not established by the Constitution. The question whether Magistrates and Area/Customary Court judges are judicial officers falls outside the scope of this paper. Judicial officers are classified into two: Federal and State judicial officers. Appointment of judicial officers can be categorized as follows: appointment of substantive Heads of Courts, appointment of Acting Heads of Courts, appointment of Justices of the Court of Appeal and Supreme Court and other judicial officers.

Therefore, the appointment of federal judicial officers in Nigeria is effected by the President on the recommendation of the National

---

6 Section 318 of the 1999 Constitution

Judicial Council subject to the confirmation of the Senate.[7] In respect of State judicial officers, their appointments are made by the respective State Governors on the recommendation of the National Judicial Council subject to confirmation of the appointment by the House of Assembly of the State.[8] All these appointments are done in due compliance with the provisions of the Revised Guidelines and Procedural Rules for the Appointment of Judicial Officers of all Superior Courts of Record in Nigeria, 2014.[9]

According to Aare Afe Babalola,[10]

> undoubtedly, the provision of the 1999 Constitution of Nigeria as to the appointment of judges and justices deeply encourages politicization of this hallowed position. A Justice of the Supreme Court now has to be appointed by the President on the recommendation of the National Judicial Council, subject to the confirmation of such appointment by the Senate, thereby making the process more politically inclined and easier to manipulate to suit the whims and caprices of the political class.

The Learned Senior Advocate,[11] further submits that

> appointed to the Bench... In addition, there needs to be a review of the process of appointing High Court Judges from the Magistracy. Magistrates should be encouraged to stay at the Lower Bench and not necessarily seek elevation to the High Court.

With the greatest respect, it is submitted that Magistrates and Area Court Judges who have proved themselves competent should be elevated to the Higher Bench. It is further opined that the segregation sought in terms of confining Magistrates to the Magistracy without giving cogent reasons for so doing is discriminatory and unfounded.

---

7 Sections 231(1), 238(1), 250(1), 256(1), 261(1), 266(1) of the 1999 Constitution of Nigeria

8 *Ibid*, sections 271(1), 276(1), 281(1)

9 The Rules came into effect on 3rd November 2014 repealing the NJC Guidelines and Procedural Rules, 2003

10 Aare Afe Babalola (SAN), 'Appointment, Promotion and Remuneration of Judges in Nigeria: The Need for a Change' <https://www.vanguardngr.com/2021/06> accessed 18.09.2021

11 *Ibid*

It is humbly submitted that the opinion of the Learned Silk,[12] is apposite where he stated that;

> Generally, the age of appointment of judges in Nigeria calls for great concern. It is not only economically counterproductive but equally unreasonable to appoint judges who are close to the official age of retirement. There is no point in waiting till a person has attained the age of 55 before appointing him to the Bench. Younger judges should be appointed in order for them to spend more years on the Bench and allow them develop the requisite skills and knowledge which will permit them have longer, more productive years on the Bench.

3.1. Experience from other Jurisdictions

i. *Thailand*

In Thailand, each judge is appointed by the King but only after the candidate has passed a judicial examination run by the Courts and served a one-year term of apprenticeship. This type of system can be considered one in which the judiciary plays the primary role, notwithstanding formal appointment by the King.[13]

ii. *Italy and South Korea*

In Italy and South Korea, the constitutional court is formed by 1/3 of the members being appointed by the Supreme Court. The representative system is designed to ensure a mix of different types of professional and political backgrounds on the bench and to prevent one institution from dominating. Since only one 1/3 of the membership is appointed by any one body, each can be assured that it will be unable to dictate outcomes if each judge acts as a pure agent.[14]

It is submitted that, it is possible that judges will be seen as the agents of those who appointed them, for example, justices appointed by parliament might favour the parliament in disputes with the executive. This system focuses on the collective nature of the court to ensure independence and accountability.

---

12 *Ibid*

13 United Institute of Peace (n1)

14 *Ibid*, 3

iii. *USA, Russia and Brazil*

Supreme or Constitutional Court Justices in the USA, Russia and Brazil must be nominated by the President and approved by a House of the Legislature by a majority vote.[15] This system probably leads to more moderate judges, less likely to act as agents of those who appoint them, because they must have a super majority of support. This cooperative system, however risks deadlock, since appointment requires the agreement of different institutions to go forward.

It is possible that in circumstances of political conflict, appointments would not be made at all and vacancies would persist. Each American State has its own judiciary with its own system of appointment. These systems have varied over time and many of them, though not all, involve elections of judges. Electoral systems gained popularity in the 19th Century to enhance accountability of the judiciary and owing to the fear that judges were too elitist. In some states of the United States of America, the appointment of judges is not totally in the hands of the governor or the legislature but in the hands of the electorates. For instance, in Pennsylvania, an election was held on the 18th of May, 2021 whereby judicial hopefuls were elected into office through partisan state-wide elections, rather than being selected on merit by the judicial commission, or the governor or legislature.

Judicial elections require judges to-be to raise money for campaigns which can lead to politicization. Judicial elections can also lead to instances in which relatively unqualified persons are able to win election because they have more money or name recognition. In one notable case in Washington State, a small town lawyer with very little experience who shared the same name with a popular judge ran for the State Supreme Court and won. He then won re-election twice.[16] This shows that the public may not pay sufficient attention to judicial elections to make it an effective means of ensuring accountability, except in extreme cases.

iv. *Germany*

The German Constitutional Court is effectively appointed by the parliament, with each house of the legislature appointing an equal number of members to the Constitutional Court.[17] The German system uses supermajority requirements so that a 2/3 vote is

---

15 *Ibid*

16 Aare Afe Babalola (SAN), (n10)

17 *Ibid*

required. This has led to a norm of reprocity that has established *de facto* permanent seats on the Constitutional Court held by the major parties. Each of the two largest parties has an equal number of seats. The norm produces a stable court that reflects broad political preferences without over-representing either of the two main factions. This version of the legislature-centred system is stable because the party system is stable. If the parties were less stable or if there were numerous small parties rather than a few large ones, the supermajority requirement might make appointments more difficult or even impossible.[18]

v. *The United Kingdom*

Formerly judges were appointed by a government minister, typically, the Minister of Justice or Attorney General. Even though by convention the judges appointed under this system were not seen as explicitly political, there was a good deal of criticism in the United Kingdom that the judiciary did not adequately reflect the diversity of the society, with women and minorities highly under-represented. This system was recently replaced with a variant on judicial council.[19]

vi. *India, Iraq and Japan*

In India, the Higher Judiciary is appointed by the President after consultation with the Supreme Court and this has led the judiciary to be largely self-appointing in practice. The Iraqi Higher Judicial Council is comprised entirely of judges and is responsible for the recommendation of judges for appointment. Another good example of a largely self-appointing judiciary is that of Japan. Although the Supreme Court of Japan is appointed through a political process, the Supreme Court Secretariat has total control over lower-level judicial appointments, training, promotion and discipline.[20] Some have criticized this combination as allowing political control over the whole judiciary through the Supreme Court. Furthermore, individual judges have a great incentive to conform, and are thus less independent from higher-level judges. Indeed, this may be a general feature of systems of self-appointment.

---

18 *Ibid*
19 *Ibid*
20 *Ibid*, 4

3.2. Acting and Substantive Appointments

If the office of the Chief Justice of Nigeria is vacant or if the person holding the office is for any reason unable to perform the functions of the office, the President shall appoint the most senior Justice of the Supreme Court to perform those functions.[21] The same provision applies to all the Federal Courts, i.e. the President of the Court of Appeal,[22] the Chief Judge of the Federal High Court,[23] the Chief Judge of the High Court of the Federal Capital Territory,[24] the President of the Customary Court of Appeal of the Federal Capital Territory,[25] the Grand Khadi of the Sharia Court of Appeal.[26] In respect of the High Court of a State, Sharia Court of Appeal of a State and Customary Court of Appeal of a State, it is the Governor of each State that has the appointing power of an acting Chief Judge,[27] Grand Khadi,[28] and President[29] respectively. In respect of appointments of Heads of Federal and State Courts of Record, on acting basis, recourse is strictly had to seniority on the bench as a yardstick for appointment.

However, with respect to substantive appointments as Heads of the Federal and State Courts, no mention of "the most Senior" justice or judge is mentioned.[30] This unfortunate omission has given room for abuse by the relevant appointors.

Rivers State was effectively without an incumbent Chief Judge from 20th August 2013 until the 31st day of May 2015. On the 20th of August, 2013 Hon. Justice Iche Ndu retired as the Chief Judge of Rivers State. The former Governor of Rivers State Rt. Hon. Chibuike Amaechi appointed and swore in Hon. Justice P.N.C. Agumagu, former President of the Rivers State Customary Court of Appeal on 18th March, 2014, without the recommendation of the National Judicial Council. In appointing and swearing in Hon. Justice P.N.C. Agumagu as Chief Judge of Rivers State, the Governor purportedly

---

21 Section 231(4) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended)

22 *Ibid*, section 237(4)

23 *Ibid*, section 249(4)

24 *Ibid*, section 256(4)

25 *Ibid*, section 265(4)

26 *Ibid*, section 261(4)

27 *Ibid*, section 270(4)

28 *Ibid*, section 275(4)

29 *Ibid*, section 281(4)

30 See sections: 231 (1) (2); 238(1); 250(1) and(2); 256(1) and (2); 261(1) and (2); 266(1) and (2) in respect of Federal Courts and sections 271(1) and (2); 276(1) and (2); and 281(1) and (2) in respect of State Courts

acted on the advice of the Rivers State Judicial Service Commission to the NJC which preferred Hon. Justice P.N.C. Agumagu as Chief Judge of Rivers State to Hon. Justice Daisy Okocha for appointment of Chief Judge of Rivers State. In the case of *Governor of Rivers State& Ors v. National Judicial Council and Anor*,[31] the Federal High Court sitting in Port Harcourt per Hon. Justice Lambo Akanbi, set aside the recommendation of the National Judicial Council to the former Governor of Rivers State to appoint Hon. Justice Daisy Okocha to the office of Chief Judge. It was on the basis of this that Governor Amaechi was emboldened and swore in Justice Agumagu as the Rivers State Chief Judge. The National Judicial Council refused to recognize the Chief Judge appointed by Governor Amaechi. On the 3rd day of June, 2014, the National Judicial Council appointed Hon. Justice Daisy Okocha as the "Administrative Judge of the High Court of Rivers State" with the mandate to assign cases to all judges of the High Court of Rivers State. The Rivers State Governor swiftly reacted by issuing a circular which forbade any staff of the judiciary from taking orders from the "Administrative Judge" with strong sanction of dismissal for any staff that violated the circular instructions. In this confusion, the Judiciary Staff Union of Nigeria (JUSUN) Rivers State Branch declared an indefinite strike which paralysed the Rivers State Judiciary. The then new Chief Justice of Nigeria, Hon. Justice Mahmud Mohammed blamed Governor Chibuike Amaechi for not heeding to the seniority rule in appointing a Chief Judge while Governor Amaechi blamed the National Judicial Council for meddling in the internal affairs of Rivers State Government.[32] On the 1st day of June, 2015, Hon. Justice Daisy Okocha was appointed and sworn in as the Chief Judge of Rivers State thereby bringing to an end the imbroglio.

In Cross River State, Justice Michael Edem retired in November, 2019 but the State remained without a substantive Chief Judge for thirteen months following the disagreement between the National Judicial Council and the State Government. The National Judicial Council wanted due process followed, insisting that the most senior judge be appointed the Chief Judge but the Cross River State Government wanted its favourite candidate to emerge as the Chief Judge. Governor Ben Ayade in 2019 swore in Justice Ikpeme as the Acting Chief Judge, and through the manipulation of the Executive

---

31 Suit No. FHC/PH/CS/421/2013 delivered on 18/3/2013

32 *Ibid*

arm of Government,[33] the House of Assembly declined to confirm Justice Ikpeme on the grounds that she was from Akwa Ibom State and would constitute a security risk,[34] despite the fact that she is married to a Cross River husband and her mother is from the State. Consequently, the governor swore in Justice Maurice Eneji, a junior judge, as the Acting Chief Judge. As the National Judicial Council refused to recommend Justice Maurice Eneji for appointment as the substantive Chief Judge, His Lordship was appointed twice in acting capacity. This development compelled the governor to swear in Justice Eyo Effiom Ita as the Acting Chie Judge on the 19th October, 2021 being the third time an acting Chief Judge was appointed in a row. The Eyo Effiom Ita's tenure ended on the 18th day of January 2021 and the National Judicial Council declined to make any extension insisting that the most senior judge should be sworn in.

Due to intense pressure from some prominent Nigerians, including Senior Advocates of Nigeria and the media,[35] Governor Ayade in a letter dated 20th January 2021 asked the House of Assembly to confirm Justice Ikpeme as the substantive Chief Judge.

After the expiration of the tenure of the Chief Judge of Adamawa State, Justice Bamare Banji, the governor failed to appoint the most senior ranking judicial officer in the State for a period of 50 days. The Nigerian Bar Association protested, which forced the governor, Murtala Nyako to appoint Justice Bartimaeus Lawi as the Acting Chief Judge and the governor extended His Lordship's tenure after three months without the approval of the National Judicial Council. However, in a twist of events, Governor Murtala Nyako swore in Justice Ishaku Banu as the Chief Judge of Adamawa State.[36]

3.3. Discipline of Judges

A key factor in ensuring judicial independence and accountability is a system to discipline and in serious cases, remove judges who have engaged in misconduct. Security of tenure is intended to protect judges against interference by any external or internal subject in a discretionary or arbitrary manner. Premature and unjustified termination of a judge's mandate is a form of improper

---

33 Depoliticising the Appointment of the Chief Judge of State in Nigeria. <https://www.researchgate.net> accessed 26.09.2021

34 <https://www.the guardian.ng.24th January 2021> accessed 26th September, 2021

35 *Ibid*

36 <https://www.premiumtimes.ng.com.20th March, 2012> accessed 26th September, 2021

pressure on the judge. To this end, grounds for the removal of a judge prior to retirement age or the term of office must be based on well-defined circumstances provided for by law, involving: reasons of incapacity or behaviour that renders judges unfit to discharge their functions; conviction based on a serious crime; gross incompetence or conduct that is manifestly contrary to the independence, impartiality and integrity of the judiciary, e.g. corruption. The 1999 Constitution of Nigeria vests powers on the National Judicial Council to discipline judicial officers for any misconduct and/or contravention of the code of conduct for judicial officers.[37]

The code for judicial officers covers basically three broad aspects of the life of a judicial officer. The first aspect deals generally with the comportment and social relations of a judicial officer. From this perspective, a judicial officer is expected to avoid impropriety in all his activities. The second deals with his functions as a judge, to wit, adjudicative and administrative duties and adherence to the rule of law. Finally, the third aspect enjoins a judge to regulate his extra-judicial activities in order to minimize the risk of conflict with his judicial duties.[38]

It would appear that the entire life of a judge is over-burdened with a lot of restrictions to the extent that he may be seen as having lost all his freedom from the day he is appointed and sworn in as a judicial officer. It appears he has lost his privacy. Every seeming misconduct is subject of a petition to the National Judicial Council.

It may be in realization of the apparent caging of judicial officers that the National Judicial Council in 2014 issued some regulations on complaints against judicial officers.[39] Frivolous petitions against judges without sanctions erode judicial autonomy as affects the security and integrity of judicial officers.

Jeffrey Shaman stated that:

> Judges are important public officials whose authority reaches every corner of the society. Judges resolve disputes between people, interpret and apply the law by which we live. Through that process, they define our rights and responsibilities, determine the distribution of

---

37 Section 292(1) paragraph 21, part 1, Third Schedule to the CFRN 1999 (as amended)

38 Rilwanu Salmanu Muhammad and Bobai Paw Ali, 'Misconduct by a Judicial Officer in Nigeria: An Analysis of its Scope' [2015] (1) ABUJPLL, 118

39 2014 Judicial Discipline Regulations – Complaints/Petitions Against Judicial Officers in the Federation

> vast amount of public and private resources and direct the actions of officials in other branches of government and the need to maintain high standard.[40]

Any person who writes a petition against a judge knowing that such a petition is based on falsehood should be prosecuted before a court of law. No citizen, no matter how low or high, should be allowed to go scot free after defaming a judge. The riches of a judge are found in his integrity.

William Shakespeare,[41] speaking of a good name, says:

> Good name, in man, and woman, dear my Lord,
> Is the immediate jewel of their souls;
> He who steals my purse, steal trash, it is something, nothing,
> It was mine, it is his, and has been slave, to thousands,
> But he that filches from me my good name robs me of that, which not enriches him, and makes me poor indeed.
> Lack of social protection for judicial officers is an obstacle to judicial autonomy.

3.4. Salaries and Pensions

Salaries and pensions of judges are important elements to be considered for the protection of judicial independence. It is generally accepted that salaries and pensions must be established by law, and be adequate and commensurate with the status, dignity and responsibilities of judicial officers. Adequate remuneration, in fact, contributes to prevent judges seeking extra profits or favours and better shield them from potential corruptive practices and pressures aimed at influencing their decisions or behaviour.[42]

The President of the Court of Appeal, Justice Monica Dongban-Mensen at the opening of the 2021/2022 Legal Year of the Court of Appeal, painted a grim picture of the welfare and remuneration of judicial officers and court staff in the country. The President of the Court of Appeal expressed concern regarding inadequacy of budgetary allocation to the judiciary which His Lordship said was hampering the capacity of the court to effectively discharge its constitutional responsibilities, adding that the "judiciary is in a very

---

40 Jeffrey M Shaman, 'Judicial Ethics' <https://www.ejei.org/publications/mackay.html> accessed 26.09.2021

41 William Shakespeare, Othello, Act III, Scene I

42 Aare Afe Babalola (SAN) (n10), 9

bad shape".[43] His Lordship continued that the salary structure for judges and other judicial staff in Nigeria has consistently ranked poorly when compared to that of their counterparts in other African and Commonwealth countries. The last time the salaries of judicial officers were reviewed in Nigeria was via the certain Political, Public and Judicial Office Holders (Salaries and Allowances, etc) (Amendment) Act 2008. By the provisions of the Act, the Honourable the Chief Justice of Nigeria's annual basic salary is N3,353,972.50 or N279,497.71 monthly, while other justices of the Supreme Court and the President of the Court of Appeal earn N2,477,110.00 as basic annual salary or N206,425.83 monthly. Justices of the Court of Appeal earn an annual basic salary of N1,999,430.18 each or N168,285.84 monthly exclusive of benefits and allowances.[44]

His Lordship also revealed that the salaries of justices are static and with no graduation as in the civil and public service. His Lordship added that "We have been on one salary grade for over ten years now", and called on the government to increase allocations that "will enable us to introduce technological innovations that will improve adjudication."[45] It was also sadly disclosed that the Court of Appeal is "currently plagued with aged, deteriorating houses" as "most of the houses the justices occupy are in fact, older than the Court of Appeal, being houses donated by the then regional authorities."[46] All the same, the Court of Appeal has very meagre budgetary allocation which cannot sustain the development of new structures being all drawn by repairs of the ancient buildings.[47]

In spite of the poor salary and meagre resources at the disposal of the Court of Appeal, a total of 5,092 appeals and 9,249 motions were filed in the twenty Divisions of the Court in the last legal year from September, 2020 to August, 2021. At the time the court disposed of 3,111 appeals and 7,492 motions. Of these appeals, 2,169 appeals were dismissed while 942 appeals were upheld as at 31st August, 2021. In the 2019/2020 legal year, a total of 5,478 appeals and 6,140 motions were filed at the Court of Appeals' divisions. In 2019/2020, the Court disposed of 5,061 motions and

---

43 Appeal Court President, 'Judges' Pay Poor, Judiciary Under Funded' The Nation (Lagos, 14 September, 2021)

44 *Ibid*, 5

45 *Ibid*

46 *Ibid*

47 *Ibid*

4,091 appeals respectively. In totality, the Court currently has 33,647 appeals and motions pending in its docket, as compared with 45,775 appeals and motions pending at the end of the previous legal year.[48] The Courts are no doubt, saddled with a lot of work with no commensurate pay.

In a similar vein, during the celebration of the Legal Year of the Adamawa State Judiciary, the Chief Judge of Adamawa State, Hon. Justice Ishaya Banu declared that the Adamawa State Judiciary was in comatose following the long years of neglect as entitlements of retired Chief Judges and Judges were yet to be paid. His Lordship expressed regret that as a result of the neglect, retired senior judicial officers in the State including the longest serving former Chief Judge, Justice Bamare Bansi, Justice Adamu Buba and Justice Tokumboh Olouti were yet to get their retirement entitlements. Justice Tokumboh Olouti retired March 3rd 2008, Justice Adamu Buba on 10th December, 2009 and Justice B.S. Bansi who was the Chief Judge of Adamawa State for almost 20 years and who retired in July 2011 were yet to be paid their entitlements in 2016.[49] Though approval was given for the establishment of four Judicial Divisions of the High Court in Numan, Gombi, Ganyi and Michika local governments in order to bring justice nearer to the people, they were unable to take off due to financial constraints. His Lordship further disclosed that they lacked court halls and other essential infrastructure for the administration of justice and some of the courts were in terrible state of disrepair that they constituted serious risks for the staff and litigants.

3.5. Autonomy from Political Ideology or Public Pressure More Broadly Defined (Including Ethnic or Sectarian Loyalties)

A Judge is supposed to perform his duty free from intervention from the political class. He should not only be autonomous, but he should be seen to be autonomous. A judge should not be a sympathizer of any political party. Though all human beings are political animals, a judge should not be partisan. In Japan,[50] lower judges are appointed by the Supreme Court but are technically subject to recall elections every ten years. No judge has ever been recalled, however. In contrast, judges have been recalled in the

---

48 *Ibid*

49 Ibrahim Abduulaziz, 'Adamawa's Retired Chief Judges yet to get Entitlements' <https://www.blueprint.ng October 8th, 2016> accessed 26th September 2021

50 United Institute of Peace (n1), 6

United States as a punitive measure by the public.[51]In one famous incident, three members of the California Supreme Court were recalled in 1986 because of their vocal opposition to the death penalty. One of them, Chief Justice Rose Bird, voted to overturn every penalty of death pronounced by a lower court.[52] This led to the successful campaign to recall her and is an example of judicial accountability. However, it also shows that involvement of the public can reduce the ability of the judge to decide the case independently in accordance with her best view of the law.

In Nigeria, the Chief Justice of Nigeria, Hon. Justice Onnoghen was removed in circumstances that political interference was inferred. On Friday, January 25th, 2019, the President of Nigeria, Mohammadu Buhari, suspended the Chief Justice of Nigeria, Justice Walter Nkannu Samuel Onnoghen from office and immediately administered the judicial oath of office to the most Senior Supreme Court Justice next in rank, Justice Tanko Muhammed as the Acting Chief Justice of Nigeria. Essentially, the President explained that he was swiftly executing an order *ex-parte* of the Code of Conduct Tribunal (CCT) made and dated 23rd day of January 2019.[53] The President further explained that sequel to the filing of Corruption-related Charges against the Chief Justice of Nigeria by the Code of Conduct Bureau (CCB) before the Code of Conduct Tribunal and the commencement of his trial for gross violations of the provisions of the Code of Conduct for Public Officers as stipulated in the Constitution of Nigeria, the Chief Justice of Nigeria, instead of resigning his position, took steps to frustrate his trial. The Chief Justice of Nigeria had been accused in the charges of receiving into and retaining in many bank accounts huge sums of money in foreign and local currencies, without disclosing them in his asset declaration forms and documents submitted to the Code of Conduct Bureau.

On January 7th 2019 the Code of Conduct Bureau received the petition against the Chief Justice of Nigeria, and between that date and 14th January, 2019 treated the petition and filed charges against the Chief Justice of Nigeria leading to his expected arraignment. When the Chief Justice of Nigeria was confronted with the

---

51 *Ibid*

52 *Ibid*

53 Jiti Ogunye, 'Analysis: Suspension of CJN Onnoghen: An Illegal Executive Coup against a Recalcitrant Chief Judicial Officer' Premium Times, January 26, 2019. <https://www.premiumtimes.ng.com>

particulars of his infractions upon the receipt of a petition from a Non-Governmental Organisation that submitted same, calling for his probe and prosecution, he was alleged to have made a confession.[54] In a written statement that he volunteered, he admitted the ownership of the bank accounts and the sums therein contained. In the face of these damning confessions, the President stated that Nigerians had expected the Chief Justice of Nigeria to resign his appointment. But instead of doing that, a team of senior lawyers working with him had obtained a number of orders from the courts to frustrate his trial. It was in consequence of these orders that the Executive had to act. The Executive sought an order to suspend the Chief Justice of Nigeria from office, and upon the order being granted by the Code of Conduct Tribunal, acted swiftly to suspend the Chief Justice of Nigeria from office.[55] A section of the public opinion is of the view that the President acted illegally and unconstitutionally. This class of thought cited the provisions of section 292 of the 1999 Constitution of Nigeria, which guarantees security of tenure for judicial officers, including the Chief Justice of Nigeria in that he cannot be suspended or removed from office without the recommendation of the National Judicial Council and the 2/3 concurrent approval of the Senate.

A contrary public opinion hails the action of the President contending that it is premised on the valid and subsisting order of the Code of Conduct Tribunal, which is incumbent on the President to enforce. This section of the opinion also believes that the action of the President addresses the substance of the allegation of corrupt practices against the Chief Justice of Nigeria; the tackling of which is being frustrated by resort to technicalities and procedural niceties of law, a slavish adherence to labyrinth of the due process of law.[56]It is submitted that since this procedure ran short of the letter and spirit of section 292 of the Constitution of Nigeria, it is patently illegal and smacks of political influence.

A judge is supposed to be independent of public pressure. He is not supposed to be a tribalist or a religious bigot. Though free to practice his religion, he is not supposed to bow to pressures from his pastor or Imam or members of his congregation. Being human beings, there is likelihood that these factors may influence the

---

54 *Ibid*
55 *Ibid*
56 *Ibid*

spectacle with which a judge interprets the law. This may invariably be a hurdle before the actualization of judicial autonomy.

As humans, judges may not be infallible. Some judges, it is alleged, are members of secret societies. They may therefore, take oath of allegiance to a particular deity and to the effect that they would help a member in all circumstances. This may affect a judge's independence in his adjudicatory function.

Judges are exposed to family pressures. This could be from their wives/husbands, sisters and brothers or even from their concubines or boyfriends as the case may be. That temptation would always come the way of judges is indubitable. What is important is how the temptations are handled. The judge is therefore, expected to be a superhuman, and this poses a difficulty. Not everybody, no matter how brilliant, can be a good judge. A judge is, therefore, a rare breed. He must be, and must be seen to be so.

3.6. Independence of the Individual Judge from Superiors in the Judicial Hierarchy

It is vital that each judge is able to decide cases solely on the evidence presented in court by the parties and in accordance with the law. Only relevant facts and law should form the basis of a judge's decision. It is only in this way that judges can discharge their constitutional responsibilities to provide fair and impartial justice. It is important in a democracy that individual judges and the judiciary as a whole are impartial and independent of all external pressures and of each other so that those who appear before them and the wider public can have confidence that their cases will be decided fairly and in accordance with the law. When carrying out their judicial function, they must be free of any improper influence. Such influence could come from a number of sources. It could arise from improper pressure by individual litigants, pressure groups, the media, self-interest or other judges, in particular, more senior judges.[57]

Sometime in 2011, the then President of the court of appeal, Justice Ayo Salami was elevated from the Court of Appeal to the Supreme Court of Nigeria. Justice Ayo Salami, in a letter, swiftly rejected the promotion saying that he was not consulted, but more importantly, that he was contented with being the President of the Court of Appeal. Justice Ayo Salami went to court and deposed to an

---

[57] <https://www.judiciary.uk.independence/courts and tribunals judiciary> accessed 03.10.2021

affidavit alleging that the Chief Justice of Nigeria, Justice, A.I. Katsina-Alu had asked him to compromise the Court of Appeal's verdict on the protracted Sokoto governorship legal tussle by either disbanding the original panel, which the Chief Justice of Nigeria believed was about to give a verdict adverse to Sokoto governor's interest or direct the Panel to give judgment in the governor's favour.[58]

This affidavit raised very disturbing concern, particularly coming from the President of the Court of Appeal. Whether true or false, it raised the issue of superior judges attempting to influence other judges to deliver judgment one way or the other irrespective of the evidence and the position of the law. It smacks of emasculating the autonomy of individual judges in the adjudicatory process. This is unfortunate.

4. Disobedience to Court Orders

Judicial powers are vested in the court [59] and the constitution of Nigeria is supreme. All heads of the three arms of government take oath to preserve, protect and defend the constitution. It, therefore, becomes curious when any arm of government disobeys court orders. In *Ibrahim v. Enein*[60] the court of appeal held that:

> … It is indeed a sorry situation that such highly placed Government functionaries should descend so low to disobey a clear order of this court with reckless abandon. They are supposed to set good examples for people to follow, but instead they tenaciously promote indiscipline of the highest order by openly promoting lawlessness in our Nation from vantage point of their seats of power. It is indeed very regrettable to place such type of people in a position of authority.

Recently, the Chief Justice of Nigeria, Justice Ibrahim Muhammed Tanko decried disrespect to lawful court orders by some members of the public. Such acts, sadly, have lately become common place among very senior public officers who often feel they are above the law. Nothing can be more condemnable because such

---

58 'Katsina-Alu/Salami Saga: The Controversy continues' https://www.vanguard.com. 22nd February, 2011 accessed 23rd October, 2021.

59 CFRN 1999 (as amended), section 6(6)

60 (1996) 2 NWLR (Pt.430), 322 CA

disobedience constitutes flagrant disregard to due process and rule of law, without which a country can hardly survive [61].

In the words of His Lordship, "obedience to lawful court orders has no alternative in any sane society. A threat to this is simply a call for anarchy… Most times, some persons who by sheer stroke of providence, find themselves in position of authority, flagrantly disobey lawful court orders and even make a boast of it."[62]

However, the Chief Justice did not name any culprit, but in recent past, the administration of President Muhammadu Buhari has been accused of disobeying court orders, for example, cases involving the publishers of Sahara reporters, Omoyele Sources; Leader of the Islamic Movement in Nigeria, Ibraheem El-Zazaky and Former National Security Adviser, Colonel Sambo Dasuki.

5. Public Perception of the Judiciary

The judiciary needs to do soul searching if it hopes to regain the dignity and awe with which it was once regarded. In particular, the Chief Justice of Nigeria should be bothered about the recent report by the Independent Corrupt Practices and Other Related Offences Commission (ICPC) which in the "Nigeria Corruption index: report of a pilot survey" it carried out, ranked the judiciary a top the country's corruption[63] index as an estimated sum of N9.4 Billion was demanded, offered and/or received as bribe by the justice sector between 2018 and 2020, with most of the transactions brokered by lawyers,representing politicians in high profile cases. The public perception of that report is that justice in Nigeria is reserved for the highest bidder. [64]

In the last two years, a number of judges of the High Courts, National Industrial Court, Sharia Court of Appeal across the country were recommended for disciplinary action ranging from dismissal to compulsory retirement for various corruption offences and ethical misconduct [65].

Public perception of the integrity of the country's justice system has been on the wane, and judicial officers must be reminded that loss of confidence in the integrity of the system due to corruption is a

---

61 'Judiciary, Corruption and Disobedience of Court Orders' <m.Guardian.ng 13th January, 2021> Accessed 3rd October, 2021

62 *Ibid*

63 *Ibid*

64 *Ibid*

65 *Ibid*

call for embrace of self-help by the people and a sure path to a breakdown of Law and Order in the society. Thus, it is the responsibility of all stakeholders to ensure that the dignity of the judiciary is maintained.

6. A Virile Bar

Lawyers are Ministers in the Temple of Justice. A virile Bar begets a virile judiciary. If the bar is inept and corrupt, the judiciary cannot be seen to be autonomous.

Lawyers play an important part in the administration of Justice. The profession itself requires the safeguarding of high moral standards. As an officer of the court, the overriding duty of a lawyer is to the court, standards of his profession and to the public. Since the main job of a lawyer is to assist the court in dispensing justice, lawyers should strictly practise their profession in conformity with the rules of professional conduct. Judges cannot perform their task of dispensing justice without the co-operation of the bar.

7. Judicial Precedent

Judicial Precedent means the process whereby judges follow previously decided cases where the facts are of sufficient similarity. The doctrine of judicial precedent involves an application of the principle of *stare decisis*, i.e., to stand by the decided.

In this practice, this means that inferior courts are bound to apply the legal principles set down by superior courts in earlier cases. This provides consistency and predictability in the law. The decision or judgment of a judge may fall into two parts, the *ratio decidendi*-reason for the decision and obiter dictum-something said by the way.

The *ratio decidendi* of a case is the principle of law on which a decision is based. When a judge delivers judgment in a case, he outlines the facts which he finds have been proved on the evidence. Then he applies the law to those facts and arrives at a decision, for which he gives the reason (*ratio decidendi*). The judge may go on to speculate about what his decision would or might have been if the facts of the case had been different. This is an *obiter dictum*.

The binding part of a judicial decision is the *ratio decidendi*. An *obiter dictum* is not binding in later cases because it was not strictly relevant to the matter in issue in the original case. *Obiter dictum* of superior courts bind inferior courts.

Strict adherence to this rule, sometimes places a judge in a straightjacket and impedes his freedom in the course of his duty in

administering justice. In *Hon. Terhemba Shija v. Peoples Democratic Party & Ors*,[66] on the 19th December, 2002, the Plaintiff and the 3rd Defendant (Mr. Michael Atumba Shima) contested in the primaries under the People's Democratic Party (PDP) for the nomination of the party's candidate for the election into the Federal House of Representatives from Vandeikya/Konshisha Federal Constituency. The 2nd Defendant, the Independent National Electoral Commission, organized the election into the National Assembly. The PDP, on the other hand, organized the elections within its ranks for nomination of her candidates.

The Plaintiff averred in the statement of claim that the result of 19th December, 2002 primary election he had with the 3rd Defendant "showed that the plaintiff won by an overwhelming margin while the 3rd defendant lost woefully". By 30th December, 2002, the plaintiff claimed that he heard on Radio Benue that his victory had been nullified and that the 3rd defendant had been declared the winner. He immediately, "Complained in writing to the Chairman, National Working Committee of the 1st defendant respecting the purported nullification of the plaintiff's nomination and declaration of the 3rd defendant". The statement of claim in paragraph 8 averred further that on 8th February, 2002, the "Plaintiff was informed by the National Secretariat of the 1st Defendant that the Plaintiff's election was nullified on the grounds that the plaintiff hailed from the same Local Government as Senator Jack Tilley-Gyado, the Senatorial Nominee of the 1st Defendant in the Benue North Senatorial District. The Plaintiff's contention was that "this reaction is not supported by the Guidelines and the party's constitution". The defendants did not file any Statement of Defence.

Eko J (as he then was) held inter alia as follows:

> "What I understand the plaintiff as saying is that the 1st defendant nullified his election on the ground that it cannot afford to sponsor two vital candidates from one local Government area. In other words, the 1st Defendant wants to spread out in order, may be, to improve their chances at the polls, that is, the question: In deciding its prospects or chances at the polls and the strategies therefore can the law court direct the political party? Mr. Hom's answer is that on the question of electability, which is political, the decision of the political party is

[66] Unreported MHC/52/2003 delivered on 25th May, 2003

non-justifiable. That was the issue in *Onuoha v. Okafor* (Supra) before the full court of the Supreme Court,facts are similar to the facts in this suit. In answering this question, Obaseki, JSC had stated: –

> The issue raised in this appeal before us, is in my opinion, as stated by learned counsel for the respondent is whether the court ought to make an order directing the NPP to sponsor the appellant against the 3rd Respondent. The answer to the question so raised must, in my view, be in the negative. A positive or affirmative answer will instantly project or propel the court into the arena of jurisdiction to run and manage political parties and politicians. Can the court decide which of the two candidates can best represent the political interest of NPP? In all honestly, I think the court will in so doing, be deciding a political question which it is ill fitted to do…
>
> The question of the candidate a political party will sponsor is more in the nature of a political question which the courts are not qualified to deliberate upon and answer.

The decision of the Supreme Court in *Onuoha v. Okafor*[67] was applied in the case of *Dalhatu v. Turaki*[68] by the Supreme Court of Nigeria.

His Lordship, Eko J (as the then was) came to the conclusion that –

> Applying the subsisting decisions of the apex and intermediate courts in Nigeria as I am, by judicial policy, bound to, I should decline jurisdiction and hold that it is not for this court to choose who between the Plaintiff and the 3rd Defendant, is the PDP's better candidate to be sponsored by the PDP in the Vaindeikya/Konshisha Federal Constituency. The Exercise of the sponsorial right is completely subjective… I have no doubt that this power can be abused, Lord Acton had once stated that power corrupts and absolute power corrupts absolutely… this could be a veritable instrument of oppression in the hands of the party leaders.

---

67 (1983) 10 SC 118

68 (2003) 7 SC nigeria/ii.org

In spite of the above observations, His Lordship was bound by *stare decisis* to arrive at the decision that would not offend the superior judges. It would appear that if not for the shackles of *stare decisis*, His Lordship would have reasoned differently. His Lordship further held that –

> There are echoes of this, which is called party supremacy". In the judgment of Adefarasin CJ, in *Balarabe Musa V. PRP (Supra)* in which he held that a political party, being a voluntary association, is Supreme over its own affairs and that in conduct of its affairs, is not subject to the jurisdiction of the court of law. I would not go along with the Learned Chief Judge that far as doing so would create the impression that a political party, upon registration, is a sovereignty within a realm and whose leaders when they become despotic in the affairs of the party are not subject to the jurisdiction of the law courts. The party, I should think, is only supreme, if it acts in accordance with the articles of its own constitution.

In very clear terms, the PDP here flouted its guidelines and its constitution. This was found as a fact but earlier decisions had to be followed and this does not matter if the ends of justice are not met as in the instant case.

In *Dalhatu v. Turaki & 5 Ors*. [69] the Supreme Court held that "the case of *Onuoha v. Okafor & ors* (1983) 14 NSC 494 was rightly applied to the facts of this case by the Court of Appeal. It is unfortunate that the trial judge, deliberately and consciously refused to apply it, because he thought the Supreme Court was wrong. If the Supreme Court was wrong, the trial judge was also wrong not to have followed the age long established doctrine of *stare decisis*, otherwise known as judicial precedent.

According to Justice Alu,[70] "the doctrine of *stare decisis* is a *sine qua non* for certainty to the practice and application of law. A refusal, therefore, by a judge of the court below to be bound by this court's decision, is gross insubordination".

In the words of Kalgo JSC [71], judges of the lower courts have no right under any circumstances to ask or advise this court to change its

---

69 Ibid
70 At Page. 207
71 At Page. 217

decision in any case. Their duty is to follow the principles of law enunciated by the Supreme Court in all cases, and apply them in similar cases before them".

It would appear that lower courts are intellectually disabled by the doctrine of *stare decisis*. The Supreme Court considers infraction on the principle as insubordination. This is hierarchical tyranny. Now that the position of the law has changed wherein political parties are no longer 'Supreme' in fielding candidates except they follow their guidelines and the provisions of the constitution, would it not have been better to allow lower courts to give reasons why they want to depart from previous decisions if they feel strongly on a particular point while the superior courts assess such reasons?

8. Recommendations

The following hurdles in the way of judicial autonomy have been identified and recommendations made:

1. The Executive is recalcitrant in implementing the autonomy of the judiciary. This reflects the culture of impunity that is prevalent in high places in governance in Nigeria.
2. The extant procedure of appointing judges by the President on the recommendation of the National Judicial Council and on the confirmation of the Legislature should be maintained. The only hurdle is that where there is a major disagreement between the Executive and the Legislature, vacancies may be unattended to for an unreasonable time. In addition, in appointing judges to the High Court bench, judges within jurisdiction should be given an opportunity to submit names of competent counsel who may not have indicated their interest to serve on the bench.
3. In appointing substantive Judges, the Constitution should be amended to add seniority on the bench as a criterion.
4. In disciplining Judges, misconduct should be properly defined by law. As it is now, it is too fluid.
5. Salaries and pensions of judges should be paid as and when due. The salaries of judges should be increased and reviewed at reasonable intervals.
6. Interference from the other arms of government and all external pressures from even superior judges should be eschewed.
7. Disobedience to court orders by the other arms of government is undemocratic and is a major hurdle to the realization of judicial autonomy.

8. A virile Bar is required to give effect to a vibrant and autonomous judiciary. Conferences should be organized on periodic basis where the Bar and the Bench should interface.
9. Judges of the lower courts of record should be given an opportunity to depart from a judicial precedent on a particular point of law where such a judge feels strongly that to adhere to such precedent would result to injustice. He should give reasons for so doing which can be reviewed by the appellate court. Judicial precedent as rigidly applied now breeds judicial tyranny.
10. Petition writing against judges, particularly where such petitions are frivolous, baseless and malicious, should be checked by way of prosecuting such petition writers. Leaving them to go scot free affects the security and integrity of the judges.

9. Conclusion

The Judicial Arm of government is indispensable in any democratic system. Judges are men of integrity and they are expected to perform their functions with utmost sense of honesty and commitment. The judiciary, therefore, needs to be first and foremost, financially autonomous. However, there are hurdles in the way of the autonomy of the judiciary. These hurdles are identified and rooted in the implementation of the relevant provisions of the Constitution in respect of financial autonomy, the procedure for appointment of substantive Heads of Courts of record and other judges, discipline of judges, salaries and pensions of judges, autonomy of judges from public pressure, independence of individual judges from superiors in the judicial hierarchy, disobedience to court orders, public perception of the judiciary, a co-operative bar, and strict adherence to the doctrine of *stare decisis*.