REIMAGINING THE INDEPENDENCE OF THE JUDICIARY FROM THE PERSPECTIVE OF DEFECTIVE DEMOCRACY IN NIGERIA

Anne Amuche Obiora*****

Abstract

Democracy is that form of government in which the sovereign power resides in and is exercised by the whole body of free citizens directly or indirectly through a system of representation. It anchors on the tripod stand of separation of powers, which are the legislative, the judiciary and the Executive. Each is separate and apart and at the same time compliments each other in the discharge of the functions. The legislature which is bicameral in Nigeria makes the law. This law is interpreted by the judiciary and implemented by the executive. This is of utmost importance so that no arm of the government goes arbitrary. They therefore act as checks and balances on each other. However, while the legislature and the executive are independent, the judiciary is not. In the share of resources, while the legislature and the executive get allocation of resources directly from the Federal Government, the executive gives to judiciary whatever it thinks fit. As a result, the judiciary is like a string attached to the executive. The concern of this paper therefore is for the independence of the judiciary to be guaranteed so that they will be free to discharge their duties without fear or favour to enhance democracy in Nigeria. This work will discuss among other things, separation of powers, Concept of democracy, checks and balances as essential ingredients for a good and effective democracy in Nigeria. It therefore recommends for the independence of the judiciary which will enhance the dispensation of justice by the judiciary. This paper will employ doctrinal methodology in investigating

the challenges that impair independence of judiciary in the Nigeria democratic governance.

1.0 Introduction

The essence of this work is to emphasis the need and importance of independent judiciary in Nigeria. This is of vital importance because it will enhance the dispensation of justice without fear or favour. It will therefore be appropriate to know the meaning of independence. According to Oxford Advanced Learner's Dictionary[1], it means not controlled by other people or things. It means confident and free to do things without needing help from other people[2]. Independence is not relying on others. It means among other things not influenced by others[3]. To be independent also means not being involved in a particular situation. It is a state of being confident, free, and not needing to ask other people for help, money, or permission to do something[4]. Independence means not subject to control, restriction, modification, or limitation from a given outside source[5].

---

* Dr. Anne Amuche Obiora, Associate Professor of law, Faculty of Law Chukwuemeka Odumegwu Odumegwu Ojukwu University, Igbariam Campus. Head, Department of Public and Private Law. Phone Number: 08035452310, Email:ucheoraha@yahoo.com.

[1] A.P. Cowie; Oxford Advance Learner's Dictionary of current English (4thEdn) Oxford university Press, New York 1994) 633.

[2] A.S Horndy Oxford Advanced Learner's Dictionary of current English (8thEdn) Oxford university Press, Oxford, 2010)p. 763.

[3] Oxford Advanced Learner's Dictionary of current English (3rdthEdn) Oxford university Press, Oxford, 2010)p. 440

[4] Longman Active Study Dictionary Pearson Education Limited, (5thEdn) China 2008) p. 380.

[5] H.C. Black, Black's Law Dictionary (6thEdn.) St. Paul, MINN West Publishing Co. United States of America 1990) p. 770.

Judiciary independence therefore is the ability of courts and judges to perform their duties free of influence or control by other actors, whether governmental or private[6]. The term is also used in a normative sense to refer to the kind of independence that courts and judges ought to possess[7]. The concept of judicial independence is not defined in a exact way and often varies from jurisdiction to jurisdiction. This does not detract from its status as a cornerstone of the rule of law. It does not mean that there are no core features of judicial independence upon which there is universal agreement[8]. Vital to the concept of judicial independence is the idea that courts should not be subject to improper influence from the other branches of government or from private or partisan interest[9]. Judicial independence is therefore conceived and understood in relation to other institutional actors. Courts can only contribute to the rule of law if the courts are legitimately composed and judges are independent[10]. Judicial independence is the ability of individual judges and the judiciary as a whole to perform their duties free of influence or control by other actors[11], judicial independence is as old as constitutionalism itself. Democracy is a system of government by the whole people of a country especially through representatives whom they elect[12]. It is also a form of government in which the sovereign power resides in and is

[6] https://oxcon.ouplaw.com/view/10.1093/law-mpeccol/law-mpeccol-e339. Accessed Sunday 10th May, 2020 by 8.30pm.
[7] Ibid.
[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] Ibid.
[12] A.S Horndy Oxford Advance Learner's Dictionary of Current English, Oxford University Press, Oxford 1994) p. 319.

exercised by the whole body of free citizens directly or indirectly through a system of representation as distinguished from a monarchy, aristocracy, or oligarchy[13]..Democracy is a system of government in which all the people of a country can vote to elect their representatives[14].Defective means something that is in perfect in form, structure of form[1515]. It is also a state of being impatient and incomplete[16] .

From the foregoing it can be deduced that the democracy being practiced in Nigeria does not conform to the principles of an ideal democracy which is affecting or rubbery off on the independence of the judiciary. Consequently, in Nigeria frantic effort should be made to reimage the independence of the judiciary in Nigeria for effective and lasting democracy.

1.1 Historical Perspective of Judicial Independence

According to Joseph Diescho: 'The genesis of the doctrine of judicial independence is to be found in the evolution of a constitutional democratic state in Europe'. The doctrine takes its roots in Montesquieu's book, *Spirit of the Laws/De L'esprit des Loix* (1748). Montesquieu theorized, for the first time, the need

[13] H.C, Black, Black's Law Dictionary (6thEdn) St. Minn. West publishing company United State of America) p.432
[14]A.S Horndy Oxford Advance Learner's Dictionary of Current English, Oxford University Press, Oxford 1994) p. 388
[15] Oxford Constitutional Law Independence of the judicial http//oxconcom/view/10. 1093/law-npeccol-law-npeccol: Accessed 10th July 2020 by 5.00pm.
[16] Ibid.

that the executive, legislative, and judicial functions of government should be assigned to different bodies[17].

The independence of the judiciary is also related to the concept of separation of powers and the existence of checks and balances. Alexis de Tocqueville theorized this concept after he observed the functioning of America's society in the mid-nineteenth century (*On Democracy in America*/*De La Démocratieen Amérique* (1899)). He noticed that, contrary to Europe, the United States ('US') President was the mere executor of the law and that he was checked by other institutional entities in the exercise of his executive authority[18].

Until the 18th century, judicial independence was a concept unknown to the British legal system. The emergence of judicial independence as a modern concept in the United Kingdom ('UK') can be traced to 1701 when the Act of Settlement was enacted. This is what Shetreet refers to as the first phase of British judicial independence when the concept was domestically received (Shetreet (1976). The Act of Settlement among other things curtailed the Crown's judicial powers and served as a safeguard against future monarchs' abuse of power after the 1688 Great Revolution. This was followed by the second phase when the British concept of judicial independence came to be used internationally (Shetreet (2009) 275). The adoption of the theoretical model of separation of powers doctrine by other states and the text of Article III US Constitution (Constitution of the United States of America: 17 September

[17] Oxford Constitutional Law: Independence of the judicial http://oxcon.ouplaw.com/view/10: 1093/law-npeccol-law-mpeccol: Accessed 20th July, 2020 by 5.00pm

[18] Ibid.

1787 (as Amended to 1992) (US)) are examples of the exportation of judicial independence during the second phase[19].

As seen above, after the US gained its independence in 1776, its constitutional history was marked by the checks and balances system among the three organs of government. This system has been a great inspiration for western countries[20].

1.2 The Concept of Democracy

Democracy is a theory of government which, in its purest form, holds that the states should be controlled by all the people each sharing equally in privileges, duties, and responsibilities and each participating in person in the government, as in the city states of ancient Greece. In practice, control is vested in elective officers, as representative who may be upheld or removed by the people. A government so conducted, a state so governed by the mass of the people[21]. Democracy is a form of government in which the sovereign power resides in and it is exercised by the whole body of the free citizens directly or indirectly through a system of a representation, as distinguished from a monarchy, autocracy or oligarchy[22]

[19] Ibid.
[20] Ibid.
[21] The New International Webster's Comprehensive Dictionary of the English Language, Deluse Standard International Media Holdings, United States of America, 2013) P. 341.
[22] The New International Webster's Comprehensive Dictionary of the English Language, Standard International Media Holdings, United States of America, 2013) P. 432.

1.2.1 Types of Democracy

Key Points

- **Participatory democracy** is a model of democracy in which citizens have the power to decide directly on policy and politicians are responsible for implementing those policy decisions.
- **Pluralist democracy** is a model of democracy in which no one group dominates politics and organized groups compete with each other to influence policy.
- **Elite democracy** is a model of democracy in which a small number of people, usually those who are wealthy and well-educated, influence political decision making.

1.3 The Doctrine Of Separation Of Powers

The doctrine of separation of powers is one of the important and relevant principles of law and closely identified with democracy which is government of the people by the people and for the people. It is all about representing the interest of the masses. It also enhances the application of the rule of law, separation of powers is usually attributed to John Locke[23] and emanated from the existing condition in the 17th century in England. According to John Locke it was more convenient to confer legislative and executive powers on different organs of government. While the executive performs continuously, the legislature performs continually. Also if the law-makers were left to execute the law, as human beings, he might exempt himself from the observance of the law. Equally Montesquieu who was a French jurist in expanding this theory of separation of powers opined that in every government, there should be three different kinds of

[23] P.A.O. Olunde Constitutional Law in Nigeria (1stEdn) (Evans Brothers Nigeria Publishers Limited, Ibadan 2001) P. 75

powers namely; legislative, the executive and the judicial powers[24]. Following the fact that politics is a social contract where the people entrust their interest and liberty to some other person for representation. Sequel to such confidence reposed on the government the people will like to enjoy tranquility of mind emanating from such confidence. Consequently, it is pertinent for the government to be construed so that one person cannot be afraid of another. However, if when the legislature and the executive powers are united in one person, there is no liberty. This is because apprehensions may arise lest the same person or senate should enact tyrannical manner. Also there is no liberty if the judicial power is not separated from the legislative and the executive[25].

Where judicial power is joined with the legislative, the life and liberty of the subject it would be exposed to arbitrary control, this is because the judge will then be the legislator. If it is joined with executive power, the judge might behave with oppression and violence. According to Montesquieu that will be the end of everything where the same man or the same body, whether of the nobles or of the people to exercise these three powers, that of enacting laws, that of executing public resolutions and of trying the cause of individuals[26]. In line with the principles of separation of powers the 1999 constitution[27] of the Federal Republic of Nigeria as amended provides for the legislative, the executive and the judicial powers in the different bodies in sections 4,5, and 6

[24] Ibid.
[25] Ibid.
[26] Ibid.
[27] Nigeria Constitution (1999) ch.1 s 4(1)

1.4 Separation of Power under 1999 constitution

Under Section 4(1) of the 1999 Constitution, the Constitution provides for legislative powers[28] it states:

Section 4(1) "The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives[29]. Legislative powers in respect of a state are vested in the House of Assembly of the State.

Section 5(1) Subject to the provisions of this Constitution, the executive powers of the Federation.

(a) Shall be vested in the President and may, subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice-President and Ministers of the Government of the Federation or officers of the public service of the Federation; and

(b) Shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws[30]

(c)

Section 5(2) Subject to the provision of this Constitution, the executive powers of a state:

[28] 1999 Constitution of the Federal Republic of Nigeria (As Amended) s 4(1)

[29] 1999 Constitution of the Federal Republic of Nigeria (As Amended) s 4(1)

[30] Ibid. s 5 (1)

(a) Shall be vested in the Governor of that State and may, subject as aforesaid and to the provisions of any Law made by a House of Assembly, be exercised by him either directly or through the Deputy Governor and Commissioners of the Government of that State or officers in the public service of the State; and

(b) Shall extend to the execution and maintenance of this Constitution, all laws made by the House of Assembly of the State and to all matters with respect to which the House of Assembly has for the time being power to make laws.

Section 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.

So from the above provisions of Sections 4, 5, and 6 of the 1999 Constitution, it could be asserted that separation of powers as a constitutional concept is recognized by the Nigerian Constitution[31]

The Nigeria courts have since given effect to this constitutional concept in their judgments even before the promulgation of the 1999 constitution. In *Lakanmiv. Attorney General (Western State)*[32], the Supreme Court held *inter alia* "In the absence of anything to the contrary it has to be admitted that the structure of our constitution is based on the separation of powers- the

[31] M.B. Dalhatu, What is Constitutional Law? The student Guide, (Ahmadu Bello University Press, Ltd Zaria) p.34
[32] (1971) 2 UILR 201 at 218

legislature, the Executive and the Judiciary. Our Constitution clearly follows the model of the American Constitution[33].

The court in this case quoted with approval the decision of the United States Supreme Court in *United States v Lovett:*

> Those who wrote our Constitution well knew the danger inherent in special legislative acts which take the life, liberty, or property of particular named persons, because the legislature thinks them guilty of conduct, which deserve punishment. They intended to safeguard the people of this country from punishment without trial by duly constituted courts[34].

The court in Lakanmi v Attorney General Western State conclude that "these principles are so fundamental and must be recognized[35].

The Court of Appeal summarily discussed the essence of separation of powers in *Honourable Aihaji Abdullahi Maccido Ahmed vs. Sokoto State House of Assembly & Anor*[36].

In the words of Salmi JCA, he stated:

> The organic structure created by Part II of Chapter 1 of both constitution of the Federal Republic of Nigeria, 1979 and 1999 are three organs of powers of the

[33] American Constitution
[34] United States v.Lovett 328 U.S 303.317 (1946)
[35] (1971) 2 UILR 201 at 219
[36] (2002) 44 WRN 52

Federal Republic of Nigeria, of these powers, legislative powers are vested in the legislature at both federal and state level; the executive i.e the president at the Federal and the Governor at the State level. Judicial powers both at the Federal and State levels are vested in the courts established for the Federation and the States under section 6 of the constitution. The doctrine of separation of powers has three implications.

a. That the same person should not be part of more than one of these three arms of or divisions of government;
b. That one branch should not dominate or control another arms. This is particularly important in the relationship between the executive and the courts;
c. That one branch should not attempt to exercise the function of the other, for example a President however powerful

Ought not to make laws indeed act except in execution of laws made by the legislature. Nor should a legislature make interpretative legislation if it is in doubt it should head for the court to seek interpretation[37].

1.5 Checks and balances

In 1787 Madison admonished against mingling executive and legislative powers. But today this precept is often ignored. It has

[37] Ibid. p 69

been the practice though uneasily to ascribe the delegation of substantial law-making power to the president who also executes the laws he makes[38]. However, this power of the president to make law is usually referred to as lawmaking. There are some mild or indirect way of referring to it, such as "regulatory" or "interpretative", or "gap filling". But then when this situation arises it presents an unusual problem for constitutional theory. This is because constitutions[39]text gives lawmaking power to congress, reserving to the president only a qualified veto. Consequently on a straightforward textualist view, presidential lawmaking would be unconstitutional.

Congress may give away legislative power and insulate such delegated power from total presidential control, but congress may neither draw executive power to itself nor seek to legislate outside the provisions of the constitution. Insulation from presidential control, often accomplished through the establishment of independent agencies, restores a balance of power by preventing the agglomeration of executive and legislative power in the President without creating an unjustifiable "accountability gap" for undisciplined agencies. Checks and balances are the outcome of separation of powers. The essence of separation of powers is for the three arms of government as separated, to at the same time act as a check for the government to be stable and balanced. A complete separation of powers, in the sense of a distribution of the three functions of government among three independent sets of organs

[38] A.S. Greene, Checks and Balances in an era of presidential law-making, 61 U, CHI. 1. REV. 123 (2004) in a constitutional law anthropology (2nd edition) Anderson Publishing Company Cincinnati, Ohio.
[39] Ibid.

with no overlapping or co-ordination would (ever if theoretically possible) bring government to a standstill. What the doctrine must be taken to advocate is the prevention of tyranny by not conferring too much power on any one person or body, and the check of one power by another[40] In essence, the doctrine of separation of powers is incomplete without the concept of checks and balances. The latter supplements the former, and both concepts constitute a dual principle. A system of government based on the principle of separation of powers that fail to incorporate some elements of the two principles of checks and balances will lack co-ordination of the three branches of government and risk the possibility of partial tyranny in the form of isolate legislative, executive or judicial abuse[41]. In the words of James Madison.

> Unless these departments of government be so far connected and blended as to give each a constitutional control over others, the degree of separation which the maxim requires, as essential to a free government can never in practice be maintained[42].

Montesquieu himself was not oblivious of this fact. He asserted that to prevent abuse of power, it is necessary that, by the nature of things, one power should check another. He is quite right. It is difficult if not impracticable for an individual, no matter how rich, powerful or influential, to constitute a check on power of government. One power should rather be a counterpoise to another[43]. In the United States of America, the principal

[40] Ibid.
[41] Ibid.
[42] Ibid.
[43] Ibid.

instrument of these checks and balances is the Supreme Court which under the inspiration of Chief Justice Marshall assumed to itself the power of declaring invalid not only the acts of the President but also the acts of the Congress[44]

1.7 Elements of Judicial Independence

The concept of judicial independence has many elements which can broadly fall under the headings of:

i. Appointment and Removal of judicial officers and judicial staff
ii. Security of tenure and remuneration of judges and supporting staff
iii. Budgetary provisions (process)
iv. Individual and institutional freedom unwarranted interference with the judicial process by the executive arm of government and politicians[45].

This road is now clear to expertise on these basic elements and draw examples as to their applicability in contemporary Nigeria.

1. Appointment and Removal of Judicial Officers and Judicial Staff

To have a vibrant judiciary, care must be taken from the onset in the selection or appointment process, care must be taken that only highly trained, competent, ethical and intelligent men and women are recruited. They must be creative because their

[44] Ibid.

[45] International Journal of Public Administration and Management Research (IJPAMR), Vol. 2, No 3, August, 2014
Website: http//www.remse.com. ISSN: 2350-2231 (Online) ISSN: 2346-7215(Print) Morahim Abdullahi 2014,
2(3): 55-66

creative role in the society is important in carrying out their responsibilities to ensure a balanced society[46].

2. Security of tenure and remuneration of judges and supporting staff

It is said that Magistrates, Area and Customary Judges and Sharia Court Judges are under the constitution of the Federal Republic of Nigeria not covered by the term "Judicial Officers". They are appointed, promoted and subjected to disciplinary control by the various states Judicial Service Commission[39],even though they perform the bulk of judicial work and closer to the grassroots, their usefulness is undermined. One wonders why they can be referred to as non judicial officers.

Remuneration at the Superior Courts of records level has been greatly improved upon in recent years even though there can still be room for improvement, compared with their colleagues in other developing and transition states particularly having regard to the volume of work and the environment in which they operate[47].

3. Budgetary Provisions (Process)

The involvement of the Federal Government of Nigeria and State Government as the case may be in the budget process of Courts in Nigeria is an indication of the extent of judicial

[46] International Journal of Public Administration and Management Research (IJPAMR), Vol. 2, No 3, August, 2014
Website: http//www.remse.com. ISSN: 2350-2231 (Online) ISSN: 2346-7215(Print) Morahim Abdullahi 2014, 2(3): 55-66

[47] Ibid.

independence in Nigeria. Unchecked domination of one branch over the other can produce dysfunctional budgetary allocation process. In Nigeria, this plays down especially at the state level. Clear out constitutional provisions are recklessly ignored by the Governors of the States particularly with regards to capital expenditure for state judiciaries. The constitution provides[40]

> 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.

This provision rather than be compiled with by the State Government is often breached especially where the head of Court within the state is not in the good books of the Governor of the State. This dysfunctional budgetary allocation has given rise to disastrous situation for the judiciary. Absence of funds can lead to non-availability of physical structures or grossly inadequate structures like Court halls, chambers, Registries and offices for supporting staff which will in turn affect the flow of cases and other essential services thus leading the system not been able to face the demand and deliver the requisite justice demanded[48].

4. Individual and Institutional freedom from unwarranted interference with the judicial process by the executive arm of government and politicians.

The history of the judiciary around the world demonstrates that the greatest danger of interference counsel from other government institutions or political parties. An independent judiciary must not only be independent in unwarranted

[48] Ibid.

interference with the judicial process by the executive arm of government and politicians but it must appear to be independent. This brings into operation the popular adage "Justice must not only be done, but also must seen to be done".

To remain just, the courts must not be influenced by any outside sources or appear to be capable of such influence. To aid such a perception, they must have no real or apparent contact with a political party. If such contact exists, they would appear to be bias in favour of the policies of that party or if the party controls the state, to be biased in favour of the state, succumbing to pressures from the executive arms to inappropriate interference with judicial independence.

Access to judges outside official channels has been one of the greatest problems that further threaten the independence of the Judiciary in Nigeria. Governors of states have direct access to judges within the state even as it relates to matters in court and lawyers and clients often boast of their accessibility to judges or even to panel of an election petition hearing particular cases[49].

1.8 Challenges that impair Independence of Judicial in the Nigeria Democratic Governance

The Nigerian Judiciary, despite the innovations and constitutional safeguards in ensuring justice delivery still experiences some challenges that undermine its efforts to ensure that justice is delivered. These challenges include: Delay in Trials, Executive High Handedness and Lawlessness, Corruption, Insufficient Funding and Financial Dependence on the executive Arm of Government, Ethno religious bias and

[49] Ibid.

Justice Compromise, Dependence of the Executive Arm of Government for Justice Enforcement, internal interference, etc[50]

Delay in Trials: Delay in court proceedings is a major challenge in justice delivery. This is because rights are measured in relation to time. The Nigerian Judiciary in the 21st Century has not gotten it right in the area of quick and timely disposition of cases consequently and the resultant de-lay has in many cases occasioned a miscarriage of justice. Delay in court proceedings whether at the trial or Appellate stages is principally caused by: Counsel and The legal system

Counsel: Lawyers are in the habit of causing delay in court proceedings and trials either for their own selfish interest or in order to please their clients. A lawyer delays court proceedings and trials for his own selfish reasons where his client is a rich client and he feels disposing off his client's case in good time would stop the flow of money into his law firm. The lawyer will then drag his client's case by filing frivolous applications and appeals at the slightest opportunity all at the expense of his client. In some other cases, a lawyer whose client is sued in court and who knows that the rights of the litigants in dispute is measure in relation to time would rag the cases in court so as to enable his own client enjoy the rights (E.g. election petitions are

[50] The Nigerian judiciary in the 21st Century and the challenges in judicial delivery by Lohya I. Lakai in https://www.nomos-elibrary.de/10.5771/2363-6262-2017-3-424/the-nigerian-judiciary-in-the-21st-century-and-the-challenges-in-justice-delivery-jahrgang-4-2017-heft-3. Accessed 20th March, 2021 by 3.00pm

time bound. A respondent would frustrate the case of the plaintiff so that time would lapse and the courts would lose jurisdiction)

Delay by the Legal System: This point is closely related to the forgoing in the sense that counsel can only cause delay where the system permits. More to this point is the delay caused by the Practice of Trial Denovo and Appeals on interlocutory matters. Trial denovo literally means "Trial commencing Afresh". It is a principle that applies when a judge begins hearing a case afresh either because the judge previously hearing the matter has been elevated to a higher bench, is dead, retired (voluntarily or compulsorily), or dismissed. The law, as it were, forbids a Judge who has been elevated, retired or dismissed from taking further actions in relation to the cases he is handling once he ceases to be a Judge of that court based on the aforementioned reasons. This principle has caused delay in the disposition of cases hence, occasioned miscarriage of justice. A practical example of this can be seen in the hearing of the case of *Benjamin Ezeoke vs Wash Pam*. This is a case that was filed sometimes in 1993 before Justice Oyetunde of the Plateau State High Court. Justice Oyetunde could not hear the matter before he died. The matter was transferred to another Judge then Justice Naron and now to justice Pius Damulak the Chief Judge of the state. The case has spent over 20 years without final determination of it. Justice Damulak before whom the matter is pending will soon retire. It is just hoped that he would conclude the case before he retires. If he doesn't, the case will be further transferred to another judge who would begin hearing of same Denovo. Another case that has suffered as a result of trial within trial and the conduct of counsel and litigants is the case of *Abdul Ganiyu Jimoh vs*

Ab-DullahiAdamu &Ors[51] this case commenced in 2006 and up till date, it is still in court. The subject matter is a landed property of the deceased. It was being heard by Justice Y.B. Nimpar of the state High Court. Parties had closed their cases, had adopted their address when the judge was suddenly elevated to the Court of Appeal. Upon her elevation, she became Funtus Officio. The matter had to start Denovo. Unless the practice of trial Denovo is abolished, delay will keep on occasioning a miscarriage of justice like it does now[52].

Executive High Handed Ness and Lawlessness This is another important problem militating against the smooth delivery of Justice. The executive arm of Government has always been at logger heads with the Judiciary in terms of obeying court orders in some other cases, the executive arm of government uses its power to influence justice where it has interest. While during the military rule, this phenomenon could easily be explain away by the fact that the military government was not a democratically elected government, there are no Justifications for the failure of Government in the21st century to obey court orders. Government at the federal and state levels is in the habit of flouting court orders with impunity. Under the law contempt proceedings would be commenced against a Contempt nor who is alleged to have flouted Court order and if found guilty would

[51] SUIT No PLD/J216/2006.

[52] his case was handled by a colleague in office while he was in private practice. Long after his left the private barr, the matter is still in court. He meet with the plaintiff who was formally his client and the plaintiff lamented ever filing any case. That the money he spent in litigating the case is more than what prize of the subject matter. This situation has clearly occasioned a miscarriage of justice.

be thrown into the prison. This ought to be the fate of a contempt nor but in reality; it is practically difficult to throw into prison. A Government official who is in con-tempt of court order most especially when he acted with the tacit support of the head of the executive arm of government is always protected. The unfortunate thing is that the constitution does not give any powers to the judges or judiciary to take any action against the executive arm where its orders are flouted. Where orders of court are flouted, the party in whose favour the order was made ordinarily can cause contempt proceedings to be commenced against the Contemnor. The government of general Obasanjo flouted court orders; President Buhari is presently flouting court orders. The court had made orders admitting the former National Security Officer Sambo Dasuku[53] to bail but the executive arm of government did not comply with it. There are a lot of examples just that time will not permit me to list them. If the court cannot be respected, then justice no longer exists.

Corruption The monster called corruption has not speared any arm of the government though it can be said with certainty that it is minimal in the Judiciary compared to other arms of government. Corruption is a big challenge confronting the judiciary in the task of justice delivery. Corruption in the judiciary is principally in the form of bribe given to Judges and court officials to tilt justice in favour of the giving side in litigation. A lot of Judges have fallen to these bribes and have sold justice to the highest bidders. The transaction of giving and taking bribe happens behind the scene and in most cases, with

[53]Remium Times "Again, Court orders release of ex-NSA Dasuki". http://www.premiumtimesng.com/news/headlines/221407-court-orders-release-ex-nsa-dasuki.html accessed 20/3/2021

evidence of these transactions destroyed. Though there ought not to be any reason to explain away or justify corruption in the judiciary, the working condition of some of these judges, particularly the judges of the inferior courts, is deplorable and pathetic such that it makes them vulnerable to receiving bribes[54] In Northern Nigeria, the Judges of Inferior Courts, The Magistrates and Area Court judges are not treated differently from civil servants. They are paid about the same amount as salaries like other civil servants are paid and in most occasions, their salaries are delayed for months. Some of their courts particularly in the villages are an eye sore. Simple court facilities and stationary are not made available to them yet, they must function as no court can function without these things. Even the superior courts of record are not speared the trouble of having to work under harsh conditions[55] The only difference is that their salaries are charged from the consolidated revenue funds of the government. But their salaries are not the only things they need in order to deliver justice to the people. They need their allowances and good working condition to function properly however, these allowances and benefits particularly retirement benefits when retired are not paid as at when due. This too has left them vulnerable to corruption. Other arms of government ought to understand that judges whether of the superior courts or the inferior courts are more prone to being offered bribe than any other arm of government and this is because the schedule of their work as judges involves

[54] Okechukwu Oko "SEEKING JUSTICE IN TRANSITIONAL SOCIETIES: AN ANALYSIS OFTHE PROBLEMS AND FAILURES OF THEJUDICIARY IN NIGERIA" \ https://www.brooklaw.edu/~/media/pdf/lawjournals/bji_pdf/bji_vol31i.pdf accessed on the 20/2/2017.
[55] Ibid.

adjudicating on rights and liabilities of parties which rights are most often monetary and huge in nature but that is not the case. In fact, some of these government officials are culprits as they themselves offer bribes to judges in political cases. Some of the justices of the supreme court who are being tried for corruption have actually alleges strongly that they were offered the bribes they are accused of collecting by some government official yet, these government officials have not been invited by the anti graft agencies for interrogation talk more of charging them to court[5656] That is evident of double standards in the fight against corruption but then, like mentioned earlier, there is no and should never be any reason to justify corruption by a judge. A judge who feels the working conditions are not favorable or who feels he cannot stand the pressure when offered bribes should resign his appointment as a judge. He cannot sit and sentence people to prison and some to death yet commits the same offence with the ones, if not a graver, he convicts and sentences accused persons of. The Chief Justice of the Supreme Court, Justice Lawal Mohammadu uwais (CJN as he then was) once described the dangers of having a corrupt Judge as follows:17"A corrupt judge is more harmful to the society than a man who runs amok with a dagger in a crowded street. The latter can be restrained physically. But a corrupt judge deliberately destroys the moral foundation of society and causes in calculable distress to individuals through abusing his office while still being referred to as honourable" Though government appears to be stern on the issue of corruption, more can be done in the

[56]Ahara reporters "Rotimi Amaechi Dismisses Justice Ngwuta's Bribe Allegation As Fiction". http://saharareporters.com/2016/10/21/rotimi-amaechi-dismisses-justice-ngwuta%E2%80%99s-bribe-allegation-fiction accessed on the 20/2/2017.

judiciary to ensure that the monster named corruption does not destroy the moral foundation of the society.

Rise of Insurgency: Boko Haram has become a disaster of un-imaginable proportion. The terrorist activities of the group has retarded socio-economic and political development of the country, especially in the north eastern region, hence it poses a major challenge to democracy and good governance. Since insurgency is inimical to democracy and good governance, the only way to remedy the situation is to fight it to a stand-still. Thus, mustering the political will to pursue a full frontal attack on Boko Haram is no longer an option, it is the most desirable course of action. Many Nigerians are unable to come to terms with, why a so-called Africa's best army has been unable to bring to an end this horrendous situation. However, the military approach must be backed by a political solution, which will address the challenges of poverty and underdevelopment of northern Nigeria.

Impunity: This is a threat to democracy, which is not measured by the existence of democratic structures but by the promotion of rule of law. Thus, in Nigeria's quest for democracy and good governance, the impunity clause must be expunged from the constitution, in order to domesticate the equality of every Nigerian before the law[57].

[57]https://globaljournals.org/GJHSS_Volume15/1-Democracy-and-Good-Governance.pdf. Accessed 20th March, 2021 by 3.30pm

1.9 Importance of Judicial Independence

Judicial independence serves as a safeguard for the rights and privileges provided by a limited constitution and prevents executive and legislative encroachment upon those rights[58]. It serves as a foundation for the rule of law and democracy. The rule of law means that all authority and power must come from an ultimate source of law. Under an independent judicial system, the courts and its officers are free from inappropriate intervention in the judiciary's affairs. With this independence, the judiciary can safeguard people's rights and freedoms which ensure equal protection for all.[59]

[58]Alexander Hamilton (1982) [1961], "The Federalist No. 78", in Jacob E. Cooke (ed.), The Federalist, Middletown, Conn.: Wesleyan University Press, pp. 521–530 at 524, ISBN 978-0-819-53016-5, The complete independence of the courts of justice is particularly essential in a limited constitution. By a limited constitution I understand one which contains certain specified exceptions to the legislative authority ... Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice; whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing..

[59]Li-ann Thio (2004)"Rule of Law within a Non-liberal 'Communitarian' Democracy: The Singapore Experience", in Randall Peerenboom (ed.), Asian Discourses of Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the U.S., London; New York, N.Y.: RoutledgeCurzon, pp. 183–224 at 188, ISBN 978-0-415-32613-1, As the partisan administration of law erodes rule of law, a central institutional requirement is an independent, accessible judiciary.

The effectiveness of the law and the respect that people have for the law and the government which enacts it is dependent upon the judiciary's independence to mete out fair decisions. Furthermore, it is a pillar of economic growth as multinational businesses and investors have confidence to invest in the economy of a nation who has a strong and stable judiciary that is independent of interference.[60] The judiciary's role in deciding the validity of presidential and parliamentary elections also necessitates independence of the judiciary.[61]

Conclusion

Independence of the judiciary is the greatest asset of a free people. The judiciary by the nature of its functions and role is the citizens last line of defence in a free society that is in line separating constitutionalism to totalitarianism[62] . Section 17(2) (e) of the 1999 constitution[63] provides for the financial independence of the judiciary but unfortunately this is ironical in practice because in Nigeria the winner who is the executive takes it all and gives the judiciary peanuts of what is its right. This is because this provision is placed under chapter II of the

[60]Roger K. Warren (January 2003), The Importance of Judicial Independence and Accountability, National Center for State Courts, p. 1, archived from the original(PDF) on 11 November 2018

[61]Constitution, Art. 93A, and the Presidential Elections Act (Cap. 204A, 2007 Rev. Ed.), ss. 71–80; and the Parliamentary Elections Act (Cap. 218, 2007 Rev. Ed.), ss. 92–101

[62]E. Umoru, "The Role of the judiciary is sustaining democracy in Nigeria", Oyeyepo, Gunmi, Umezurulike (eds), judicial integrity, independence and Reform. Essay on Honour of Hon. Justioce M.L. Uwais (GCON) Enugu: Snapp Press, Ltd, 2006 p.178

[63] 1999 Constitution of the Federal Republic of Nigeria

fundamental objectives andDerective principles of state policy whose provisions are non-juristiciable by virtue of section 6 (6) of the constitution. Consequently section 17 (2) (e) of the constitution do not really have any bite so as to be implemented[6464]. From all the discussion in this work it can be deduced that an independent judiciary is a very important instrument or tool for the enhancement of an active and effective democracy. And the judiciary in Nigeria cannot really function and occupy.

Independence of judicial in Nigeria has remained in illusion. The present situation is an anathema to practive judicial system. The role of court as resolver of disputes, interpreter of the law and defender of the constitution requires that they be completely separate in authority and function from all other participants in the justice system. Therefore independence of judiciary must be so in form and substance[65]

Its cardinal position in a democratic dispensation if it is not empowered by the constitution which is the grandnorm. This is the reasons why other sectors especially the executives uses it as a tool to play with and achieve its aim. Therefore, we need to reposition the judiciary in Nigeria for effective democracy.

---

[64]International Journal of Public Administration and Management Research (IJPAMR) Vol. 2, No. 3, August, 2014 Website http//www.remss.com. ISSN2350-2231 (Online)ISSN; 2346-72151 (print) Morahim Abdullahi 2014, 2 (3): 55-66

[65] V.N Osaka, proactive judicial system in Nigeria Fledging democracy, suggested Reform. Frontline Bar Journal: A publication of Nigerian Bar Association Aguata Branch Vol.1 No 1. 2015 p. 205.