

INDEPENDENCE OF THE JUDICIARY IN NIGERIA AND THE MENACE OF POLITICAL INTERFERENCE

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Abstract

The judiciary in Nigeria is gradually diminishing in reputation and integrity owing to so many factors one of which is regular interference. These interferences had significantly whittled the powers of the judiciary in the estimation of the public. Currently, public perception on the judiciary is that judges can be easily bribed and that the courts cannot be relied upon for impeccable judgments. This perception is owing to the antecedent of the judiciary. This article identified various aspects through which the institutional independence of the judiciary is undermined in Nigeria. It among others considered judicial forum shopping, corruption, nepotism in the exercise of appointive powers of judicial officers and administrative staff of courts, impunity especially of the political class, political interference, refusal to obey court orders, intimidation of judicial officers amongst others as responsible poor public perception of the judiciary. It is in a bid to highlight the grave challenges posed by a weak judicial system that this article is written. This article thus, presented an indebt analysis of the idea behind the formulation of the Constitutional guarantee of the 'independence of the judiciary' and considers the extent of its applicability in Nigeria. It emphasis the need for the continuous application of the constitutional principle in Nigeria devoid of extraneous considerations and underscored the dangers of undermining this principle. In addition to the various areas of the violation of the principle, this article also presented potential aspects of the violation of judicial independence in Nigeria. It found the major violators to judicial independence in Nigeria to include politicians, judges, judicial administrative staff, senior lawyers and other judicial stakeholders. Lastly, this article recommended amongst others that persons who undermined judicial independence while in office should be made to forfeit their pension rights or other retirement benefits to the federal or state government concerned. This in the opinion of this article will enhance the practice of the independence of the judiciary in Nigeria.

Keywords: Separation of powers, Interference, Judiciary, Independence of the Judiciary, and Judicial Autonomy.

1.0 Introduction

Views are widespread that the efforts of the appropriate regulatory institutions to check the menace of corruption in the Nigerian judiciary are not yielding the required result. Concerned by this state of affairs the late jurist Kayode Eso once noted that 'corrupt judges are becoming billionaires...'¹ Bothered about the heightened level of corruption in the nation's judiciary the Nigerian government raided the homes of notable high profile judicial officers perceived to be neck deep in corruption in October, 2016.

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¹ K Eso, Further Thoughts on Law and Jurisprudence (Ibadan: Spectrum Books Ltd., 2003)47

Evidence collated from the homes of some of the judicial officers involved were mind-boggling.² Although, many lawyers and scholars of constitutional law and jurisprudence condemned the raid on the homes of the judicial officers noting that the action of the Directorate of State Security (DSS) alleged to have carried out the arrest constituted an affront on the independence of the judiciary.³ Some further contended that the nation 'come up with laws and institutions to protect judicial officers in the discharge of their duties to avoid actions of the executive that unduly fetter the independence of judiciary.⁴ Notwithstanding, the divergence of opinion the result of the 2016 search was quite revealing. Instructively, the October 8, 2016 search was not the first time that the homes of judicial officers have been searched in Nigeria. However, what made the 2016 search outstanding was the nature of evidence extracted in the homes of some of the judicial officers. Some of the evidence extracted from the homes of the judicial officers searched included cash in local and foreign currencies, running into millions of naira, unexplained luxury vehicles, undeclared property document belonging to some of the judges whose homes were searched.⁵ Rather than focus on the outcome of the search and save the institution of the judiciary from 'bag eggs' who are bent on dragging the judiciary into the mud. Some commentators chose to blackmail the DSS and the Nigerian state by tagging the search of the homes of some judicial officers as an affront to the independence of the judiciary in Nigeria.⁶ In this regard, they ignored the fact that the judicial officers concerned are like every other citizen of Nigeria who have an equal subjection before the law. More troubling is the fact that some of these judicial officer's appears to be incurably corrupt and that these individuals act with impunity as if nobody can checkmate them.⁷ The activities of some of these folks make the Nigerian judiciary a 'reference point for perversion of justice and corruption...⁸

While legal commentators continue to berate the executive for the largely unprofessional 'Gestapo' manner in which the search of the homes of these judges were carried out it remained to be said that judicial officers in Nigeria must realise that they have a duty to at all times to act with integrity and respect which preserves the judiciary.

² E Okakwu and S Ogunidipe, Nigeria's Secrete police, SSS, raids judges' residence in Abuja, Five States <premiumtimesng.com> accessed December 8, 2022.

³ Lawyers Divided over judges arrest by DSS<<https://pmnewsnigeria.com>>accessed August,2024

⁴ A Adesomoju, 'Raid on judge's houses threat to judiciary independence-NJC <<http://punchng.com>> accessed December, 2022; A A Babalola, 'Raids by DSS on home of Judges: Two wrongs do not make a right' <<https://www.vanguardngr.com>> accesses November, 2023.

⁵ R Ugwu, 'What DSS found in homes of three Judges'<<https://www.thesun.ng>> accessed 12 August, 2024; E Okakwu, Exclusive: Untold story of SSS raid on judges' homes in Abuja <<https://www.premiumtimesng.co>> accessed 12 August, 2024.

⁶ A Adesomoju, 'Raid on judge's houses threat to judiciary independence-NJC <<http://punchng.com>> accessed December, 2022

⁷ Eso (n.1); A Ejekwonyilo, Corruption in Nigerian Judiciary is extensive-UNODC <<https://www.premiumtimesng.com>>accessed March 1, 2024; U Ejilibe, Nigeria: Corrupt Judges Should be Brought to Trial' <<https://allAfrica.com>>accessed August 13, 2024;<<https://nairaland.com>-Revealed: See List of 18 High Profile Judges Under Investigation> accessed August 13, 2024; M Adamu, 'Mudapher: The voice not heeded' (1)<<https://www.vanguardngr.com>> accessed August 13, 2024; G O Akinrinmade and *et al*, An Assessment of the Role of the National Assembly in the Fight Against Corruption in Nigeria,' <<https://staff.oougoiwoye.edu.ng>> accessed August 13, 2024.

⁸ Adamu (n.7).

1.0 Conceptual clarification

2.1 Separation of Powers

In the administration of a state, there is every need for each sector or branch of the government to work in a manner that advances the interest of the state. To achieve this, the English philosopher *John Locke* propounded the doctrine of a government with separate powers to perform three different functions to wit legislative, executive and judicial functions. For him, the essence of this separation is to obviate arbitrariness where one organ or institution is vested with tripartite functions of a government.⁹ *Baron Montesquieu* also made an exposition on the notion of separation of powers but considered that the theory in addition to obviating abuse also uses power to check power. In his monographs he noted, ‘... to prevent this abuse, it is necessary from the nature of things that one power should be a check on another...’¹⁰ For *Oputa* a constitutional democracy presupposes a balanced system of divided or shared powers as it is only within such a system that individual citizens can ever hope to enjoy any measure of independence and freedom from arbitrariness and governmental lawlessness...¹¹ *Nwabueze* was of the view that the doctrine of separation of powers was initiated to evolve a society where government will act according to rules and not government according to the whims and caprices of the rulers.¹² In the view of this paper, the notion separation of powers serves to make government work for public interest or public good by avoiding chauvinism and bias in the management of public affairs. It serves to restrain, preclude arbitrariness and narrow mindedness. It brings about efficiency through a broadminded approach in the discharge of state affairs that accommodate the egalitarian character of the state. However, separation of powers alone cannot achieve this ends, we need an independent judiciary to fortify this pristine constitutional principle. An independent judiciary is therefore needed in a free society to balance the powers of the other branches of the government to wit the executive and the legislature.

Although by virtue of the doctrine of separation of powers the state function of lawmaking, is primarily assigned to the Legislative arm of the government, this power is counter-balanced by the duty of the Judiciary arm to interpret and the responsibility of the Executive arm also execute such laws made by the legislature. Notwithstanding the theory of separation of powers, each branch of the government in the exercise of its sectoral functions one way or the other performs task, which encroaches into the constitutional functions of the other. For instance, the judicial arm in the exercise of its interpretative functions through the application of the doctrine of precedent (*stare decisis quieta non movere*) also makes laws (judge made’ laws). Even though, the judiciary possesses the authority to review and declare laws made by the Legislature as unconstitutional null and void; the legislature too can make laws that can change judicial pronouncements or judgments to be ineffective.¹³

Separation of powers in theory presupposes the independent exercise of governmental powers by different state institutions vested with distinct legislative, executive and judicial functions. Each of which are expected to act exclusively and separately in its domain without interference from any of the

⁹ Bradley, Wade and Philips – Constitutional and Administrative Law (9th edn,) 45

¹⁰ L’Esirit De Lois, Chapter XI pages 3-6; O Hood Philips, Constitutional and Administrative Law, 7th edn, p 13.

¹¹ C Oputa, Independence of the Judiciary in a Democratic Society (Unpublished Paper; also cited in Magistrate Association of Nigeria (Ogun State Branch (Ogun State Branch: 2006) 113

¹² B Nwabueze, the Presidential Constitution (1982) 32.

¹³ T.O. Elias and M.I. Jegede, Nigerian Essays in Jurisprudence (MIJ Publishers Ltd, Lagos, 1993) 24

other, two branches of the government. The whole essence of the doctrine of separation of powers and independence of the judiciary is to form a synergy between those who perform the most critical governmental responsibilities in a democratic society for the interest of the state. Notwithstanding, the theoretical application of the doctrine of separation of powers in Nigeria, the Nigerian judiciary is largely independent in the processes of judicial decision-making. This it has to guard jealously too. The doctrine of separation of powers is now a constitutional and judicial theory.¹⁴

The nexus between the both doctrines is the autonomy as well as the checks and balances they both offer in the stability of the state by putting aside arbitrariness in the conduction of state affairs thereby ensuring the protection of the fundamental liberties of the citizens. In principle, then, the interdependence of the branches of government should work to limit the frequency and severity of confrontation and gridlock, while allowing each to perform its constitutional duties unhindered.¹⁵ The principle of the independence of the judiciary enables judges to decide cases without apprehension of consequences to the judge or the judiciary.¹⁶

2.2 Independence

The concept 'independence' within the context of this paper seems to have at least two meanings. One meaning commonly invoked when considering the circumstances of the individual judge as a person that do not rely of others before he is able to take actions. The concept refers to non-interference. The whole idea behind judicial independence is that a judge ought to be free to decide and make pronouncements on cases before him/her without fear or repercussion immediate or anticipated. As side from the individual judges, reference is also made to the 'judiciary' as an institution as being independent of another branch, institutions or individuals not connected to the process of the decision-making. In this context, the judiciary is institutionally insulated from the legislature and the executive both in terms of its jurisdiction, rules, and execution of its orders. Within the context article, judicial independence is intended to obviate all forms of influence that may fetter the out-come of a judicial process. This is notwithstanding the fact that judicial independence, or impartiality, is in itself a desirable aspect of a judge's character.¹⁷ The philosophical basis for the independence of the judiciary in the decision-making process is to preclude undue interference is the exercise of the judicial powers of checks and balances of the other branches of the government.

The independence of the judiciary further mean the freedom from executive, legislative or other form of interference in the administration of justice capable of undermining the judiciary in the performance of its constitutional duty.¹⁸ It is the ability of the court to make pronouncements on matters without being directed, or impeded in its constitutional functions by any other department of the government¹⁹ or

¹⁴ CFRN 1999 (as amended) Ss 4, 5 & 6; *Myers v United State*, 272 US 52 *Guardian Newspapers Ltd v AGF* (1995) 5 NWLR (Pt 408) 74; *Polychowich v The Commonwealth* (1991)172 CLR page 501 at 607; *AG Bendel State v AGF & 18 Ors* (1981) 10 SC 1 at 113-114

¹⁵ J Ferejohn, Independent Judges, Dependent Judiciary: Explaining Judicial Independence (1999)(72)' *Southern California A Law Review*, 362

¹⁶ P S Karlan, *Two Concepts of Judicial Independence*, (1999)(72) S. CAL. L. REV. 535, 539

¹⁷ Ferejohn (n.15) 353.

¹⁸ E A Dike, 'Amputating Judicial Independence Through Appointing Conventional Court Judges of Election Tribunals as Commissioners of Commissions of Inquiry in Nigeria: Lesson to Learn' (*Port Harcourt Law Journal for Learning and Wisdom Vol.4 No. 2, June 2012: ISSN: 1595-1790*)269.

¹⁹ *Board v Albright* (1907) 168 IND. 564, 578, 81 NE; *Board v Stout* (1893) 163 Ind. 53, 35 NE 683, 22 LRA 398; *Unongo v Aku & Ors.* (1983)LPELR 3422 SC.

by powerful individuals. The underlying philosophy of independence of the judiciary is that judges must be able to decide disputes before them according to law, uninfluenced by any other factor. It is the independence of each judge.²⁰ An encompassing consideration of the concept ‘Independence of the Judiciary’ will take into account every factor that will enhance the institution and its personnel;²¹ this includes all necessary judicial safeguards and supervisory control by the courts to check acts of arbitrariness in the other arms of the government. In the opinion of the paper, it means the ability of the courts to adopt an unbiased, fearless and uncompromising policy in dispute adjudication as a fortress of the society. This independence is an ideal, which every person saddled with the resolution of disputes, must strive to attain. To be independent all factors relating to the institutional administration of justice must be taken into consideration including the manner of appointment of judicial officers and their removal.²² Other factors which must be taken into consideration include the quantum, and review of the remuneration of judicial officers, the freedom and immunity they have in the performance of their functions, their qualifications and moral character. The absence these factors under the military rule negatively influenced the independence of the judiciary.²³

2.3 Interference

The notion interference is defined as a wrongful act by a person who prevents or disturbs another in the performance of his usual activities, or in the conduct of his business.²⁴ In the course of this article, the concept ‘interference’ was repeatedly mentioned as a key aspect of the infraction judicial functions leading to the violation of the independence of the judiciary. The concept ‘interference’ is considered as an act amounting to the violation of the independence of the judiciary especially when it is intended to influence or induce the judge or any other person placed to act in that capacity to be intimidated, partial or indulge in granting some favour in the exercise of his constitutional judicial functions. This may come by way of threat to the umpire or the institution as a whole. This article notes that the dynamics of judicial interference changes from time to time. In contemporary times, the basic methods of interference amounting to the infraction the principle of the independence of the judiciary is orchestrated even before the judges are appointed. This could be via the compromise or inference with the agency responsible for the exercise of the appointive powers of the judges. In this manner spouses, relatives, associates, privies and so on of ‘would be’ judicial officers are penned down for judicial appointments. Eventual release of the list nominees are usually followed by public outrage over the individuals so selected. In many cases in spite of public outrage on the proposed list of those to be appointed, the list goes in and comes out unaltered as if the opinion of the public does not matter in the process or processes of appointment. Indeed, this has been the case with the appointment of the spouses, relatives, cronies and even close associates of most political officers, or politically exposed individuals and ‘judicial stakeholder’ (children of former and serving judicial officers).²⁵ This is not only done to

²⁰ M P Singh, ‘Securing the Independence of the Judiciary – the Indian Experience’ *Indian Int’l Comp. L. Rev.* (Vol.10: 2, 2000) 145

²¹ S Shetreet, *Judicial Independence: New Conceptual Dimensions and Contemporary Challenges*, in *Judicial Independence: The Contemporary Debate* 594 (Shimon Shetreet & Jules Deschenes eds., 1985); Singh (n.93) 147.

²² *Hon. Justice Realiat Eleu-Habeeb & Anor. V The Attorney General of the Federation & Ors.* cited in *The Adjudicator*, *Journal of the Rivers State Judiciary* No. 1 Vol.1 October 2015, 52 also available @ <<https://www.riverstatejudiciary.com>>; *AG of Cross Rivers State v Hon. Justice Esin* (1991) 6 NWLR (Pt. 197) 265.

²³ *Ibid.*

²⁴ R E Rothenberg, *The Plain Language Law Dictionary* (New York: Penguin Books, 1987) 170.

²⁵ B Olabimtan, Olumide Akpata: Only by sheer luck can Nigeria’s Judiciary produce good judge

secure placement or create a dynasty in the system, but ultimately done to set the stage for interference with the administration of justice by those appointed as they become obliged to their ‘god-fathers’ to render necessary assistance or willing tools to influence the system when they need them to so act. Interference for all intend and purpose is inverse or counter objective to judicial independence. Notwithstanding who appoints a judicial officer this article share the view that ‘... the attainment of judicial independence in the final analysis depend on the ... courage and integrity of the individual judges concerned, this is regardless of who appoints them’ or indeed the circumstances of the appointment.²⁶

2.4 Judicial Autonomy

Judicial autonomy refers to the institution of the judiciary as an autonomous, self-determining and self-governing agency or institution of the state established to manage or administer its affairs. This relates to budgets, personnel and procedural engagements for its affairs devoid of external interference. It mainly relates to and focuses on institutional independence of the judiciary as a whole, as well as the structures put in place by sector players not just to administer the judiciary but also self-regulate and hold sector players accountable for the exercise of judicial powers and actions taken that undermine or jeopardizes the collective interest of the judiciary in a country.

2.5 Judiciary

The term judiciary has been variously defined as that branch of government invested with the judicial power; the system of courts in a country in a country; the body of judges; the bench; that branch of government which is intended to interpret, construe and apply the law.²⁷ The judiciary is that branch of the government invested with the judicial powers, it refers also to the system of courts in a country, the body of judges, the Bench: that branch of the government that is intended to interpret, construe and apply the law.²⁸ It is the department of government charged or concerned with the administration of justice.²⁹ It could also be construed as an adjective of or pertaining to the administration of justice or courts.³⁰ It is that branch of government, which functions to declare the law ‘*jus dicere et non jus dare.*’ This article considers the judiciary both in terms of the institutional body recognised by the state as a branch of the government and in the context of the individual judge who exercises judicial powers or functions on behalf of the state in making decisions among parties.

2.6 Independence of the Judiciary

Judicial Independence is the freedom, the latitude enjoyed by judicial officers to make judicial decisions without interference or influence from other arms of government (executive and the legislature). It is the liberty of judicial officers to interpret the law devoid of fear, coercion or reprisal of any nature. It is an ideal that has both internal (normative) and external (or institutional) aspects. From a normative viewpoint, it implies that judges should be autonomous moral agents, who can be relied up on to carry out their public duties independent of venal or ideological considerations.³¹ Institutionally, judicial

<<https://www.theable.ng>> accessed 20 January, 2024.

²⁶ A B Kasumu, *The Supreme Court of Nigeria* (Ibadan: Heinemann Educational Books, 1956-1970)

²⁷ *The Black’s law dictionary west edition* p. 762.33

²⁸ *Black Law Dictionary* (6th edn, USA: 1981-1991) 849.

²⁹ *Bouvier Law Dictionary* (3rd edn, USA:) 1756

³⁰ *Black’s Law Dictionary Centennial Edn 1891-1991 6th edn*, 849

³¹ Ferejohn(n.15) 353.

independence refers to the safeguards or institutional shields provided to protect judges against threats likely to undermine the discharge of their judicial functions. The institutional protection of judges is necessary to enable them make the right decisions without worrying about personal consequences from such decisions. Nevertheless, the institutional protection in no way affords the judges the leeway to impose their individual (private) philosophies on the society³² or in their judicial undertakings.

The theory of the independence of the judiciary was historically propounded on the ideology that those who exercise judicial powers be independent of the prevailing orthodoxy either of the people or of the other arms or branches of the government. This extends to their tenure of office and salaries. Independence of the judiciary is institutionally thus, an insulation afforded judicial officers to discharge judicial functions without any restraint or pressure. The institutional protection has been fashioned to address issues of the appointment that is to ensure that as much as possible those appointed to the bench have appropriate character and independence of mind.

Traditionally, judicial independence concerns independence of judges from the interference of other governmental officials or those with enormous economic influence. The aim of which is to safe guard individual appointed as judges from being unduly pressured and to preventing interference with legal processes irrespective of the interest at stake.

Johnfere view the independence of the judiciary from its utilitarian perspective, according to him the principle of judicial independence furthers ‘three distinct values.’³³ The first being that independence of the judiciary seem a necessary condition for the maintenance of the rule of law as it ensures the subjection of all persons to the same publicly communicated general legal rules. These rules within the context of this article are laws made to regulate the conduct of citizens. This ensures that those entrusted or vested with ‘political power’ principally elected officials do not manipulate legal proceedings to their advantage.³⁴ In addition, an independent judiciary enhances the ability of the judges to enforce only laws that are constitutionally legitimate. Considering that, the responsibility to set aside unconstitutional legislations is the responsibility of the judiciary epitomized by the courts it needs to be independent to decide and carryout this task (that is deciding which law survives this test). Lastly, the independence of the judiciary is needed to give force to constitutionally legitimate legislations. This deters the executive or the legislature from interfering with the enforcement of statutes enacted by previous legislatures without adhering to laid down rules or procedural formalities for amendment of laws. In the interest of democracy, courts must have sufficient autonomy to resist the temptations to give too much deference to current holders of economic or political power.³⁵

Analytically, from the perspective of each of these three values, judicial independence can be seen as facilitating the provision of a certain kind of public or collective good. In the case of each value, the collective good takes the form of creating a capacity of the political system to commit to a future course of action that is, to commit not to interfere with judicial decisions, no matter what their content.

³² Essays of Brutus, No. XI (Jan. 31, 1788), *reprinted in the anti-federalist papers and the Constitutional Convention Debates* 293 (Ralph Ketcham ed., 1986).

³³ Ferejohn (n.15)

³⁴ *Ibid* (n.17) 367.

³⁵ *Ibid*.

Independent judging makes it possible that substantive rules adopted now will be reliably upheld in the future, even in the face of strong temptations to do otherwise.³⁶

Considering that independent judges are desirable from each of these three separate perspectives, it is not surprising that the purposes served by judicial independence are in some conflict and therefore that independent judges will need to reconcile these conflicts in their decision making. Thus, from a rule of law perspective, we want judges to maintain values of stability, notice, and equality before law, free from pressures arising from democratic or even constitutional perspectives.³⁷

2.7 Similarity between Judicial Autonomy and Judicial Independence

Judicial autonomy and judicial independence are similar but different concepts. Judicial independence refers to ability to make decisions without interference from the government (executive and legislature) or indeed any other influences and to interpret laws based of sound logical and judicial reasoning without coercion or fear of reprisal. The centre of focus here is the individual judge. Whereas, judicial autonomy deals with or relates to the ability of the judiciary to manage, conduct or superintend its own affairs and as said above this includes budgeting, personnel and the regulation of its processes and procedures. It mainly has to do with the capacity to self-govern and regulate its institutional affairs. Its focus is on the institutional independence of the judicial sector as a whole contrary that of the individual judge in judicial independence. Judicial independence and judicial autonomy form the fulcrum of this paper.

3.0 Utilitarian Basis of Judicial Independence

From a more general perspective, the reason for seeking judicial independence is to permit the judicial process to be appropriately insensitive to arbitrary and irrelevant influences, in order to be able to weigh evidence and apply the law in particular cases in an unbiased manner. In our market driven society, such influences seem as likely to emanate from powerful social or economic forces as from other public officials. The utilitarian basis of the independence of the judiciary therefore is to obviate the likelihood of improper economic or social influence on judges or the judicial institution. This utilitarianism preclude the possibility of individuals or organizations from interfering, intimidating or influencing a judge or the court to reach a decision on grounds irrelevant to law and from allowing individuals from acting in a way that interferes with judicial independence.³⁸

4.0 Justification for the Independence of the Judiciary

The theory of the independence of the judiciary is so fundamental in constitutional law because it serve's to safeguard the constitution, enforces fairness, equity and trust in the management of state affairs. In a constitutional democracy such as practiced in Nigeria, the independence of the judicial arm is basic to the survival and entronement of an egalitarian state where individual citizen can strive to attain their full potentials devoid of impunity and coercion. The independence of the judiciary is also important not just for the survival of democracy but also other institutions of the state and to obviate impunity that is a corollary for the independence of the judiciary. However, as important as this

³⁶ Ibid.

³⁷ Ibid.

³⁸FereJohn (n.15) 371

constitutional concept it is one of the most violated principles of constitutional law, perhaps owing to the inadequacy of appropriate legal and institutional mechanism to sanction violations.

5.0 Legal and Institutional Framework for the Independence of the Judiciary in Nigeria

In Nigeria there are both legal and institutional framework guaranteeing the independence of the judiciary. These laws and institutions will be considered seriatim starting with the Constitution of the Federal Republic of Nigeria 1999 (as amended).

5.1 Constitution of the Federal Republic of Nigeria 1999 (as amended)

The constitution guarantees this independence of the judiciary in Nigeria. it thus among others provided for the qualification of judicial officers and the procedure thereto for their appointment. It pegged qualification for a person to be appointed as the Chief Justice of Nigeria or Justice of the Supreme Court is a period not less than 15 years post-call.³⁹ While the President of the Court of Appeal or Justice of the Federal Court of Appeal the period is 12 years post-call.⁴⁰ In the case of the Chief Judge of the Federal High Court, Chief Judges of States and Federal High Court Judges and State High Court Judges is a period not less than 10 years post-call.⁴¹

In the case of the Kadis or Grand Kadi of the Sharia Court of Appeal of the FCT they need to be a legal practitioner in Nigeria and must be so qualified for at least a period not less than ten years post call this is in addition to obtaining a recognised qualification in Islamic personal law from institution approved by the State Judicial Service Council and has held such qualification for a period not less than 12 years and he must have considerable experience in the practice of Islamic law or he is a distinguished scholar of Islamic personal law.⁴² For the President of the Customary Court of Appeal and the judges of the customary court of Appeal, they need apart from such other qualifications as may be prescribed by the National Assembly considerable knowledge of and experience in the practice of customary law for a period not less than 10 years.⁴³

The power to recommend individuals to be appointed as judges is vested in the National Judicial Council (NJC).⁴⁴ The NJC in the discharge of this function shall not be subject to the direction and control of any other authority in exercising its power to make appointments or to exercise disciplinary control over judicial officers.⁴⁵ It is respectfully submitted that the powers under this section to all intend and purposes are meant to secure the independence of the judicial arm of the government. The powers vested under the constitution to the NJC are powers of sectoral control and independent management of the affairs of the judiciary not subjecting appointive and disciplinary powers to any other ‘authority’ including the courts. This is a unique feature of the constitution not available to any other branch or arm of the government.

³⁹ CFRN 1999 (as amended) 231(3).

⁴⁰ Ibid 238(3).

⁴¹ Ibid 250(3).

⁴² Ibid s 261(3)(a) and (b).

⁴³ Ibid 266(3)(a).

⁴⁴ Ibid paragraph 21 of Part 1 of the Third Schedule.

⁴⁵ Ibid S 158(1).

In addition, the constitution made provisions which one way or the other have bearing albeit not directly on the independence of the judiciary. For instance, it is provided that the National Assembly may make laws for the peace, order and good government of the Federation or any part thereof with respect to matters included in the Elusive Legislative List.⁴⁶ This provision has implications for the independence of the judiciary in Nigeria. The provision empowers the National Assembly to legislate on matters related to the judiciary, which could potentially affect the independence of the judiciary. For instance, the National Assembly might pass laws that: (i) regulate judicial appointments and tenure (b) determine judicial funding and resources (c) define the scope of judicial powers and jurisdiction (d) establish procedures for disciplinary actions against judges. It is further submitted that whereas these laws could be intended to ensure the effectiveness of the judiciary arm of the government, they may potentially compromise its independence. Again, it is important to emphasize that judicial independence is crucial for ensuring that courts can exercise their powers without interference or influence from the other branches of government. Laws that undermine this independence could compromise the rule of law and the integrity of the Nigerian legal system.

Furthermore, Section 238(1) of the constitution provides to the effect that the appointment of the President of the Court of Appeal shall be made by the NJC, subject to the confirmation of such appointment by the Senate.⁴⁷ By virtue of this section, the appointment of the head of the Court of Appeal is done through a transparent and collaborative process of the three arms of the government to wit the executive, judiciary and legislature. Additionally, to further fortify the independence of the judiciary the constitution provided for the security of the tenure of judicial officers.⁴⁸ Under the relevant section, the retirement age and benefits of judicial officers are secured. Accordingly, judges are to retire and vacate office at 70 years of age.⁴⁹ This implies that the retirement of lower court and superior courts of record can now retire at 70.⁵⁰ For those who serve for 15 years or more are entitled to lifetime pension equivalent to their last annual salary, in addition to other allowances and other benefits. Whereas those who serve for a lesser period they are entitled to a pro-rata pension based on their years of service.⁵¹ By these provisions, the security of tenure provided under the constitution, it is submitted that the independency of the judiciary is guaranteed as the executive and the legislature cannot for any reason limit the tenure of judicial officers.

The constitution further insulated this independence by providing for some level of financial autonomy for the adjudicators.⁵² The said section provided 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

⁴⁶ CFRN S 23(1).

⁴⁷ Ibid S 238

⁴⁸ Ibid S 291(1)

⁴⁹ Uniform Retirement Age for Judicial Officers: A Review of the (Fifth Alteration) No. 37, Act 2023

⁵⁰ CFRN 1999 (as amended), S 291

⁵¹ *ibid*

⁵² *Ibid* 81(3)

for the Federation and the State under section 6 of the Constitution.

The Supreme Court went on to interpret the above section 81(3) CFRN 1999 (as amended) as guaranteeing financial autonomy for the judiciary.⁵³ The Executive Arm acted in sync with the Constitution when it made an Executive Order,⁵⁴ vesting power to the Accountant-General of the Federation to deduct from the allocations due to a State from the Federation Account, any sums appropriated for the judiciary of the State and pay directly to the judiciary of the State when they State fails to pay the funds directly to the State Judiciary concerned. The Executive Order No 00-10 of 2020 became a subject-matter for litigation before the Supreme Court,⁵⁵ where it established that financial autonomy for the judiciary is constitutionally guaranteed. It went on to state that the Federal and State Governments have distinct responsibilities in funding the judiciary.⁵⁶

Furthermore, it held that the Federal Government is responsible for funding the capital and recurrent expenditures of the judiciary at the Federal level while the State governments are responsible for funding same (that is, current and recurrent expenditures of the judiciary at the state level). In the judgment of the Supreme Court, capital expenditures are funded through Appropriation Bills. However, the power of the National Assembly by virtue of section 4 of the Constitution to legislate for the issuances of the sums necessary to meet the capital expenditures of the courts in section 6 of the Constitution from the Consolidated Revenue Fund of the Federation does not extend to the High Courts, Sharia Courts of Appeal and Customary Courts of Appeal of all the States of the Federation.⁵⁷ It then nullified 'Executive Order No 00-10 of 2020' which directed the deduction of funds from the Federation Account to fund State judiciaries as *ultra vires*, unconstitutional, illegal, and therefore null and void of no effect whatsoever. As the President has no powers to direct, the Accountant-General of the Federation to deduct from the allocations due to the State in the Federation Account it added that by so doing the President overstepped his constitutional powers.⁵⁸

To further strengthen the independence of courts the Constitution also made provisions for the procedure to be adopted for the appointment of judicial officers. The process involves some level of multi-stakeholders meeting involving the National Judicial Council (NJC), and the Heads of Courts preventing any of the sector stakeholders from dominating the process. Mostly, the procedure in many ways demonstrates the independence of the judiciary by 'excluding' (in theory) executive interference and arbitrariness in the appointive process.⁵⁹

⁵³ AG Abia State & 35 Ors. vs. AGF (2007) 18 NWLR (Pt. 1065) 23; AGF v. AG Abia (No. 2)(2002) 6 NWLR (Pt. 764-905); AG Bendel v. AGF & Ors. (1982) 3 NCLR 1.

⁵⁴ The Implementation of Financial Autonomy for State Legislature and Judiciary Order, 2020 (commonly referred to as 'Executive Orders No 00-10 of 2020').

⁵⁵ AG Abia State & 35 Ors. vs. AGF SC/CV/655/2020.

⁵⁶ Ibid.

⁵⁷ Olisa Agbakoba Legal, Judiciary Funding In Nigeria: Analysis of the Supreme Court Decision In *Attorney General, Abia State & 35 Ors. vs. Attorney General of the Federation* SC/CV/655/2020 available at <<https://mondaq.com/nigeria/trials-and-appeals-and-compensation/1193114/judiciary-funding-in-nigeria-analysis-of-the-supreme-court-decision-in-attorney-general-abia-state--35-ors-vs-attorney-general-of-the-federation-sccv6552020> accessed 24th June 2024.

⁵⁸ Ibid.

⁵⁹ National Judicial Council, Appointment Procedure of Judicial Officers www.njc.gov.ng accessed 27th June 2024.

The Constitution also provided conditions for the removal of judicial officers. The main conditions for the removal of judicial officers are where he or she become incapable of performing his duties, the attainment of retirement age, and where the judicial officer is involved in some form of misconduct.⁶⁰ The conditions and procedure for disciplinary control of judicial officers are exercisable by the NJC⁶¹ and will be given due consideration hereunder while discussing the institutional Framework. However, before then suffice it to note that the disciplinary actions that may be taken on judicial officers ranges from warning, compulsory retirement and dismissal from office of erring Judicial Officers who are found guilty of judicial misconduct. The NJC being in charge of the exercise of discipline of judicial officer in Nigeria is a form of judicial control of the judiciary to introduce a system of checks and balances within the nation's judicial sector.

7.2 Revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria 2016

After the constitution the next legal framework regulating the judicial sector in Nigeria especially as it relates to the independence of the judiciary is the Judicial Code of Conduct. The Revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria⁶² was adopted to serve as the minimum standard to be observed by each judicial officer. It acknowledges the fact that ...an independent, strong, respected and respectable judiciary is indispensable for the impartial administration of justice in a democratic State.⁶³ The Code admonished every judicial officer to actively participate in and observe a high standard of conduct that will ensure and preserve transparently, the integrity and respect for the independence of the judiciary.⁶⁴ The Code contains a number of Rules applying to every judicial officer in Nigeria and a violation of the Rules contained in the Code shall constitute judicial Misconduct and or, misbehavior that shall attract disciplinary action.⁶⁵

Under the Code, judicial officers are enjoined to respect and comply with the laws of the land and to conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.⁶⁶ In addition, judicial officers are to avoid contacts that may lead to speculations of a special relationship between him and someone whom the judge may be tempted to favour in some way in the course of his judicial duties.⁶⁷ This sort of social relationships especially the ones that are improper or may give rise to an appearance of impropriety or that may cast doubt on the ability of a judicial officer to decide cases impartially.⁶⁸

As it relates to this article judicial officers are endeared to maintain public confidence in the impartiality and independence of the judiciary.⁶⁹ Similarly, judges shall not allow their family, social or other political relationships to improperly influence their judicial conduct and judgment.⁷⁰ This duty extends to not allowing family, friends, social, civic and professional colleagues with whom they associates

⁶⁰ CFRN 1999, S 292 (a)(ii),(b).

⁶¹ CFRN 1999 (as amended) Third Schedule, Paragraph 21.

⁶² Federal Republic of Nigeria Official Gazette, 2021 vol. 108.

⁶³ Preamble to Federal Republic of Nigeria Official Gazette, 2021 Vol. 108 paragraph 2.

⁶⁴ Ibid para 3.

⁶⁵ Ibid.

⁶⁶ Ibid Rule 1.3.

⁶⁷ Ibid 1.4.

⁶⁸ Ibid 1.4 and 1.5.

⁶⁹ Ibid Rule 5(a).

⁷⁰ Ibid Rule 8.1.

with regularly to influence their duty. The *judex* is to do her utmost and ‘special care’ to ensure that her judicial conduct or judgment is not even subconsciously influenced by these relationships.⁷¹ Furthermore, judicial officers are prohibited from accepting gifts, bequest, loan, favour, benefit, advantage or bribes.⁷² This duty extends to anything done or omitted to be done by the judge in connection with the performance of judicial duties.⁷³ In a similar vein, this duty extends not just to the person of the judge but also the court’s staff or others subject to the judges’ influence, direction or authority.⁷⁴

8.0 Institutional Framework for the Independence of the Judiciary

8.1 National Judicial Council

The NJC is a creation of statute⁷⁵ with constitutionally stipulated duties and powers.⁷⁶ The powers of the NJC include to (a) recommend to the President from among the list of persons submitted to it by (i) the Federal Judicial Service Commission, persons for appointment to the offices of the Chief Justice of the Federation ... (b) recommend to the President the removal from office of those specified in sub-paragraph (a) of this paragraph and to exercise disciplinary control over such officers. (c) recommend to the Governor from among the list of persons submitted to it by the State Judicial Service Commission persons for appointment to the offices of the Chief Judges of the States and Judges of the High Courts of States, the Grand Kadis and Kadis of the Sharia Court of Appeal of the States and the President and Judges of the Customary Courts of Appeal of the States. (d) Recommend to the Governors the removal from office of the judicial officers specified in sub-paragraph (c) of this paragraph, and to exercise disciplinary control over such officers.

The constitution gave the courts the power to try criminal offences also gave the NJC the power to investigate allegation of misconduct against judicial officers and make recommendations for their removal.⁷⁷ In exercise of its powers under the constitution, the constitution the NJC shall not be subject to the direction or control of any other authority or person.⁷⁸ In the opinion of this paper, the provision of section 158(1) confers independence to the NJC, thus shielding them from external interferences or control in their decision-making processes.

8.2 State Judicial Service Commission

From the above provisions of the constitution, it is obvious by paragraph 21 sub-paragraph (c) and (d) of Part 1 of the Third Schedule of the CFRN 1999 (as amended) that the NJC is the body that has been assigned the responsibility to the Governors of the States of the Federation suitable persons for appointment to the offices of the Chief Judges of the States and other judicial officers in the States. In addition to its role in the appointment of the Chief Judges and other Judicial Officers, the same National Judicial Council is also empowered under Sub-paragraph (d) of paragraph 21 to recommend to the Governors of the States the removal from office of the Chief Judges of the States and other Judicial

⁷¹ Ibid 8.2.

⁷² Ibid Rule 10.

⁷³ Ibid 10.1.

⁷⁴ Ibid 10.1(ii).

⁷⁵ Ibid Part II(I) Item 20.

⁷⁶ Ibid paragraph 21 of Part 1 of the Third Schedule to the Constitution.

⁷⁷ *Opene v NJC & Ors* (2011) LPELR- 4795 (CA), per Galinje, JCA.

⁷⁸ CFRN 1999 (as amended), s 158(1).

Officers of the States and also to exercise disciplinary control over such Chief Judges of the States and other judicial Officers of the States. From the above provisions the Governors of the States and the Houses of Assembly of the states cannot exercise disciplinary control touching the removal of the Chief Judges of States and other Judicial Officers in the States, except upon the recommendation of the National Judicial Council.⁷⁹ However, suffices to not that the State Houses of Assembly play very crucial roles in the removal of the heads of courts such as the Chief Judge of the State High Courts, Grand Kadis of the Sharia Courts of Appeal and the Presidents of the Customary Courts of Appeal.⁸⁰

9.0 Challenges of the Independence of the Judiciary in Nigeria

There are various challenges confronting the independence of the judiciary in Nigeria. These challenges to say the least gravely undermine the independence of judiciary in Nigeria. Politicians and the socially powerful overtly infringe the law and ask the public or anyone who feel violated to ‘go to court.’ In many of these cases especially in electoral matters the impunity with which they command the public to ‘go to court’ suggest that they will do all within their power to frustrate the outcome of a possible litigation and or that they already have the judges attached to their apron string. It is even worse when individuals gather resources to challenge them and in many cases rather than doing substantive justice the judiciary in a most disappointing manner and disapproval of the public uphold the lawlessness of these individuals. This to say the least bring about deep resentment to not just the particular judge but also to the entire institution as its rationale for its decisions are subjected to public disapproval. Thus, by allowing politicians to influence the outcome of cases it is submitted that the judiciary loses its credibility in the eyes of the public.

9.1 Corruption

Corruption implies dishonest or fraudulent conduct by those in power, typically involving bribery. It connotes dishonest or illegal behavior especially by powerful people (such as government officials or police officers),⁸¹ including moral perversion and depravity⁸² by those in positions of power such as business managers or government officials.⁸³ Corruption can come in the form of bribery, double-dealing, and defrauding individuals, organizations and even the government. Corruption in the Nigerian judiciary takes variety of forms from lawyer’s bribery of ‘some’ judicial officers, to the judicial officers perverting justice to satisfy primordial greed. To say the least senior lawyers take the lead in the unwholesome practice.⁸⁴ The consequences of corruption can be social and economic with insidious consequences on the rule of law.

Corruption in the judicial sector can be multi-dimensional although some consider it as an offshoot of the absence of financial autonomy resulting in the impoverishment of Nigerian judges to turn them into tools of the political elites. According one source, ‘when you know a man (judge) that knows the law

⁷⁹ CFRN 1999 (as amended), S 292 (ii)(b); *Elelu-Habeeb & Another v AGF & Ors* (2012) 13 NWLR (Pt II) 145.

⁸⁰ *Ibid* s 292(1).

⁸¹ <http://www.Miriam-webster.com> corruption definition accessed 7th march 2024.

⁸² Collins Dictionary <<https://www.collingsdictionary.com>>7th march 2024.

⁸³ James Chen, Investopedia <<https://www.investopedia.com>>7th march 2024.

⁸⁴ R Ajakaye, Nigerian Court Convicts top Lawyer in Corruption Trial’ <<https://www.aa.com.tr/en/africa/nigerian-court-convicts-top-lawyer-in-corruption-trial/1131924>> accessed August 14, 2024.

but his judgment flies against the face of what the law should be, you know that there is something else motivating him or her.⁸⁵

From findings, it has been alleged that some unscrupulous senior lawyers facilitate corrupt transactions among judicial officers. In 2023, it was reported that the Chairman State and House of Representatives Election Petition Tribunal sitting in Kano, Flora Azinge, raised an alarm that a senior lawyer was attempting to bribe her to influence the court.⁸⁶ Although the report did disclose the identity of the lawyer who was allegedly trying to bribe the panel, she insisted that some senior lawyers arguing petitions before the tribunal were engaged in unwholesome moves to corrupt the system. She however revealed in court how a senior lawyer offered a member of her staff ₦10 million to bribe the panel members. It would be recalled that this was about the second time the learned judge has raised such a weighty allegation as she has earlier accused an unnamed Senior Advocate of Nigeria of asking her to provide a bank account to send her ‘Sallah gifts.’⁸⁷ These incidences lay credence to a report of the Independent Corrupt Practices and Other Related Offences Commission Report in 2023 alleging that the judiciary topped its Nigeria Corruption Index. It said about ₦9.45 billion was offered and paid as bribes by lawyers to judicial sector between 2018 and 2020.⁸⁸ Linked mostly to election litigation, six female judges reported being offered 3.3 billion, and five male judges reported ₦392.2 million bribe offers.⁸⁹

The insinuation that many senior lawyers are involved in the endemic act could not be doubted when considered in the light of the following cases that were deliberately orchestrated to undermine the independence of the judiciary. In 2015, a senior lawyer Kunle Kalejaiye (SAN) was said to have been stripped of his rank, disbarred and had his name struck off the Roll of Legal Practitioners by the Legal Practitioners Disciplinary Committee (LPDC) having been found guilty of professional misconduct.⁹⁰ The facts of the case were that the SAN while representing Peoples Democratic Party (PDP) and the Osun State Governor at the Election Petition Tribunal engages in private and confidential telephone conversation with the Chairman of the Tribunal Justice Thomas Naron. The said Chairman was also compulsorily retired consequent thereupon having been equally found guilty of professional misconduct by the NJC.⁹¹

A 2021 United States Department of States report noted that the Nigerian judiciary is constantly under pressure from the executive and legislative arms of government. It acknowledged that corruption is particularly pervasive at election tribunals and in the corruption trials of highly politically exposed persons.⁹²

⁸⁵ B Olabimtan, Olumide Akpata: Only by sheer luck can Nigeria’s Judiciary produce good judge <<https://www.https://thecable.ng>> accessed 20 January, 2024.

⁸⁶ Editorial, Uprooting corrosive corruption in the judiciary <<https://punchng.com>> 24th August, 2023

⁸⁷ Editorial, Uprooting corrosive corruption in the judiciary <<https://punchng.com>> 24th August, 2023.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ U W Nwosu, The Impact of Corruption on the Administration of Justice in Nigeria ‘Journal of Good Governance and Sustainable Development in Africa (JGGSDA), (2018) (4) (1), 5.

⁹¹ Ibid 6.

⁹² Editorial, Uprooting corrosive corruption in the judiciary <<https://punchng.com>> 24th August, 2023.

On the 21st of October, 2015, Justice Lateef Lawal-Akapo of the Ikeja High Court, Lagos sentenced a court Registrar Mrs Oluronke Rosolu to 10 years imprisonment for defrauding a former Chief of Army Staff retired Ishaya Bamayi of \$330,000.00. In so doing, the court said ‘as a Registrar of Court, the accused should have been a image maker of the judiciary, but she acted to the contrary.’ In this matter, the convict in her capacity as court Registrar aided one Mr Fred Ajudua, a onetime Lagos socialite to defraud Bamayi who was in detention at the Kirikiri maximum prison between 2004 and 2005, in the course of which she visited Bamayi in prison to facilitate the fraud.⁹³

In November 2015, the NJC suspended one Justice Lambo Akanbi from office having found him guilty of judicial misconduct while the President subsequently approved his sack latter in the same month. The embattled Judge of the Federal High Court had among others unilaterally appointed one Mr Emeka Nkwo of CYN-JAC (Nig) Ltd who was not proposed by any of the parties as referee or valuer in Suit Nos: FHC/PH/CS/434/2012, FHC/PH/435/2012; and FHC/PH/CS/25/2013; sat on the case in the Federal High Court Yenagoa in Suit No. FHC/YNG/CS/30/2013 after a new judge of the Federal High Court had been transferred to the state without a Fiat from the Chief Judge of the Federal High Court; delivered the ruling in the Suit No. FHC/PH/CS/07/2009 four months after final addresses were taken contrary to the rule that judgment should be delivered within a period of 90 days after final addresses; dismissed the application to set aside the report prepared by the valuer, CYN-JAC (Nig.) Ltd and later changed the ruling to a final judgment; and that he failed to give a copy of his ruling delivered on 12th June, 2013 to the complainant until the 28 of June, 2013.⁹⁴

In 2016 another Senior Advocate of Nigeria, Mr Rickey Tarfa was charged by Economic and Financial Crimes Commission (EFCC) for obstruction of justice, preventing the course of justice by the EFCC, and unlawful secrete communication with Justice Mohammed Yunusa who presided over a case in which the learned SAN was appearing. Although the defendant made a no-case-submission at the end of the prosecution’s case the court in a considered ruling on the 5th of March, 2018 held a contrary view by stating that it was satisfied that the EFCC has established a prima-facie case against Mr Tarfa and that he should proceed with his defence. In arriving at the decision, the trial court took cognizance of the provisions of section 38(2) of the EFCC Act, and section 97(3) of the Criminal Law of Lagos State, 2011.⁹⁵ The trial court convicted Mr Ricky Tarfa for misconduct and the decision was upheld by the Court of Appeal⁹⁶ but was set aside on appeal and remitted to the High Court for retrial.⁹⁷

In November 2023, retired Supreme Court Justice Musa Dattijo Muhammad drew the attention of the world to issues within the Nigerian judiciary, calling for reforms to address negative perception. Among others, he highlighted concerns about the concentration of powers in the Chief Justice’s office, opaque judge appointments, depleted appellate courts judges, and controversial decisions. He criticized the lack of federal character in the Supreme Court’s composition, flawed appointment processes, low remuneration, and alleged fund misappropriation.⁹⁸ In his frank and compelling valedictory statement, the retiring justice of the Supreme Court spoke boldly on corruption and nepotism in the judiciary in

⁹³ Nwosu (n.90) page 6 available online at <<http://www.rcmss.com/index.php/ijpamr;www.academix.ng>> accessed 7th March, 2024.

⁹⁴ Ibid (n.6)

⁹⁵ Nwosu (n.90) 6

⁹⁶ EFCC v Ricky Tarfa (SAN)(2019) 15 NWLR (Pt. 1695)1.

⁹⁷ EFCC v Ricky Tarfa (SAN)(2019) 16 NWLR (Pt. 1711)1.

⁹⁸ <www.guardian.ng> accessed 29th November, 2023.

the hallowed chambers of the Supreme Court of Nigeria he spoke on the abuse of office of the Chief Justice of Nigeria. According to the learned Justice, the CJN is too powerful as he is saddled with too many responsibilities and so he is prone to be corrupt.⁹⁹ Dattijo noted that ‘as presently structured, the CJN is Chairman of the NJC which oversees both appointment and discipline of judges. He is equally Chair of the Federal Judicial Service Commission (FJSC), the National Judicial Institute (NJI), and the Legal Practitioners Privileges Committee (LPPC) that appoints Senior Advocates of Nigeria.¹⁰⁰ As Chair of NJC, FJSC and LPPC, appoints as council, board and committee members are at his pleasure. He neither confers with fellow justices nor seeks their counsel or input on any matter related to these bodies. He has both final and the only say. In the opinion of the learned retired justice, ‘the oversight functions of these bodies should not rest on an individual alone.’ A person with absolute powers he noted ‘it is said, corrupts easily and absolutely.’ Dattijo JSC (retired) noted further that the CJN has power to appoint 80 percent of members of the council and 60 percent of members of the FJSC. The same applies to NJI and LPPC. Such enormous powers are effortlessly abused.¹⁰¹ While maintain that this need to change he added that the continued denial of the existence of this threatening anomaly weakens effective judicial oversight in the country.¹⁰²

On the issue of corruption in the judiciary Justice Dattijo noted that corruption in the judiciary manifests in different dimensions, one of which he said is nepotism. He came down heavily on the practice of justices and judges swearing in their children and relatives as judges and magistrates are one of the dark spots in our judiciary. Another dimension of corruption in the judiciary that the learned jurist mentioned is that of increasing budgetary allocations to the NJC, which has not been transparently spent for the benefit of the judiciary.¹⁰³ He lamented the issue of the salaries of Justices remaining static with no graduation for over 15 years. He noted that it is instructive to enquire what the judiciary does with all its allocations.¹⁰⁴ In his speech, he also presented a breakdown of what the judiciary has gotten within the last decade as according to him:

In 2015 when President Muhammadu Buhari became the President, the budgetary allocation to the judiciary was ₦70 billion. In the 2018 Appropriation Bill submitted to the National Assembly, the President allocated ₦100 billion to the judiciary. The legislature increased it to ₦110 billion; ₦10 billion above the ₦100 billion appropriated for the 2017 fiscal year. At the end of President Buhari’s tenure in May 2023 judiciary’s allocation had increased to ₦130 billion in 8 years. That is an increase from ₦70 billion to ₦130 billion. The present government has allocated an additional 35 billion naira. More than 85 percent of the amount appropriated by the 9th Assembly has far been released to the judiciary. It is envisaged that the present government will equally release the additional 35 billion naira.¹⁰⁵

⁹⁹ E Etim, Justice Musa Dattijo’s Valedictory Speech and the Value of Frank Conversations <[https:// www.thecable.ng](https://www.thecable.ng) > accessed October 2023.

¹⁰⁰ Ibid.

¹⁰¹ M D Muhammad, Speech Delivered by Hon. Justice Musa Dattijo Muhammad, JSC, CFR at the Valedictory Court Session Held in his Honour, at the Supreme Court of Nigeria, Abuja, on Friday, the 27th Day of October, 2023 page 10 available at channelstv.com accessed 5th of March 2023.

¹⁰² Ibid 10.

¹⁰³ Etim (n.34).

¹⁰⁴ Mohammad p.17.

¹⁰⁵ Ibid 18.

Notwithstanding the phenomenal increase in the sums appropriated and released to the judiciary, Justices and officers welfare and the quality of service the judiciary render have continued to decline.¹⁰⁶

It may interest one to know that the Chief Registrar of the Supreme Court earns more than the Justices. While she earns ₦1.2 million per month, Justices take home ₦751,000 in a month. The CJN on his part takes home ₦400,000 plus. The salary of a Justice, curiously, drops rather than increase when he gets the added responsibility of being a CJN.¹⁰⁷

That the unjust and embarrassing salary difference between the Justices and the Chief Registrar still abides remains intriguing to say the least...¹⁰⁸

If the observations of the learned Justice of the Supreme Court Mohammad is anything to go by then it could be rightly argued that the nation's apex court is in itself not immune from the menace of corruption. The judiciary seem to be influenced by the process of throwing in or budgeting of humongous sums of money into the judiciary for expenditure (as a bait) without adequate measures of accountability which makes the heads of this institutions to be highly susceptible to corruption in the management of state resources entrusted to them. The prevalence of bribery, extortion, and political interference in the justice system aside from having grave implications for the nation's global image, it also undermines public trust in the judicial sector.¹⁰⁹ In fact Mohammad was apt when he noted ... that public perception of the judiciary have over the years become witheringly scornful and monstrously critical.¹¹⁰ All these put together make the whole idea of the independence of the judiciary in Nigeria as an 'ideal' far beyond the administrators of the sector at least for now to attain. This position is arrived at after a careful analysis of contemporary develops in the judicial sector that particularly tends to erode the esteemed constitutional principle of the independence of the judiciary.

9.1.1 The Impact of Corruption on the Independence of the Judiciary

- i. Corruption has devastating effect on the legal system, resulting in a weakened judiciary and law enforcement agencies, thus fostering a culture of impunity for the affluent and powerful.¹¹¹
- ii. Corruption erodes the confidence of the society in the justice sector and thus fosters resort to jungle justice.
- iii. Corruption undermines the justice system and its fundamental values such as fairness, equity and impartiality. When judges and the court officials are compromised, it results in the abuse of power, and the delivery of justice is compromised. This leads to the pervasion of justice, wrongful convictions, and acquittal of guilty fellows.¹¹²

¹⁰⁶ Mohammad 19.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Editorial, Uprooting corrosive corruption in the judiciary <<https://punchng.com>> 24th August, 2023.

¹¹⁰ Ibid 20-21.

¹¹¹ T Aderoju, The Impact of Corruption on the rule of law and effective administration of justice using Nigeria as a case study , International Bar Association <https://ibanet.org> accessed March 2024.

¹¹² Ibid.

- iv. Due to corruption, public officers leave above their means.

9.2 Judicial Interference/ Abuse of Appointive Powers

There are various methods of judicial interference in Nigeria considered by this paper as capable of undermining the independence of the judiciary. During the military era, the major method of inference is to deprive the institution of funds, frame up the judges and promulgation of ouster clauses in the statute books. However, in contemporary times the methods of interference seem to be to influence the appointive process of the judges¹¹³ to deliberately with a view to ‘implant’ surrogates who will do the bidden of the appointing officers immediately or in the near future. This influence here is usually orchestrated by politically influential figures with economic and political powers.

9.2.1 Appointment of Judicial Officers

Decades ago, appointment to the bench was strictly based on merit. Sound knowledge of the law, integrity, honour and hard work distinguished those who were elevated. Lobbying was unheard of. As much as possible the most qualified men and women were appointed.¹¹⁴ This is no longer the situation. Political, selfish and sectional interests, thereby undermining the place of merit in the process of appointment, now pollute appointments.

In November 2023 a former President of the Nigerian Bar Association (NBA) Mr. Olumide Akpata referring to the process of appointment of judicial officers in Nigeria publicly declared in a conference that ‘it is only ‘by sheer luck that the Nigerian judiciary can produce a good judge.’¹¹⁵ The former NBA President made the remark during the International Bar Association (IBA) Conference in Paris, France where he faulted the selection process of judges in Nigeria and described it as ‘bizarre.’ According to him, ‘... the kind of people who show up as judges have no business being there.’ The former NBA President served as the Chairman of the NBA between 2020 -2022 and by virtue of his office, he is a statutory membership of the NJC, a body tasked with the appointment and discipline Judicial Officers in Nigeria. In his remarks, ‘... to emerge a good judge out of that process is by fluke only.’ He noted that as president of the NBA he discovered that there was a deliberate attempt on the part of the political class in Nigeria to capture the judiciary. This for him is ridiculous with insidious consequences for the rule of law in Nigeria.¹¹⁶ The observations of the Mr. Akpata underscore the relevance the challenges of the independence of the judiciary in Nigeria.

Recently, fresh allegations emerged where children and other relatives of serving and retired judges and justices are being appointed into judicial offices at the expense of more qualified candidates lacking in such privilege and ‘backing.’ It is asserted that the process of appointment of judicial positions are deliberately conducted to give undue advantage to the children, spouses, and mistresses’ of serving and retired judges and managers of judicial offices.¹¹⁷ Sahara reporters had earlier raised alarm on how serving and retired Nigerian Judges illegally inserted names of their children and relatives in the list of

¹¹³ Punch Newspapers <<https://punchng.com/legal-community-divided-as-odinakalu-faults-acourt-judges-qualifaction> accessed May 11th 2024>; Victor Azubuike, Wike not Bound to appoint Chief Judge on the basis of Seniority- Rivers State Attorney General dailypost .ng accessed 26th March 2021.

¹¹⁴ Mohammad 20.

¹¹⁵ B Olabimtan, Olumide Akpata: Only-by-sheer-luck-can- Nigeria’s- Judiciary- produce- good -judge <<https://thecable.ng/>> accessed 20 January, 2024.

¹¹⁶ Ibid.

¹¹⁷ Mohammad 22.

judges to be appointed into the judiciary.¹¹⁸ The report gathered that in 2020 alone 22 out of the 33 candidates presented to President Buhari made the list only because they were related to serving senior members of the judiciary or close aides and members of the NJC. The report has it that Sahara Reporters came across a document in which serving and retired judicial officers were illegally preparing ways for their children and relatives to take over the country's judicial system in future. According to a document put together by Open Bar Initiative, noted that out of the 33 names recommended to the President by the NJC for appointment as judges in the Federal High Court, only 11 met the criteria set out in the employment guideline of the council.¹¹⁹ The Reports specifically gathered that 22 out of the 33 candidates presented to President Buhari made the list only because they were related to serving senior members of the judiciary or close aides and members of the NJC.¹²⁰

At the Court of Appeal, it is also asserted, presiding Justices are now appointed out of turn, and there is the further issue of unpredictability of recent decision of the courts including the apex court.¹²¹ Judges now prefer to be in companies they never would have kept in the past. It is being insinuated that some judicial officers even campaign for politicians.¹²² Furthermore, politicians when in office do everything within their powers including circumventing establishing norms for appointment to ensure that their wives and close associates become judicial officers. The motive for this as already stated is not farfetched which is to deliberately implant surrogates to undermine judicial independence of reasoning for selfish ends. Regrettably, those who are supposed to superintend the system seem to look the other way perhaps.

Judicial appointive powers are also abused by politician's especially state governors down the chain of appointment of judges through the State Judicial Service Commissions where shortlisted judges who do not have the blessing of the governors are rejected or refused to be sworn-in as judges even though they have been cleared and recommended for appointment by the NJC. In fact in May 2024 the Governor of Edo State unilaterally 'hand-picked' and swore-in five out of eight judges recommended for Edo State High Court by the NJC after almost a year of their recommendation by the NJC at its 102nd meeting held on the 14th and 15th of June, 2023.¹²³

Also in Rivers State, the incumbent Governor recently swore-in Justice Stephens Dirialakeibama Jumbo as High Court Judge. The swearing-in of Justice Jumbo came ostensibly after five (5) years of the refusal of the former governor to swear-in the learned justice after his recommendation for his appointment by the NJC in 2019.¹²⁴ The refusal of the Edo and Rivers Governors to swear-in these judges grossly violated the doctrine of separation of powers, the rule of law and the independence of the judiciary as

¹¹⁸ Sahara Reports, New York, How Serving and Retired Nigerian Judges Illegally Inserted Names of Their Children, Relatives in List of Judges to be Appointed into Judiciary accessed 8th May, 2020.

¹¹⁹ Sahara Reports (n.103).

¹²⁰ Ibid.

¹²¹ Mohammad 23.

¹²² Ibid 23.

¹²³ Channels Television, 'Akpata Berates Obaseki for Swearing In Only Five Of Eight Judges' available at <<https://www.channelstv.com>> accessed 21st July, 2024.

¹²⁴ T Ogbuagu, Vanguard News, available at <<https://www.vanguardngr.com>- rivers-belongs-to-all-of-us-defend-it-Fubara-charges-new -Judge> 30th May, x.com accessed 21st July, 2024;

an autonomous self-regulatory agency of the state. This act further demonstrated the height of impunity in the polity, and is contemptuous of the Constitution.

Abuse of appointive powers has been a major concern for judicial onlookers it is even more worrisome when it is coming from the echelon of the judiciary.¹²⁵ Whatever it is this is one practice that must be discouraged due to its consequential devastating impact on the judiciary overtime. To say the least judges appointed in the violation of judicial ethics, codes and standards lack moral acceptability in the eyes of scholars of jurisprudence and constitutional law as well as the society. Taking into account the fact that the judiciary relies heavily on the confidence and trust placed on it by the society to survive and where the appointment of a judicial officer is fraught with moral turpitude then the entirety of the judiciary loses its credibility as the conscience of the society. Judicial officers appointed in this manner carry with them moral baggage's and trust deficit which ultimately make them a liability to the Nigerian legal system.

9.3 The Bulkachuwa Saga

In the year, 2023 scholars of constitutional law and jurisprudence were terribly saddened by the confession of Senator Adamu Muhammad Bulkachuwa a Nigerian politician and now former senator representing Bauchi North Senatorial District in the 9th Assembly. The said Senator Bulkachuwa is also the husband to a former President of the Nigeria's penultimate Court retired Justice Zainab Adamu Bulkachuwa. Senator Bulkachuwa during the valedictory session of the 9th Senate shocked Nigerians and the world when he boasted that he trampled on his wife's 'freedom and independence' while she served as the President of the Court of Appeal to the advantage of his colleagues in the Senate.¹²⁶ According to the Senator, he did this when some of his colleagues secretly approached him to help in their political cases.

This is one confessional comment of a ranking politician and how he used his office and matrimonial relationship to influence the 'decisions' of his 'Justice wife' who was the head of the nation's penultimate court. To scholars of Constitutional Law and Jurisprudence, commentaries on judicial interference or breaches of the independence of the judiciary are not new to Nigerian jurisprudence. What seem to be new is the dynamics and impunity with which they occur in Nigeria. This time perpetuated with the active connivance of a principal stakeholder in the judicial system, that retired Justice Zainab Bulkachuwa allowed her husband to interfere with her judicial functions is not just a breach of the Code of Conduct for Judicial Officers but also a betrayal of the Constitution and her Oath of Office. It is submitted that a judicial officer rose up to the caliber of the President of the Court of Appeal is supposed to a unsentimental and hardened defend the independence of the judiciary in Nigeria. This case is one of the several cases in which sector players deliberately undermined the independence of the judiciary for aggrandizement. It also demonstrated another pattern of violation of the independence of the judiciary in Nigeria for scholars to consider.

¹²⁵ E Mgheahurike, HURIWA Opposes Nomination of CJN's Son As Judge available at <leadership.ng> accessed September 2023; I Nnochiri, JNC Okays the Appointment of CJN's Son and 22 Others as Judges <<https://www.vanguardngr.com>> accessed 1st August 2023.

¹²⁶ Premium Times and Agency Report 17th July 2023, <<https://www.premiumtimesng.com>> Ex-senator-under-fire-after-confessing-to-influence-wife's-judgements > 13th June, 2023.

9.4 Forum Shopping

Forum shopping is another practice impeding the independence of the judiciary. Forum shopping is a legal term that refers to the practice of choosing a favourable jurisdiction or court to file a case or appeal. It is often done to take advantage of differing laws, procedures, or judicial philosophies between jurisdictions. This is often done to increase the chances of a favourable outcome or delay the legal process. Forum shopping can be used in almost all manner of cases. Ordinarily there is nothing unethical about the practice but in a federal system like ours where courts are divided to judicial divisions it accords with standard practice that cases be commenced in the judicial division in which they arose (*lexitus*).

The practice of forum shopping is seriously criticized as constituting an abuse of court process, causes unnecessary delays, inefficiencies and as it relates to this paper for undermining the independence of the judiciary. Both citizens and the courts have variously criticized the practice.¹²⁷ The practice also widely condemned interfering with the administration of justice. Where however, forum shopping is aimed at securing a favourable decision it is wrong and condemnable ‘the effect is that justice is not attained in most cases because a new shop is most likely a favourable shop and must be discouraged.’¹²⁸

Forum shopping could interfere with the independence of the judiciary in the following ways:

- i. Erosion of Public Confidence: when cases are repeatedly transferred between courts or jurisdictions, it can create the perception that the judiciary is vulnerable to external influences or manipulation, undermining public trust on the independence of the judicial sector of the country.
- ii. Selective Justice: where cases are pushed to particular courts, jurisdictions or judges perceived to handing down favourable decisions to particular litigants, it sets the tone and creates an atmosphere for a possible uneven application of the law and thus justice for based on favoritism
- iii. Judicial Bias: the practice of forum shopping could also create in the minds of the litigants and the society an assumption of the likelihood of bias, as the judex (judge) could be viewed as favouring certain interests, considered to be compromising his impartiality.
- iv. Undermining Judicial Authority: again, forum shopping can wane judicial authority especially where specific courts and individual judges are preferred to be assigned certain cases. This practice over time weakens the acceptability of the judgments of the court, the morality and the enforceability of such judgments.
- v. Potential basis for Appeal: forum shopping do not encourage the spirit of sportsmanship in litigations. When parties feel that they have been shortchanged in the process they are

¹²⁷ *Ezenwa v Oko & Ors.nigeria-law/LawReport* available at <<https://sunnewsonline.com>> accessed *EFCC-vs-Kalu FHC/ABJ/CR/56/07* accessed 16th October 2016.

¹²⁸ *Ibid*.

bound to appeal the outcome of a case and in many cases this do not bring an end to litigation as parties may chose extra judicial means of settling their cases.

In addition to the above, forum shopping dents, the rule of law, equal access to justice, erodes the confidence of the masses on the judiciary in Nigeria. Indeed, the Nigerian Supreme Court has in a number of landmark cases demonstrated its displeasure to the practice by lawyers. In *Okorochoa v PDP & Ors*¹²⁹ the Supreme Court among others frowned at the practice of forum shopping as it constitutes an abuse of court process.¹³⁰ Again, like other cases of corruption senior lawyers are very much enmeshed in the cases of forum shopping.¹³¹

9.5 Contradictory Court Orders/Judgments

Contradictory court orders and or judgments are judgments or orders of courts of concurrent jurisdiction on similar or the same matter. Ordinarily, by the theory of precedent the judgment of a court of law should bring about certainty and predictability.¹³² However, when the order or judgment of courts becomes conflicting it leaves the litigants and the public in confusion, distrust and in limbo as to which order or judgment to follow.¹³³ Contradictory court orders and judgment are in recent times a common feature of our judicial system especially in high profile political cases.¹³⁴ The instant case was on conflicting judgments on the validity of elections in the 2015 Rivers State Governorship Election. The main contenders were Nyesom Wike of the People's Democratic Party (PDP) and Mr. Dakuku Peterside of the All Progressive Congress (APC). Mr. Peterside challenged the election results at the Rivers State Election Tribunal, alleging irregularities and fraud.¹³⁵ The tribunal dismissed the petition of Peterside and upheld the election of Wike. Peterside appealed the decision of the tribunal to the Court of Appeal (CA).¹³⁶ Nevertheless, within the pendency of the appeal a Federal High Court (FHC) in Abuja nullified the election and ordered a rerun.¹³⁷ Meanwhile, the issues before CA and FHC were the same. The FHC held that the election was marred by violence and irregularities, and that Wike was not validly elected. To say the least this conflicting judgments led to heightened tension and confusion in Rivers State with rallies and protest in the both camps and political divide.¹³⁸ The case was eventually resolved by the Supreme Court that upheld the decision of the Rivers State Election Petition Tribunal that affirmed the election of Nyesom Wike as duly elected as Governor.¹³⁹ The same position applied under the 2016 Kogi State Governorship Election.¹⁴⁰

¹²⁹ (2014) LPELR-22058(SC).

¹³⁰ *R-Benkay Nigeria Ltd v. Cadbury Nig. Ltd* (2012) LPELR-7820(SC); *Dingyadi & Anor. v INEC* (2011) LPER-950n; *Provisional Liquidator of Tapp Ind. Ltd & Anor v Taap Ind. Ltd & Ors.* (1995) LPER-2928(SC)

¹³¹ R Ajakaye, Nigerian Court Convicts top Lawyer in Corruption Trial' <<https://www.aa.com.tr/en/africa/nigerian-court-convicts-top-lawyer-in-corruption-trial/1131924>> accessed August 14, 2024.

¹³² Y Yakubu and Others, 'An Analysis of the Impact of Conflicting Judgment s on the Nigerian Judiciary: Challenges and Proposed Solutions' (2023)(8)(1) *Journal of International Law and Jurisprudence, University of Jos, Nigeria*, 57.

¹³³ G Ezejiofore, 'Stare Decisis in the Nigerian Courts' (1972) (6)*Nigerian L J* 47.

¹³⁴ *Nyesom Wike v Dakoko Peterside* (2016) 7 NWLR (Pt.1512) 452; (2016) LPELR-41250(CA).

¹³⁵ Y Yakubu and Others, 'An Analysis of the Impact of Conflicting Judgment s on the Nigerian Judiciary: Challenges and Proposed Solutions' (2023)(8)(1) *Journal of International Law and Jurisprudence, University of Jos, Nigeria*, 59.

¹³⁶ *Nyesom Wike v Dakuku Peterside* CA/PH/198/2015.

¹³⁷ *Nyesom Wike v Dakuku Peterside* (2016) Vol.66 NSCQR (Pt. 3) 1325.

¹³⁸ Yakubu (n 122) 59.

¹³⁹ SC. 1002/2015)(2016)NGSC 137 (12 February 2016); Wike (n. 124)

¹⁴⁰ C Eze, Kogi Guber: Conflicting court orders, lawyer's interpretations confuse voters. The Sun.(2019

<<https://www.sunnewsonline.com/kogi-guber-conflicting-court-orders-lawyers-interpretations-confuse-voters/>> Accessed 22nd June 2024.

This practice comes with dire implication on the independence of the judiciary and like forum shopping the practice erodes public trust in the system of justice. It further creates confusion and undermines public confidence in the judiciary, as it is suggestive of inconsistency and vulnerability of the courts to external influences. Additionally, contradictory orders of court create the impression of bias inimical to judicial impartiality. It also undermines judicial authority like forum shopping. Nevertheless, there seem to be some overlap between forum shopping and conflicting court orders and or judgments as they have similar implications for judicial independence. Notably, both can erode public trust, suggestive of partiality, creates suspicion, undermine judicial authority and rule of law and may lead to internal conflicts or external interference. Again, forum shopping and conflicting court orders seriously call to question the integrity and independence of the judiciary.

Forum shopping relates to seeking favourable jurisdictions or judges, whereas, contradictory courts orders can result from different interpretations or errors. Nevertheless, the consequences of both on the independence of the judiciary in Nigeria are similar. To stem the practice the National Judicial Council (NJC) has variously issued policy directions on political and election related cases to the Heads of Courts in Nigeria. This included that courts of coordinate jurisdictions are not supposed to overrule one another. The NJC should retire judges who make second orders with immediate effect.

9.6 Political Vulnerability of Judicial Officers in Nigeria

Judicial officers around the world are particularly vulnerability to attacks by politicians who feel threatened by an independent judiciary.¹⁴¹ Attacks to the judiciary are orchestrated by politicians who aim to be in absolute control of the machinery of the state and in most cases are despots who are intolerant of decent. Thus, judges became very much politically vulnerable during the military rule in Nigeria as they were arbitrarily removed from office, poorly remunerated with abysmal working conditions. In 1975 alone about 60 High Court Judges, one Court of Appeal Justice and the Chief Justice of the Supreme Court were removed following a purge by the military government on the judiciary.¹⁴² It is submitted that the manner of appointment, removal and remuneration of judicial officers impacts the independence of the judiciary and the productivity of the institution as a whole because any form of interference with the tenure of office of the judicial officers affects their capacity to decisions between disputants be it the military government or the citizens thereby undermining independence of the judiciary in Nigeria. Other factors limiting the Independence of the Judiciary under the Military rule included:

- i. The existence of ouster clauses in Military Decrees.¹⁴³
- ii. Appropriation of judicial responsibilities to quasi-judicial tribunals¹⁴⁴
- iii. Unlawful removal judges

¹⁴¹ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803); B Friedman, 'Things Forgotten' in the Debate Over Judicial Independence,' (1998) (14) GA. ST. U. L. REV. 737, 739.

¹⁴² Ibid (n.37) 266.

¹⁴³ CFRN 1999(as amended), S 4(9);

¹⁴⁴ Robbery and Fire Arms (Special Provisions) Decree 1970; Counterfeit Currency (Special Provisions) Decree 1970; Offences against the Person (Special Provisions) Decree 1974 repealed by Decree of 28 September 1979; Special Tribunal (Miscellaneous Offences) Decree; *Fawehinmi v Babangida* (2003) FWLR (Pt. 146) 835;

9.7 Forceful Entry into the Houses and Arrest of Justices

In 2016, President Muhammadu Buhari ordered the forceful entry into the houses and the arrest of Justices some of whom were serving at the apex court. In 2019, the government accosted, arrested and arraigned an incumbent CJN before the Code of Code of Conduct Tribunal for alleged underhand conduct. With his retirement apparently negotiated, he was eventually left off the hook even though it is generally believed that His Lordship's removal was politically motivated.¹⁴⁵

In 2022 a letter signed by all the other Honourable Justices of the Supreme Court, including the current CJN, protested against the shabby treatment meted to them by the head of court and the Chief Registrar. At the centre, of the friction were their welfare and the cavalier attitude of the Chief Registrar thereto. In the circumstance, His Lordship Ibrahim Tanko Muhammed voluntarily disengaged.¹⁴⁶

9.8 Findings

This article presents the concept of Independence of the Judiciary as an ideal for which every individual occupying the status of an umpire or a judge should strive to maintain when faced with the responsibility of decision making in matters brought before them between parties for adjudication. This article is an academic endeavor to jurisprudentially ex-ray the concept of the independence of the judiciary in Nigeria and the contemporary methods of the infraction the principle by those involved in the administration of sector. It particularly considered the interference by way of the appointive powers of the judges, their spouses, relatives, and associates, privies and so on as aspects of interference of with the administration of justice and inversely judicial independence.

In the course of this paper, it was discovered that the independence of the judiciary in Nigeria is seriously under threat. The threat of the independence of the judiciary stems from several factors including:

- i. Judicial interference, abuse of appointive powers of the judges (where spouses of politicians, relatives, privies and associates of those who exercises appointive powers in the judicial sector now predominate the bench).
- ii. It further observed that from one democratic era to another the patterns of interference with the administration of the justice continue to change and the most disturbing aspect of these interferences is the impunity with which it is carried out.
- iii. Judicial officers are not very absolved from acts, which undermine the independence of the judiciary as forum shopping, conflicting court orders, bribery and corruption continue to hold sway.
- iv. This paper also found out that some stakeholders contribute to the violation of the independence of the judiciary. These include lawmakers, politicians, senior lawyers, judges, relatives of judicial officers and other key sector players and politicians. Each of

¹⁴⁵ Mohammad 24.

¹⁴⁶ Ibid.

these sector players one-way or other inhibits the effectiveness of the practice of independence of the judiciary as found by this paper.

9.9 Conclusion

This article considered that judicial Independence is the freedom, the latitude enjoyed by judicial officers to make judicial decisions without interference or influence. It also considered judicial independence as the liberty of judicial officers to interpret the law devoid of fear, coercion or reprisal of any nature. It is an ideal that has both internal (normative) and external (or institutional) aspects. The rationale for the judicial independence is to permit the judicial process to be appropriately insensitive to arbitrary and irrelevant influences, in order to be able to weigh evidence and apply the law in particular cases in an unbiased manner. The justification for the independence of the judiciary is the fundamental place it occupies in constitutional law which to safeguard the constitution, enforce fairness, equity, trust and egalitarianism in the management of state affairs. It further obviates impunity and coercion. Notwithstanding the importance of this fundamental constitutional concept, it is still susceptible to the findings of this article above.

In summation it is instructive for the judiciary to take cognizance the fact that the Nigerian judiciaries like its counterparts in other climes has ‘no sword’ or ‘purse of its own’ but largely survives by public confidence which is important for the stability of the nation. Sector players, especially judicial officers must leave above board at all times by ensuring that they do not act in a manner inimical to the trust of the society and then claim to be victim of the violation of the independence of the judiciary.

9.10 Recommendations:

In the light of the foregoing findings, it is considered very imperative that the present attitude of stakeholders in the sector be improved upon. To achieve this it is recommended as follows:

- i. That there be put in place a law or constitutional provision disqualifying relatives of judicial officers, associates and privies from serving in the judicial sector for at least 10 years from the date in which the family member is disengaged from service. Where in any case a family member is discovered after the person has been employed the person should be summarily dismissed from service.
- ii. Persons who abuse or undermined the independence of the judiciary while in office should be made to forfeit their pension rights or other retirement benefits to the federal or state government concerned.
- iii. Spouses, relative and associates of politicians or politically exposed persons be disqualified from taking up judicial offices or serving in the judicial sector. This is to obviate the possibility of interference with the independence of the judiciary. Persons who conceal their identity before they gain employment whenever they are discovered should be dismissed and made to refund all salaries and emoluments they enjoyed while in office.
- iv. Make stakeholders of the sector who whenever found to have abused their judicial oath of office and undermined the independence of the judiciary like the ‘Bulkachuwa saga’ should

be made to forfeit their retirement benefits. In this vein, nobody should be cloaked with any form of immunity on cases of the violation of judicial independence.

- v. Politicians irrespective of their status found to have breached judicial independence should be made to forfeit at least 10 years entitlement or all their entitlements while they were in office.
- vi. To tackle the awkward situation where judges cleared and recommended for appointment are rejected or refused to be sworn-in by the Governors, it is recommended that the NJC or the Chief Judges of the States after the clearance of these individuals carryout the constitutional function of swearing-in of the judges. To this end, there is every need for the constitution to be amended to reflect this position.