

The Nigerian Judiciary and Democracy

Adrian Osuagwu*

Obinne Oguejiofor**

Sylvester Anya***

Abstract

To the uncritical mind, it seems that the executive arm of government is the most powerful. However, this is not so in constitutional democracy, as the judiciary in such arrangement seems to be the most powerful. This position becomes clearer when one considers the functions of the judiciary which include, but is not limited to the resolution of disputes between all parties appearing before her, the executive and legislature inclusive. Thus, a judiciary that is independent and impartial is the backbone of any democracy. Recently, the Nigerian judiciary has come under public scrutiny. The objective of the study is to ascertain the way in which the Nigerian judiciary can become a beacon of democracy and the last hope of the common man. The methodology is doctrinal. Data are gathered from statutes, case-law, journal articles, books, theses, internet sources etc. The study finds that there is a serious trust deficit on the Nigerian judiciary, as it seems the independence of the judiciary is grossly affected. The study recommends that the judiciary should be above board, proactive and always endeavour to seek the truth so as to deliver substantial justice to all parties appearing before the court.

Key words: Constitutional democracy, judiciary, rule of law, judicial independence, justice delivery, citizens' right to choose their leaders.

1. Introduction

The conduct of the 2023 general elections in Nigeria and the eventual decisions of the court on the outcome of the election raised echoes of constitutional democracy becoming a theatre of brigandage. There was a significant interest of the Nigerian citizens in participating in the electoral process that ushered in the current administration. It is assumed that many citizens especially the youths came out to exercise their franchise. This awakened interest may be attributed to the numerous assurances given by Independent National Electoral Commission (INEC) which include but not limited to the use of Bimodal Voter Accreditation System (BVAS) and electronic transfer of results in real time. However, it is certain that such promises made by INEC based on its own guidelines and regulations¹ were flagrantly disobeyed. Indeed, they were observed more in breach than in compliance.²

In spite of the disappointment of the electorates and indeed the citizenry, a large premium of hope was placed on the Nigerian judiciary to live up to her role as the last hope of the common man so as to uphold the constitution, protect the votes of the electorates and in fact, protect Nigeria's democracy. This constitutional role and obligation placed on the judiciary especially the duty to give free and fair judgment (substantial justice) has been gravely affected by numerous alleged cases or instances of corruption. Can one say that the Nigerian judiciary is truly independent and impartial? Or has the judiciary become an appendage of the politicians to the extent that it is a willing tool to the other branches of government? Have the independence and impartiality of the judiciary been grossly eroded?

* **Adrian Osuagwu**, Lecturer, Department of International and Comparative Law, Faculty of Law, University of Nigeria Enugu Campus.

** **Obinne Oguejiofor**, Lecturer, Department of International and Comparative Law, Faculty of Law, University of Nigeria Enugu Campus.

*** **Sylvester Anya**, Senior Lecturer, Department of International and Comparative Law, Faculty of Law, University of Nigeria Enugu Campus. E-mail: Sylvester.anya@unn.edu.ng, Phone number: 07064561418.

¹ See Paragraph 38 of the INEC Regulations and Guidelines for the Conduct of Elections, 2022 made pursuant to s 65 and other sections of the Electoral Act 2022.

² Note that the Constitution of the Federal Republic of Nigeria (CFRN) 1999 as amended, the Electoral Act 2022 and the INEC Regulation and Guidelines form the Electoral Legal Framework of Nigeria.

This paper reveals that there is a serious confidence or trust deficit on the Nigerian judiciary as presently constituted. Thus, the paper recommends, among other things that: the judiciary should do all it can to salvage that noble institution, endeavour to seek the truth so as to salvage Nigeria's democracy and halt further decay of the Nigerian society. Since the title of the paper is on the Nigerian judiciary and democracy, it is important to clarify some concepts.

2. Democracy

The word 'democracy' is derived from two Greek words namely: demos, deme, which means the people and kratein, meaning to rule. Joined together, these two words mean rule of the people.³ It was therefore Abraham Lincoln, who, while reflecting on these two words, gave the popular definition of democracy, as the government of the people, by the people, and for the people.⁴ Therefore in democracy, the supreme power is vested or domiciled in the people.⁵ Such supreme power otherwise known as sovereignty is exercised by the medium of representation which usually involves periodic free and fair elections.⁶

Democracy is thus, a type of government just as monarchy, oligarchy and plutocracy are forms of government.⁷ However, there are differences.⁸ In oligarchy, it is the oligos (few) that rules. In plutocracy, it is the plutos, that is the rich that rules. In monarchy, it is the monos that rules (the rule of one man). But in democracy, the demos (the people) rule. This is why it is called the government of the people.⁹ In other words, the distinguishing factor between democracy and these other forms of government is: who rules and for whose benefit?¹⁰ In democracy, the answer to both questions is the people.¹¹ In a democratic government, the people rule and they are the primary beneficiaries of such government.

Democracy presupposes certain hypotheses or beliefs such as rationality, representation, law, freedom, human rights, human equality, morality and so forth.¹² Rationality alludes to the fact that man's actions are guided by reason. Thus, his actions are not whimsical and capricious.¹³ Democracy consecrates the belief that all men are equal before the law. Hence, both the person who governs and the governed are equal before the law and none should have undue advantage over the other.¹⁴ Equality before the law is one of the connotations of the concept of the rule of law. For Dicey the rule of law means:

³ T Okere, *Philosophy, Culture and Society in Africa* (Nsukka: Afro Orbis Publications Ltd, 2005) 195.

⁴ Ibid.

⁵ Mariam Webster, 'Democracy' <<https://www.mariamwebster.com/dictionary/democracy>> accessed 28 November 2024.

⁶ Ibid; see also section 14(2) (a) of the CFRN which states that 'sovereignty belongs to the people of Nigeria from whom government through this constitution derives all its power and authority'.

⁷ J Omeregbe, *Social Political Philosophy and International Relations* (Lagos: JERD Ltd 2002) 31; A Osuagwu, 'Natural Law and Democracy' in GA Onuoha and others, *Perspectives in Democracy, Rule of Law and Globalization* (Aba: Falcon Publishing Co 2010) 54, 61; J Obi Oguejiofor (ed), *Okere in His Own Words: The Hermeneutics of Culture, Religion and Society* (Vol. II, Owerri: Whelan Research Academy) 212.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid 212-213.

¹³ Ibid 212.

¹⁴ Mary-Imelda Obianuju Nwogu, 'The Rule of Law in Governance in Nigeria' (2010) *Journal of International Law and Jurisprudence* <https://www.ajol.info/index.php/naujilj/article/view/131978/127762> accessed 26 November 2023.

Equality before the law or the equal subjugation of all classes to the ordinary law of the land, administered by the ordinary law courts, the rule of law in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens from jurisdictions of ordinary tribunals.¹⁵

In other words, equality before the law implies that every citizen has equal right of protection before the law and that each citizen has equal right to resist any infraction either to his person or to his property.¹⁶ This right to equal protection to one's person and his property is achievable only when there is an independent judiciary, free from the shackles and interference of the executive and legislative branches of government.¹⁷

The assumption of representation implies that though democracy is the rule of people, the people do not all come together to rule unless the country in question has a very small population. The nations with huge populations rule themselves through representations that make constant elections imperative in a democracy. This enables the people either to renew or withdraw their mandate.¹⁸ Further, democracy which is the rule of the people does not imply that the rule is at the whims and caprice of the people. It means the rule of the people through the instrumentality of the law.¹⁹ Thus, one of the functions of law is the maintenance of order in the society. The absence of law or the flagrant disobedience of law brings about anarchy in the society.²⁰ Accordingly, the absence of law leads to societal disorder.

Democracy also entails freedom and respect or recognition of basic human rights and fundamental freedoms.²¹ To the extent that these basic rights and fundamental freedom are entrenched in the constitution of any given country, they are therefore regarded as fundamental human rights and freedoms.²² However, such freedoms and human rights are not absolute. The freedom of A is limited by that of B. For according to Jean Jacques Rousseau, though man is born free, at the same time he is always in chains.²³ In Nigeria for instance, human rights are not absolute as they can be restricted, limited or even derogated by any law that is reasonably justifiable in a democratic society.²⁴ The law can therefore place or impose certain limitations on human rights since it is evidently true that one person's right stops where another person's rights begin.²⁵ Without such limitations, there will be chaos and disorder in the society. Though these rights are sacrosanct, to the effect that they must be respected and cannot be derogated without recourse to due process of the law;²⁶ they are never absolute.²⁷ God, the creator of the universe did not give Adam and Eve,

¹⁵ AV Dicey, *Introduction to the Study of the Constitution* in Nwogu (n 13).

¹⁶ B O Igwenyi, *Modern Constitutional Law* in Nwogu (n 13); see also *Shugaba v Minister of Internal Affairs* (1981) INCLR 125.

¹⁷ Nwogu (n 14).

¹⁸ Oguejiofor (ed) (n 7) 213; Olusecan Olugbenga Orimogunle, 'A Gaint Tottering at Fifty: Electoral Integrity as the Basis for Democracy in Nigeria's Fouth Republic' in GA Onuoha and others (ed) (n 7) 100.

¹⁹ Oguejiofor (n 7) 213.

²⁰ Ibid.

²¹ Ibid.

²² See Chapter IV of the 1999 CFRN (as amended) that embodies the fundamental rights of the citizens. These fundamental human rights and freedoms include, the right to life, human dignity, personal liberty, fair hearing, freedom of movement, right to freedom from discrimination etc.

²³ LR Curzon, *Jurisprudence* (Cavendish Publication Limited 1995) 31.

²⁴ Section 45(1) (n 21); *Amoshina v State* (2009) SC 283.

²⁵ Olasupa Jubril Adedimeji, *Constitutionality of the Restriction of Fundamental Rights* <<http://dx.doi.org/10.2139/ssrn.3658657>> assessed 30 November 20234.

²⁶ Ibid.

²⁷ Ibid.

absolute rights and freedom when He placed them in the Garden of Eden. He told them to eat every fruit except the one placed at the center of the garden. Disobedience to this restriction attracts the penalty of death.²⁸

Under the Nigerian Constitution, human rights and fundamental freedom could be restricted in the interest of defence, public safety, public order, public mortality, or public health; or for the purpose of protecting the right and freedom of other persons.²⁹ Thus, arbitrary derogation of these rights and freedom is an affront to democratic principles. The inclusion of morality in the practice of democracy shows that man, as a moral being, is constantly aware of right and wrong.³⁰ He is also conscious of the rights of his neighbour.³¹ This constant awareness therefore serves to tame his own excesses and is indeed a veritable tool or instrument in checking and balancing his selfishness.³²

From the foregoing survey of the meaning of democracy, the following features of democracy could be distilled. Democracy is all about the rule of law as opposed to the rule of men. In democracy, power belongs to the people and resides in them. Sovereignty does not reside in the leaders but it is domiciled in the people and through the doctrine of social contract as enunciated by Locke and Rousseau, they donate power and authority to their leaders who must always endeavour to protect their rights.³³ In a democracy, the people rule through their representatives brought about through periodic elections which must be free and fair. Hence, the incumbent government should not interfere with the campaigns of other political parties,³⁴ and the government does not force the electorates to vote in a particular way.³⁵ Though democracy admits of majority rule, the rights of the minority are equally protected.³⁶ Democratic governance triggers an interesting feature of checks and balances. Thus, in democracies, power is never centered on one arm of government. The legislative, executive and judicial powers are distributed and allocated to different arms of government and each branch has some degree of direct control over the exercise of the functions of the other branches, although in a limited form.³⁷ In the Nigerian constitutional democracy for instance, there are three arms of government namely; the legislature, the executive and the judiciary. The legislative powers of the Federal Republic of Nigeria are vested in the National Assembly made up of the Senate and House of Representatives.³⁸ The legislature is empowered to make laws, for the Federation or any part thereof.³⁹ The executive powers of the Federation are vested in the President and may be exercised by him directly or through officers in the public service of the Federation.⁴⁰ The judicial powers are vested in the courts.⁴¹ The courts

²⁸ Genesis 3: 1- 19.

²⁹ Adedimeji (n 25); see also s 45(1)(a) and (b) of CFRN 1999 (as amended).

³⁰ Oguejiofor (n 7) 212.

³¹ Ibid.

³² Ibid.

³³ Curzon (n 23) 28-33.

³⁴ B O Igwenyi, 'Democracy in the Fourth Republic of Nigeria: A Critical Appraisal' in GA Onuoha and others (eds) *Perspectives in Democracy, Rule of Law and Globalization* (Aba: Falcon Publishing Co 2010) 120, 122.

³⁵ Ibid.

³⁶ Ibid 127.

³⁷ *Liyange v The Queen* (1957) AC 259; *Lakanmi & Anor v Attorney-General (Western State of Nigeria)* (1971) UILR 201.

³⁸ Section 4 of the 1999 CFRN (as amended); see also section 4(6-7) of the 1999 CFRN (as amended) for the corresponding legislature powers of the state.

³⁹ Section 4(2) Ibid.

⁴⁰ Section 5 (1) (a) Ibid; see section 5(2) ibid for the executive powers of the state.

⁴¹ Section 6(1) and (2) Ibid.

and the people who administer them especially the judges are termed the judiciary.⁴² The point has been made that all the assumptions and features of democracy are realizable when there is in place, an independent, incorruptible, and impartial judiciary. The process that produces the personnel of the judiciary must be credible.

3. The Nexus between the Judiciary and Constitutional Democracy

Constitutional democracy has been described as a form of democratic government that makes use of a written document which may be regarded as a constitution that embodies the law of a nation.⁴³ In constitutional democracy the belief in the principle of the rule of law is sacrosanct.⁴⁴ For AV Dicey, the rule of law embodies mainly three principles namely: supremacy of law which simply states that government officials must govern by following the law, rather than employing unlimited discretion. Thus, the running of the government must be based on the principle of law and not of man.⁴⁵ The term 'rule of law' means equality before the law and subjection of all persons both the government officials and governed to the laws of the law as administered by the courts of the land. In other words, every citizen is equal before the law and is therefore under the law of the land and amenable to the jurisdiction of the law.⁴⁶

The attribute of the rule of law relates to the predominance of the legal spirit. It connotes the admission that the constitution is the reflection of the laws of the land, hence the basic rights and fundamental freedom enshrined in it are not created by the constitution but predate the constitution. Their inclusion in such a document serves as a protection of those rights and gives them the force of law.⁴⁷ Constitutional democracy is therefore a form of regime that is basically founded on the principle of self-government which is not only realized by the formation of governments through the organization of elections⁴⁸ but making sure that institutional frameworks are put in place that guarantee periodic free and fair elections, and the respect and protection of human rights.⁴⁹ Added to this is that, such institutional frameworks are energized by the constitution that provides the

⁴² Vocabulary.com, 'Judiciary' <<https://www.vocabulary.com/dictionary/judiciary>> assessed 30 November 2024.

⁴³ Julieanne Klein, 'Constitutional Democracy' <<https://study.com/academy/lesson/constitutional-democracy-origins-principles-government.html>> accessed 2 December 2024.

⁴⁴ Constitutional Rights Foundation, 'What is Constitutional Democracy?' <https://www.crf-usa.org/images/pdf/challenge/What-is-constitutional-Democracy.pdf> accessed 2 December 2023; Encyclopedia Britannica, 'Albert Venn Dicey' <<https://www.britannica.com/biography/Albert-Venn-Dicey>> accessed 2 December 2024.

⁴⁵ Dylan Lino, 'The Rule of Law and the Rule of Empire: AV Dicey in Imperial Context' (2018) 81 *Modern Law Review* <https://ssrn.com/abstract=342056> accessed 2 December 2023; Nicholas Ebehiakhalu, 'The Rule of Law and Constitutional Democracy in Nigeria' *Thisday* (Lagos 2 December 2023) <<https://www.thisdaylive.com/index.plp/2022/11/07/the-rule-of-law-and-constitutional-democracy-in-nigeria>> assessed 2 December 2024.

⁴⁶ Ibid; see also Alok Kumar, 'Rule of Law' (2017) 4(3) *International Journal of Law and Legal Jurisprudence Studies* <<https://ijlls.in/wp-content/apluadi/2017/08/Rule-of-law.pdf>> accessed 2 December 2024.

⁴⁷ Ibid; see also the view of the Chief Justice of Japan that: 'Fundamental human rights were not created by the state but are external and universal institutions, common to all mankind and predate the state, and founded upon natural law'; See (1977) 10 *JAL* No 2, 131 in MC Anozie, *Notes on Nigerian Constitutional Law* (Enugu: Pymonak Printing and Publishing Co 2000) 176.

⁴⁸ Martin Coughin, 'The Contemporary Crisis of Constitutional Democracy' (2019) 39 (2) *Oxford Journal of Legal Studies* <<https://www.seiakiuk.com/law/assets/documents/martin-loughlin/crisis-of-con-dem-OJLS.pdf>> accessed 3 December 2024.

⁴⁹ Ibid.

branches of government with the attendant checks and balance necessary for a democratic society.⁵⁰

Nigeria arguably claims the practice of democracy. However, as far as the CFRN 1999 is concerned, Nigeria is a democratic country. Section 14(1) of the CFRN 1999 states that ‘Nigeria is a democratic state standing on the foundation of social justice’. For Ebehikhalu, constitutional democracy is measured by the separation of powers of the three arms of government with the attendant checks and balances, independent electoral empires, independent media known as the fourth estate of the realm, respect of basic human rights and fundamental freedom, free and fair election and so forth.⁵¹

From the forgoing, it is eminently evident that the judiciary plays a pivotal role in sustaining democracy in any given country. Thus, the concept ‘constitutional democracy’ indicates the role of the judiciary in democratic governance. The roles of the judiciary in democratic governance have received elaborate treatment by Tobi-Aiyemo.⁵² According to him, the judiciary plays significant roles in any given democracy such as Nigeria. These roles include the interpretative role, adjudicatory role, democratic role, constitutional role, social role, social order role etc.⁵³ Because of *spatio-temporal* determinisms we shall briefly elaborate on some of these roles.

The primary role of the judiciary is to adjudicate.⁵⁴ The adjudicatory role of the judiciary exemplifies the meaning of the name ‘judge’⁵⁵ given to various judges of the superior courts of records. Thus, to adjudicate means to judge a matter and this implies dispute settlement.⁵⁶ The power of the Nigerian judiciary to adjudicate on matters before it is derived from the Constitution.⁵⁷ Section 6(6)(b) of the 1999 CFRN (as amended) provides that the powers of the judiciary:

*Shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto for the determination of any question as to the civil rights and obligations of that person.*⁵⁸

The implication of the above constitutional provisions is that the judiciary acts as an umpire, judge or arbitrator between disputants or parties to a dispute.⁵⁹ Its role is the determination and settlement

⁵⁰ Ibid.

⁵¹ Ebehikhalu (n 46).

⁵² Ari Tobi-Aiyemo, ‘The Role of the Nigerian Judiciary in a Democracy: A Judge’s Dilemma’ (PhD thesis, University of Nevada Reno 2021).

⁵³ Ibid.

⁵⁴ Enaruna Edosa and Ernest O Fenemigbo, ‘The Judiciary as an Organ of Government’ (2014) 8(3) *African Research Review* < <http://dx.doi.org/10.4314/afrrrev.v8i3.7>> accessed 4 December 2024.

⁵⁵ Tobi-Aiyemo (n 45).

⁵⁶ Ibid.

⁵⁷ S 6 of the CFRN 1999 (as amended); see also *Chief Ken Nnamani v Chief Nnaji* (1999) LPELR-6575 (CA), where the court emphasized the adjudicatory role of the judiciary.

⁵⁸ S 6(6) (b) *ibid.*

⁵⁹ Hon Justice BA Adejumo, ‘The Judiciary and the Rule of Law. Challenges of Adjudication in the Electoral Process’ (A paper presented at 2011 Law week of the Law students’ Association of the University of Abuja on 23 May 2011) <<http://nicn.gov.ng/publication/UNIABUJA%20LAW%20STUDENTS%20LECTURE.PDF>> accessed 4 December 2024.

of disputes, determination of rights and obligations of parties that present cases before it with the aim of bringing about peace, order, harmony, progress and democratic stability.⁶⁰

Another role of the judiciary is the interpretation of statutes. The interpretative role of the judiciary complements the adjudicative role⁶¹ in the sense that they go hand in hand.⁶² Hence, once a matter comes up before the judiciary, the true meaning of the law becomes apparent.⁶³ The determination of the true meaning of the law brings forth the principle of judicial precedent which affects future court decisions.⁶⁴ In this way, the judges are involved in law-making through statutory interpretation and the doctrine of judicial precedent.⁶⁵ In other words, whatever meaning might be the intention of the law maker in drafting a particular law, it is only the meaning attached to the words of such statute by the courts that becomes the law.⁶⁶

In interpreting statutes, the courts make use of the following canons of interpretation which include, the literal rule, the golden rule, the mischief rule, purposive rule, *ejusdem generis* rule, *contra proferentem* rule, *expressio unis est exclusio alterius* rule, the blue pencil rule etc. In its interpretative role, the primary aim of the judiciary is the attainment of justice to all the parties before it. Hence, justice must be done even if the heavens may fall. All the canons of interpretation are geared towards the arrival of substantial justice which is the aim of judicial activism, as opposed to formal justice. Formal justice or what has come to be known as technical justice should never displace substantial justice. In other words, substantial justice must never be sacrificed at the altar of technicalities. For Justice Olabanji Orilonishe:

*The days of justice by technicalities, which is as bad as injustice are over because the weight of judicial authorities have shifted from undue reliance on technicalities to doing substantial justice even-handed on parties in a case. Justice by technicalities has died in Nigeria for good and has been buried; the trend these days is to do substantial justice by the merit of each case.*⁶⁷

The above statement can only come from a judiciary that is independent and responsive to the needs of the society.⁶⁸ The democratic role of the judiciary is one of the consequences of constitutional democracy. Thus, in this form of government, the courts play a vital role in the arbitration and protection of the rights of citizens.⁶⁹ In so doing the judiciary advances democratic governance by making sure that no one is above the law and that any abuse of power is checkmated.⁷⁰ In sum, the democratic role of the judiciary is the defence of the principles of democracy and the rights of the citizens.⁷¹ As regards the former, such principles includes, fairness, equality, free speech, representative government, separation of powers, checks and balance,

⁶⁰ Ibid.

⁶¹ Tobi-Aiyemo (n 53).

⁶² Edosa and Fenemigho (n 55).

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Obi Okoye, *Law in Practice in Nigeria Professional Responsibilities and Lawyering Skills* (Enugu: Snapp Press Nig Ltd 2011) 375.

⁶⁷ Quoted by Edvsa and Fenenigbo (n 55).

⁶⁸ Ibid.

⁶⁹ Ebun-Olu Adegboruwa, 'Role of the Judiciary in Development of Democracy' *The Guardian* (Lagos, 3 April 2023) <https://guardian.ng/opinion/role-of-judiciary-in-development-of-democracy> accessed 4 December 2024.

⁷⁰ Ibid.

⁷¹ Tobi-Aiyemo (n 53).

independence of the judiciary, and rule of law.⁷² The latter refers to the basic human rights as stated in the constitution.⁷³ For the judiciary to play these roles creditably and effectively it must be seen to be truly independent.

4. The Independence of the Judiciary

Judicial independence has its jurisprudential foundation in the doctrine of separation of powers.⁷⁴ The modern form of this doctrine was formulated by Baron de Montesquieu when he declares that:

When the legislative and executive powers are united in the same person, or in the same body or Magistrate, there can be no liberty. Again there is no liberty if the judicial power is not separated from the legislature and executive power. Where it is joined with the legislative power, life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Where it is joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything were the same man or the same body to exercise these three powers.⁷⁵

The doctrine of separation of powers as understood by Montesquieu contemplates a democratic setting where the legislature lays down general rules, the judiciary settles disputes between parties by making binding decisions,⁷⁶ and the executive carries out the business of administering the government.⁷⁷ In other words, the legislature makes, the executive administers, while the judiciary interprets the law.⁷⁸ The CFRN 1999 embodies the principle of separation of powers⁷⁹ and by implication, secures, in theory the independence of the judiciary. Section 36(1) of the CFRN 1999 provides that the court should be constituted in such a way as to secure its independence and impartiality. Again the CFRN 1999 makes it clear that the judges are bound only by Constitution and the law.⁸⁰ Judicial independence means that judges freely decide cases brought before them based on the facts of the cases and their understanding of the law;⁸¹ thus, a judge shall not bow to external pressures, improper influences and inducements.⁸² It also means that the judiciary is independent of the other branches of government and has the power to decide all issues of a judicial nature.⁸³

Accordingly, there are two components of judicial independence namely: personal independence and institutional independence.⁸⁴ The former means that the judge is free from external pressures; he has no other master apart from the law and must always act without depending on another.⁸⁵

⁷² Ibid.

⁷³ Chapter IV of the CFRN 1999 (as amended).

⁷⁴ AA Olatunji, 'Securing the Independence of the Judiciary' *The Guardian* (Lagos, 31 January 2023).

⁷⁵ Montesquieu, *De L' Esprit des lois*, 1748 quoted in TB Singh, 'Principle of Separation of Powers and Concentration of Authority' <<https://ijtr.nic.in/articles/art35pdf>> accessed 5 December 2023. Note that Montesquieu's doctrine is not a postulation of impassable barriers and impenetrable frontiers, but one of mutual restraints that came to be known as the principle of checks and balances. See *ibid*.

⁷⁶ GW Paton, *A Text Book of Jurisprudence* (4th edn, Oxford University Press 1972) 330.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ss 4, 5 and 6 of the 1999 CFRN (as amended).

⁸⁰ See Judicial Oath as contained in the Seventh Schedule of the CFRN 1999 (as amended).

⁸¹ Aharon Barak, *The Judge in a Democracy* (Pinceton University Press 2006) 77.

⁸² Ibid.

⁸³ Ibid 78.

⁸⁴ Ibid.

⁸⁵ Ibid.

The later implies that there is a protective wall built around each individual judge, preventing influences from the other branches of government except the usual constitutional imperative of checks and balances.⁸⁶ These two components are cumulative.⁸⁷

The imperative of judicial independence is so central to the sustenance of democracy and the continued survival of an ordered society.⁸⁸ The true beneficiaries of judicial independence are the citizens and not necessarily the judges themselves.⁸⁹ Hence, the fundamental human rights and basic freedom enshrined in the constitution are meaningless and a mere sham unless such rights are guaranteed to them by an independent and impartial judiciary. In the view of Barak, judicial independence is a central feature of any democratic culture and is pivotal to the rule of law, separation of powers and, human rights.⁹⁰ Currently, it is a notorious fact that the Nigeria judiciary is battling in trembled waters. The perception of the citizens is that the judiciary has been hijacked by itself, the politicians, the legislature and the executive alike. These challenges are discussed in the next segment.

5. Public Perception of the Nigerian Judiciary

A comprehensive analysis of the activities of the Nigerian judiciary is beyond the scope of this paper. However, it seems safe to say that, since independence the Nigeria judiciary has done substantial justice even in the face of tyranny and undemocratic rule.⁹¹ For instance the Nigerian judiciary has arguably aided in the promotion of human rights and by extension, the development of the basic assumption and features of democracy.⁹²

In spite of this positive perception of the judiciary in Nigeria, that arm of government has got its legs in the public fire. Thus, after the conclusion of the 2023 general elections, a hashtag emerged and it was titled ‘All Eyes on the Judiciary’. This hashtag was fueled by the series of allegations against the Chief Justice of the Federation, Olukayode Ariwoola. The substance of these allegations is that the Chief Justice was seen disguised in a wheel chair in London in order to have a meeting with Bola Ahmed Tinubu, the acclaimed winner of the 2023 presidential election. However, this was debunked by the spokesperson of the Supreme Court.⁹³ The above allegation coupled with others, made Atiku Abubakar, the presidential candidate of the Peoples’ Democratic Party (PDP) to raise alarm on how the All Progressives Congress (APC)-led Federal Government and Tinubu are determined to influence the decision of the court in their favour.⁹⁴ He also made allusion to the removal of the former Chief Justice of Nigeria, then Justice Walter Onnoghen by the APC- led government in 2019, when they perceived he was not ready to do their bidding.⁹⁵ This made Atiku therefore to conclude that:

⁸⁶ Ibid 80.

⁸⁷ Ibid 78.

⁸⁸ Murtala Aminu, ‘Judicial Powers and Its Independence’ in MM Gidado and others (eds.), *Nigeria Beyond 1999: Stabilizing the Polity through Constitutional Re-engineering* (Enugu: Chenglo Limited 2004) 119.

⁸⁹ Ibid.

⁹⁰ Barak (n 82) 76.

⁹¹ Adegboruwa (n 69).

⁹² Ibid.

⁹³ Louis Achi ‘Judiciary: Is Democracy under Threat?’ *This Day* (Lagos, 7 July 2023) <https://www.thisdayhive.com/index.php/2023/07/30/judiciay-is-democracy-under-threat> accessed 9 December 2023.

⁹⁴ Ibid.

⁹⁵ Ibid.

*The plot of the APC is simple: intimidate the judiciary, threaten the judges with arrest so that they will bow to their will. This is a playbook from 2019 when they removed CJN and then replaced him with Tanko Muhammad who himself was later accused of corruption by his colleagues at the Supreme Court and he resigned shamefully.*⁹⁶

Such allegations and indeed public perception of the judiciary in Nigeria coupled with some other events like the cases of *Senator Hope Uzodimma & Anor v Rt Hon Emeka Ihedioha and 2 Ors*,⁹⁷ *All Progressive Congress v Bashir Machina and Ors*,⁹⁸ and *All Progressive Congress v Udom Ekpoudom*⁹⁹ have really brought the Nigeria judiciary in the eyes of the storm. For the ordinary citizens for whom the judiciary should be their last hope, that arm of government is seen as being corrupt, kidnapped by the politicians, lacking in independence, impartiality and infected with trust and confidence deficits among other vices. A detailed review of this perception follows below.

5.1 A Corrupt Judiciary

For Olatunji, the 'Nigerian judiciary is at crossroads, and has been unable to cross the 'Red Sea' of corruption'.¹⁰⁰ The word corruption is derived from the Latin word '*corruptus*' which means to abuse or destroy. Thus, corruption is the state of being or becoming decayed, deteriorating or spoiling.¹⁰¹ The *Black's Law Dictionary* defines corruption as 'The act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others, a fiduciary's or official's use of a station or office to procure some benefit either personally or for someone else contrary to the rights of others'.¹⁰² Therefore, corruption is a type of behaviour which is inconsistent with one's normal duties as a public official due to personal interest. Such private interests include certain pattern of behaviours such as bribery, nepotism, misappropriation of public funds and so forth.¹⁰³

The judicial arm of government for a long time has been drawn into this social menace of corruption and has been 'deeply engrossed in excessive acts of corruption, impropriety and mismanagement of public fund'.¹⁰⁴ The depth of corruption in the Nigerian judiciary is summed up

⁹⁶ See statement made by Atiku Abubakar in Tunde Opalana, PEPC: Atiku raises Alarm of Alleged Sinister Plot by APC to Intimidate Judiciary *Daily Times* 9 (Lagos), 23 July 2023 <https://dailytimesng.com/pepc-atiku-raises-alarm-of-alleged-sinister-plot-by-apct-to-intimidate-judiciary/> assessed 11 December 2023.

⁹⁷[2020] LPELR-50260 (SC) 1. It is difficult to see how the Supreme Court arrived at its decision to declare the appellant, winner of the said election. This is because the total number of accredited votes by INEC is 823,743 while the total number of votes allocated to each candidate at that election by the Supreme Court is 927,630. Common sense would have prevailed in ordering for a re-run-

⁹⁸ [2022] SC/CV/1689. See FA Nwodo, SN Anya, I Chime and CO Amucheazu, 'All Progressives Congress v Bashir Sheriff and Others: The Conflict between Legal Technicalities and Justice' *Journal of African Law* (Accepted 18 April 2024) (2025), 1-10 Doi:10.1017/S0021855324000342, which finds that the decisions in this case and the one that follows it were decisions based on technical justice rather than substantive justice.

⁹⁹ (2022) SC/ CV/ 1476.

¹⁰⁰ Olatunji (n 75).

¹⁰¹ *The New Webster Dictionary of English Language* (International Edition) 219 in Chukwunonso Okafo, John Funsho Olorunfeni and Adrian Osuagwu, 'Analyzing the Effectiveness of Relevant Laws and Crime Control Theories in the Fight against Corruption in Nigeria (46th Annual Conference of the Nigerian Association of Law Teachers, Ilorin Nigeria, April 2013).

¹⁰² BA Garner (ed), *Black's Law Dictionary* (7th edn, St Paul Minnesota: West Group 1999) 348.

¹⁰³ J S Nye, 'Corruption and Political Development: A Case Benefit Analysis' in Okafo, Olorunfemi and Osuagwu (n 102).

¹⁰⁴ Wahab Egbewole and Ibrahim Imam, 'Nigerian Judiciary and the Challenges of Corruption: Islamic Options as Panacea' (2015) I(1) *Journal of Islam in Nigeria* 84, 87.

in a report titled ‘Nigerian Corruption Index: Report of a Pilot Survey’.¹⁰⁵ In that report, 901 respondents were surveyed. Out of this 901 respondents 638 (70.81%) were lawyers, 124 (13.76%) were judges and 25 (2.77%) were court staff, while 114 respondents did not state their roles.¹⁰⁶ The money involved in this judicial corruption could be categorized as money demanded, offered or paid.¹⁰⁷ Such demands were either made by judges or other court officials, while lawyers and litigants paid bribes.¹⁰⁸ Further, the report stated that the total sum of money corruptly demanded by the justice sector and the actual amount offered and paid between 2018-2020 was nine billion, four hundred and fifty seven million, six hundred and fifty thousand Naira only (₦9,457,650,000.000).¹⁰⁹ Finally the survey indicated that 78 of the 901 respondents in the justice sector reported their personal experience in offers and payment of bribes to manipulate the judicial process.¹¹⁰ Against the above background, the stench coming out from the quantum of corruption in the judicial sector is mind-boggling.¹¹¹ The damaging and destructive effect of a corrupt judiciary was succinctly captured by justice Uwaifo in his valedictory speech. Thus, he declares:

*A corrupt judge is more harmful to the society than a man who runs amok with a dagger in a crowded street. He can be restrained physically. But a corrupt judge deliberately destroys the moral foundation of society and causes incalculable distress to individuals through abusing his office while still being referred to as ‘honourable’. It is difficult to bring him to account under our system.*¹¹²

Accordingly, a corrupt judiciary is an affront to various international and regional human rights instruments that are testamentary to the fundamental rights of everyone to due process of law which includes the right to fair hearing by an independent and impartial arbiter,¹¹³ and the procedural equality of parties otherwise known as equality of arms.¹¹⁴ Judicial corruption adversely affects the outcome of the judicial process, rendering judicial decisions unfair and unpredictable, while making mockery of the rule of law.¹¹⁵ Once a judge is bribed or corrupted by the offer and acceptance of monetary inducements, one of the elements of fair hearing, equality of arms is vitiated.¹¹⁶ A judge who demands bribe from a litigant ceases to be independent, impartial and fair.¹¹⁷ The one who has given bribe or the person who gives a bigger bribe assumes a privileged

¹⁰⁵ The methodology was experience-based rather than perception-related question of corruption as measured from a scale of 0 to 100, with 0 representing ‘Absolutely not corrupt and 100 indicating Absolutely corrupt’. See Kunle Sanni, ‘At least 9.4bn paid as Bribes for Justice in Nigeria in Two year *Premium Times* (Abuja 26 December 2020 <https://www.premiumtimes.com/news/headlines/433257-atleast-ng-4bn-paid-as-bribe-for-justice-in-nigeria-in-two-years>)> assessed 11 December 2024.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Olatunji (n 75).

¹¹² See excerpts from the 2004 valedictory speech of retired Justice Odemwengie culled from Vanguard (Lagos 2 December 2023 <https://www.vanguard.com/2023/12/may-the-s-court-never-become-an-undergrowth/>) accessed 10 December 2024.

¹¹³ Egbewole and Imam (n 105) 89.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ SB Lugard, ‘Judicial Corruption as a Self-Inflicted Impediment to the Independence of the Judiciary in Nigeria (2017) 4 *Kas African Law Study Library* <https://www.nomoselibrary.de/10.5771/2363-6262-2017-3-310.pdf?download-full-pdf> assessed 10 December 2024.

position in relation to others who have not offered or who offered something less.¹¹⁸ The attainment of the privileged status and the concomitant discriminatory tendency on the part of judicial sector makes nonsense of objectivity and neutrality in the administration of justice.¹¹⁹ The whole process becomes a sham, leaving the judiciary in a kidnapped state.

5.2 A Kidnapped Nigerian Judiciary

The Nigerian Corruption Index: Report of a plot survey which ranges from 2018-2020 placed the Nigeria judiciary at the pinnacle of the Nigeria corruption index. This report was released by the Independent Corrupt Practices and other related Offences Commission (ICPC).¹²⁰ This report shows that the Nigerian judiciary is grossly corrupt. A corrupt judiciary is a kidnaped judiciary. The kidnapping of the Nigerian judiciary is both extraneous and self-inflicted. As regards the former, the boldness or temerity with which politicians and the rich always shout ‘go to court’, is indicative of the fact that the judiciary is at their beck and call. Thus, an East African proverb puts it succinctly that when a criminal encourages you to approach the services of a court, be sure that his relative is the arbiter. Such effrontery implies that the ‘criminal’ has the capacity and wherewithal to influence and buy over the judge. Indeed, the judge is under his custody and payroll, willing to do his bidding. His release is only possible on payment of a ransom which is the delivery of a judgment that is favourable to him. This becomes ‘justice’ under the banner of trade by barter. For Olumide Akpata, there is calculated attempt by the political class to capture the Nigerian judiciary, and this plot is already yielding visible results.¹²¹ Such judicial capture by politicians has devastating implications for the rule of law. Hence at the moment, there is almost a total trust deficit in the Nigerian judiciary.¹²²

As regards the kind of kidnap that is self-inflicted, it is a notorious fact that appointments into sensitive judicial positions are based on biological or friendly relationships. In the words of Chidi Odinkalu, appointments of judicial officers ‘has become a pattern of diversion and capture of high judicial office in Nigeria by a mutually sustaining incest of political and judicial insiders, mostly connected through bloodlines, personal favours or genital relations.’¹²³ Corroborating Odinkalu, Itse Saga maintains that the relations especially sons and daughters of serving and retired judges and justices are preferable candidates for sensitive judicial offices to other more qualified and suitable candidates who have nobody of such status to support and back them.¹²⁴ Thus, merit is sacrificed at the altar of biological and genital relationship, leading to a judiciary lacking in independence.¹²⁵

5.3 A Judiciary Lacking in Independence

A corrupt and kidnapped judiciary can never be independent. For democracy in Nigeria to thrive, the judiciary as an important element in constitutional democracy must be independent. The independence of the judiciary is not negotiable in constitutional democracy and it is arguably the

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Sanni (n 106).

¹²¹ Business Day Ng, ‘Olumide Akpata Enumerates Three-pronged Strategy to Decimate Nigerian Judiciary’ <https://businessday.ng/news/legal/article/olumide-akpata-enumerates-three-pronged-strategy-to-decimate-nigerian-judiciary> assessed 11 December 2024.

¹²² Ibid.

¹²³ C A Odinkalu, ‘A Captured Temple of Justice’ *Premium Times* (8 October 2023) <https://www.premiustimesng.com/opinion/631725-a-captured-temple-of-justice-by-chidi-anselm-odinkalu.html> assessed 11 December 2024.

¹²⁴ Quoted by CA Odinkalu, *ibid*.

¹²⁵ For a detailed account of appointment of judicial officials based on biological connections and other extraneous factors rather than merit, see Odinkalu, *ibid*.

most important element of the concept of the rule of law.¹²⁶ All other components of the rule of law rest on judicial independence.¹²⁷ Hence, equality before the law, access to justice, human rights and predictability of the judicial process will have no meaning if the integrity of the court and its power to settle disputes are compromised and jeopardized.¹²⁸ At the risk of repetition, judicial independence implies institutional independence and personal independence. The former implies that the judicial arm of government must be run in an independent manner.¹²⁹ Hence it must not be on an extension of the executive branch, subject to the whims and caprices of the executive arm of government.¹³⁰

In Nigeria, the politicians are aware that the judges and not the electorate decide elections. This realization has caused the politicians to start planting their daughters, wives and mistresses into juicy judicial positions.¹³¹ The CFRN 1999 (as amended) has vested appointment of judicial officers in the National Judicial Council (NJC).¹³² However, there is lack of clarity on the criteria of such appointments aside the post-call qualification experience.¹³³ This lack of clarity has resulted to intense lobbying since the decision to nominate or not to nominate a person either for appointment or promotion is whimsical and capricious.¹³⁴ Based on this, most appointments are not meritorious.¹³⁵ Such appointments that are based on intense lobbying and power of connection cannot produce judicial officers that are independent.¹³⁶

With regard to personal independence, this implies independence from relatives and friends; independence from litigating parties and the public; independence from fellow judges.¹³⁷ A graphic illustration or instance of lack of personal independence is the testimony of an outgoing senator of the ninth National Assembly. During a valedictory session for the ninth National Assembly, Senator Adamu Bulkachuwa made public how he influenced his wife, Justice Zainab Bulkachuwa while serving as a judge and President of the Court of Appeal to dispense justice not according to law and facts but based on favouritism.¹³⁸ He equally admitted to have encroached on his wife's judicial independence so as to exploit the judicial process in favour of his friends and colleagues.¹³⁹ With such revelations, one is not left in doubt as to what transpired in the numerous cases she presided over and decided.¹⁴⁰ This is the 'Bulkachuwaisation'¹⁴¹ of the independence of the Nigerian judiciary. This voluntary confession by the husband of the president of the Court of

¹²⁶ Lugard (n 118).

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Barak (n 82) 80.

¹³⁰ Ibid.

¹³¹ CA Odinkalu, 'The Untold Story of Nigeria's Judiciary' *Business Day* (Lagos, 24 November 2023) <https://businessdaysin/opinion/article/the-united-story-of-nigerias-judiciary-by-odinkalu> assessed 11 December 2024.

¹³² See Art 20 of the Third Schedule of the CFRN 1999.

¹³³ Lugard (n 118).

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Barak (n 82) 78.

¹³⁸ Ejiiofor Alice and Wale Igbintade, 'Confession that Explodes Rot in Judiciary' *This Day* (Lagos, 11 December 2023) <https://www.thisdaylive.com/index.php/2023/06/18/confession-that-exolveves-rot-judiciary> assessed 11 December 2024.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Chiedu Okoye, 'Bulkachuwaisation of our Judiciary and Nigeria's Culture of Corruption', *Vanguard Newspapers* (Lagos, 29 June, 2023) <https://ww.vanguardngr.com> Accessed on 11 December 2024.

Appeal is testamentary to the fact that Nigeria's judicial system is neither independent nor impartial.¹⁴² It indicates that Nigeria's temple of justice is populated with corrupt personnel.¹⁴³ Thus, it is safe to conclude that the Nigerian judiciary has a trust and confidence deficit.

6. Conclusion

One of the important roles of the judiciary is the interpretation of statutes. In the performance of this role, the judges intend to arrive at justice which must be done though the heavens may fall. All the canons of interpretation therefore, are geared towards the attainment of substantial justice which is the goal of judicial activism. Hence the judiciary is enjoined not to sacrifice substantial justice at the altar of technicalities. Judges and justices do not live in isolation. They are members of the society. In the resolution of disputes before them, judges must be abreast of the positive values of the society in which they live even if these values are contrary to theirs. In this way judges become witnesses to the truth as reflected in the society, thus promoting the social order. As an important arm in a constitutional democracy, the judiciary should be populated with personnel of high moral probity. The body responsible for the appointment and promotion of judges which is the National Judicial Commission should make sure that such appointments and promotions are merit-based. Any judge or justice or other support staff who falls below the standard of what is permissible by law and code of conduct of judicial officers and other rules of engagement should be adequately punished. This will go a long way to deter future offenders. The judiciary as a matter of urgency should refrain from this new trend of usurping the right of the electorates in choosing their leaders. Cancellation and allocation of votes to contestants should not be part of the duty of the judiciary. Thus, it is recommended that the courts in most electoral cases should order a re-run instead of declaring winners. This is the work of the electoral umpires subject to the votes of the electorates.

In conclusion, constitutional democracy, as practiced in Nigeria, places the judiciary as an important branch or arm of government. For democracy to thrive in Nigeria, the judiciary must not be seen as an appendage to any arm of government. A vibrant, fearless, independent and incorruptible judiciary that has no master except the law and facts is therefore a necessary ingredient for a sound democracy. The personnel in that arm of government should, like Caesar's wife, be above board. The realization of all the assumptions and features of democracy such as respect for human rights and fundamental freedoms, equality before the law, morality, representative government, rule of law and so forth, are possible only with a judiciary that is impartial and independent, and has little or no credibility and confidence deficit. Only in this sense can the judiciary be the last hope of the common man.

¹⁴² Ibid.

¹⁴³ Ibid.