

INDEPENDENCE OF THE JUDICIARY: THE NIGERIAN EXPERIENCE

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Abstract

The independence of the judiciary is one topic which is recurrent in the Nigerian legal jurisprudence. There are controversies surrounding the extent of the independence of the judiciary in Nigeria especially in the light of recent happenings with respect to the office of the Chief Justice of Nigeria (CJN). These recent events have necessitated a critical evaluation of the judiciary and its independence. Thus, this article will highlight the structure of the judiciary and the role of the judiciary under the Constitution of the Federal Republic of Nigeria 1999 (as Amended). The research will appraise the extent to which the independence of the judiciary has been secured and/or violated. More so, a brief recourse will be had to the practice in some foreign jurisdiction and how if necessary, the Nigerian judiciary can be improved learning from such foreign jurisdictions. Recommendations will be given as part of the conclusion of the study.

Keywords: Independence, Judiciary, Judge, judicial independence, Jurisprudence

1. Introduction

The trio of the Executive, Legislature and Judiciary form the three arms of government. The Judiciary is the third arm but not the least of government as it occupies the cardinal role of interpreting and giving effect to the laws enacted by the Legislature on the one hand, and on the other hand, interprets and pronounces upon the validity or nullity of the actions of the Executive. For this arm of government to be able to carry out its functions and responsibilities effectively and efficiently, it must enjoy independence and autonomy. Independence of the judiciary is the principle of law which stipulates that the judiciary should be autonomous, that is to say, the judiciary should be independent of the other arms of government to wit: the Executive and the Legislature.

This doctrine stems from the age long principle of Separation of Powers in any given government. This doctrine requires that the powers or functions of

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government are separated and carried out by different institutions and personnel. The doctrine of separation of powers was introduced by Britain following the struggle for power in England between the parliament and the monarchy within the period 1642 and 1660.² Scholars reputed to have contributed greatly to the expounding and expansion of this doctrine were John Locke, a British philosopher and Barron de Montesquieu, a French philosopher. John Locke in his “Second Treatise of Civil Government” written in 1690 focused on the difference between legislative and executive powers and emphasised the need for the different powers of government to be kept separate from one another, being that these powers are exercised by distinct arms and as such none of the arms should exercise overriding influence on the other.³ He went further to note that it would be rash to concentrate the power of executing the law also on the law makers as in so doing, the law makers might exempt themselves from obedience and suit of the law.⁴ Locke further identified the need for separation of powers clearly thus;

It may be too great a temptation of human frailty for the same persons who have the power of making laws to have also in them the power to execute them, whereby they may exempt themselves from obedience to the laws they make and suit of the laws, both in its making and execution, to their own private advantage and thereby come to have distinct interest from the rest of the community contrary to the end of society and government...⁵

Several decades after Locke’s work on the doctrine of separation of powers, Baron de Montesquieu in his work, “The Spirit of the law” written in 1748 also articulated the details and fundamentals of the doctrine of separation of powers.⁶ Montesquieu

² A Moses, ‘Separation of Powers in the Local Government: The Legislative Experience’ in O Tony, (2011) (ed.) *Key Issues In Local Government and Developments: The Nigerian Perspective*: Enugu: Praise House Publishers.

³ K Beetsch, and A Echikwonye, ‘Separation of Powers and Sustainability of Democracy in Nigeria: A Challenge’ (2011) *Journal of Social Science and Public Policy*, 3.

⁴ Ibid.

⁵ As quoted in U Otobasi, ‘The Legislative Arm in the Third Tier of Government Framework: Functions and Inter Relations’ in BI Ugwuanyi, LO Nworji and AA Oruebuor, ‘Effecting Checks and Balances of Powers in the Local Government system in Nigeria: A critical discourse on the experience and the implications for good governance’ (2015) *Journal of Policy and Development Studies*, 9(5) 11-23 @ 542 < https://www.arabianjbm.com/JPDS_index.php> accessed on 16 July 2019.

⁶ A Appodarai, *The Substance of Politics*. New Delhi: Oxford University Press, 1968) as cited in BI Ugwuanyi, LO Nworji and AA Oruebuor, ‘Effecting Checks and Balances of Powers in the Local

in expounding the doctrine of separation of powers drew a connection between this doctrine and the principles of liberty and the rule of law.⁷ He was of the opinion that concentration of powers in one arm of government would render the citizens subject to the arbitrary and capricious will of the rulers, a condition manifestly contrary to the rule of law and, also a threat to civil liberty. In this regard, Baron de Montesquieu, opined thus;

...Constant experience shows us that every man invested with power is likely to abuse it and carry his authority as far as it will go. To prevent this abuse, it is necessary from the nature of things that one power should be a check on another. When the legislative and executive powers are united in the same person or body, there can be no liberty...⁸

This doctrine is regarded as one of the most fundamental tenets of liberal democracy and is seen as a basic condition for good governance. Its existence is also necessary for preserving the liberty of the individual, for avoiding tyranny and corruption which prone to breed where there is fusion/concentration of powers in one arm of government.⁹

2. The Structure and Role of the Judiciary in Nigeria

In the Nigerian federation where democracy is practised, the doctrine of separation of powers among the three arms of government is a fundamental constitutional principle and applies at both the federal, the state and the local government tiers. Sections 4, 5 and 6 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) prescribes the legislative, executive and judicial powers respectively. Section 4(1) states thus:

- (1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives.
- (2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any

Government System in Nigeria: A critical discourse on the experience and the implications for good governance' (2015) *Journal of Policy and Development Studies*, 9(5) 11-23 < https://www.arabianjbm.com/JPDS_index.php > accessed on 16 July 2019.

⁷ A Moses, *opcit.*

⁸ U Otobasi *opcit.*

⁹ F Ogoloma, 'The Theory of Separation of Powers in Nigeria: An Assessment' (2012) *African Research Review*, 6(3), 26-39

matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

Section 5(1) provides for the powers of the Executive both at the Federal level and the State level thus:

- (1) Subject to the provisions of this Constitution, the executive powers of the Federation:
 - (a) shall be vested in the President and may subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice-President and Ministers of the Government of the Federation or officers in the public service of the Federation; and
 - (b) shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws.

- (2) Subject to the provisions of this Constitution, the executive powers of a State:
 - (a) shall be vested in the Governor of that State and may, subject as aforesaid and to the provisions of any Law made by a House of Assembly, be exercised by him either directly or through the Deputy Governor and Commissioners of the Government of that State or officers in the public service of the State; and
 - (b) shall extend to the execution and maintenance of this Constitution, all laws made by the House of Assembly of the State and to all matters with respect to which the House of Assembly has for the time being power to make laws.

Section 6 provides for judicial powers of the federation and the States thus:

- (1) The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.
- (2) The judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State.

3. Who and what is the Judiciary?

Judiciary is the part of a country's government that is responsible for its legal system, including all judges in the country's courts.¹⁰ Judiciary is broadly made up of the lawyers, judges and other officers charged with the responsibility of

¹⁰ Cambridge Dictionary, meaning of judiciary in English
< <https://www.google.com/amp/s/dictionary.cambridge.org/amp/english/judiciary> > accessed on 10 June 2019.

advocating and interpreting the law as well as aiding the legal process of the law. However, for the context of this study, judiciary may be said to comprise the Judges at every level of the Court system, from the High Court Judges to the Judges of the Court of Appeal to the Supreme Court Justices.

The judicial powers of the judiciary is stipulated in Section 6(6)(a) to extend to all inherent powers and sanctions of a court of law, notwithstanding anything to the contrary in the constitution. This shows the great importance of the powers of the judiciary such that nothing can rid the court of law of its powers and sanctions. Additionally, judicial power shall extend, to all matters between persons, or between government or authority and to any persons 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.¹¹

There are constitutional limitations however to the exercise of judicial powers by the Courts of law; except as otherwise provided by this Constitution, judicial powers shall not extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.¹² This is the non-justiciability clause in the Constitution. This clause has raised so much controversy, but this is not the focus of this present research. More so, judicial powers shall not, as from the date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966 for determining any issue or question as to the competence of any authority or person to make any such law.¹³

The role of the judiciary is that of interpretation of the law primarily. Judges do not make laws strictly speaking. However, under judicial activism, judges have been known to make laws as a consequence of discharging their responsibility of interpreting the law. This is confirmed in the Latin maxim; *Judicis est jus dicere non dare* which translated means that it is for the judge to declare the existing law and not make one. The Supreme Court in *Okumagba v Egbe*¹⁴ validated this principle when it held thus:

¹¹ Section 6(6)(b)

¹² Section 6(6)(c)

¹³ Section 6(6)(d)

¹⁴ (1965) 1 ALL NLR 62.

Feeling that the appellant deserve to be punished, the chief magistrate replaced the word “another candidate” by the words “any candidate” and thus enable himself to punish the appellant. In effect, he amended the regulation, but amendment is the function of the legislature and the courts cannot fill the gap which comes to light by altering the words of a regulation to make it read in the way he thinks it should have been enacted. As Lord Bacon said in his essay on Judicature, the office of a judge is *jus dicere non jus dare* to state the law not to give law, and the court below should not have gone in for judicial legislation¹⁵

4. Judicial Independence in Nigeria

This section of the study will commence by looking at what is judicial independence. Judicial independence is the principle which stipulates and ensures that judges are not subjected to pressure and influence when adjudicating matters and are free to make impartial decisions based solely on fact and law. In an article published in 2003, the then Chief Justice of the Wisconsin Supreme Court, Shirley Abrahamson wrote:

(T)he term judicial independence embodies the concept that a judge decides cases fairly, impartially, and according to the facts and law, not according to whim, prejudice, or fear, the dictates of the legislature or executive, or the latest opinion poll....

Judges are constrained to maintain judicial independence by the law, their legal training, their expectations, and the judicial culture. The judicial culture and judicial education treasure intellectual honesty, fair and principled decisions, and rising above partisanship and the political moment.

Judicial independence is also safeguarded by statutes and ethical codes requiring judges to conform to high standards and to disqualify themselves from sitting on cases in which their impartiality would be questioned. Judicial discipline commissions and the courts can discipline judges for violations of these codes...

¹⁵ Bairamin FJ at p.65

A judge needs courage. Judges with courage resist threats to judicial independence and actively advocate judicial independence. Those lacking courage should neither apply nor run for the office. We must foster a culture that supports and rewards courageous judges.¹⁶

Additionally, in *Scott v Stansfield*,¹⁷ Justice Baron rejected an action for slander made out against a judge relying on this statement of law:

It is essential in all courts that the judges who are appointed to administer the law should be permitted to administer it under the protection of the law, independently and freely, without favor and without fear. This provision of the law is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence, and without fear of consequences.¹⁸

The very important position occupied by the judiciary in the Nigerian jurisprudence is buttressed by the Constitution where it provides that save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.¹⁹ This means that no law can be made to purportedly oust the jurisdiction of a court of law.

4.1. What then are the attributes of an independent judiciary?

An independent judiciary is determined by the mode of appointment of judges, the mode of removal of judges, the remuneration of judges, security of tenure, freedom from political interference, among others. These attributes will be discussed in further details with relation to the Nigerian constitution and experience.

¹⁶ SS Abrahamson, 'Thorny Issues and Slippery Slopes: Perspectives on Judicial Independence' (2003) 64 *Ohio st. L.J.* 3

¹⁷ [1868] L.R. 3 Ex. 220

¹⁸ *Ibid.*

¹⁹ Section 4(8)

4.1.1. Appointment of Judges.

The office of a Judge is one that requires utmost integrity, honesty and ... as such, the process of appointment of judges is a very thorough, transparent and corrupt-free one ideally. The importance of appointing persons of reputable character to the office of a judge has been captured in an article by a legendary jurist; Oputa JSC thus:

... No one should go to the bench to amass wealth, for money corrupts and pollutes not only the channels of justice but also the very stream itself. It is a calamity to have a corrupt judge. The passing away of a great advocate does not pose such public danger as the appearance of a corrupt judge on the bench, for in the latter instance, the public interest is bound to suffer and elegant justice is mocked, debased, depreciated and auctioned. When justice is bought and sold, there is no more hope for society. What our society need is an honest, trusted and trustworthy Judiciary.²⁰

A thorough reading of the sections of the Constitution on the appointment of judges reveals two modes of appointment of Judges namely:

(i) The first mode of appointment is by the President or Governor acting on the advice of the National Judicial Council and subject to confirmation by either the Senate or the House of Assembly of a State as the case may be. The judicial officers appointed this way are the Chief Justice of Nigeria, Justices of the Supreme Court of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court, Chief Judge of The High Court of Justice FCT Abuja, Chief Judge of State High Court, Grand Khadi of the Sharia Court of Appeal FCT Abuja, Grand Khadi Sharia Court of Appeal of States, President of the Customary Court of Appeal FCT Abuja, President of the Customary Court of Appeal of a State²¹ and President of the National Industrial Court. The real makers of the appointment appear to be the National Judicial Council.

(ii) The second mode of appointment is by the President or Governor acting on the recommendation of the National Judicial Council. No confirmation by either the

²⁰ C Oputa, "Judicial Ethics, Law, Justice and the Judiciary", *A Journal of Contemporary Legal Problems* 1(8)

²¹ Sections 231(1), 231(2), 238(1), 250(1), 256(1), 271(1), 261(1), 276(1), 266(1), 281(1) of the CFRN 1999 respectively.

Senate or House of Assembly is required. Judicial officers appointed by this mode are: Justices of the Court of Appeal, Judges of the Federal High Court, Judges of the High Court of Justice FCT Abuja, Judges of the High Court of Justice of States, Khadis of the Sharia Court of Appeal FCT Abuja, Khadis of the Sharia Court of Appeal of States,⁵³ Judges of the Customary Court of Appeal FCT Abuja, Judges of the Customary Court of Appeal of States²² and Judges of the National Industrial Court.

From the provisions of the foregoing sections of the Constitution, it is evident that appointment of judges in Nigeria is a power exercised by either the President or the Governor of a state. The confirmation by the Senate or House of Assembly is also required for some categories. The question becomes: who are these persons charged with power to appoint judges? The answer is: they are Politicians. The implication of this is not far-fetched. Can the judiciary be said to be truly independent when the Judges are appointed by the Politicians in power? Would the Judges dispense fair and just judgment especially when it concerns the actions of the government which appointed them? The answer to all these questions point to the negative.

4.1.2. Removal of Judges

Section 292 of the Constitution clearly stipulates thus:

A judicial officer shall not be removed from his office or appointment before his age of retirement except in the following circumstances –

- (a) in the case of –
 - (i) Chief Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court, Chief Judge of the High Court of the Federal Capital Territory, Abuja, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and President, Customary Court of Appeal of the Federal Capital Territory, Abuja, by the President acting on an address supported by two-thirds majority of the Senate.
 - (ii) Chief Judge of a State, Grand Kadi of a Sharia Court of Appeal or President of a Customary Court of Appeal of a State, by the Governor acting on an address supported by two-thirds majority of the House of Assembly of the State, Praying that he be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct;

²² Sections 238(2), 250(2), 256(2), 271(2), 261(2), 276(2), 266(2), 281(2) of the CFRN 1999 respectively.

- (b) in any case, other than those to which paragraph (a) of this subsection applies, by the President or, as the case may be, the Governor acting on the recommendation of the National Judicial Council that the judicial officer be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct.

The foregoing power of removal of judges by the President or the Governor of a state with support by members of the Senate or House of Assembly raises the same questions asked above with respect to their appointment. These powers granted to Politicians to appoint and remove Judges all go to rob the judiciary of its independence.

4.1.3. Remuneration of Judges

The remuneration of Judges in Nigeria has seen great improvement over the years. Judges are also entitled to receive bonuses, allowances and other benefits from the state by virtue of their positions. These welfare packages for Judges do not however extend to their counterparts; the Magistrates and Judges of Customary courts, Area Courts and Sharia Courts who are omitted from the classification and definition of judicial officers and receive meagre salary and allowances as remuneration for the enormous work they do. This discrimination is unfounded in that Magistrate courts, Customary, Area and sharia Courts all handle as many cases as the Superior Courts of record, occupy same positions as arbiter in the temple of justice and dispense justice accordingly.

4.1.4. Budget and Allocation of funds

The Federal Government of Nigeria and State Governments are usually involved in the budget process and allocation of funds to the Courts in Nigeria. This again raises the issue of the extent of judicial independence in Nigeria. This is because unrestrained domination of one arm of government over the other can produce impaired budgetary allocation process. This is usually a challenge in Nigeria where the government ignores and flouts express constitutional provisions in this regard especially the Governors of the States. With respect to capital expenditure for state judiciaries, the constitution provides thus: “Any amount standing to the credit of the Judiciary in the Consolidated Revenue Fund of the State shall be paid directly to the heads of the Courts concerned.”²³ This provision is often disregarded and breached by the State Government most especially where the head of Court within

²³ Section 121(3) CFRN 1999 (as Amended)

the state is not in good terms with the Governor of the State.²⁴ Such inadequate budgetary allocation gives rise to disastrous situation for the Judiciary. Absence of funds can cause lack of maintenance of structures like court halls, chambers, registries and offices for supporting staff etc. All these affect the efficiency of the Courts and the quality of justice dispensed.

4.1.5. Political and other interference

Most times, there is perceived and often real interference from the Executive arm, the Legislature and other quarters. All these interferences be they political, social or otherwise all affect the independence of the judiciary greatly. No wonder the immediate past Chief Justice of Nigeria (CJN), Justice Walter Onnoghen, while in office expressed his displeasure over what he described as politicians 'undue interference in the process of judges' appointment. He lamented that the current system of judges' appointment in the country is such that the governor of a state does not allow the names of persons nominated for judicial appointment to be sent to the National Judicial Council for scrutiny if the names of the governor's candidates are not included on the list.²⁵The consequence, the Chief Justice (Emeritus) said, is that the nation's Judiciary is populated by men and women highly deficient in integrity and job performance. The CJN's outburst is a reminder of the nominal role the National Judicial Council (NJC) plays as the apex body of the nation's judiciary despite that it is one of the agencies of government created by virtue of Section 153 of the 1999 Constitution (as amended).²⁶

5. The Nigerian Experience

Four events out of many come to mind here to once again mirror the concept of independence of the judiciary and evaluate same. The first is the intricate drama between the former Chief Justice of Nigeria, Justice Aloysius Katsina Alu and the suspended President of the Court of Appeal, Justice Ayo Isa Salami. The then President of the Court of Appeal (PCA) Justice Ayo Isa Salami was suspended by the National Judicial Council over his refusal to apologise to the NJC and the then Chief Justice of Nigeria, Justice Aloysius Katsina Alu. The then President of the Court of Appeal (PCA) Justice Ayo Isa Salami was later compulsorily retired by the then President Goodluck Jonathan who acted under his constitutional authority.

²⁴ Ibrahim Abdullahi, "Independence of The Judiciary In Nigeria: A Myth Or Reality?" (2014) *International Journal of Public Administration and Management Research (IJPAMR)*, 2(3), 55-66 <<http://www.rcmss.com>> accessed 15 July 2019. 55

²⁵ Editorial, 'Judges And Independence of The Judiciary', *Leadership Newspaper*, 16 June 2018. <<https://www.leadershipnewspaper.com>> accessed 15 July 2019.

²⁶ Ibid.

Subsequently, Justice Isa Ayo Salami was recalled from suspension by the NJC which suspended him but the President refused to approve the acts of the NJC. That scenario raised serious questions concerning the partisan nature and level of independence within the Nigerian Judiciary.

The other event is the very recent saga surrounding the retirement of the immediate past Chief Justice of Nigeria, Chief Justice Walter Onnoghen, who was suspended on 25 January 2019.²⁷ The trial and decision of the Code of Conduct Tribunal on the charge of non-disclosure of assets against the former CJN is one that till today brings up several controversies when being discussed. The Independent UN Special Rapporteur on the Independence of Judges and Lawyers, Diego Garcia-Sayán while commenting on the dismissal of Nigeria's Chief Justice stated that such executive action constitutes a grave attack on judicial independence from the State. He further expressed dismay at the warning of "threats, pressures and interferences" made against the lawyers defending the then CJN. The Independent UN human rights expert noted thus:

"International human rights standards provide that judges may be dismissed only on serious grounds of misconduct or incompetence," he said. "Any decision to suspend or remove a judge from office should be fair and should be taken by an independent authority, such as a judicial council or a court."²⁸ According to Mr. Garcia-Sayán, who reports to the UN Human Rights Council, the decision to replace Chief Justice Onnoghen with Ibrahim Tanko Mohammad was taken by Nigeria's President, Muhammadu Buhari, who insisted he had "acted in compliance" with an order issued by a tribunal to decide on alleged breaches of the code of conduct for public officials.

The third is the recent happenings in Kogi State where the State Governor had tried severally to remove the Chief Judge of the State for no just cause. The Governor had attempted to achieve his ploy through the Kogi State House of Assembly. The Chief Judge thus filed an action at the High Court for the court to determine whether the executive and legislature have the power to remove him. A Kogi High Court sitting on the matter ruled that both the Executive and the Legislature cannot

²⁷J Ogunye, 'Analysis: suspension of CJN Onnoghen: An illegal executive coup against a recalcitrant chief judicial officer' Premium Times, January 26, 2019. <<https://www.premiumtimesng.com>> accessed 15 July 2019.

²⁸ *ibid*

remove Justice Nasir Ajanah, the Chief Justice of the State, without the recommendation of the NJC.²⁹ The presiding Judge, Omolaye-Ajileye held thus:

By item 21 of the Third Schedule to the 1999 Constitution (as Amended), the National Judicial Council (NJC) is the body empowered to exercise disciplinary control over all Judicial Officers of Nigeria. It is also the NJC, established under Section 153(i) of the Constitution (as amended), that has the power to recommend to the Governor, the removal of a judicial officer.

Where a Chief Judge of a state is to be removed, for whatever reason, it is the NJC, not the state House of Assembly that is empowered to make recommendations to the governor of a state under item 21(d) of the Third Schedule to the Constitution.

To allow only the House of Assembly and the governor of a state to remove a Chief Judge of a state or any judicial officer for that matter, without the input of the NJC, will be monstrous and outrageous as it is capable of destroying the very substratum of justice and introducing a system of servitude, utterly inconsistent with the constitutional independence of judges.³⁰

The Executive of Kogi State government decided to punish the entire judiciary by owing the workers their salaries. It is on record that the State Judiciary has been on strike for over six months now for the non-payment of their salary. This is seen as a further ploy to frustrate the Chief Judge of the State, the real reasons behind the fracas between the Governor and the Chief Judge being alleged to be politically minded.

In another happening in Kebbi State, the acting Chief Judge of Kebbi State, Esther Asabe Karatu wrote a petition to the NJC complaining that the Governor Atiku

²⁹ Sahara Reporters, Yahaya Bello, Kogi House of Assembly cannot remove Chief Judge- High Court, June 18, 2019. <<https://www.saharareporters.com>> accessed 18 July 2019

³⁰ Ibid.

Bagudu had refused to confirm her as the substantive Chief Judge of the State.³¹ On January 17 2019, the Kebbi State House of Assembly confirmed Mrs. Karatu as substantive Chief Judge of the state, but the governor refused to act on the assembly's confirmation.

These and more, point to the fact that the independence of the judiciary in Nigeria is still a myth.

6. Conclusion

Section 17(1) of the 1999 Constitution provides that the State social order is founded on ideals of Freedom, Equality and Justice. And thus in furtherance of the social order; every citizen shall have equality of rights, obligations and opportunities before the law;³² Most importantly, the independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained.³³

Judicial independence is so essential in dispensation of justice that every legal thing possible should be done to preserve and uphold it. Thus, to preserve judicial independence, the Constitution should provide for three things: first, Security of tenure such that once appointed, a judge is entitled to serve on the bench until the age of retirement, unless, where an independent tribunal established for that purpose has ordered that a judge be removed from office upon proof of an allegation of misconduct against him. Secondly, financial security, such that Judges are paid sufficiently and in a manner that they are not dependent on or subject to pressure from other institutions. And thirdly, Administrative independence: Courts must be able to decide how to manage the litigation process and the cases judges will hear. In confirmation of the need for administrative independence, a jurist once wrote:

It is the judge ... who is primarily responsible for the maintenance of (their) independence and the independence of the judiciary generally. The Chief Judge and others with administrative duties must act as a buffer between the executive and individual judges. All judges, especially those with administrative duties, must be vigilant to preserve their independence and the independence of their court. They must

³¹ Wale Odunsi, 'Kebbi acting Chief Judge petitions NJC over Bagudu's alleged refusal to confirm her for 'being Christian' Daily Post, 17 June 2019. <<https://www.dailypost.ng>> accessed 18 July 2019.

³² S. 17(2)(a) CFRN 1999

³³ S. 17(2)(e) CFRN 1999

keep the (government), just as they must keep all others, at arm's length.³⁴

7. Recommendations

For the judiciary to be truly independent in Nigeria, a lot still needs to be done, as follows:

- (a) The appointment and removal of judges should be removed from the Executive and retained within the confines of the National Judicial Council. The Executive would usually be under the whims and caprices of an individual. In other jurisdictions like the United States of America for instance, the Executive has no power to remove a federal Judge. A Judge can only be removed either by death, resignation or impeachment by the legislature. At best there may be a confirmation of such appointments and removal by the Legislature. This is for both the federal and state judiciary in Nigeria.
- (b) The judiciary should be financially autonomous. This means that they should get their disbursements directly from the Central Bank of Nigeria.
- (c) The tenure of Judges should be reviewed with particular regard to the tenure of Supreme Court Justices. In the United States of America, once appointed a Supreme Court Judge, the tenure runs for life. This brings about a sense of true independence as the judges know that their tenures will outlive the executive and as such will most likely exercise their powers without any fear or prejudice.
- (d) The government should put the judiciary into consideration in their economic reform programmes in order to ensure the efficiency of the third arm of government.
- (e) The criteria for judicial appointments should be reviewed as a result of the declining intellectual depth and overall quality of the judgments of some judges in Nigeria which are often conflicting. Men and Women of integrity

³⁴ G Plant, 'Reform no threat to engaged judiciary', Vancouver Sun Newspaper, March 20, 2012

should be appointed in order to reduce the incidence of bribery and corruption alleged against some judges.

- (f) States governments should be made to uphold and comply religiously with the provisions of section 121(3) of the Constitution 1999 which provides that “any amount standing to the credit of the Judiciary in the consolidated revenue fund of the state shall be paid directly to the heads of court concerned.” This will ensure the availability of funds to the judiciary for the maintenance of the Courts and the facilities. Any State government which fails to comply with the above provision should be penalised.
- (g) The definition section of the Constitution which defines a Judicial Officer should be expanded to include Magistrates, Area Courts Judges, Sharia Courts and Customary Court Judges of the various states. They should be treated as judicial officers especially as far as salaries and tenure of office are concerned. These individuals serve in the temple of justice and as well dispense justice, thus, there is no basis for the discrimination in status and welfare.