



The Judiciary and Post Election Peace Building Issues in Nigeria

Ibikunle David Ayodele

Faculty of Social Sciences, Department of Political Science, Kogi State University, Anyigba, Nigeria

Email: ibikunledavidayodele@gmail.com

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Abstract

One of the evidences to show that human beings are higher mammals is that they have the possibility or the ability to live in an organized society, a society that brings about equal rights, fairness, justice, impartiality and non-discrimination. In short, a society that can interact freely and peacefully, if not observed, will deal with this situation fearlessly without tribalism or any form of nepotism. Organization, peace and justice have existed for a long time. Therefore, although they are not a new thing, they need to be improved with the development of the times and the adjustment of the mandatory orders of the judiciary, so as to balance the power of the government as a legislator and a law enforcer. The aims of judiciary through the courts therefore are to promote efficiencies of justice. Change of power or regime however affects the type of government practiced and judiciary especially from time to time as the power in control may also dictate the kind of judiciary that would be effected. As stated in celebrated case of *Gasba v Federal Civil Service Commission*, when military is in power, the question is usually whether to establish the rule of law or the rule of force. The strength of power or area of jurisdiction is another thing that must be clearly spelt out so that necessary checks and balances are observed and that judiciary would not be saddled with responsibility that may not be its. An example of this is found in the judiciary faced with the issue of impeachment of Governor of Kaduna State, Alhaji Balarabe Musa, that because a controversial issue. As an old saying goes, anything worth doing is worth doing well. If many and other desired qualities are to be gotten from Nigerian judiciary system, another thing that needs to be seriously considered is the funding of the arm. The funding will have to do with effective court tools that could be sued and record court proceedings and even the remuneration of the judicial officers. The said salary of such people should meet their responsibility and not a case of one that would be looking for other sources like bribes and the likes as not to pollute or influence such officers in dispensing the right justice. As different governments then come into power,

democracy not excluded, there is therefore necessary concern on how to obtain independent judiciary in the face of democracy and how to continuously sustain such judiciary independence in peace building in Nigeria.

Subject Areas

Politics

Keywords

The Judiciary, Peace and Justice, Check and Balance, Separation of Power, Courts, Constitution, Democracy, Independence of Judiciary

1. Introduction

To make a study of this kind clear, it is going to be apparent to explain the geographical location of the area in question that is being studied. Nigeria as a country has a population of more than 120 million (2016 census), with a living area of about 923,770 square kilometers. This populace is made up of 395 ethnic groups as discussed by Bello [1], and the three largest ethnic groups are Hausa-Fulani, Yoruba and Igbos. This goes further to explain why an X-ray of cordiality of the said group of people needs to be discussed to get a clear picture of what might be responsible for some of the findings in this study. The said cordiality is further complicated by the colonialist nature involved. Nigerians were affected by these colonialists early in their lives, which had a great impact on the country's elections and policies. To this end, as discussed by Crowder [2].

Although Nigeria was the creation of European ambitions and rivalries in West Africa, it would be an error to assume that its peoples had little history before Britain, France and Germany negotiated the final boundaries at the times of the twentieth century. For this newly created country contained not just a multiplicity of pagan tribes, but a number of great kingdoms that had evolved complex systems of government independent of contact with Europe. Within its frontiers were the great kingdom of Bornu with a known history of more than a thousand years, the Fulani Empire that for the hundred years before its conquest by Britain had ruled most of the savannah of Northern Nigeria, the kingdoms of Ife and Benin, which had produced art recognized amongst the most accomplished in the world. The Yoruba Empire of Oyo which had once been the most powerful of the states of Guinea coast the city states of the Niger Delta which had grown in response to European demands for shares and palm oil, as well as the loosely organized Ibo people of the Eastern region and the small tribes of the Plateau as discussed by Yakubu [3].

It clearly indicated that present country known as Nigeria is group of complex origin that became a desired land to be discovered and civilized by her colonial

master. The situation of Nigeria present type of federalism as form of government has its structural problem of the nature well blown out by the judiciary which is the subject of our study in the case of Ogun (Aberyagba) on this, Eso JSC as discussed in (1985) 1NWLR [4].

The Nigerian Federation itself never started like the American Federation of strong small units coming under the umbrella as if the original purpose was confederation, graduating to federation and with each strong small not yielding some means of its power structure to the confederation. The Nigerian Federation started the other way round, first as one whole (unitary government), then with provinces and finally region, but then very powerful region each almost independent of the other. It is the federation of powerful regions that has yielded some of its powers to the state units created there, as discussed elsewhere [3] [4].

Hence, it is the judiciary of this fused nations and impact of her independence that is purposed to be addressed in this issue, to and fro, the extent to which the judiciary is helping the substance of the democracy. It is evident that the judiciary, that had been now as an arm of governance be. The hope not only of the common men, but in this form, for the continued existence of democracy in Nigeria, if not for the survival of the nation as a corporate entity as discussed by Salisu [5].

2. Principles of Separation of Powers

History has it from the traditional perspective that is usually as far back as to the seventeenth century in England as stipulated by an English philosopher, as discussed by John [6] and the French aristocrat Montesquieu as discussed elsewhere [7], This notwithstanding, the checks and balances of governmental powers found in different body of persons outdate this said time as it was first revealed by an Italian philosopher, as discussed by Nicolo [8], who defended for the need to have different body of persons to take over or be in charge of, legislation and administration. This, however, fully confirmed when Montesquieu puts it in his spirit de Lois as:

Every man invested with power is apt to abuse it there can be no liberty where the legislative and executive posts are united in the same person or body of magistrates [8] as discussed elsewhere by Nicolo [8].

The objective of this is to remove or prevent abuse in its totality and make sure that the freedom of citizens is guaranteed. The said abuse is not controlled by just a body due to human nature as defended by Montesquieu.

Again there is no liberty if the judicial power is not separated from the legislative and the executive. There would be an end to everything if the same person or body, whether of the nobles or of the people, were to exercise all three powers as discussed elsewhere by Nicolo [8].

The extent of this is not cheaply spelt as the support of the government gleaming as it is presently backed by some views and this position was given credence by Hon. Justice Warren when his lordship claimed:

Separation of power is obviously not instituted with the idea that it would promote government efficiency it was on the contrary looked to as a bulwark against tyranny as discussed by United State [9].

This citizenry notwithstanding the idea is also a controversial source of supremacy of the constitution as all basic powers of the chief organs of government are laid out, the doctrine by practice stressed the need to follow the constitution to the end as discussed by Alexisde [10].

The peace, the prosperity and the very existence of the union are in rested in the hands of the...judges. Without their active co-operation the constitution will be a dead letter, the executive appeals to them for assistance against the encroachments of the legislative powers, executive, they defined the union form the disobedience of the states interest against the interest of private citizens as discussed Walter ... [11]

Judging from the above, it is clear, which seem to side in favour of the existence of the judiciary as a separate arm, which bring about the likelihood of one power to acquire more as well as overstepping on other powers and that only wayout is to ensure a fair interplay of forces, by giving each arm its defined boundary as well as protecting one from the other. An airtight power of separation may however not work as such arm of government must be free in order to make progress that is positive in interaction. This brings to the surface the idea of check and balances that is advocated for by the theory of American, James Madison as he declared:

Separatism of powers means that one of the departments of government must not have the whole of another branch vested in it they nor obtain control over another branch. But even if they are separated, they must be connected by a system of checks and balances as discussed by James ... [12]

Also, justice Brandeis confirmed in Myers v limited states that:

The doctrine of separation of powers was adopted by the convention of 1787 not to promote efficiency but to produce the exercise [13] as discussed by Justice Jackson.

The Nigerian government after taking on the presidential system of government through the use of the 1979 constitution has been on the fact of generally acceptable doctrine of separation of powers basing it on Nigerian factors. The committee that drafted the constitution was charged with the formulation of the 1979 constitution that gave birth to the adoption of the idea in words following:

Modern government should be a cooperative, coordinated effort and not a tug of war, between the principal organs of government...some separation

is necessary and desirable, if limited government and individual liberty are to be secured, but certainly not a rigid separation as discussed by Constitution Drafting Committee [14].

To confirm this underlying principle of government in Nigeria, the constitution drafting committee also stressed that power should be used for the advantage of the great majority of the people with policy goal and mission, with the following to support:

As a charter of government and fundamental law of the land, the constitution should make it clear that powers are bestowed upon the organs and institution of government, not for the personal aggrandizement of those who wield them from time to time, but the welfare and advancement of the society as a whole. It should therefore cast on the state definite duties towards its subjects as discussed by CDC Report [15].

It is therefore in the interest of power all democracy power need not be concentrated on a person or body for it is opposing the work of democracy to the judiciary and post election peace building in Nigeria.

As it will not represent, nor be responsible. In light of this Hon. Justice Kayode Eso believed that separation of powers serves the end of democracy as he puts it:

And so, eventually by conduct and experience, America settled with the notion of separation of powers. That is would be most dangerous for the giver of law both to execute the law and interpret it. Equally dangerous would not it be for the executives, who execute, to make law he is to execute, nor would it be right for him, either to interpret it. It would be undemocratic for the judiciary, either to interpret it which has the duty to interpret law also to have the power to execute the law. This in short is separation of power and it is democracy as discussed by Hon. Justices Kayode [16].

For situation in Nigeria, the view that opposes the idea that it is meant only to prevent uncalled-for rule and not necessarily that the judiciary does not share efficiency. The Supreme Court in the case of Attorney General of Benue State v Attorney-General of the Federation [17] as discussed in (1984)3 decided that the separation of powers is to promote efficacy and remove abnormalities the court therefore has this to say:

It seems that in so far as our constitution is concerned, observance of the doctrine is meant to promote efficiency and preclude aims succeed depends on the three arms of government but more...on the judiciary bring up it home to all the functionaries concerned at every opportunity as discussed by Unongo [18].

Of the three arms, the judiciary which plays important role, the schedule of things is paramount in peace building in Nigeria. It acts as the balance for all and is responsible to iron out the differences if it ever exists between them. The

court at this end has the duty to see fiat legislature could not pass into law any bill that by pass the jurisdiction of the court as discussed by 43 U.S. [19].

Another role of the judiciary is also important in area of interpretation of law if a bill has been passed into law or not as held in the United States in the case of *Field v Clark* as discussed by Wahab [20]. The operation of the principle in Nigeria, most especially since the coming up of the fourth Republic leaves much to be cherished mostly in the relationship between the legislature and executive and is not focused for the study.

3. Judiciary within the Nigerian Policy and Post Election on Peace Building in Nigeria

The position judiciary holds cannot be over stressed, as earlier indicated. Judiciary could be given as the last hope of any man, great part of people's liberty that upholds the law and advocates fundamental human rights. It is regarded as sign of justice [21] as discussed by Supreme Court. It is obvious to ask the question of what is the place of this crucial segment in the Nigerian polity since her emergence as a national-state.

To answer such question, reference must be made to the many development stages of government, which is, colonial rule, military rule and civil rule.

In the time of colonial administration, the legal system that was in operation in Britain was equally administered in Nigerian with effect from 4th of March, 1863 [22] as discussed elsewhere (24/25) with the first Supreme Court [23] as discussed by common law. A Court of record was made for Lagos colony and empowered as in High Court of Justice of England [24] as discussed by A Northern Nigeria. The Northern Nigerian Council in 1899 established what was known as Northern Protectorate [25] as discussed by Yakub with a supreme court put in place to do civil and criminal jurisdiction. By the time of Nigerian Amalgamation of 1914, three courts were in place; which include Supreme Court, Provincial Courts and Native Court [26] as discussed by Obilade. The highest appeal then was with the Judiciary Committee of Privy Council and was in place until Nigeria got her independence on 1st October, 1960.

With the commencement of independence, appeals to the West African Court of Appeal were end and when Nigerian became a republic 1963 appeals to the judicial committee of the Privy Council was no more. Not long after the independence, the military took over with its disruption of the three arms of government and the executive and legislative activities were joined for one body or person to carry out various assignments [27] as discussed by Harry. The new development has been described as new despotism which is different from what was earlier practiced. This, wheeler has described as the most extreme period of despotism and slavery; likening it to servant to masters [28] as discussed by Nwabueze Ben. Nwabueze [29] as discussed elsewhere [28] [29]. View this between military rule and colonial regime in the following descriptions:

The military revolution has status the same effect as the colonial subjugation-

tion of a people by conquest both are a forcible seizure of the entire sovereignty inhering in the country. A military government established after a successful coup thus combines in itself both the delegated power of a colonial government and the residual power of the imperial government in and over the colonized country. Just as the imperial government in its legislative capacity not subject to no law by which its power in and over the colonized country is limited legislative capacity so also is a military government in its not subject to any supreme law. Just as the imperial government can, in virtue of the sovereignty seized from the colonized people, make any law it likes, including a law authorizing and directing the arrest and detention of named person or the confiscation of his property, and ad-hominem laws of privilege, so also can a military government do the same by virtue of the sovereignty forcibly seized, form its own citizen, ad-hominem law were enacted by the Nigerian military government between January 1966 and September, 1979 [30] as discussed by Hon. Justice Koyade.

The said power the military regime has on the judiciary is explained by the case of *Lakanmi and Kikelomo Ola v Anthony-General (state) and others* [30] as discussed elsewhere [30]. The present government made everyone to know who controls. Eso JSC describes this regime this way:

They have since reminded the judiciary that the institution is permitted to exist. But they have done worse. The litter their legislation with ouster clauses, thus in effect rendering the judiciary. The legendary third arm of government, which they probably in their benevolence have left extant, impotent [31] as discussed in (1996)9NWLR.

The fact that the source of the power of the military is brute force with the ability to subject to obedience and subjugate the people to its authority is not popular acceptance but centred on gun.

To further account for havoc military has caused on judiciary Sir Adetokunbo Ademola has this to say:

A state chief judge recommended two names to the Governor for appointment as judges. When the Governor got the list, he persuaded the chief Judge to go on leave and while away, the Governor added three other names and got the appointing body to meet and appoint the five of them [31] as discussed elsewhere [31].

This no doubt is clearly bad. While the chief judge was at work, the Governor could still do it; not only bringing out his own nominated ones but making sure that they were the once appointed. Earlier instances like this are on records.

Such judiciary in the said office attempt to have their own in created for credibility as an arm of the tripod in any governmental organ. To be precise, the court of Appeal, Lagos Division in the case of chief *Gani Fawehimni v General Sanni Abacha* [32] 3 others as discussed elsewhere [31] [32] in it, his lordship Hon. Justice Mustapha, JCA commented on the importance of the African

Charter on Human and peoples' Right even under a military rule as of its own car. He commended thus:

The contracting states are bound to establish some machinery for the effective protection of the terms of the carter and when the local procedure is exhausted or when delay will be occasioned the matter will be taken to the International commission. All these indicate that the prevision of the charter are in a class of their own and do not fall Within the classification of the hierarchy of laws in Nigeria in order of superiority ... it is in my view that notwithstanding the fact that cap 10 was promulgated by the National Assembly in 1983, it is a legislation with international flavour and ouster clauses conceived in decree No. 107 of 1993 or No. 12 of 1994 cannot affect the operation in Nigeria [33] as discussed elsewhere [31] [32] [33].

The decision brings out the glearing truth with which the judiciary performs its duties even when gun challenges. The same tenure was held by Hon. Justice Pats-Acholonu, JCA:

By not merely adopting the African chapter but enacting it in our organic law the tenor and intendment of the preamble and section seem to best that Act with a greater vigor and strength than mere decree for it has been elevated to a higher pedestal and as Bello CJN said in *Ogugu v State* (supra) its violability becomes actionable [34] as discussed elsewhere [28] [31] [32] [33] [34].

Nigerian courts have not shy away to make pronouncements on things that affect the fundamental rights of the individuals and the chief doctrine of the rule of law. In his way of rebuking, Hon. Justices Kayode Eso made known his distaste for military leaders for trying to infuse timidity into the courts in the case of *Attorney-General of Lagos State v Odumegwu Ojukwu* [35] as discussed by Sagay as he puts it:

To use force to effect an act and while under the marshal of that force seek the courts equity is an attempt to infuse timidity into our court and operate a sabotage of the cherished rule of law [36] as discussed by electoral act.

The apex court also in *Garbar federal Civil service con mission* [37] as discussed elsewhere [36] [37] declared that since the military rule has not silence the court then the court has a responsibility to how to the rule of law of portrayed by the court, which also has a responsibility to justify it. The court says:

The military in coming to power is usually faced with the question as to whether in establish a rule of law or a rule of force. While the latter could be justifiably a rule of terror, once the path of law is chosen the mighty arm of government the militia that is an embodiment of legislature and executive must in humility bow to the rule of law cowed down, it can only be silenced. But once the only arm that can silence it does not silence it, it must be accepted in full confidence to be able to justify its existence [38] as dis-

cussed by electoral act.

The courage found in the court to face military through their declarations in judgment is likely informed by the fact that the military can only rule if they have legitimacy as a provision of the people. This was confirmed by Itse Sagary:

Apart from the implication that the consent of the populace is the basis of the legitimacy of military governments those passages also indicate that coups usually occur when the same populace is fed up (frustrated) by the misdeeds of a constitutional or democratically elected civilian government. In other words, the military usually assesses the mood of the nation and will normally attempt a coup if only they are confident that the populace—the source of legitimacy would welcome it [39] as discussed elsewhere [38] [39].

From the above discussion, from which ever perspective one looks at it, the judiciary attempted to create personality for itself during military rule. However, it may be necessary to point out that the courts at high level discharged itself creditability well during this period the same cannot be said of the trial courts at high level discharged most especially when viewed from declarations at the appellate courts. This is not good enough for the fact that it is not all cases that would be appealed against, thus it is necessary that the judiciary at all levels must live to the billing of an impartial independent arbiter.

3.1. Nigerian Judiciary under Democracy and Post Election Peace Building in Nigeria

As discussed earlier, administration of the government is based on topped with the judicial arm playing main role, In any democracy, the judiciary is given a top place for ordinarily the rule of law is expected to lead. The judiciary is given the chance to determine if or not a person has been duly elected into the office which he attempt to take. It is therefore not possible to put much responsibility on such an arm.

The Electoral Act gives the court the chance to look into whether or not a person is duly elected [40] as discussed by electoral act. The court has unfailingly played this role, but how effectively this is done is something else. The court still do this in the first republic, one of the serious issues that court had to work on was whether Governor can single handedly remove a premier of a Region or not. The focus was the western Regional constitution [41] as discussed elsewhere [40] [41] and finally what the court did in the executed case of Akintola v Aderemi [42] as discussed elsewhere [41] [42] and also that of Adegbenro v Akintola [43] as discussed by electoral act.

During the second Republic, the Nigerian judiciary measured up to standard by displaying her position of law especially as it is on interpretation of the 1979 constitution which was carved out in fashion of American constitution but which was new to our system. The court has the chance to execute the issue of locus stand in the case of Abraham Adesanya v Attorney-General of the Federa-

tion¹ as discussed in all cases. The then Supreme Court man, Hon. Justice Fayi-Williams CJN has this:

Except in the extreme or obvious case of process, how then can one conceive of a judicial process where access to the court by persons with grievances, is based solely on the courts own value judgment in a multiethnic country where more than two hundred languages are spoken? I would rather error the side of access than on that of restriction [44] as discussed by daily independent.

In the same vane the courts in many cases defended the superiority of the nation constitution over other proposals. For the case of Lawal Koguma v The Governor of Kaduna State² as discussed in allocation of revenue the court has this side:

My Lords, it is my view that the approach of this court to the construction of the constitution should be and so it has been one of liberalism, probably a variation of the theme of the general maxim *utresmagis valeat cuam parrent*. I do not conceive it to be the duty of this court so to construe any of the provisions of the constitution as to defeat the obvious ends the constitution was designed to serve where another construction equally in accord and consistent with the words and sense of such provisions will serve to enforce and protect such end [45] as discussed in (1982)³.

The judiciary was equally assigned with impeachment of Governor of Kaduna State, Alhaji Balarabe Musa to emphasize if the court can or cannot. The court could not eventually for it holds the belief that it interferes with principles of separation of powers ([45], p. 42) as discussed elsewhere [45]. This may look unreal, however it was presented in another form that the court should only be able to look into whether or not protocol for impeachment is followed or not before a Governor, Deputy, President, Vice is remove from office.

Similar issues surfaced again presently when Deputy Governor of Anambra State, Okechukwu Udeh was to be impeached. A move to restrain the judiciary panel, headed by Chike Ofodile SAN was defiled. It was done on the platform that court has no mission with impeachment proceeding. The act is described by Itse Sagay as “the best rule of the impeachment process since the second republic” [46] as discussed in (2002)⁴. It is going to be an insanity to throw away caution and give the political act an outlet without appropriate checks and balances. What is being upheld in the above discussion is that not minding the political nature of impeachment, proper procedure should be followed and the protocol has been followed to letter. The court also had the chance to discuss resource control during the second republic and even as to today. This issue of resource control has ever being a controversial issue Bendel State for instance during the

¹All cases involving the Governor E3larabe Musa of Kaduna State against the House of Assembly with regards to the impeachment of Government Balarable Musa as the Governor of Kaduna State.

²Allocation of Revenue (Federal Account etc) Act which was signed to law by President Shehu Shagari on 3rd February, 1981.

second Republic challenged the Federal Government on the allocation of resources as it affects the Act passed by the then National Assembly [47] as discussed elsewhere [46] [47]. This ended up in Supreme Court as Attorney General of Bendel State v Attorney General of the Federation and 22 others [48] as discussed by 332 US. Among other things, Bendel State government sought:

A declaration that a Bill for an Act of the National Assembly with respect to any matter which the National Assembly is authorized to prescribe pursuant to the provisions of Section 149 of the constitution of the Federal Republic of Nigeria or the provision of item IA (a) of part II of the 2nd schedule to that constitution can only be enacted into law in accordance with the procedure prescribed in section 55 of the constitution.

Eventually, the Supreme Court declared the Act null and void. Lead judgment delivered by Fatal Williams CJN Pronounced:

Consequently I declare the Allocation of Revenue (Federation Account, etc), Act 1981 (No. 1 of 1981) unconstitutional and therefore invalid, null and void and of no effect whatsoever [48] as discussed elsewhere [48].

The issue of revenue allocation in Nigeria again surfaced in this dispensation and the Attorney-General of the federation had to enforce an action at the supreme court against the Attorneys-General of other states in A-G, Federation v A-G, Abia State and others ([48], pp. 73-74) as discussed elsewhere [48]. Where the federal Attorney-General took out a proclamation:

A determination of the seaward boundary of littoral state within the federal Republic of Nigeria for the purpose of calculating the amount of revenue assuming to the Federal account directly from any national resources derived from that state pursuant to section 162(2) of the constitution of the Federal Republic of Nigeria 1999 [49] as discussed in (2002)3.

To resolve the dispute the court had to consider cases from other jurisdiction, especially the case of United States v State of California [50] as discussed by Per. Where the jurisdiction of the Supreme Court was confirmed especially for it affects the issue, whether it brought about dispute or not as indicated in the following:

The difference involves the conflicting claims of federal and state officials as to which government, state or federal has a superior right to take or authorize the taking of the vast quantities of oil and gas underneath that land much of which has already been, and the state. Such concrete conflicts as these constitute a controversy in the classic legal sense, and are the very kind of differences, which can only be settled by agreement, arbitration, force or judicial action [51] as discussed by daily Independence.

The Supreme Court considered the case thoroughly and then took decisions that expected to serve as a permanent solution to the unending friction of reve-

nue allocation in

Nigeria. The court declared:

The under-listed policies and/or practices of the plaintiff are unconstitutional, being in conflict with the 1999 constitution, that is to say:

- 1) Exclusive of natural gas at constituent derivation for the purpose of the provision of 5.162(2) of 1999 constitution.
- 2) Non-payment of the shares of the 10th Defendant in respect of proceeds from the capital gains taxation and taxation and stamp duties.
- 3) Funding of the judiciary as a first line charge on the federation account.
- 4) Serving of external debt via first line charge on the federation account.
- 5) Funding of joint venture contracts and the Nigerian National Petroleum corporation (NNPC) priority projects as first lien charge on the federation Account.
- 6) Unilaterally allocating 1% of the revenue accruing to the federation account to the federal capital territory [52] as discussed by Chief John.

Event at this decision and its attendant implication in resolving the disagreement on the revenue sharing of the federation, the situation is yet to be resolved up to date. However, the two sectors of Nigerian government (Federal and State) seem to be working out a political solution to end this.

In dispensation, another area that demands attention of the judiciary was the fate of local government political office-holders. State governments were united in their opinion that it is the House of Assembly of the different states that has the sole power to determine their tenure in office. The Federal Government and National Assembly hold it that it is their duty. The said issue was discussed in the case of Attorney-General of Abia State and 35 others v Attorney-General of the Federation [53] as discussed in (1996)8. However, the Supreme Court holds the idea that:

It is the House of Assembly of a state and not the National Assembly which has the power to make laws with respect to matters relating to or connected with elections to the office of the chairman, vice-chairman of the local Government council in that state or to the office of councilors therein ([53], p. 238) as discussed elsewhere [53].

A matter that faces the judiciary in the whole nation since the beginning of the present civil allocation is the removal of the Governor of Anambra state propos, Chris Ngige, by order to the federal High Court Abuja, Governed by Hon. Justice Wilson Egbo Egbo that said it was an error. The order and the Hon have been generally criticized. On this, Godwin Adindi; has this to say:

His order has aroused serious concern over the role of the judiciary in the fourth Republic. The general impression is that of defender of the establishment. But curiously, though he seems to be portraying the judicial institution as a partisan umpire ([54], B.4.) as discussed by daily independent

The Anambra issue has not been appeased from either the political or the judicial view. She has cleverly moved along courts in the land from Anambra to Enugu to the Federal Capital Territory. A lasting solution could be following the constitution to letter and exert human rights. It is the duty of judiciary to serve the Nation and not individuals nor governments.

3.2. Ex-Parte Injunction and Disobedience of Court Orders

Nigerian judiciary has faced two main problems of ex-parte application and disobedience of courts' orders that is not helping judicial officers and various courts. Needless to emphasize that this ex-parte application is not the real barrier to the judiciary in determine various issues brought up. The base of ex-parte application is for situation of real emergency, where not possible or a lot of damage might have been done before Motion on Notice is served ([54], pp. 633-634) as discussed elsewhere [54]. It is expected to be on for few days to be effective. The procedure is being abused over time and it is therefore necessary for stakeholders in the justice arm and all Nigerians to take appropriate measure to cub the matter.

The Supreme Court in *Badejo v Federal Ministry of Education* [55] as discussed in preamble. Believe that the days of wanton grant of ex-parte injunctions are over with what the judiciary faced in the previous five (5) years. It is clear that something has to be done quickly about it. Hon. Justice Kayode Eso fearfully expressed:

It is again, respectfully submitted that the menace of ex-parte orders is very much with us, and it vages unabated and looks ominously uncontrolled [56] as discussed in section 10.

Inclusively, is the destroying disobedience of courts' order, that some educated see as a measure that is wrong in granting ex-parte orders. This disobedience is not centred on individuals alone, but also the government said behavior has been criticized by many analysts and courts it is mandatory to obey every court order until such order is set aside by court or on appeal ground. Anything less this will erupt problems and dis-orderliness in the legal system. Fola Akinsola puts this view more distinctly that it is worse if government refuses to obey courts order in the following:

If the government becomes a law breaker, it breeds contempt for the law; it invites everyone to become a law into himself it invites anarchy [57] as discussed by Omoniyi.

It is obvious that judicial judgments have faced neglecting and little by title, judiciary is rendered ineffective and trust in judiciary is taken away. The said need to obey court orders, mainly by government was squarely discussed in the celebrate case of *Ojukwu v Governor of Lagos State* (Supra) where the supreme court in which the court indicated the incumbent danger in this attitude as:

I think it is a very serious matter for anyone to flout a positive order of the

court and proceed to taunt the court further by seeking a remedy in a higher court while still in contempt of the lower court. It is more serious when the act of flouting the order of the court, the contempt of the court is by the executive. Under the constitution of the federal Republic of Nigeria, the Executive, the legislature (while it lasts) is equal partners in running of a successful government. The power granted by the equal partners in running of a successful government. The power granted by constitution to these organs by S.4 (Legislative Powers) S.5 (Executive Powers) and S. 6 (Judiciary Powers) are classified under an ominous umbrella known under part II to the constitution as “powers of the Federal Republic of Nigeria”. The organs wield those powers and one must never exist in sabotage of the other or else there is chaos. Indeed, there will be no federal government. I think for one organ and more especially the Executive, which holds all the physical powers to put up itself in sabotage or deliberate contempt of the other is to stage an executive submersion of the constitution it is to uphold. Executive lawlessness is tantamount to a deliberate violation of the constitution. Where the Executive is the military Government which blends both the Executive and Legislative together and which permits the judiciary to exist with it in the administration of the country, then it is more serious than imagined. The essence of rule of law is that it should never operate under the rule of force of fear. To use force to effect an act and, while under the Marshall of that force, seek the court’s equity in an attempt to infuse timidity into court and operate a sabotage of the cherished rule of law. It must never be [57] as discussed elsewhere [57].

It is good to note that today government people who refuse to obey positive orders of court will in a day be out of office and will need same court, they did not have regard for. Also the attitude of parties in a case to court order need be re-examined and stress placed on need for all to see that court order disobedience has the ability of pulling down the entire structure. This gives room for survival of the strongest that should not be encouraged.

3.3. The Shana Imbroglio

This has over and over challenged both the political and legal Nigeria regimes religion, which some scholars believe as the Sharia matter may not have bias intension in legal operation. However, there cannot be a clear application of non-involvement of religion in our politics. The often quoted S.10 of the 1999 constitution cannot be interpreted to mean that Nigeria is a non-god fearing country, but a particular religion must not be adopted. From our relationship, it is clear that the constitution recognizes, confirms and acknowledge God existing and for the same God to direct our affairs. Role of God is also indicated. The constitution gives.

To live in unity and harmony as one individual and indissoluble sovereign Nation under God dedicated to the promotion of inter-African solidarity,

world peace, international co-operation and understanding [58] (emphasis mine) as discussed by the guardian.

Thus, the constitution provision that

The Government of the Federation or of a state shall not adopt any religion, as state religion cannot justify secularism, which is tantamount to a state of Godliness. The only interpretation that we can give to S. 10 of the 1999 constitution therefore is appreciation of the existence of so many religions but that none of the identified religions must be adopted by the state [59] as discussed by Akpo.

On the issue of Sharia as a legal system, as acknowledged by Omoniyi Adewoye, it has been in Nigeria for long. He said, the Sokoto caliphate as in Bornu Islamic culture was divided into emirates and each ruled by emir and linked with Sokoto by many bureau chief connects. According to him, the matter of judicial were looked after by learned jurists (alkali) appointed to administer the Sharia, in form of Islamic laws for both civil and criminal cases [60] as discussed by Yakubu. The dispensation experienced lots of expansion of the operation of the Sharia law in Nigeria with enactment of Sharia law by using what Justice Kayode Eso explained as “purposive method of interpretation” [61] as discussed by Roscoe. This brought about a lot of arguments and comments. Hon Justice Mohammed Bello, former chief Justice of Nigeria was bent that Zamfara state other states that put Sharia law into operation in their state to include criminal jurisdiction has power to do so he said:

There has been controversy as to whether a state has the constitutional power to adopt Sharia law as law of its area. There is no doubt it has the power. The British started it with Native Courts Ordinance in 1934 by adopting Sharia as the law of the Alikali courts. Since then our constitution empowered the region and the states to make as their laws. Given the federal endorsed Sharia because both the court of Appeal and Supreme Court are Sharia courts in exercising their jurisdiction on appeals relating to Sharia matter [62] as discussed by Hon. Justice John.

However, the parties aggrieved on this made no challenge on the matter in court and so judiciary was not given the chance to declare the issue. The antagonist of the system only have the major complaint on punishment, which is seen as archaic not conforming to modern civilization and offensive to the just surfacing what is known as humanitarian law. Coulson working, on this said.

Equally in supportable to the modernist view was the traditional forms of criminal jurisdiction. Such potential penalties as amputation of the hand for theft and stoning to death for adultery mere offenses to humanization principles ... the notion was no longer suited to a state organized on a modern basis. In the relationship between Muslim and Western States, it was precisely have that the deficiencies of the traditional Islamic point of

modern conditions were most apparent [63] as discussed by Bola.

In regards to justification of punishment in Sharia law having lost its focus and no longer serving its purpose of justice, as discussed by Prof Nwabueze [64] made reference to Roscoe Pound as:

Legal systems have their periods in which a scientific jurisprudence becomes a mechanical jurisprudence. In a period of growth through juristic speculation and judicial decision, there is little danger of this. But whenever such a period has come to an end, when its work has been done and its legal theories have come to maturity, jurisprudence tends to decay. Sanctions are fixed. The premises are no longer to be examined. Everything is reduced to single deduction for them. Principles cease to have importance. The law becomes a body of rules, barred by barricades of dead precedents [65] as discussed by Benjamin.

Yakuba went further to suggest need to mix punishment with what are provided in the penal code or criminal code as the case may be.

The objective of any law is to serve justice in the same strength any law lack of morality cannot be properly so called or be referred to as law [66] as discussed by Justice Douglas. Good to stress here that the punishment under Sharia did not come just like that, any society needs the kind of law it has for law is to regulate the society. Our concern here should be if or not the end of justice is met and if or not the goal reducing crime with such punishment is met. Punishment goal may be deterrent, reformatory or rehabilitative. Therefore, the idea of punishment being archaic or anachronistic does not have objective evaluation. So far as the objectives are decided by values and worldviews of each scholar, it will be subjective and lack acceptability. No conclusion could be reached by any scholar now until this is trashed by judiciary in determining the legality of its existence and appropriate or otherwise of the punishment it carries along.

3.4. Independence of Judiciary and Democracy

It was Hon. Justice John Marshall that was said to have said that a judge must be completely independent only influenced by God and the common man hope and trust in the law of the land will make judiciary to be independent in order to carry out justice, fairly and without favour or fear. The only way, out to do this is by way of being an unbiased referee. Judiciary in Nigeria cannot be separated from other part of the world. The basis of theory of separation of powers is such that each arm operates as a distinct and independent body.

Bola to justify this has this to say:

It is expected to reckon with the best traditions of impartiality and independence and to be seen to provide necessary succor to all those who seek help under the law [67] as discussed by Huges.

Let us have it from onset that independence of judiciary is beyond financial independence, but includes the totality of the operation of the judicial offers

from time of Insertion, available resources to discharge desired duty, relationship with other arms of government, ability to be able to discern any matter brought without any interference from in or out. To determine what this interprets to, Ben Nwabueze came up with likened indices to identify independent judiciary as:

First, that powers exercised by the courts in the adjudication of disputes is independent of legislative and executive power, so as to make its usurpation, or to attempt to exercises it either directly by legislation, as by a bill of Attainder, or by resting any part of it in a body which is not a court secondly. That the personnel of the court independent of the legislature and the executive as regards their appointment, removal arid other conditions of service [68] as discussed by Crossman.

A judge must all the time recheck himself in justly determining any case brought to him as Benjamin C. Kardozo puts it:

What is it that I do when I decide a case? To what sources of information do I approach for guidance? In what proportions do I permit them to contribute to the result? In what proportions ought they to contribute? If no precedent is applicable, how do I reach the rule that will make a precedent for the future? If I am seeking logical consistency, the symmetry of the legal structure, how far shall I seek it? At what point shall the quest be halted by some discrepant custom; by some consideration of the social welfare by own or the common standards of justice and morals [68] as discussed elsewhere [68].

There must be truthfulness, altruism and honesty in answering these questions and with a view to obtain justice that is interference free, It is argued in some quarters that the thinking to which one subscribes, the power of dissent at the apex court is a blessing and confirmation of independence of judiciary and confirming the purpose for which the judiciary is set up is being fulfilled. According to Justice Douglas, Dissent is a confirmation of division existing in the society [69] as discussed in section 231(1) Charles Evans Huges express this in:

A discent in a court of last resort is an appeal to the brooding spirit of law to the intelligence of a future day, when a later decision may possibly correct the error the dissenting judge believes the court to have been betrayed. Unanimity which is merely formed, which is recorded at the expenses of strong conflicting views is not desirable in a court of last resort whatever may be the effect upon public opinion at the time. This so because what must ultimately sustain the court in public confidence is the character and in depended of the judge [70] as discussed elsewhere [69] [70].

The significances of independence of judiciary cannot be over emphasized for it stand at the root of separation of powers, it is the platform on which liberty and justice can be guaranteed to the citizens, also the concept understand this

point as expressed in the case of *guardian Newspaper v Attorney-General of the Federation* [71] as discussed elsewhere [70] [71].

A basic point that must be known is that the courage of the judiciary officer is in itself a factor for the independence of the judiciary. It is worth noting that if the judicial officers do not show the courage that they will not allow themselves to be influenced, the courage that they will execute judgment without fear or favor, that they will interpret them there is hope of independence of the judiciary being uphold.

This is not new, some judicial officers have done this courage in some cases as they of *Governor of Lagos State v Odumegwu-Ojukwu* (Supra) held:

It has long been recognized that vesting judicial power in independent judiciary is essential to justice and liberty, which are the operative ideals of our society and the foundations of our nation, Without an independent judiciary exclusively charged with the exercise of the nations' judicial powers, there will be an easy betrayal of these ideals and the concept of the rule of law Will become empty [72] as discussed by Guardian Newspaper.

Within the constitutional province in Nigeria, appointment of judicial office is provided in regard to various superior courts that are known. With respect to the Supreme Court, the Chief Justice of Nigeria is made by the president on the recommendation of National judicial council and subject to affirmation by the senate. The other justices of the Supreme Courts are equally appointed by the President on the recommendation of the National judicial and confirmed by senate [73] as discussed in section 29 (1). The main qualification is (15) fifteen years post qualification as a legal practitioner [74] as discussed elsewhere [73] [74].

Such provisions are done to make the appointed judicial officers independence and be loyal only to Nigerian justice. One needs to stress the importance of the provisions as couched which a safeguard to the independence of justice. However, various people given to such responsibilities must not be subjected to political religious or ethnic as they are choose on merit.

There is need to consider the expressed view of present Attorney-General of the Federation and minister for justice, Akin Olujimi SAN, that apart from constitutional provision, some more fundamental issues on integrity ground, intellectual capability may be important. This was recently of Guardian newspaper editor's as discussed by Guardian newspaper:

Good manners among judges of first instance are just as important as a good legal brain. In other word, a judges moral credentials should be attractive: condor, decorum, honesty and sincerity of purpose should be his credos. Today, we find in the Nigerian judiciary a sizeable crop of judges with a audacity of those qualities and who are consequently associated with and corrupt practices [73] [75] ... as discussed elsewhere [73] [74] [75].

Additional to this is the basis for removal of judicial official, which is put at

voluntary retirement at age 65 years or cessation at the age of 70 years for Supreme Court and court of Appeal [76] as discussed in section 292.

Retirement benefits like pension and gratuities are generous, to make them work in a way not to be influenced by bribes. For the other courts, it is 60 years and 65 years respectively. An officer of judiciary may be removed due to infirmity of mind or body or for misconduct or contravention of the code of conduct.

In as much as it is clear what contravention of the code of conduct may mean infirmity of mind and body, it is also known as the provision of misconduct and is subject to unsettled interpretation. There is therefore need for clear interpretation of misconduct. This is necessary if we believe the fact that sentiments and prejudice may come to be in interpreting misconduct as it is defined by constitution. This also provides for confirm the security of tenure as the constitution seem to grant the judicial officials by this provision.

The remote influence of tenure security on the existence of a judicial officer may affect its independence for he may be under stigma fear hanging on him the new change. The judiciary must be informing of the socio-economic revolution of the nation.

4. Conclusions

As the shield of the masses, the judiciary must entertain no fear and must discharge its duty of maintaining the rule of the law. Are post election peace building issues in Nigeria? To do this perfectly, the judiciary must be given enough and state of the art equipment to enhance exaction. The apex court in the country lost three (3) justices concurrently. These have been alleged to overload work. People have made suggestions on the need to provide electronic gadgets for recording proceedings. As good as this is, it should not be suggested that the word processors should replace computers to meet the time challenges. The means of power should equally be focused as for the gadgets not to only beautify the courts.

To advance, it is important for the judiciary to shun the placed in power conservative tendencies and thereby display judicial role. Judicial racialism is not encouraged, but rather activism that will prevent the judiciary from forming an archaic and solipsistic perspective in law.

For democracy to have meaning, the judiciary must be truly independent. This cannot be obtained until and unless the judiciary itself knows the need for it to be independent by taking necessary steps. It must also design away, apart from that of constitution, to make it gleaming for the society and other arms of government to respect its independence.

Towards an independent judiciary in Nigeria: Earlier, it has been discussed that democracy without an independent judiciary is impossible parallel to this in governance in Africa, independence of the judiciary is only recognized in books, not in practice. It consequently calls for attention and especially for judiciary

body to find ways in which to assert her independence.

One of the major steps to take is for judiciary body not to allow itself to molest or intimidated by the other arms of government. The judicial officers must have enough courage to break new grounds.

Conflicts of Interest

The author declares no conflicts of interest.

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