HOW INDEPENDENT IS THE JUDICIARY IN NIGERIA?

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CERTIFICATION

I, **Grace Ihinosen AKHIHIERO** with Matriculation Number **LAW 1504267,** hereby certify that apart from references made to other people's works are duly acknowledged herein, this entire project is the product of my personal research, and has neither in part nor in whole been presented for another degree elsewhere.

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DEDICATION

This work is dedicated to God Almighty who has been my strength and wisdom. I dedicate this project also to my Dad who pushed me to get this project ready on time and for all academic, financial and spiritual assistance he gave to help me complete this project.

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LIST OF ABBREVIATION

A.C – Action Congress

AA – Action Alliance

A-G – Attorney General

APC – All Progressive Congress

APGA – All Progressives Grand Alliance

C.B – Companion of the Bath

CCB – Code of Conduct Bureau

CCT – Code of Conduct Tribunal

CDC – Constitution Drafting Committee

CFRN – Constitution of the Federal Republic of Nigeria

CJN – Chief Justice of Nigeria

CSIH – Court of Session Inner House

EFCC – Economic and Financial Crimes Commission

EWHC – England and Wales High Court

Ex – Exchequer

GOC – General Officer Commanding

INEC – Independent National Electoral Commission

J.S.C – Justice of the Supreme Court

JUSUN – Judicial Staff Union of Nigeria

L.R. – Law Reports

LFN – Laws of the Federation of Nigeria

LPELR – Law Pavilion Electronic Law Reports

MP – Members of Parliament

N.W.L.R – Nigeria Weekly Law Report

NBA – Nigerian Bar Association

NCLR – Nigerian Constitutional Law Report

NDC – National Democratic Congress (Ghana)

NJC – National Judicial Council

NMLR – Nigeria Monthly Law Report

NPP – New Patriotic Party (Ghana)

PDP – People's Democratic Party

QB – Queens Bench

SC – Supreme Court

UILR – University of Ife Law Report

UK – United Kingdom

UK – United Kingdom

UN – United Nations

USA – United States of America

ABSTRACT

The phase independence of the judiciary is not a strange concept to any student or concerned citizen of any country including Nigeria. The concept of independence of the judiciary has long been introduced as an important ingredient to uphold the rule of law in any country. The independence of the judiciary in Nigeria is enshrined in ***Section 17 of Chapter 2 of The Constitution of the Federal Republic of Nigeria, 1999*** which states that "the independence, impartiality and integrity of courts of law and easy accessibility thereto shall be secured and maintained". Unfortunately, this chapter of the constitution is not justiciable, meaning that none of the objectives and principles set out in the chapter can be enforced. Thus, the instrument creating the Nigerian judiciary does not clearly provide for the enforcement of its independence. This is one of the reasons many often wonder if the judiciary is and can be independent. This paper seeks to answer the question, is the Nigerian judiciary independent? How free is the Nigerian judiciary from interference? In answering these questions, it is important to first understand the meaning of the words *independence* and *judiciary*, what constitutes an independent judiciary? This will include an illumination into the development and structure of the Nigerian Judiciary, the development of independence in the Nigerian judiciary since independence under the different constitutions and the military dispensation. The challenges to an independent judiciary in Nigeria will be discussed along with a brief comparison with other nations, in particular the United Kingdom from which most of our laws emanate.

CHAPTER ONE

HOW INDEPENDENT IS THE JUDICIARY IN NIGERIA?

1.0 Introduction

'There is nothing like judicial independence in Nigeria'. This statement was made by Festus Oguche, a Port Harcourt based legal practitioner. He made the statement in an interview with a reporter from the Guardian Newspaper in 2019.[1]

Although the statement might sound offensive to the ears of some well-meaning citizens, unfortunately the statement captures the sincere opinion of most concerned citizens in Nigeria especially those with some understanding of the law. This is one of the reasons why it is expedient to examine the subject of the independence of the Nigerian judiciary, in order to ascertain the true independence of the judiciary in Nigeria.

This paper will begin with an analysis of the concept of the independence of the judiciary before moving on to determine its existence and extent in Nigeria. It will also consider a brief history of the Nigerian judicial system and its structure.

1.1 The Concept of Independence of the Judiciary.

The Judiciary

The Judiciary is the arm of government that interprets the laws of the state and applies the existing laws to individual cases. In any modern state, the liberty of individuals depends upon the fairness of the courts in providing protection against the tyranny of overzealous members of the government. The *Black's Law Dictionary* defines the Judiciary as the branch of government responsible for interpreting

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[1] Bridget Chiedu Onochie, 'There is nothing like judicial independence in Nigeria says Oguche' *The Guardian Newspaper* (Port Harcourt, Nigeria, 22 October 2019) https://m.guardian.ng/features/there-is-nothing-like-judiciary-independence-in-nigeria-says-oguche/amp/

the laws and administering justice.[2] The Judiciary is also defined as the system of courts that interprets the law in the name of the state.[3] In Nigeria for example, the Judiciary is made up of a large number of courts, ranging from the Supreme Court, Appeal courts, High courts, down to Magistrate and Customary courts. It is a means of resolving disputes between individuals, states, states and individuals and even nations.

Judicial Independence

The word independence is said to come from a medieval French word *"depenre",* meaning "to hand from" or "to hand down". The "in" at the beginning is Latin for "not" so the word originally meant "not hanging from".[4] The Webster's dictionary defines "Independence" as "the state or quality of being independent; freedom from dependence; exemption from reliance on, or control by others; self-subsistence or maintenance; direction of one's own affairs without interference". The Black's Law Dictionary defines it as "the state or quality of being independent which means not subject to the control or influence of another or associated with another often larger entity".[5] Independence means free from any external control or interference.

Judicial independence therefore means the freedom of the judiciary to direct its own affairs without any reliance on, interference or control by others. While most persons would agree with this definition and probably give a similar definition, some jurists hold a very strict philosophical understanding to the term 'judicial independence'. According to Oshisanya, "the term judicial independence is not conterminous with an independent judiciary which connotes autonomy and sovereignty of the judicial arm of government from incursion from the other arms of government. Judicial independence is recognised as an ideal which would be betrayed by any disloyalty to impartiality, neutrality, non-

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2 Black's Law Dictionary (8th ed. 2004).

3 **https://en.m.wikipedia.org/wiki/Judiciary**

4 https://www.vocabulary.com/dictionary/independence

5 Black's Law Dictionary (8th ed. 2004)

alignment or objectivity in adjudication".[6] This explanation given by Oshisanya appears to mean that the concept of 'judicial independence' is more theoretical than factual, that is, it exists in the mind and has not been proven to be real. *Wikipedia* defines judicial independence as the concept that the judiciary should be independent from other branches of government and should not be subject to improper influence from the other branches of government or from private or partisan interests.[7]

The concept of independence of the judiciary under any system of government can only be seen within the confines of the constitution operating within the state or nation. Independence of the judiciary includes the independence of the judiciary as an arm/organ of government and secondly, the independence of the judge himself. Independence of the judiciary doesn't mean that the judiciary or judge is free to act in whatever way it likes without any form of checks and balances or redress. It simply means that in coming to their decisions and discharging their functions, there is absolutely no interference in whatever form from outside forces especially the other two organs of government. The essential requirements for total independence of the judiciary will be considered in this paper.

1.2 Historical Background of the Concept of Independence of the Judiciary

The concept of judicial independence has been traced to the writings of *Baron de Montesquieu* in his book, *Spirit of the Laws/De L'esprit des Loix (1748).* Montesquieu theorised the need for the executive, judicial and legislative functions to be assigned to different bodies. This conception of separation of powers was said to have led to the political theory of an independent judiciary.

This origin however is debatable. Some jurists trace the origin of the concept of an independent judiciary to a much earlier time than the 16th and 17th century. The concept is said to have a deeper origin. Some Jewish researchers found traces of an independent judiciary even as far back as the Old

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6 'lai Oshitokunbo Oshisanya*, An Almanac of Contemporary Judicial Restatements with commentaries, Volume Ia*

7 https://en.m.wikipedia.org/wiki/Judicial_independence

Testament Bible Days in the city of Jerusalem.[8] According to the *Mishnah*, the monarchy and the judiciary are separate institutions. *David C. Flatto* explains that, although the king was central to the judicial system, as it was stated in the bible when the people asked for a king, it was for the king to judge them, the political constitution recorded in the book of Deuteronomy describes a centralized judiciary that oversees an elaborate network of municipal courts where the king is glaringly absent. In the sequence of verses that directly address the role of the monarch, the text omits mention of any judicial responsibility on the part of the king. The king is instructed to read and not turn aside from the commandments. The centralised judiciary supplies the authoritative interpretation of the Torah's Law while the king is relegated to a passive role of reading, not interpreting the Torah, as he is enjoined not to stray from Torah's law as interpreted by the judiciary. While the judicial officials have mastery over the Torah's law, the King is subservient to the Torah and accordingly, to them as well. In short according to the Mishnah, Justice is not for kings (not even Jewish ones) but rather for the Sanhedrin, the idyllic supreme court that stands alone atop Jerusalem's Temple Mount. If these claims are to be believed, then the concept of separation of powers and an independent judiciary existed before the English and French records. It should be noted however that the proponents of the doctrine of separation of powers did not advocate for a complete and total separation of the three organs of government. All three organs of government are to work together on the principle of checks and balances for the common good of the state.[9] There should be an interactive, symbiotic relationship between them towards the attainment of the common objective of good governance. While each organ is autonomous within constitutional limits, none is subject to the control of any other. Each acts as a check on the powers of others, resulting in a system of checks and balances.[10] To quote *John Locke*, it may be too great a temptation to human frailty, apt to grasp at power, for the same persons who have the power of making laws to have also in their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they make and suit the law, both in its making and

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8 David C. Flatto*, The historical origins of judicial independence and their modern resonances*

9 N.A. Inegbedion, J. O. Odion, *Constitutional Law in Nigeria (2nd Edition, Ambik Press 2011) 51*

10 Egbe Evbuomwan*, Legislative Powers Uses and Abuses*, 4

execution to their own private advantage (however, he concentrated mostly on the executive and legislative powers).[11]

The independence of the judiciary is also related to the concept of separation of powers and the existence of checks and balances. Until the 18th century, judicial independence was a concept unknown to the British legal system. The emergence of judicial independence as a modern concept in the United Kingdom (UK) can be traced to 1701 when the Act of Settlement was enacted. This is what has been referred to as the first phase of British judicial independence when the concept was domestically received.[12] The Act of Settlement among other things curtailed the Crown's judicial powers and served as a safeguard against future monarchs' abuse of power after the 1688 Great Revolution. This was followed by the second phase when the British concept of judicial independence came to be used internationally.[13] The Nigerian constitution was drafted after the UK's Westminster model of written constitution which recognises separation of powers with the judiciary as the third organ of government.

1.3 Elements of Independence of the Judiciary

In order for there to be no doubt and to safeguard the independence of any judicial arm of government, certain key features are indispensable. This can be seen under the following sub headings:

1. **Formal separation of powers.**

   There should be a formal separation of the powers of the judiciary from that of the executive and legislature and this should be enshrined in the constitution of the state.

2. **Selection and Appointment of Judges;**

   According to the UN Basic Principles, there shall, in the selection of judges, be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth, or status. A requirement that a candidate for

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11 John Locke*, 'Second Treaties of Civil Government' (1690) Chapters 12-13*

12 *(Shetreet (1976))*

13 *(Shetreet (2009) 275)*

judicial office must be a national of the country concerned is, however, not discriminatory. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law (Principle 10). Thus, their appointment should be based on merit looking at their professional qualifications, ability and integrity. The executive or political agendas should not influence the appointment of judges. The appointment and selection of judges should be done by independent judicial bodies established for selection and appointment such as the Judicial Service Commission or National Judicial Council. However, the International Bar Association standards provide that participation in judicial appointments and promotions by the executive or legislature is not inconsistent with judicial independence if such appointments and promotions are vested in a judicial body in which members of the judiciary and the legal profession form a majority.[14]

3. Security of Tenure;

This means that the specific period in which judges are to remain on the bench or the retirement age of judges should be guaranteed. The implication of this is that judges cannot ordinarily be removed from office except on special grounds. The security of tenure for judges is specifically needed to ensure their independence and impartiality, which are essential ingredients for the enthronement of the rule of law. It ensures job security, therefore allowing the judges to make decisions and act without fear of dismissal.

4. Salaries and allocations.

The judiciary should have financial independence. The state is expected to allocate sufficient resources to finance and empower the judiciary. Decent salaries and other official emoluments should be paid to judges directly from a fund set up by the state without the approval of the other arm of government. Fiscal autonomy is a strong requirement for an independent judiciary. The financial budget of the judiciary should be protected from reduction by the other arms of government. Undue delay or denial of judges' salary will not aid judicial independence.

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14 Philip C Aka, 'Judicial Independence under Nigeria's Fourth Republic: Problems and Prospects' (2014) 45 Cal W Int'l LJ 1, 13

5. Discipline and Removal of Judges.

Judges should only be disciplined or removed for reasons which render them incapable or unfit to discharge their duties. Reasons for and effect of discipline and removal should be clearly spelt out and determined in accordance with established rules of conduct.[15] The judge should also have a right to fair hearing.

6. Freedom from External Pressure.

Judges should also be free from other influences apart from the executive and legislature that could mount pressure on them to affect their judgements. This influence can come from pressure groups, mass or social media, family or relatives, their own personal interests and even sometimes their fellow judges, especially from senior judges. Efforts should be made in order to curb or reduce these and other external pressures threatening the independence of the judiciary.

7. **Immunity**.

Judicial Immunity, which finds its origin in sovereign immunity, is the absolute immunity of a judge or magistrate from any kind of civil liability for an act performed in the judges' official capacity. Hence, while sitting on the bench the judge cannot be sued for defamation if he or she makes a statement about one of the parties before the court that might otherwise be considered slander. Judges should be given immunity from civil suits for monetary damages or improper acts or omissions in the exercise of their judicial functions. This rule was recognised by the Common Law that things said or done during judicial proceedings needs to be protected in order to promote the administration of justice. In *Scott v Stansfield,*[16] *Kelly C.B.* opined that the protection is not for the 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 duty with independence or without fear of the consequence.[17] This position has also been

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15 UN Basic Principles, 17-19

16 (1868) L.R. 3 Ex 220

17 N.A. Inegbedion, J. O. Odion, *Constitutional Law in Nigeria (2nd Edition, Ambik Press 2011)* 232.

restated by the learned Justice Karibi-Whyte J.S.C., in the case of *Egbe v Adefarasin.*[18] However, a judge should only have immunity for acts relating to cases before the court and not for acts relating to cases outside its jurisdiction. For example, a criminal court judge should not have immunity if he tries to influence proceedings in a civil court. Thus a judge enjoys immunity from civil damages if they have jurisdiction over the subject matter in issue.[19] Judicial immunity also does not extend to crime, for example where a judge was alleged to have murdered his police orderly.[20]

8. Authority to Determine Jurisdiction

As part of the necessities for judicial independence, the judiciary should have the authority to determine whether it has the authority to decide on any issue brought before it for determination. On this subject, a legal scholar, Philip C. Aka exposited thus: ***"the judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law"***.[21] According to him, this will serve as a safeguard against intentionally stripping the courts of their jurisdiction and diverting cases to other tribunals with the view of having those cases determined by tribunals who can easily be influenced in their decisions.[22]

9. **Security**.

Extra security should be provided for the protection of judges both inside and outside of the courts to prevent any form of intimidation.

10. **Partisanship**.

Judges should not be allowed to belong to any political party or actively participate in politics so that they would not be influenced by the political tide.

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18 [1985] 1 N.W.L.R (part 3) 549 at 567.

19 Mia Stuart, 'Independence of the Judiciary' (2015) From: Oxford Constitutions (http://oxcon.ouplaw.com). (c) Oxford University Press, 2015. All Rights Reserved. Date: 11 May2020

20 *Justice Donald, Ikomi v The State* (2002) 7 WRN 121

21 Philip C Aka, 'Judicial Independence under Nigeria's Fourth Republic: Problems and Prospects' (2014) 45 Cal W Int'l LJ 1, 12

22 Ibid 51

11. **Promotion of Judges**.

Just like the selection and appointment, promotion of judges should also be done by an independent body set up by the judiciary. In Nigeria, we have the National Judicial Council that works alongside the Federal Judicial Service Commission and the Judicial Service Committee of the Federal Capital Territory, Abuja.[23]

1.4 Importance of the Independence of the Judiciary

The importance of an independent judiciary are as follows;

i. Judges would be free in carrying out their duties without fear or favour. This will ensure that justice is done without partiality.

ii. An independent judiciary will build trust in the mind of the citizens toward the justice system, thereby encouraging them to exercise their rights and freedom.

iii. An independent judiciary will act as a reliable check to the excesses of the other arms of government. To ensure that the other arms of government carry out their duties and responsibilities as enshrined in the Constitution.

iv. It is a necessary requirement in upholding the rule of law.

v. An independent judicial is essential for the growth and prosperity of any nation.

vi. It will aid in fostering growth, peace and unity in the nation.

vii. It will assist the nation in practising true federalism and holding true to the tenets of the Constitution.

viii. The fundamental objectives of state policy can only be realised, and the fundamental rights of citizens protected, with an independent and impartial judiciary.

ix. An independent judiciary is a necessity for the complete obedience and submission to the provisions of the Constitution by all the arms of government.

[23] S 20 & 21, Part I, Third Schedule to the CFRN 1999, as amended

CHAPTER TWO

THE NIGERIAN JUDICIARY

2.1 Historical Development of the Nigerian Judiciary

A major problem in attempting to outline the history of the Nigerian judicial system is the absence of any uniform pattern of development.[1] On the 6th of August, 1861 the king of Lagos ceded his Island to Her Majesty, the Queen of England. Before then European soldiers and nationals were already present in what would later be known as Nigeria. By January 1, 1900 the territories on the coast of Nigeria had metamorphosed into three political units, i.e. the Colony and Protectorate of Lagos, the Protectorate of Southern Nigeria and the Protectorate of Northern Nigeria.

Total amalgamation was complete on January 1, 1914 and the new political entity Nigeria, continued under British rule until its independence on October 1, 1960. On October 1, 1963 the monarchy was abolished breaking the last institutionalised chains of colonialism from Nigeria. On January 15, 1966 the first military coup was recorded in Nigeria's history. A few months later on July 29, 1966 a counter coup was staged leading to the very first military government which lasted until July 29, 1975 after Nigeria's first civil war from July 1967 to January 1970. A civilian government was elected on October 1, 1979 to usher in Nigeria's second republic.

The second republic was terminated on December 31, 1983 when the military once again seized power. Thus from 1966 to date, Nigeria has experienced about ten successful and unsuccessful coups that resulted in the incursion of the military in politics in Nigeria.[2] However with the death of General Sani Abacha and the subsequent ascension of General Abdulsalam Abubakar, military rule in Nigeria was terminated and power was handed over to a civilian government led by an elected president, Chief Olusegun Obasanjo on the 29th of May, 1999. This civilian government led to the enactment of the Constitution of the Federal Republic of Nigeria (Promulgation) Decree No 24 of 1999 -the 1999 constitution- which became operative from that date till today.

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1 J. O. Asein, *Introduction to Nigerian Legal System*, (2nd Edition, Ababa Press Ltd 2005) 149

2 C. C. Dibie, Essential Government, (5th Edition, Tonad Publishers Ltd 2012) 214.

The Pre-Colonial System of Administration of Justice

It is doubtful if there has ever been any organised body of human beings without some form of judicial system for the administration of justice.[3] Long before the advent of European settlers the various communities which now constitute Nigeria had their own traditional laws and systems of adjudication. These traditional rules and systems of adjudication differed from each other based on their separate values, beliefs and cultures. They were put in place not just for the administration of justice but for the maintenance of peace, order and sustenance of their cultures.

The political structure of the traditional societies may be classified as a monarchical or republican system of government, chiefly and chiefless or centrally and non-centrally organized states. One remarkable characteristic of these traditional systems of government was that there was the absence of clear demarcations between judicial, executive and legislative functions.[4]

The monarchical states were organised in a hierarchical order of political authority. At the head, there was the Emir or Oba in the North and Yoruba/Edo states respectively. They ruled with the assistance of their council of chiefs. Delegated authority was also given to subordinated authorities like the village head who were empowered to settle minor disputes within the community. Serious offences were taken to the court of the Oba/Emir and their council of chiefs. In the republican states such as the Igbo communities, there were no recognised heads as such. Each village or clan was governed by a council of elders mostly constituted of adult male members of the community. They jointly exercised judicial control in the society. Minor disputes were settled by the adult male members within the family. It should be noted however that the Northern states had a more organised and developed administrative and judicial system of administration. This is often ascribed to the Islamic religion and culture of the northern states.

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3 C. C. Dibie, Essential Government, (5th Edition, Tonad Publishers Ltd 2012) 150

4 Ibid 151

However, these traditional systems of adjudication were soon overtaken by the English system in the advent of colonialism.

Colonial System of Administration of Justice

With the arrival of European traders on the shores of the Niger and the growing business between Europe and the various communities, the Europeans saw the need to protect their interests and the interests of their traders through the establishment of judicial courts. The Europeans had a distrust for the simplistic traditional systems of adjudication. Also the traditional rules of justice in place before their arrival did not account for the type of disputes that arose with the coming of the European traders. The Courts of Equity were the first courts to be established in order to cater for the commercial disputes that arose amongst the European traders and between them and the natives. These courts were not exactly like the courts of equity in England, compared to the court of equity in England, they were less complex, however they were useful in sustaining the European merchants that were far from home. All of these took place within the 1800s.

Other courts were also available at that time such as, the Consular Courts-which were run by the British Consul who was empowered to execute and enforce all agreements between the local chiefs and the British government through various instruments of punishment, this was alongside his other administrative powers and duties. There was also the Courts of the Royal Niger Company which had control over the Niger waterways. The company was granted a Charter and given the mandate to exercise some judicial authority over certain territories in the Niger area.

In 1861, following the recommendation of the British Consul, the British government occupied Lagos and formally concluded the treaty of cession. The first governor of the colony of Lagos established 3 courts, namely, the Police Magistrate Courts, the Commercial Courts and the Slave Commission Courts. Each court was created for specific matters and exercised separate jurisdictions some of which were subject to appeal. The Police Magistrate Courts were replaced by the Supreme Court in 1862. This court exercised jurisdiction on criminal and civil matters similar to the courts in England.

However, with the fusion of the Niger Coast protectorate and the territory under the Royal Niger Company, the Protectorate of Southern Nigeria was formed and this led to the establishment of a new Supreme Court which covered the whole protectorate as from January 1, 1900. Two classes of courts were also created to assist the new Supreme Court, i.e. the Native Council and the Minor courts. In 1906, the Colony of Lagos and Protectorate of Southern Nigeria were amalgamated and this led to the establishment of another Supreme Court with extended jurisdiction. The Native Courts were reorganised and placed under the supervision and control of the Supreme Court. This court system continued until the amalgamation of the North and South Protectorate of Nigeria in the year 1914. Before the amalgamation in 1914, the judicial system in the north was very different from that of the south. This was because indirect rule system was used instead of the introduction of the English Style of courts. The High Commissioner for the North found it easier to govern the people by allowing the Islamic religion and the native laws of the people to persist under the control of the Emir and local chiefs. This is as a result of the already somewhat organised judicial system in the Northern Protectorate. However, as from January 1, 1900, a proclamation was made to establish a Supreme Court and other Courts similar to courts in England in other to administer the English common law, doctrines of equity and statutes of general application in force in England on January 1, 1900. Judges were also appointed to each court. After the amalgamation, three categories of courts were established for the whole country, i.e., the Supreme Court, the provincial courts and the native courts. The judicial system of the country continued to face major changes and reorganization until Nigeria became a federation. With the creation of the Federation, a Federal Supreme Court was established in Lagos. The Northern Region established the Moslem Court of Appeal which was later replaced by the Sharia Court of Appeal in 1960. Before 1960, the Privy Council was the highest court in the land. Appeals from the Federal Supreme Court went to the Privy Council. This situation continued even after Nigeria gained independence on October 1, 1960. The Judicial Service Commission was introduced by the 1960 Independence Constitution. The constitution gave power to the Commission to advice on the appointment of judges in the federal and regional level. Appointments of judges were made by the Governor General or Governor on the advice of the Prime Minister, Premier or the Judicial Service Commission as the case may be.

Nigeria became a republic on January 1, 1963 and with that, the ties with the British government was completely severed. The Federal Supreme Court became the highest court. Courts of appeal were established by the regional constitution. The 1963 constitution abolished the Judicial Service Commissions leaving the appointment of judges to be made by the President on the advice of the Prime Minister and by the Governor on the advice of the Premier as the case may be.

In 1979, the superior courts of record were reordered by the 1979 constitution and this structure was retained by the 1999 Constitution with some modifications.

2.2 The Nigerian Judicial System under the 1999 Constitution.

The 1999 Constitution vests the judicial powers of the Federation of Nigeria as well as the states in the courts.[5] The Legislative powers is vested in the National Assembly for the Federation and in the House of Assembly for the state.[6] The Executive powers of the federation is vested in the President and the executive powers of a state is vested in the Governor of that state[7], subject to the provisions of the constitution. The constitution goes ahead to list the respective courts, including the ones which will be known as the superior courts of record in Nigeria. The power of the courts is however subject to the jurisdiction conferred by the constitution and other enabling statutes. The extent of the powers given to the courts is prescribed under the constitution.[8] Chapter VII deals extensively on the judicial system in Nigeria. The Chapter is divided into four parts, Part I deals with the Federal Courts while Part II deals with the State Courts, Part III deals with the Election Tribunals and Part IV deals with other supplemental matters in the judiciary.

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5 Constitution of the Federal Republic of Nigeria 1999 as amended, section 6.

6 CFRN 1999, Section 4

7 CFRN 1999, section 5

8 Ibid., section 6(6)

2.2.1 Types of Courts.

The courts established by the 1999 constitution,as amended, as superior courts of record are (i) the Supreme Court of Nigeria; (ii) the Court of Appeal; (iii) the Federal and State High Court; (iv) the Sharia Court of Appeal; (v) the Customary Court of Appeal, and; (vi) the National Industrial Court.[9] Part 1 of chapter VII of the constitution identifies the Federal Courts in Nigeria- the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, the High Court of the Federal Capital Territory Abuja, the Sharia Court of Appeal of the Federal Capital Territory Abuja, the Customary Court of Appeal of the Federal Capital Territory Abuja. Part II identifies the State Courts as; the High Court of a State, the Sharia Court of Appeal of a State and the Customary Court of Appeal of a State. Notwithstanding, both the state and national legislatures are empowered by the constitution to create additional courts.[10] There are also inferior courts such as the Magistrate (or district) courts and Customary(or area) courts, as well as Special Courts, and Tribunals.

2.2.2 Establishment of Courts.

The Superior courts of record set out in Sect. 6(5)(a) -(i) of the 1999 constitution are created and established by the constitution and as such derive their power and authority from the constitution. The constitution not only provides for the establishment of the courts but also their composition. Each of the courts is allowed a maximum amount of Justices, that is made subject to the prescription of the Legislature. For the Supreme Court of Nigeria, it shall consist of the Chief Justice of Nigeria and such number of Justices not exceeding twenty-one as may be prescribed by an Act of the National Assembly.[11] The Court of Appeal is to consist of a President and such number of justices, not less than forty nine of which not less than three shall be learned in Customary Law and not less than three

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9 CFRN 1999 as amended, section 6(5); CFRN (third alteration) act 2010, appendix 2.

10 CFRN 1999, section 6(4)

11 Sect. 230

shall be learned in Islamic Personal Law, as may be prescribed by an Act of the National Assembly.[12] The Federal High Court shall consist of a Chief Judge and such number of justices as may be prescribed by an Act of the National Assembly.[13] The High Court of the Federal Capital Territory, Abuja shall also consist of a Chief Judge and such number of judges prescribed by an Act of the National Assembly.[14] Similar provisions are made for the Sharia Court of Appeal and Customary Court of Appeal of the Federal Capital Territory, Abuja[15] with the head of the court being the Grand Kadi and President of the Customary Court of Appeal respectively. As for the state courts, that is the High Courts, Sharia Court of Appeal and Customary Court of Appeal, each court should consist of a head of court and such number of justices as may be prescribed by the House of Assembly of the state.[16]

2.2.3 Qualification and Appointment of Judges.

Under the 1960 Independence Constitution, an independent Judicial Service Commission was established for the appointment and promotion of judges for the centre and regions.[17] For a person to be qualified to be appointed into a higher bench under the constitution, the candidate must have been a judge of a court having unlimited jurisdiction in both criminal and civil cases in some parts of the commonwealth as well as being qualified as an advocate for a period of not less than ten years.[18] The appointment of the Chief Justice of the Federation and Chief Judges of the Regions were however done by the Prime Minister or Premier as the case may be.

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12 Sect. 237

13 Sect. 249

14 Sect. 255

15 Sect. 260 and 265.

16 Sect. 270,275 and 280.

17 N.A. Inegbedion, J. O. Odion, *Constitutional Law in Nigeria (2nd Edition, Ambik Press 2011)* 223

18 Section 112

Under the 1963 Republican Constitution, the Judicial Service Commission was abolished, leaving the appointment of judges to the executive. Justices were appointed by the President acting in accordance with the advice of the Prime Minister or Premier as the case may be.[19]

Under the 1979 Constitution, the appointment of the Chief Justice of Nigeria was made by the President in his discretion subject to confirmation of such appointment by a simple majority of the senate. However, the appointment of a person to the office of a justice of the Supreme Court was made by the president on the advice of the Federal Judicial Service Commission subject to the approval of the Senate by a simple majority. The appointment of a person to the office of president of the Federal Court of Appeal was also made by the President on the advice of the Federal Judicial Service Commission subject to the approval of the Senate by a simple majority.[20] Justices of the Federal Court of Appeal, as well as the Chief Judge and other judges of the federal high court were appointed by the President on the recommendation of the Federal Judicial Service Commission. With respect to state courts under the 1979 constitution, judges of the High Court, Sharia and Customary Court of Appeal were appointed by the Governor of the state acting on the recommendation of the state Judicial Service Commission. The Chief Judge, Grand Kadi and President of the Courts respectively were appointed by the Governor of the state on the advice of the State Judicial Service Commission subject to the approval of such appointment by the House of Assembly in a simple majority.[21] The qualification for appointment as a judge under this constitution is that the candidate must be a legal practitioner who has been registered to practice in Nigeria for not less than ten years. To be appointed into the Supreme Court, the candidate must be qualified to practice for a period of not less than 15 years. For the Court of Appeal, the minimum is 12 years and for the Federal and State High Courts, the minimum is 10 years.

However, under the 1999 Constitution, the appointment of the Chief Justice of Nigeria is made by the President based on the recommendation of the National Judicial Council subject to senate

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19 Section 112 and 122.

20 CFRN 1979, Section 218

21 CFRN 1979, Section 235,241 and 246

confirmation. This is different from the 1979 constitution were the appointment was made solely on the President's discretion. Justices of the Supreme Court as well as the President of the Court of Appeal are also appointed by the President on the recommendation of the National Judicial Council and subject to Senate confirmation. Justices of the Court of Appeal are appointed by the President on the recommendation of the National Judicial Council but not subject to Senate confirmation. Also unlike the 1979 constitution, the appointment of the Chief Judge of the Federal High Court is made by the President but now subject to subject to Senate confirmation on the recommendation of the National Judicial Council. Other Judges of the Federal High Court are appointed by the President on the recommendation of the National Judicial Council with no requirement of Senate confirmation. A High Court, Sharia Court of Appeal and Customary Court of Appeal was created for the Federal Capital Territory Abuja. Appointment as judge of these court is made by the President only on the recommendation of the National Judicial Council. Senate confirmation is required in addition to this for appointment into the Head of these Courts. For State Courts, appointment of a judge into the High Court, Sharia and Customary Court of Appeal of a state is made by the Governor of the state acting on the recommendation of the National Judicial Council. The appointment of the Chief Judge, Grand Kadi and President of the State court has to be with confirmation of appointment by the state House of Assembly.[22]

The qualification for appointment as a judge into any of the court under the 1999 Constitution is the same as that of the 1979 Constitution.

2.2.4 Jurisdiction of Courts.

The highest Court in Nigeria under the 1999 constitution is the Supreme Court of Nigeria. It is the only court with original jurisdiction to entertain disputes between the Federation and a State or between States. An Act of the National Assembly may also confer original jurisdiction on the

[22] CFRN 1999, Section 271, 276 and 281.

Supreme Court provided the jurisdiction is not with regard to criminal matters.[23] Subject to Section 233(2) of the CFRN 1999, the Supreme Court also has the exclusive jurisdiction to hear and determine appeals from the Court of Appeal.

The Court of Appeal has original jurisdiction to hear and determine questions relating to the office of the President and Vice President.[24] Subject to constitutional provisions, the Court also has appellate jurisdiction to hear and determine appeals from the other superior courts of record except the Supreme Court.[25]

The Federal Supreme Court has jurisdiction to hear and determine all the matters prescribed by the constitution under Section 251(1)(2) of the CFRN 1999. It also exercises jurisdiction in respect of some criminal causes and matters prescribed by the constitution.

The High Court of the Federal Capital Territory, Abuja has the jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue and also to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person, subject to the provisions of the constitution.[26]

Subject to the provisions of the constitution, the Sharia Court of Appeal of the Federal Capital Territory Abuja exercises appellate and supervisory jurisdiction in civil matters relating to Islamic personal law. Other jurisdictions may also be conferred on it by an Act of the National Assembly.[27]

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23 CFRN 1999, Section 232

24 CFRN 1999, S 239

25 CFRN 1999, S 240

26 CFRN 1999, Section 257

27 CFRN 1999, Section 262

The Customary Court of Appeal of the Federal Capital Territory has, in addition to any other jurisdiction that may be conferred on it by an Act of the National Assembly, appellate and supervisory jurisdiction in civil matters involving Customary law.[28]

State High Courts have, subject to the provisions of the constitution, jurisdiction to hear and determine civil matters in which the existence or extent of a legal right, power, duty, liability, privilege, obligation or claim is in issue and to hear and determine criminal matters involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.[29]

The Sharia Court of Appeal of a State has appellate and supervisory jurisdiction in civil matters relating to Islamic personal law in accordance with Section 277(2) of the CFRN 1999. This is in addition to any other jurisdiction that may be conferred on it by the law of the State.[30]

A State Customary Court of Appeal has appellate and supervisory jurisdiction in civil proceedings involving questions of Customary law in addition to any jurisdiction conferred on it to determine such questions by the House of Assembly of the State for which it is established.[31]

2.2.5 Remuneration and Removal of Judges.

The remuneration, salaries and allowances payable to judicial officers is provided for under the CFRN 1999. These salaries and other official allowances are to be paid directly from the Consolidated Revenue Fund of the Federation or State as the case may be. The amount of such remuneration, salaries and allowances may be prescribed by the federal or state legislature but are not to exceed the amount as have been determined by the Revenue Mobilisation Allocation and Fiscal Commission. Other than allowances, the remuneration and salaries of judges must not be altered to the disadvantage

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28 CFRN 1999, Section 262

29 CFRN 1999, Section 272

30 CFRN 1999, Section 277

31 CFRN 1999, Section 282

of such officials after their appointment.[32] Judicial officers are also entitled to pension and other retirement benefits as prescribed by the constitution.[33]

The tenure of judges is guaranteed and entrenched in the constitution. A judge cannot be removed from office except on the conditions prescribed by the constitution. Under the 1999 constitution, a judicial officer appointed to the Supreme Court or Court of Appeal may retire when he attains the age of sixty-five and shall cease to hold office when he attains the age of seventy years. For all other courts, judicial officers may retire when they attain the age of sixty years and cease to hold office when they attain the age of sixty five years.[34]

The process of removing a judge before retirement under the 1999 constitution is slightly different from that of the 1979 constitution. Under the CFRN 1979, judicial officers could only be removed by the executive acting on the recommendation of the Judicial Service Commission or as the case may be, upon an address from the federal or state legislature calling for the removal of the judge and on other grounds specified by the constitution.[35] However, under the 1999 Constitution, a federal judge can only be removed by the President acting on an address supported by two thirds majority of the Senate. State judges can only be removed by the Governor acting on an address supported by two thirds majority of the House of Assembly of the State on the ground that the judge is unable to discharge his functions based on infirmity of the mind or body, or for misconduct or contravention of the Code of Conduct. In any other case, the judge may be removed by the president or Governor as the case may be acting on the recommendation of the National Judicial Council for the aforementioned reasons.[36] Aside from these grounds, a judge cannot be removed from office before the age of retirement. The appointment and removal of magistrates is also made by the appropriate Judicial Service Commission. In the case of Area and Customary Courts, the appropriate interim Area Courts Judicial Service Board

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32 CFRN 1999, Section 84 and 124

33 CFRN 1999, Section 291(3)

34 CFRN 1999, Section 291(1)(2)

35 CFRN 1979, Section 256

36 CFRN 1999, Section 292

and the Interim Customary Courts Judicial Service Committee respectively make the appointment and also remove judges from that category of courts.[37]

One of the biggest controversies concerning the removal of a judge is the determination of what constitutes "misconduct". However there has been several judicial pronouncements made on what could be regarded as a misconduct to justify removal of a judicial officer.[38]

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37 Niki Tobi, 'Judicial Independence in Nigeria' (1981) 6 Int'l Legal Practice 62

38 See, *Attorney General of Cross River State v Esin* (1991) 6 NWLR [Part 197] 365; *Bischi v Judicial Service Commission of Benue State* (1991) 3 NWLR [Part 197] 331.

CHAPTER THREE

JUDICIAL INDEPENDENCE IN NIGERIA.

3.1 Judicial Independence under the Nigerian Independence Constitution, 1960.

Nigeria became independent on October 1, 1960. The 1960 Independence Constitution was made under the British Colonial rule before Nigeria became independent. The 1960 constitution was the organic law which heralded the attainment of Nigeria's political independence on October 1, 1960.[1] As at 1960, the federation of Nigeria comprised of three regions. The constitution provided for the independence of the judiciary by making elaborate provisions for the jurisdiction of the Supreme Court. The Federal Supreme Court was given original jurisdiction over disputes between the Federal Government and any of the regions and between the regions. It also had original jurisdiction on maters on constitutional interpretations and was the final appeal court for a number of criminal and civil matters. However, the Privy Council remained the highest appeal court and could entertain appeals from the Federal Supreme Court. Appointment of the Chief Justice of the Federation and other Justices of the Supreme Court was provided for by the Independence Constitution.[2] The 1960 constitution was drafted after the Westminster model of written constitution which recognised the judiciary as a third arm of government. a federal supreme court was established by Section 104 as a superior court of record. The Chief Justice of Nigeria was appointed by the governor general with the advice of the Prime Minister and Federal Justices were appointed by the Governor General with the advice of the Federal Judicial Service Commission. the authority to remove a judge from office rested on Her Majesty, the Queen of England but the judge could only being removed after being investigated and found deserving of removal either as a result of inability, or misconduct.[3] Besides the original jurisdiction granted to the Federal Supreme Court, Parliament had the power to confer any

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1 Maxwell M. Gidado, Ph.D(Warwick), the Nigerian Independence Constitution 1960

2 N.A. Inegbedion, J. O. Odion, *Constitutional Law in Nigeria (2nd Edition, Ambik Press 2011)* 31

3 Section 106.

additional original jurisdiction on the court provided it's not in respect of a criminal matter[4]. Appeals from the Supreme Court went to Her Majesty in Council, that is, the Privy Council.

3.2 Judicial Independence under the 1963 Republican Constitution.

The 1963 constitution marked the dawn of a new era in Nigeria. With the republican constitution, the last vestiges of colonial rule were removed and Nigeria could then be called a truly independent state. From October 1st 1963, Nigeria became a republic with the president as the head of state and bestowed with the executive powers of the federation. Nigerians no longer owed allegiance to the British crown but rather to the federal republic of Nigeria. As for the judiciary, appeals to the Privy Council were abolished and the supreme court became the highest court. This constitution was premised on the doctrine of separation of powers which calls for the independence of the judiciary. Chapter VIII provided for the establishment and jurisdiction of courts as well as the appointment and tenure of judges. The constitution was written to ensure the independence of the three arms of government. however, the Judicial Service Commission was abolished leaving the appointment of judges in the hands of the executive with legislative confirmation. The abolishment of the Commission left the judiciary exposed to abuse and interference by the politicians. This led to the submission by the Chief Justice of the Supreme Court at the time, that the judicial service commission should be reconstituted as it was best suited for the appointment, renewal, dismissal and promotion of judges. According to him, the recruitment of judges should be left in the hands of a nonpartisan and professional body that is able to appreciate the basic qualities of a good judge. It was his fear that the appointment of judicial officials by politicians may lead to a "packed bench".[5] This prophecy could not be fulfilled however because soon after the events of January 1966 led to the first military coup.

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4 Independence Constitution 1960, Section 107

5 Akin Alao, '*The Republican Constitution of 1963: The Supreme Court and Federalism in Nigeria'*, 10 U. Miami Int'l & Comp. L. Rev. 91 (2015), 94. Available at: http://repository.law.miami.edu/umiclr/vol10/iss2/10..

3.3 Judicial Independence under the Military Government.

In all its years of independence from Britain, Nigeria has had seven military rulers, six military inspired changes of government-five of which have been successful military coups- five constitutions (and this includes the one that was never used), a civil war and at least three unsuccessful coup attempts.[6]

The first military coup in Nigeria came after the controversial elections held from December 1964 to March 1965. It was installed on January 15, 1966 after a partially successful coup led by a group of middle rank officers of the Armed Forces of Nigeria. the coup was mostly successful in the northern region where its leaders succeeded in taking temporary control of the government. The Prime Minister along with the Regional Premiers of the Northern and Western regions and other important political leaders were assassinated. In the three other regions, that is, the western, Midwestern and eastern regions, the coup was only partially successful. Major General Aguiyi-Ironsi, who was the General Officer Commanding (GOC) the Nigerian Army was able to evade arrest and successfully gathered loyal officers to resist the coup in the other parts of Nigeria. While these events were taking place the President was reportedly absent from Nigeria, and the then speaker of the Federal Parliament and Acting President, Dr. Orizu Nwafor, announced that he was advised to voluntarily hand over the government of the country to the armed forces in order to ensure the peace and stability of Nigeria. The GOC then went ahead to address the nation and confirmed that the armed forces had been invited by the Nigerian government to form an interim military government. The GOC then became the head of the Federal Military Government.

The implication of these declarations was interpreted by the courts to mean that although the transition of power to the military was unusual, it could be excused on grounds of necessity and as a result was constitutional and as such, being constitutional, the military government was still bound to respect the provisions of the 1963 constitution.[7] It was in the case of *Lakanmi v Attorney General*

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6 https://books.openedition.org/ifra/634?lang=en [Nigeria during the Abacha Years (1993-1998) - The Management of Transition to Civil Rule by the Military in Nigeria (1966-1996) - IFRA-Nigeria].

7 *Lakanmi v Attorney General of Western Region of Nigeria* (1971) 1 UILR 201.

(West)[8] where the court made this pronouncement that clear defiance of the authority of courts by the military government is clearly displayed. The military government in response to the courts declaration at the time, promulgated a retroactive decree[9] which nullified the courts judgement by declaring that the events of January 1966 was a military revolution, thereby legitimising its actions and validating its decisions. The decree also ousted the jurisdiction of any court of law in Nigeria from entertaining any question as to the validity of any decree or edict made by the federal military government. This is just one example of how the military trampled on the judicial authority of the courts. In effect, the powers and authority of the courts were restrained by the military government and most of the court's orders were flagrantly disobeyed by the military governments.

The Constitution (Suspension and Modification) Decree No 1 of 1966 was enacted which suspended and modified several provisions of the 1963 constitution particularly the ones relating to the executive, legislative and judiciary. The legislative lists were left intact and legislative power over matters in the lists was conferred on the federal military government. The Federal Military Government legislated by Decrees and Edicts. The Executive powers were vested on the Head of the Military Government. For the judiciary, an Advisory Judicial Committee was established by Section 11 of Decree No. 1 of 1966. This committee comprised of the Chief Justice of Nigeria as Chairman, the Chief Justice of each of the four regions, the Chief Justice of the federal territory of Lagos, the Grand Kadi of the Sharia Court of Appeal as well as the Attorney General of the Federation. The role of the committee was to advice the Supreme Military Council on the appointment of judges, the recommendations of which were usually sent to the Council. The Decree suspended certain sections of the constitution relating to the exclusive original jurisdiction of the Supreme Court in disputes between the Federation and the Regions and between the Regions. It also suspended the advisory jurisdiction of the Supreme Court as well as other provisions of the constitution relating to the jurisdiction and powers of courts in Nigeria. By Section 113, the tenure of office of the Justice of the Supreme Court was modified so that a person holding or appointed to act in the office of the Chief Justice or a justice of the Supreme Court

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8 (1971) 1 UILR 201.

9 The Federal Military Government (Supremacy and Enforcement of Powers) Decree, 1970(Decree No. 28)

could be removed or have his appointment terminated by the Supreme Military Council acting after consultation with the Advisory Judicial Committee. After the second military coup d'état on July 29, 1966, a civil war broke out which later led to Nigeria becoming a federation of twelve states and Chief Judges were appointed for each state. A Federal Revenue Court was established by the military in 1973 to deal with matters involving the revenue of the Federal Government.

The third military coup took place on July 29, 1975 with General Murtala Mohammed becoming the new Head of State. When he was assassinated on February 15, 1976, his former deputy, General Olusegun Obasanjo continued his administration. Nineteen states were created with a Chief Judge in each state. The Jurisdiction of the courts contained in the 1963 constitution was ousted by Decree. However, a new Federal court, the National Industrial Court was established. The military abolished the Court of Appeal of the former Western State and repealed its enabling legislation. An advisory judicial committee similar to the previous one was also established by the military. This military government led to the promulgation of the 1979 constitution and the introduction of a civilian government in Nigeria's second republic.

However, Nigeria's second republic came to an end once again with the emergence of the military in the fourth successful coup d'état following the 1983 elections which were fraught with rigging. As usual, Section 4 of the Constitution (Suspension and Modification) Decree No. 1 of 1984 ousted the jurisdiction of the courts with regard to anything done or intended to be done under the Decree. Special Military Tribunals were established. These tribunals consisted of selected judges but were headed not by a High Court Judge but a member of the Armed Forces.

A fifth military coup d'état took place on august 27, 1985 with General Ibrahim Babangida as the new Head of State. The 1979 Constitution which was suspended, amended or modified by the previous administration was further amended. Some of the important amendments to the constitution as it pertains to the judiciary was that, Section 258 of the 1979 constitution was amended so that judgements of court which had to be delivered within three months could now be delivered outside of three months provided there is no miscarriage of justice. Also a single Justice was now enough to deliver a judgement of the Supreme Court or Court of Appeal. Two military tribunals were set up to

try offenders under the Special Tribunal (Miscellenous Offences) Decree 1984. These tribunals were however constituted and headed by judges.

The sixth military coup d'etat in Nigeria since independence took place on November 18, 1993. General Sani Abacha took over power from the interim government set up after the June 12 presidential elections. Just like in the past, some provisions of the constitution were suspended and modified, and the Head of state combined the executive and legislative powers of the state. An Advisory Judicial Committee was also set up for the judiciary with the Chief Justice of Nigeria as chairman. The legislature was abolished and the military legislated by Decrees and Edicts for the federation and the states respectively.

In each military era, the judiciary was allowed to function. None of the military governments attempted to completely usurp the powers of the judiciary. Courts were still allowed to function but within certain limits. They could only hear and determine matters under the unsuspended portions of the constitution. Military decrees usually suspend, modify and/or abrogate certain sections of the constitution that guarantees separation of powers. The federal military government usually combines the legislative and executive powers of the state. While the judicial powers of the state are still left to rest with the courts, the powers of the courts are limited by decrees which ousts the jurisdiction of the courts to hear and entertain certain questions especially the ones pertaining to the validity of a decree or edict. In *Adamolekun v Council of University of Ibadan*[10], the Supreme Court acknowledged that Decree No 1 of 1966 had ousted the jurisdiction of the court on questions concerning the validity of a decree, although the court could still entertain questions on conflict between a decree and an edict. This trend of subverting the powers of the judiciary continued even with the advent of the military in 1984 and again in 1993. One significant attribute of military regime was the use of ouster clauses in military decrees in order to diminish the jurisdiction of regular courts of the land. Most of the decrees promulgated had a retroactive effect and trampled on the fundamental rights of citizens. Although

[10] (1968) NMLR 253.

these ouster clauses were strongly resisted by the courts[11], the judiciary could not regain its full powers and authority until the end of the military era. Numerous accounts of disobedience and disrespect to court orders were recorded during the military era. One of such was the case of *Odumegwu Ojukwu v Governor of Lagos State*[12] where the appellate was forcefully ejected from his residence by the then military governor of Lagos State while the case was still pending in court. The interlocutory injunction ordered by the court to restrain the governor from doing so was also ignored.[13]

Thus, under each of the military governments, the judiciary suffered gross interference and subversion from the Federal Military Government. General Sani Abacha's regime later came to an end with his death and the subsequent ascension of General Abdulsalam Abubakar into power. An elaborate transition from military rule to civil government on May 29, 1999 was released. Federal, state and local government elections were conducted, and a newly elected president was sworn in on the 29th of May 1999 in the person of Chief Olusegun Obasanjo. With the enactment of the Constitution of the Federal Republic of Nigeria (Promulgation) Decree No. 24 of 1999, the Constitution of the Federal Republic of Nigeria (CFRN) 1999 became operative with effect from that date.

3.4 Judicial Independence in Nigeria under the 1979/1999 Constitution.

After the military coup d'état that ushered in the government of General Olusegun Obasanjo in February 1976, elaborate plans were made for the emergence of a democratically elected government. Every democratic government needs to be founded on a constitution and there was need to create a new constitution after the ineffectiveness of the 1963 constitution. A Constitution Drafting Committee was set up in September 1976 tasked with producing a draft constitution. One of the basic ideas in forming the Constitution Drafting Committee was to ensure an independent judiciary. The CDC's report was deliberated upon by a Constituent Assembly which on completion of its deliberations and

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11 See, *Lakanmi v Attorney General(West)*supra; *Nwosu v Imo State Environmental Sanitation Authority* (1990)2 NWLR 688.

12 [1985] 1 NWLR 621

13 See also, *Obeya Memorial Hospital v AG of the Federation* [1987] 3 NWLR (Part 601) 325.

proposals presented them to the then Supreme Military Council for approval. This led to the promulgation of the Constitution of the Federal Republic of Nigeria (Enactment) Decree No. 25 of 1978 which was the bulk of the 1979 constitution. Power was handed over by the military to the new Executive President on October 1, 1979 which was to be the commencement date of the 1979 constitution. The American Constitution served as a model for the 1979 constitution, therefore it imbibed the principle of separation of powers. There was clear cut separation and division of legislative, executive and judicial powers. Chapter II of the constitution contained the Fundamental Objectives and Directive Principles of State Policy which provided that in furtherance of the state social order, the independence, impartiality and integrity of courts of law shall be secured and maintained.[14] Although this is a commendable addition to the constitution, the non-justiciability of the chapter created a major drawback. The 1999 constitution contains similar provisions to that of the 1979 constitution.

During the military rule, there was gross disregard for the rule of law and democratic principles. There was unwarranted dismissal and cancellation of appointment of judicial officials along with open contempt and disregard for judicial pronouncements. As a result of this, provision was made under the 1979 constitution for a Judicial Service Commission for not just the federation but for the various state governments. The Federal Judicial Service Commission was given the power to advice the president on the appointment of persons as Justice of the Supreme Court, appointment into the High Court and Court of Appeal, except the Chief Justice and President of the Court of Appeal. It also had the power to make recommendations to the president concerning the removal of judges and other judicial officers from office. The Chief Justice of the federation was appointed by the President at his discretion. The President of the Court of Appeal was also appointed by the President but on the advice of the Judicial Service Commission. Other Justices of the supreme court were appointed with the Senate approval by a simple majority. All other judicial officers were appointed by the President on the recommendation of the JSC. According to Aihe, appointment made by way of advice means that the President has no discretion in the appointment. However, when it is made on recommendation it

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14 CFRN 1999, Section 17

means that although the President is not expected to appoint outside the commission's recommendation, he could refuse to appoint the person recommended by the commission leaving the Commission with the option to reconsider their recommendation.[15] Under this constitution, the executive had little to do with the appointment of judicial officers, except with the Chief Justice of the Federation. As regards tenure of office, a justice could not be removed unless a recommendation is made by the judicial service commission. This is to the exclusion of the Chief Justice of the Federation. The Chief Justice along with the other Chief Judges could only be removed by the president or the Governor, as the case may be, upon an address supported by two thirds majority of the Senate or House of Assembly, as the case may be, either as a result of infirmity, misconduct or contravention of the Code of Conduct. The retirement age for Judicial Officers was placed at sixty-five years. This was held to be sufficient to secure the tenure of judicial officers.

However an opportunity for the judiciary to critically examine the provisions of the 1979 constitution as regards tenure and removal of judicial officers came in the case of *Anyah v Attorney General, Borno State*[16]. In this case, relying on section 256 of the 1979 constitution, the state house of assembly of Borno State passed a resolution calling on the state Governor to advice the chief judge Justice Kalu Anyah to honourably resign his appointment or face impeachment within fourteen days. The charges laid against him were that he mismanaged the funds allocated to the state judiciary alongside his inappropriate speech to the Area Court judges. Section 256 of the 1979 constitution has to do with the removal of judicial officers. Subsection 1 provides that that a judicial officer shall not be removed from his office or appointment before his age of retirement except, in the case of a Chief Judge of the High Court 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. The Chief Judge responded by taking an action by a writ of summons at the High Court challenging the purported resolution of the Borno State House of Assembly. In other to comply with section 259 of the constitution the matter was taken to

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15 M A Ikhariale, 'Independence of the Judiciary under the Third Republican Constitution of Nigeria, (1990) 34 J Afr L 145, 151-152.

16 (1984) 5 NCLR 225

the Court of appeal. The court of appeal in interpreting section 256 of the constitution stated that; "Section 256 which provides for the removal of the Chief Judge requires the participation of all the three departments of the Constitution. This is because the power of removal is vested in the Governor, the Executive of the State but only acting on an address supported by two-thirds majority of the House of Assembly of the State. Furthermore, the determination of the reasons for removal which consist of misconduct or contraventions of the Code of Conduct are clearly matters outside the constitutional powers and functions of the executive or the legislature, and indeed even both combined."[17]

Thus, It held that: (1) a Chief Judge of a state can only be removed from office by the Governor on the address supported by two-thirds majority of the House Assembly in respect of *proved* inability to discharge the functions of his appointment and an *established* and *proved* misconduct or contravention of the Code of Conduct before the law courts and the Code of Conduct Tribunal, (2) The allegations of misconduct against the Chief Judge must be proved in a court of law; (3) It is mandatory that all allegations of a contravention of the Code of Conduct made against the Chief Judge must first be made to the Code of Conduct Bureau which shall refer the matter to the Code of Conduct Tribunal.

The court concluded its judgment by pointing out that it is contrary to the doctrine of separation of powers as envisaged under the Nigerian Constitution for a State House of Assembly to attempt to exercise judicial functions by investigating and making a finding of guilt on a Chief Judge of a state.

However, according to many, this judgment was unsatisfactory to both parties and most especially the courts reason for its decision. For example, the plaintiff's counsel argued that the removal of the Chief Judge is entrusted to an impartial body constituted in such a manner as to ensure its independence and impartiality. On the other hand, the defendant's counsel argued that the removal of

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17 M A Ikhariale, 'Independence of the Judiciary under the Third Republican Constitution of Nigeria, (1990) 34 J Afr L 145, 153

the Chief Justice is entrusted solely to the House of Assembly which is a political body by the Constitution.

This judgement has been criticised that even though it sought to protect the judiciary from unnecessary harassment, the interpretation which the court gave to section 256 as regard the requirement of a combined action by the three arms of government in the process of removing a Chief Judge is most unlikely to be workable because of its expectation of unanimity from the three organs of the government, even where the need to do so genuinely arose.

There is also the criticism that the judgment sought to exclude the legislature from the specific constitutional role it has to play in the impeachment of a Chief Judge by limiting it to merely presenting the address supported by two-thirds majority praying the Governor to remove the Chief Judge.

Arguments have been made to imply that removing a Chief Judge is less rigorous than removing other judges.[18] This is quite contrary to the view expressed by the learned judge of the Court of Appeal, because, before the other judges are removed from office, both the alleged misconduct and its gravity have to be established before the Judicial Service Commission which is an independent impartial body. The Governor is not bound to remove a Chief Judge or a judge so recommended by the House of Assembly or the Judicial Service Commission. In both cases, he is entitled to exercise his discretion.

In the case of Justice Anyah, it was quite troubling that soon after the court gave its ruling on the matter, the state legislature again resolved by the required two-thirds majority to ask the Governor to remove the Chief Judge from office for "misconduct". Consequently, the Governor purported to remove the Chief Judge. The next day an Acting Chief Judge was hurriedly sworn in by the Governor. The removal, without a finding of misconduct against the Chief Judge by an impartial tribunal or court, was clearly against the Constitution and therefore void. This was the more so as there was a subsisting order made by the High Court restraining the state government, the Speaker and members

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[18] Ibid 154.

of the House of Assembly from taking further steps on the matter while the suit was still pending. This matter almost resulted in a serious political crisis. The case brought out clearly the problems with section 256 as far as the removal of a Chief Judge was concerned.

Another major development which brought about a rethinking of the provisions of the 1979 constitution as it concerns judicial independence was the notorious case of the *State v Justice Ikomi*.[19]

With the overthrow of the democratic government of President Shehu Shagari by the military on 31 December, 1983, the Constitution as usual was suspended and the provisions which sought to guarantee the independence of the judiciary by the establishment of a Judicial Service Commission were swept away.

The military replaced them with the Advisory Judicial Committee with responsibility to undertake the appointment and discipline of judicial officers. In practice the committee was only an advisory body whose rules of procedure required the consent of the Head of the Federal Military Government. In actual fact, the Federal Military Government was in complete control of all appointments to the Superior Courts of record as well as exercising the executive and legislative powers.

Characteristically, the military government, through the Supreme Military Council, (now Armed Forces Ruling Council) assumed complete control over the appointment and dismissal of judges without recourse to the least requirements of a fair hearing. The Ikomi case clearly demonstrated the depth of the diminished security of judicial tenure under the military in Nigeria. In the said case, a police constable attached to Justice Donald Ikomi was found dead in mysterious circumstances near the judge's official quarters. While investigations were still on going, the Supreme Military Council immediately announced his dismissal from office as a judge of the Bendel State High Court of Justice. Although there was no evidence connecting the judge with the murder, the judge was subjected to the most humiliating treatment before being acquitted of the murder charge. This incident generated considerable sentiments about the deteriorating insecurity of Nigerian judges, especially under a

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[19] (1986) LPELR- SC 28/1986, *Ikomi v State* (1986) 3 NWLR (Pt. 28) 340.

military dictatorship. This judge was undoubtedly denied the most basic requirement of natural justice as he was dismissed from his judicial office even before the case against him was heard and determined.

All these issues encouraged a change in the constitutional provisions for the removal of a judge under the 1989 constitution that was to take effect on October 1, 1992 but was never implemented.

The 1989 Constitution contained some pragmatic provisions which were intended to safeguard the independence of the judiciary. Although that constitution was never operational, I will highlight some of the relevant provisions.

Under the said constitution, when a Chief Judge or the Chief Justice of Nigeria is accused of misconduct or inability to discharge the functions of his office or of contravention of the Code of Conduct, the allegation against him must be made in writing addressed to the Speaker of the House of Assembly of the state or the President of the Senate, as the case may be, who will then constitute a panel called the Investigation Panel consisting of five members all of whom shall be persons of unquestionable integrity and two of whom shall be non-members of the legal profession, to investigate the allegation.[20] If after the Investigation Panel finds that the allegation had not been proved or substantiated, no further proceedings shall be taken in respect of the matter. It follows that there must be a prima facie case against the Chief Justice before the Panel can take further action. If, however there is such a prima facie case, the Chief Justice of Nigeria or the Chief Judge of the state will be entitled to defend himself either in person or by a legal practitioner of his own choice before the Investigation Panel.

At the conclusion of its investigation, the Panel would submit a report of its findings to the Speaker or Senate President who will immediately submit the said report to the House of Assembly or Senate for consideration. Then the House of Assembly or Senate would within a period of not more than 60 days from the receipt of the report consider it and if the report is considered and confirmed by an address supported by two-thirds majority of the House of Assembly of the state or Senate, the Speaker of the

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[20] Section 276 of the 1989 Constitution

House or Senate President would send the decision made to the President or the Governor, as the case may be, who would then remove the Chief Judge or Chief Justice from his office, as the case may be.[21]

This arrangement was to reinforce the security of judicial appointments by making sure that any removal proceedings must be subjected to a judicial or an impartial process where a hearing is guaranteed to the judge accused of misconduct or contravention of the Code of Conduct. Thereby preventing the confusion that occurred in Borno State when the legislature sought to impeach the Chief Judge of the State. The role of the executive was limited to the formal removal of the judge. The executive therefore had no discretion in the matter making the process non-political. Also, given the calibre of persons constituting the Investigation Panel, any person under trial ought reasonably to expect a fair treatment.

The appointment of other judicial officers in the federal judiciary was secured till retirement age. They can only be removed by the President acting on the recommendation of the Federal Judicial Service Commission and on an address supported by two-thirds majority of the Senate. This is however after the allegation of misconduct or contravention of the Code of Conduct has been proved by an Investigating Panel. Such an allegation must have been made in writing addressed to the Secretary of the appropriate Judicial Service Commission whose Chairman is empowered to constitute the Investigating Panel for that purpose. Like the cases of the Chief Justice of Nigeria and a Chief Judge of a state, there shall be five members of whom all persons shall be of unquestionable integrity and two of whom shall be non-members of the legal profession.

Members of a state judiciary are removable by the Governor of the state acting on the recommendation of the state Judicial Service Commission and on an address supported by a 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. This is only after the allegation has been investigated by the Investigating Panel during which the accused had been afforded all opportunity to

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[21] Section 276(7)(8) of the 1989 constitution

defend himself in person or by a legal practitioner of his own choice.[22] These provisions were commended for further securing the tenure and appointment of judicial officers from executive and legislative meddling.[23]

However, when the Constitution of the Federal Republic of Nigeria 1999 was promulgated, the provisions concerning the creation of an Investigation Panel in the removal of judges were excluded. The 1999 constitution continued with the 1979 procedure for the removal of judges with the exception that both state and federal judges are removed on the recommendation of the National Judicial Council[24] and not the state Judicial Council. As a matter of fact, the power to appoint and not just remove a federal or state judge is left to the National Judicial Council. This has been argued to be contrary to the principles of federalism as the power to appoint and remove state judges should be left solely to the states.[25]

The independence of the judiciary under the 1999 constitution can be analysed using the basic requirements for judicial independence:

1. **Formal Separation of Powers.**

The principle of separation of powers is clearly entrenched in the 1999 Constitution. Sections 4,5 and 6 provides for the legislative, executive and judicial powers of the federation respectively. Chapter V, VI and VII also clearly differentiate between the powers and functions of the three organs of government. The entrenchment of the doctrine of separation of powers in the constitution has helped to secure the independence of the judiciary in Nigeria.

2. **Selection and Appointment of Judges.**

The procedure for the selection and appointment of judges in each of the various courts in Nigeria are contained in Chapter VII of the 1999 Constitution. The constitution lists out the criteria that must be

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22 Section 277 of the 1989 constitution.

23 M A Ikhariale, 'Independence of the Judiciary under the Third Republican Constitution of Nigeria, (1990) 34 J Afr L 145, 156-158

24 Section 292(1) b of the 1999 constitution.

25 N.A. Inegbedion, J. O. Odion, *Constitutional Law in Nigeria (2nd Edition, Ambik Press 2011)* 231

met before an individual can be qualified to be appointed as a judge in any of the superior courts of record. These provisions were designed to ensure that only competent individuals of virtue and high integrity can be appointed to the Bench. The president and members of the senate or house of assembly have their roles to play in the appointment of judges. However, the establishment of an independent body for the selection of judges, i.e. the National Judicial Council, helps to strengthen the independence of the judiciary.

3. Security of Tenure.

The tenure of judges is guaranteed by the 1999 Constitution. The process of removing a judge is such that a judge cannot easily be removed by the other arms of government. The National Judicial Council along with the executive and as the case may be, the legislature, has to be involved in the removal of a judge. The age of the retirement of judges is clearly stipulated in the 1999 constitution. The procedure for removing a judge is contained in Section 292 of the CFRN 1999 and the tenure is contained in Section 291.

4. Salaries and Allotments.

The Constitution provides for the salaries of judges and other judicial expenditure to be paid directly from the Consolidated Revenue Fund of the State or Federation.[26] The amount of pension to be paid to judges is clearly stipulated in the 1999 constitution.[27] The legislature need not approve before the salaries of judges are paid from the consolidated revenue fund. The remuneration and allowances of the judiciary are not to be altered to their detriment after their appointment in order to keep them free from financial worries. The emoluments of judicial officials have also improved considerably under the 1999 constitution in the form of domestic staff, vehicle, and sometimes even accommodation, provided for by the government.

5. **Discipline and Removal of Judges**.

The reasons for the removal of a judge before the age of retirement are clearly spelt out in the constitution. A judge can only be removed for his inability to discharge his functions, either arising

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[26] Section 84 and 124.

[27] Section 291

from infirmity of the mind or of the body, or for misconduct or contravention of the code of conduct.[28]For a judge to be found guilty of contravention of the code of conduct he would have to appear before the code of conduct tribunal and be given a chance at fair hearing. The National Judicial Council, an independent body set up by the constitution comprising of members of the judiciary, has the power to exercise disciplinary control on judicial officials based on the recommendation of the federal and state Judicial Service Commission.

The case of *Justice Raliat Elelu-Habeeb v Attorney General Federation, Attorney General Kwara State and Kwara State House of Assembly*[29]presents an interesting view of the law on removal of judges in Nigeria. On 30 April 2009, the Governor of Kwara State as Head of the Executive forwarded an address to the House of Assembly in which the Governor prayed that the appellant, the Head of the Judiciary in Kwara State be removed from the office of the Chief Judge of Kwara State 'for inability to discharge the functions of her office and that her act of misconduct stated above also contravened the Code of Conduct for chief judicial officer of the State'. The House of Assembly summoned, ordered and directed the appellant to appear at its plenary as part of the process of its exercise of disciplinary control over her.

The appellant then instituted an action at the Federal High Court wherein she asked the court to interpret the provisions of the Constitution particularly sections 6, 153(1), paragraph 21(d) of the Third Schedule to the Constitution of the Federal Republic of Nigeria 1999 and determine whether the Governor and the House of Assembly can exercise or constitutionally exercise disciplinary control over her without the input of the National Judicial Council, the body exclusively empowered under the Constitution to exercise disciplinary control over judicial officers including the Chief Judge. It was held that the National Judicial Council has supervisory control and powers of appointment and discipline to the exclusion of any other body over judicial officers and that both the Governor of Kwara State and the House of Assembly cannot initiate disciplinary proceedings against the plaintiff as the Chief Judge without the input of the National Judicial Council.

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28 Section 292(1)

29 (2012) LPELR-SC. 281/2010.

Whether the intendment of the Constitution is that the Chief Judge of a State should not be removed save upon a recommendation by the National Judicial Council is really not clear. Section 292(1)(a)(ii) of the Constitution simply obliges the Governor to obtain the support of two thirds majority of the State House of Assembly members prior to exercising the power to remove the Chief Judge and no more. This is buttressed by subparagraph (b) of the provision dealing with the removal of judges of the High Court which then dispenses with the requirement for legislative support but expressly requires that their removal be on the recommendation of the National Judicial Council.

Section 21(d) of Part 1 of the Third Schedule to the 1999 Constitution upon which the Court relied to invalidate the removal of the Chief Judge merely allows the National Judicial Council to recommend the removal of a Chief Judge to a Governor and to exercise disciplinary powers over a Chief Judge and no more. It fails to expressly allow exclusive powers to the National Judicial Council to recommend the removal of a Chief Judge or indeed mandatorily require that such a recommendation be secured prior to the removal of a Chief Judge. The problem is thus created by the Constitution itself which in Section 292(1)(a)(ii) seems to forget having vested disciplinary powers over Chief Judges in the National Judicial Council. It is against the above background that we take the view that despite the recommendation of the National Judicial Council, the Governor would still need the support of two thirds of the State House of Assembly members prior to removing the Chief Judge. Thus following the decision in *Elelu-Habeeb* case, the law is now that for the Governor to remove a Chief Judge, the National Judicial Council will have to recommend such a removal alongside two-thirds support of the State House of Assembly members. This is what the judgment has achieved.[30]

6. Freedom from External Pressure.

The constitution has aided in curbing external pressures on judges to influencing their functions through a system of hierarchy of courts. Under this arrangement, appeals can lie from one court to another. Such that a judgement delivered by one court can be over turned by a judge of an appellate court, with Supreme Court at the apex. The supreme court can only be duly constituted if it consists of

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30 Edwin Obimma Ezike and Emmanuel Onyedi Wingate, 'Judicial Independence and Accountability in The Enforcement of Contracts Against the Nigerian Government', 12- 16

not less than five Justices of the supreme court.[31] Other appeal courts need to consist of at least three judges. This arrangement is meant to keep the judges in check.

7. **Immunity**.

There are no specific constitutional provisions pointing to the immunity or otherwise of judges. Thus there is no provision in the constitution stating that a judge may be free from any case brought against him as a result of things said or done while exercising his jurisdiction in court proceedings. The constitution however makes provision for the enforcement of courts' decision[32] and that's the closest it came to protecting the decisions taken by judges. The common law however recognises and demands protection for things said and done during judicial proceedings. This common law principle finds its basis from the case of *Scott v Stansfield*.[33] In the case of *Egbe v Adefarasin*[34], Karibi-Whyte J.S.C exposited that it is of considerable interest to the administration of justice and the stability of our society and the constitution that the thin and fragile fabric of our judicial wall should be protected from the wanton attacks of irate litigants whose only grievance is that they have lost their cause or falsely believe that they are persecuted.

8. Authority to Determine Jurisdiction.

Jurisdiction is the authority of the court to exercise judicial power or to decide the matter placed before it. A court must first have jurisdiction before it can proceed to exercise any form of judicial power. The court assumes the authority to first determine whether or not it has jurisdiction. The jurisdiction vested in each of the courts is clearly spelt out in the constitution. The structure of the judiciary as it relates to the hierarchy of courts is one of the mechanisms put in place to protect the independence of the judiciary.

9. **Security**.

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31 Section 234.

32 Section 287

33 (1868) L.R. 3 Ex 220.

34 (1985) 1 NWLR (Part 3) 549.

The constitution does not expressly provide for the security of judicial officials. However other expenditure for judicial officials which may include security are paid for from the Consolidated Revenue Fund as provided by the constitution.[35]

10. Promotion of Judges.

The promotion of judges is done on the recommendation of the National Judicial Council to the executive from among the list submitted to it by the Federal or State Judicial Service Commission, as the case may be.[36]

11. Enforcement of Decisions.

The enforcement of decisions is an important factor of judicial independence. This is provided for by Section 287 of the 1999 Constitution which stipulates that the decisions of the various superior courts of record shall be enforced in any part of the federation by all authorities and persons and by other courts of law with subordinate jurisdiction according to the hierarchy of courts.

3.5 Laws/Legislations on Judicial Independence in Nigeria.

In Nigeria, there have been few laws that have helped to support the independence of the Nigerian judiciary. One of the major challenges facing the Nigerian Judiciary is financial autonomy, or rather the lack thereof. Just recently in 2019, the Bayelsa State Governor, Seriake Dickson signed the state *House of Assembly Service Financial Autonomy Bill* and *the Legislative Funds Management(Amendment) Bill, 2019* into law. The Bill was passed during an emergency sitting on the 3rd of December, 2019. The Bill is to grant financial autonomy not only to the legislature, but also the judicial arm of government and enable the two arms of government to carry out their duties without interference and promote checks and balances with separation of powers. The Governor in an interview, said that thanks to the new law, the heads of the other arms of government in the state

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35 Section 84(7).

36 Third Schedule to the Constitution, part I, section 12 & 20. Part II, s. 5

would henceforth not need to come to the executive to get what is due to them. The Governor also called for the respect of the independence and autonomy of the legislature and judiciary.[37]

Likewise, earlier in the year, the Delta State government also passed a bill to grant financial autonomy to the Delta State judiciary. The bill titled "*The Delta State Judiciary Fund Management (Financial Autonomy) Law, 2019*", was later signed into law by the State Governor, Dr. Ifeanyi Okowa. The law provides for the management of funds accruing to the state judiciary from the consolidated revenue fund of Delta State. Section 6 of the Law provides that the Delta State Judiciary shall have the power to manage its Capital and Recurrent Expenditure in accordance with the provisions of the Law. The new Law was set to come into force on 23rd of January, 2020. Commenting on the Bill, the Chief judge of Delta State, Hon. Justice Marshal Umukoro, commended the legislature and executive for the speedy process culminating in the signing of the Bill. He also described the action of the Governor as a bold and laudable step in granting autonomy to the judiciary, stating that the autonomy granted would enhance speedy dispensation of justice in the state, improve work conditions and facilitate development of infrastructure.[38]

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37 https://www.msn.com/en-xl/africa/nigeria/dickson-signs-bayelsa-assembly-financial-autonomy-bills/ar-BBYeF2f

38 https://www.thisdaylive.com/index.php/2020/06/06/okowa-signs-judicial-autonomy-bill-into-law/amp/

CHAPTER FOUR

CHALLENGES TO JUDICIAL INDEPENDENCE IN NIGERIA.

Although the 1999 constitution was drafted after the Westminster model that recognises separation of powers and independence of the judiciary, there are certain issues that have been left unaddressed or ignored in the drafting of the constitution leading to the denial of true separation of powers and the independence of the Nigerian judiciary. As it stands now, there are certain factors and issues that make one to question whether the Nigerian judiciary is truly independent. There have been threats to judicial independence emanating from the other arms of government as well as other elements.

4.1 Challenges from the Executive.

The executive arm of government has been identified by judicial officials as one of the main threats to the independence of the judiciary in Nigeria. Out of all the arguments made against the executive arm of government concerning judicial independence, the most common one is that ultimately, courts' budgets and finances are controlled by the executive. Money allocated for the welfare of the courts including judicial officials is provided by the executive. Judges are paid from the money released to them by the executive and as the saying goes "he who pays the piper dictates the tune". In 1982, the late Honourable Justice Oputa once lamented that,

> "the practical situation in which the chief justice of Nigeria, every chief judge and chief registrar finds himself is that he must rely on the executive arm of government for the provision of these physical and human skills and resources without which the courts will cease to function…. The court halls and judge's chambers, the record books and other stationary, the judicial libraries, all these cannot be provided without the necessary release of funds by the executive arm to the judicial branch".[1]

Dr. Nwakama Okoro while discussing judicial independence also stated that,

> "the executive is trying to control the judiciary in this country in two ways. The technical and recurrent expenditure of the judiciary should be controlled by the judiciary. When a man gives you money before you can build a court, he gives you money before you can buy a car

[1] A. A Olowofoyeku, 'Beleaguered Fortress: Reflections of the Independence of Nigeria's Judiciary, (1989) 33 J Afr L 55, 57.

> for a judge and he gives you money before you can employ your staff, he is controlling".[2]

The current Chief Justice of Nigeria, Justice Tanko Muhammed on September 23, 2019 during a special session to mark the commencement of the 2019/2020 Legal Year, lamented the helplessness of the Judiciary regarding its so called independence. He said:

> "when we assess the Judiciary from the financial perspective, how free can we say we are?... If you say I am independent, but in a way whether I like it or not, I have to go cap in hand asking for funds to run my office, then I have completely lost my independence. It is like saying a cow if free to graze about in a meadow, but at the same time tying it firmly to a tree. Where is the freedom?"[3]

Thus, in terms of budgets and finances the judiciary is not as independent as it could be. This is a very important aspect because in every organization or society, money is an indispensable asset. The implication of this factor is that if the judiciary should incur the disfavour of the executive arm of government, it could be made to go through some serious financial hardships through the control exercised by the executive. The judiciary needs adequate funding in order to quickly update its capabilities of deploying technology such as virtual court sittings, and meet with the best practices in other parts of the world.

The 1999 constitution provides for the financial autonomy of the judiciary and in line with its provisions a few states of the federation have complied with the requirements. However, most states of the federation still get their allowances from the state government thus endangering the independence of the judiciary. Although the recurrent expenditure of the judiciary is charged to the Federation Account, the funding of the lower bench run by the states is a challenge for the judiciary. The magistrate courts are so starved of funds that the Chief Justice of Nigeria was reported to have bemoaned the situation at a ceremony marking the Conferment of Senior Advocate positions in October 2012.[4]

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2 Ibid 56

3 <https://businessday.ng/uncategorized/article/cjn-canvasses-financial-autonomy-for-judiciary/amp/>

4 Edwin Obimma Ezike and Emmanuel Onyedi Wingate, 'Judicial Independence and Accountability in The Enforcement of Contracts Against the Nigerian Government' (2016)

Section 287 of the CFRN 1999 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 the Courts concerned. This provision rather than be complied with by the State Government is often breached especially where the head of Court within the state is not in the good books of the Governor of the State.[5] In an interview with the guardian newspaper, Mr. Olisa Agbakoba, SAN, former President of the Nigerian Bar Association stated that the judiciary cannot be independent without financial autonomy and he was of the opinion that the judiciary is "not only enslaved" but "chained by the executive". According to him, the constitution empowers the judiciary to receive its budget directly and not through the executive. Section 81 of the 1999 constitution places the judiciary on the first line charge on the Consolidated Revenue Fund of the Federation which means that the judiciary is exempted from government intervention, thus it is not supposed to go to the executive to ask for money. He also clarified that the constitution recognises three types of independent funding, the President, who is the head of the executive, the Speaker of the National Assembly, who is the head of the legislature and the Chief Justice of Nigeria, through the NJC, who is the head of the judiciary. All these heads of government are to send their appropriations to the National Assembly for harmonization but what entails now is that the NJC sends its budget to the executive which on its own, capriciously undermines the budget. He also complained about the judiciary getting less and less vote in the federal budget every year.

Under Section 81(3) of the 1999 Constitution, the amount standing to the credit of the Independent Electoral Commission (INEC), the National Assembly and the Judiciary in the Consolidated Revenue Fund shall be paid directly to the National Judicial Council for disbursement to the Heads of Courts established for the Federation and the States. Section 84(2) specifically states that remuneration, salaries and allowances payable to judicial officers shall be charged upon the Consolidated Revenue Fund of the Federation. INEC and the National Assembly have pursuant to these provisions freed

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5 Ibrahim Abdullahi (Frhd), LL. B, BL, LL.M, 'Independence of The Judiciary in Nigeria: A Myth or Reality?', International Journal of Public Administration and Management Research (IJPAMR), Vol. 2, No 3, August (2014)

themselves from the hold of the executive through direct control of their budget estimates, leaving the judiciary behind and under the control of the executive. Efforts have been made by the courts to bring the judiciary at par with the other arms of government in terms of financial autonomy, by the instrumentation of court actions and judgements, all of which have been wilfully disobeyed and ignored by the Executive.

This problem of financial autonomy has led to the recent the lock down of courts in Nigeria emanating from the industrial action by the Judicial Staff Union of Nigeria(JUSUN) on Tuesday, April 6, 2021. The Judicial Staff Union of Nigeria(JUSUN) had given notice of its proposed strike action since March 13, 2021 but nothing was done by the government to address the notice and this led to the closure of courts on Tuesday, April 6, 2021. The JUSUN Task Force was all over the courts to enforce the strike by closing all the entrance gates of the Court of Appeal, the Federal High Court, the National Industrial Court, the High Courts and even the Magistrate Courts. Implementation of the strike action has been reportedly successful in various states of the Federation. The demands of the JUSUN and the core reason for the strike action is for the financial autonomy of the Judiciary, total independence for the Judiciary as the third arm of government and commitment by the executive arm to obey the tenets of the constitution as it concerns the judiciary.[6]

Another threat to judicial independence from the executive is the wanton interference by the executive in judicial function. This threat was mostly witnessed during the military era in Nigeria. In each of the military regimes in Nigeria, the military government had the unsavoury habit of passing decrees that negated the decisions taken by the court rendering such court judgements of no effect. The most popular example of such behaviour is the highly debated and controversial case of *E. O. Lakanmi and anor v Attorney General(West) and anor*[7]. Some of such decrees have been retroactive. In *Lamina*

6 <https://barristerng.com/why-the-courts-are-locked-by-ebun-olu-adegboruwa-san/>

7 (1971) 1 UILR 201.

Lawal Arowoye and Others v Inspector General of Police[8], the Lagos State High Court, on an application for habeas corpus, ordered the immediate release of the applicants who had been unlawfully detained under a detention order signed by the chief of staff, Supreme Headquarters. The government refused to release the detainees but rather transferred them to an undisclosed destination. The detainees were released after six months.

The power of appointment of judges by the executive is also a threat to judicial independence. Under the 1960 Independence Constitution, the judiciary enjoyed some freedom from executive interference through the establishment of the Judicial Service Commission which was responsible for the appointment and discipline of judges. This Judicial Service Commission was abolished by the Republican Constitution of 1963 which adopted the practice of the United Kingdom where judges are appointed on the recommendation of the executive. The 1979 constitution empowered the executive to appoint judges on the recommendation of the Judicial Service Commission and the same still applies to the 1999 constitution with the slight modification that under the 1999 constitution as amended, the executive appoints judges but under the recommendation of a central National Judicial Council. No judge can be appointed in Nigeria without the express permission of the executive. The president or Governor has to agree for a judge to be sworn in and this has created a lot of doubt about the judiciary's independence. The practice of the courts in the appointment of Judges is that the most senior Judge of the High Court will be appointed as the Chief Judge. However, this practise is not written in law nor supported by the Constitution. It is merely a tradition and it need not be followed. In fact, Chief Judges have been appointed who were not judges at the High Court.[9] Nevertheless the power to recommend judges lies in the NJC, and the executive lacks the power to appoint any person outside the recommendation of the NJC.

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8 Suit No. 1D/14M/84 decided 6 April, 1984. Reported in Gani Fawehinmi, Nigerian Law of Habeas Corpus, Lagos (1986) 349. Cited from, The Beleaguered Fortress: Reflections of The Independence of Nigeria's Judiciary. A. A. Olowofoyeku*, 58.

9 Hon. Justice Taslim Olawale Elias was appointed to become the Chief Justice of Nigeria from his work as a Professor and Dean of the Faculty of Law, University of Lagos in 1972 until he was ousted by the military regime that took place in July 1975.

A classic example of this threat to the judiciary in the appointment of judges is the Rivers State experience. From the 20th of August 2013 to the 31st of May, 2015, Rivers State of Nigeria was effectively without an incumbent Chief Judge after the past Chief Judge, Hon. Justice Iche Ndu retired from service in 2013. The reason for the delay in appointment was that the Governor of Rivers state at the time, Rt. Hon. Rotimi Chibuike Amaechi insisted that he had the prerogative to reject the recommendation of the National Judicial Council that Hon. Justice Daisy Okocha should be appointed to the office of the Chief Judge of Rivers State. According to the former Governor of Rivers State, the recommendation by the NJC was merely directory since the CFRN 1999 as amended vests the actual power of appointment of the State Chief Judge in the Governor.[10] He later went ahead to appoint a Judge without the recommendation of the NJC. This was a clear infringement of the independence of the judiciary and the principle of separation of powers and this crisis led to the publication of articles recommending the amendment of the 1999 Constitution.

Again in 2021, Governor Wike Ezenwo of Rivers State was accused of misleading the NJC in the appointment of the new Chief Judge of Rivers State, Hon. Justice Simeon C. Amadi. The NJC had recommended her Lordship, Hon. Justice Joy Akpughunum, a woman from Abua/Odual Local Government Area, and the most senior Judge of the Rivers State High Court. This led to the outcry raised by concerned members of the public that the Executive was distorting the long standing tradition in the Judiciary of appointing Chief Judges based on seniority. The Governor succeded in vying for the nomination of his kinsman, Hon. Justice Amadi from Emohua Local Government Area who was recommended and later appointed by him as the Chief Judge of Rivers State. The irony of this appointment is that Governor Wike had earlier in his campaign as Governor fought against the refusal of the Former Governor of Rivers State, Gov. Rotimi Amaechi to nominate and transmit the name of her Lordship, Hon. Justice Adama Iyayi Lamikanra who was the most senior Judge at the time and next in line for the position of Chief Judge, to the NJC for the recommendation and appointment upon retirement of Hon. Justice Iche Ndu as Chief Judge following the Justice Agumagu

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10 Z. Adangor, Ph.D. (Aberdeen), BL, Aciarb; Senior Lecturer, Department of Public Law, Faculty of Law, Rsust Port Harcourt**,** 'Depoliticising the Appointment of the Chief Judge of a State in Nigeria: Lessons from the Crisis Over the Appointment of the Chief Judge of Rivers State of Nigeria' (2015).

and Hon. Justice Daisy Okocha controversy that led to the shutdown of the Rivers State Judiciary for one whole year. The Governor responded by saying that neither the NJC nor the Governor of a state is obliged to recommend or appoint the most senior Judge of the High Court as the substantive Chief Judge of a State.

A statement made by the Special Assistant to the Governor on Information, Mr. Kelvin Ebri Adangor explained that his understanding of the law was that a rule of "judicial tradition" is one really exists was only relevant where there was no applicable rule of substantive law governing the particular issue in question, adding that the rule of judicial tradition could not be relied upon to subvert or supplant an applicable rule of substantive law on any issue. According to him, it is clear from the literal construction of the provisions of Section 271 of the constitution, that provides for the appointment of the State Chief Judge[11] that there is no prescription that the Governor shall appoint the most senior Judge of the High Court as the substantive Chief Judge of the state based on the recommendation of the NJC.

He acknowledged that with respect to the appointment of an acting Chief Judge of the State under Section 271(4), the constitution provides for the Governor to appoint the most senior Judge of the High Court to perform the functions of that office as the acting Chief Judge but there is no such entitlement to the office of substantive Chief Judge of the State. Thus, seniority of the judges on the High Court Bench is relevant only where the appointment of the Chief Judge of the State is in acting capacity. It has no relevance where the appointment is in a substantive capacity. The Special Assistant maintained that if the framers of the Constitution had intended to make seniority a requirement for the appointment of the Chief Judge in a substantive capacity, they would have stated so expressly.[12]

Besides the outright refusal by some executives to appoint specific judges to the bench. The unnecessary delay by the executive arm of government in appointing judges calls for a look into the independence of the judiciary. For example, since his assumption of office in May 2015, President

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11 Section 271(1)(2)(3)

12 <https://dailypost.ng/2021/03/26/wike-misled-njc-in-appointment-of-rivers-chief-judge-amadi-group/?amp>

Muhammadu Buhari has exploited constitutional provisions which gives room for heads of courts to be appointed in acting capacity to inexplicably delay the appointment process. President Buhari's consistent pattern of unexplained delays in the handling of the appointments has ensured that no head of court appointed by the regime since 2015 has ever stepped into office in substantive capacity without first acting for a period.[13]

The most recent controversial assault on the judiciary and the rule of law from the Federal Executive is seen in the suspension and subsequent removal of the predecessor to the current Chief Justice of Nigeria, Hon. Justice Walter Onnoghen. It is important to discuss the events of this issue in detail.

On Friday, January 25, 2019, the President of Nigeria, Muhammadu Buhari suspended the then Chief Justice of Nigeria, Justice Walter Nkannu Samuel Onnoghen from office, and immediately administered the judicial oath of office to the most senior Supreme Court Justice next in rank to him, Justice Ibrahim Tanko Muhammed as the acting chief justice of Nigeria. Following the suspension, the President delivered a 25 paragraph address which has been likened to a coup speech, in order to explain his actions. The president explained that he was swiftly executing an order ex-parte of the code of conduct tribunal(CCT), made and dated on the 23rd of January, 2019. The order mandated him to suspend the CJN from office, pending the final determination of his trial at the Code of Conduct Tribunal and swear in the justice of the supreme court next to him in rank as acting CJN. The CJN had been accused and charged with receiving into and retaining in many banks accounts huge sums of money in foreign and local currencies, without disclosing them in his asset declaration forms and documents submitted to the Code of Conduct Bureau(CCB). After the filing of corruption related charges against the CJN by the CCB before the CCT and the commencement of his trail for gross violations of the provisions of the Code of Conduct for public officers, the CJN instead of resigning as expected, took steps to frustrate his trial, leading to the suspension by the president.

The suspension of the CJN raised alarm not only in Nigeria but also at the international level. The time and manner of the suspension and ultimate removal was regarded as unconstitutional by many

13 <https://newswirelawandevents.com/judiciary-groans-as-buhari-delays-judges-appointment-by-ade-adesomoju/>

and seen as an attempt by the president to secure victory in the February 2019 presidential election and also to secure victory for the All Progressive Congress(APC), the ruling party's candidates in other gubernatorial elections. The unusual speed in which the charges were filed and prosecuted at the Tribunal was a major cause for alarm. For a country notorious for its slow legal process, it was unheard of for a case to be decided that quickly. The petition was received by the Code of Conduct Bureau on January 7, 2019 and between that date and the 14th of the same month, the petition was treated and charges were filed against the CJN leading to his arraignment.

Following his suspension, the Chief Justice was convicted by the Code of Conduct Tribunal on six counts of false declaration of assets and banned from holding any public office for the next ten years. Despite the different views expressed by various sections of the public, looking only at the law, it is clear that the actions of the executive where wholly unconstitutional. The President relied on Section 11 of the interpretation Act, Cap 123, Vol. 8, LFN, 2004, an inferior statute compared to the Constitution in removing the CJN. The Constitution clearly stipulates under Section 292(1)(a)(i), that the CJN cannot be removed from office or his appointment before his retirement age except by the President, acting on an address supported by two thirds majority of the Senate.

By virtue of paragraph 21(b) of Part 1 of the third schedule to the Constitution of the Federal Republic of Nigeria, 1999 as amended, the National Judicial Council(NJC) recommends to the President the removal from office of certain category of judicial officers including the CJN, and exercises judicial control over them. Section 18, Part 1 of the Fifth Schedule to the Constitution defines the power of the Code of Conduct Tribunal. Section 18(2) stipulates the punishments which the CCT may impose upon conclusion of trial. They are; (a) vacation of office or seat in any legislative house as the case may be; (b) disqualification from membership of a legislative house and from holding of any public office for a period not exceeding ten years; and (c) seizure and forfeiture to the state of any property acquired in abuse or corruption of office.

The CCT is not vested with any power under the Constitution or the Code of Conduct Tribunal Act to order the Executive branch of government to suspend a public officer who is undergoing trial before it, from office, pending the conclusion of the trial, as the CCT purportedly did. Also being a quasi-

criminal tribunal, the rules of procedure of the CCT is the Administration of Criminal Justice Act, a criminal procedure act, under which an ex-parte or interlocutory order, analogous to an order of injunction obtainable in civil proceedings may not be validly sought or granted.

Thus it has been said that what the Executive branch of government had done was to force the matter of the desired removal of the CJN from office without respect to the Constitution or precedent. The action of the executive could therefore be seen as an abuse of power and a looming threat to the independence of the judiciary.

Few have likened this case to the case of Justice Isa Ayo Salami who was also removed from the office of President of the Court of Appeal under the President Goodluck Jonathan administration. The suspension of the President of the Court of Appeal was initiated by the NJC and endorsed by the then President of the Federal Republic of Nigeria, President Goodluck Ebele Jonathan. Arguments were made stating that the suspension was unconstitutional for procedural irregularity and that the mechanisms provided by the constitution to guarantee judicial independence are inadequate and ineffective.

4.2 Challenges from the Legislature.

The Legislature is the arm of government tasked with the responsibility of making the laws which the judiciary is meant to interpret.[14] Section 4(8) CFRN 1999, as amended, provides that save as otherwise provided by the 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. Also in order for a court to interfere with the internal proceedings of the legislature, constitutional provisions must exist and must have been breached.

Attempts have been made by the legislature to usurp the powers of the judiciary. *In the case of Anyah v Attorney General, Borno State*, the Borno State House of Assembly attempted to exercise judicial

14 Section 4(2) CFRN 1999 as amended.

functions by attempting to remove the chief Judge on the basis of its own assessment. The Court of Appeal held that such attempt is contrary to the doctrine of separation of powers. However, soon after the court gave a ruling on the matter the state legislature resolved again by a two third majority to ask the governor to remove the chief judge for misconduct. The Governor purportedly removed the Chief Judge and hurriedly swore in another judge as the Acting Chief Judge. The removal, without a finding of misconduct against the Chief Judge by an impartial tribunal or court, was clearly against the Constitution and therefore void. This was the more so as there was a subsisting order made by the High Court restraining the state government, the Speaker and members of the House of Assembly from taking further steps on the matter while the suit was still pending. This case is a clear example of contempt of court judgement by the legislature. In *Ekeocha v Civil Service Commission (Imo State)*[15], it was opined that it is not the duty of the legislature to attempt to interpret the laws they make, to do so would be to usurp the functions of the judiciary. For a judiciary to be independent as an institution it must garner the respect of other branches by respecting its decisions.[16]

Overtime the legislature has acquired a bad reputation of being consisted of politicians whose major aim is not service to the people but to acquire material and financial resources of the nation. Legislators are seen mostly as "politicians" and the effect of politics can be seen in the judiciary.

4.3 Challenges from the Judiciary Itself.

Unfortunately, the judiciary is also facing some internal threats from amongst themselves. In recent times there have been allegations of corruption against high ranking judicial officials. Any interference to the administration of justice, whether external or internal poses a threat to the independence of the judiciary as an institution. Corruption consists of a range of antisocial practices, from bribery to embezzlement to theft of all sizes, which occurs when public officials use their public offices for personal gains. Corruption can be divided into criminal and ethical (or judicial) categories.

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15 (1981)1 NCLR 154.

16 Ibrahim Sule, 'Judicial Independence in Nigeria: Between Global Trends, Domestic Realities and Islamic Law'.

Criminal corruption is corruption forbidden by the criminal code. It is the comprehensive category of corruption that afflicts all sections of the Nigerian population, including the judiciary. The most common form of criminal corruption among judges is bribery, and the most common form since the formation of the Fourth Republic is bribery in election petitions. There have been allegations of mind boggling bribes being offered to judges and collected by them in respect of matters pending before them.

Ethical corruption or judicial corruption occurs when a judge violates the code of judicial ethics. Another example occurs when a judge injects arbitrariness into the judicial process by assuming jurisdiction where there is none, declining jurisdiction where there is, or abuses or misuses the issuance of ex parte orders. Ethical corruption is an increasing problem in the Nigerian judiciary.

Whether criminal or ethical, corruption leads to inefficient use of judicial resources. As the U.N. Office on Drugs and Crime indicated in 2004, "Corruption in the judiciary may turn out to be more harmful (than corruption in other branches of government) because it could undermine the credibility, efficiency, productivity, trust, and confidence of the public in the judiciary as the epitome of integrity. A 2007 survey of nearly 3,000 conducted by the Economic and Financial Crimes Commission (EFCC), Natural Bureau of Statistics, revealed that "Nigerian courts of law receive the biggest bribes [per transaction] from citizens among all institutions in which corruption is rampant. Public knowledge of widespread abuse by judges of their judicial offices can undermine public confidence in the judiciary as the "epitome of integrity." A judiciary tainted by corruption as much as others by words of corruption, such as the Nigerian police, discourages commentators, such as *Joel Nwokeoma*, who expressed dismay that the only institution in the society that should be "the last hope of the common man" and a "bulwark" in the fight against corruption is also part of the problem. Corruption threatens judicial independence in that it results in "final decisions based on considerations other than proper application of legal principles.[17]

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17 Philip C Aka, 'Judicial Independence under Nigeria's Fourth Republic: Problems and Prospects' (2014) 45 Cal W Int'l LJ 1, 60

Notwithstanding the allegations of corruption, Nigerian judges have been held accountable for their actions. Besides the hierarchy of courts which helps to ensure that justice is competently done, there are appropriate mechanisms to ensure that those who pervert the cause of justice are punished. For instance, the National Judicial Council under Justice Aloma Mariam Mukhtar successfully recommended the compulsory retirement of Justice C.E. Archibong of the Federal High Court Lagos and Justice T.D. Naron of High Court of Justice, Plateau State. It also suspended two judges and instituted a committee to investigate the allegations levelled against Justice Abubakar Talba of Federal Capital Territory High Court in the police pension case of EFCC versus John Yusuf & Ors.

Justice Archibong was recommended for compulsory retirement to President Goodluck Ebele Jonathan, pursuant to the findings by the Council on the complaints levelled against him, including the dismissal of the grievous charges against an accused without taking his plea. Justice T.D. Naron of High Court of Justice, Plateau State was recommended for compulsory retirement to Governor David Jonah Jang sequel to the findings by the Council that there were constant and regular voice calls and exchange of text messages between Justice Naron and one of the lead counsel for one of the parties to the suit in the Osun State Gubernatorial Election Tribunal contrary to the Code of Conduct for judicial officers of the Federal Republic of Nigeria under section 292(1)(b) of the 1999 Constitution.[18] Justice Gbaja-Biamila was removed from office for failing to deliver judgment for thirty-five months after the close of evidence in the suit.[19]

Justice Yunusa of the Federal High Court was removed from the bench for misconduct in that he issued illegal court orders blocking investigation by government agencies into alleged financial misappropriation by public officers.[20]

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18 See Yusuf Alli, 'Judgment for sale: NJC probes 23 judges' (6 April 2013) <http://thenationonlineng.net/new/news/judgment-for-sale-njc-probes-23-judges/>

19 See Ikechukwu Nnochiri, 'NJC sacks 2Judges over alleged judicial misconduct, age falsification' (19 April 2016) <http://www.vanguardngr.com/2016/04/njc-sacks-2-judges-alleged-judicial-misconduct-age-falsification/>

20 'NJC Sacks 2 Judges for Misconduct' *Channels Television* (18 July 2016) <http://www.channelstv.com/2016/07/18/njc-sacks-two-judges-for-misconduct/>

As a disciplinary measure, Justice Ofili-Ajumogobia then of the Lagos Division of the Federal High Court was placed on the National Judicial Council's watch list for four years. She was barred from ad hoc judicial appointments for national assignments or elevation to the higher courts for failure to deliver judgment in a pre-election matter and adjourning the said matter multiple times until the expiration of the term of the Ogun State House of Assembly seat which was in dispute.[2122]

The judiciary has justifiably been accused of been politicised. As of recent, courts in Nigeria have been handling political cases in such a way as to favour the ruling party. This clear show of favouritism with disregard for precedent, the constitution, legislation and the rule of law has caused the masses to lose faith in the judiciary. The clear division among members of the bar as seen in recent controversial cases[23] continues to weaken the judiciary.

The case of *Senator Hope Uzodinma and Anor v Rt. Hon. Emeka Ihedioha and Ors*[24] is one of those cases where the judiciary was accused of partiality and injustice. The facts of this case are: the 1st appellant and the 1st respondent were candidates of the 2nd appellant(APC) and the 2nd respondent(PDP) respectively in the Governorship election conducted in Imo State on the 8th of March, 2019 along with 68 other candidates. The 1st respondent was returned as the winner of the election. The 1st appellant was dissatisfied with the return of the 1st respondent and filed a petition challenging the return on grounds that the 1st respondent was not validly elected by majority of lawful votes cast, and that the declaration and return of the 1st respondent is invalid by reason of non-

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21 'Nigerian Judge Sanctioned, Placed on Watch List' (2 March 2016) <www.premiumtimesng.com/news/headlines/199397-nigerian-judge-sanctioned-placed-on-watch-list.html>

22 Edwin Obimma Ezike and Emmanuel Onyedi Wingate, 'Judicial Independence and Accountability in The Enforcement of Contracts Against the Nigerian Government' (2016) 28-30.

23 Hon Justice Walter Onnoghen's case and Hon Justice Isa Ayo Salami's case. Worthy of note is the fact that the senior lawyers who colluded with the Goodluck Jonathan administration to cruelly abort the Presidency of Justice Isa Ayo Salami later sided with Chief Justice Onnoghen in arguing "the rule of law", "due process of law" and "judicial independence".

24 LOR (14/01/2020) SC; Appeal No. SC. 1462/2019.

compliance with the Electoral Act. He sought several reliefs including the nullification of the 1st respondent's return and the declaration of the 1st appellant as the winner of the said election.

After the conclusion of the Imo State Governorship election, the result released by the Independent Electoral Commission(INEC) showed that the 1st respondent, Ihedioha of the PDP polled the highest number of votes with a total of 273,404 votes, Uche Nwosu(AA) came second with 190,364 votes, Sen. Ifeanyi Ararume(APGA) came third with 114,676 votes while the 1st appellant, Sen. Hope Uzodinma(APC) placed fourth with a total of 96,458 votes. The 1st appellant argued that the votes due to him were wrongly excluded. It was the appellant's contention that they scored an overwhelming majority from 388 polling units, the results of which were excluded from ward collation results. The appellant contended that the total votes due to the appellants but unlawfully excluded from the 388 polling units is 213,695 while the 1st respondent is entitled to 1,903 votes from the same 388 polling units. It was also contended that the 1st respondent won based on a wrong computation of votes collated from the unexcluded polling units. The appellants petition was dismissed at the tribunal and appeal court before appealing to the Supreme Court. On the 14th of January 2020, the appeal of the 1st and 2nd appellants to the SC was upheld and the court declared the 1st appellant the duly elected Governor of Imo State. This judgment of the Supreme Court was received by most Nigerians with disbelief. Majority of the public could not understand the Supreme Court's reason for its judgement and Nigerians were quick to voice the opinions on how a candidate who placed fourth in an election could be declared the winner by the Supreme Court. Besides this was the fact that when the Supreme Court added the 213,695 votes claimed by the appellant, the total number of votes counted at the election, rose to 953,083. This was far above the number of accredited voters for the election which was shown to be 823,743. So a whopping 129,340 votes was unaccounted for by the Supreme Court.
The Supreme Court justification for its decision was that the respondent did not give enough evidence to support his claim that the results pleaded by the appellants was fictitious and false. Various arguments have been made against this decision with members of the public insinuating that the integrity of the judiciary had been compromised by the executive. The reasons given for this insinuation was that the candidate that was declared the winner was of the ruling party and the CJN

who presided over the matter was recently appointed by the executive after a scandalous removal of the former Chief Justice.

The result of this case weakened the public trust in the judiciary.

Even after the decision of the supreme court, another attempt was made by the ousted governor Emeka Ihedioha. He applied to the supreme court to review its judgment in view of the glaring error and miscarriage of justice. By a split decision, the supreme court dismissed the application for review. However, in his dissenting ruling, Justice Centus Nweze disagreed with the majority ruling and made some scathing remarks, indicting the apex court. In his words "The decision of the Supreme Court in the instant matter will continue to haunt our electoral jurisprudence for a long time to come". While upholding the application to set aside the judgment of the apex Court, the courageous jurist stated further thus: "This Court has a duty of redeeming its image, it is against this background that the finality of the Court cannot extinguish the right of any person." As the erudite jurist rightly observed, the application to review the controversial judgment was a golden opportunity for the Supreme Court to redeem its image after the bashing it received from the apparently erroneous verdict. Unfortunately, the majority of the panel were of the view that the judgment of the Supreme Court was final and not subject to any review. No wonder the learned jurist concluded that the decision of the Supreme Court in the said matter will continue to haunt our electoral jurisprudence for a long time to come. This is a classic example of the challenge to the independence of the judiciary occasioned by the reactionary elements within the system.

4.4 Challenges from the Society.

Members of the public can be a contributing factor to the independence or otherwise of the judiciary. The judiciary comprises of individual judges, human beings that can easily be influenced by other human beings. Independence of the judiciary not only concerns the freedom of the judiciary as an institution but also freedom of judges as individuals from any form of interference in the performance of their functions. Such interference can emanate from their peers, family members or even colleagues. The challenge can only be surmounted by the judge himself. Judges must ensure that personal feelings and ideas do not have a negative influence on their performance as defenders of the constitution.

4.5 Challenges from the Media.

The Microsoft Encarta Dictionary defines the media as "The various means of mass communication considered as a whole, including television, radio, magazines, and newspapers, together with the people involved in their production.[25] There is the Conventional Media and also the Social Media. The social media even enjoys more patronage than the conventional media. The internet has made the media highly interactive allowing every Tom, Dick and Harry to air their views on sensitive matters such as criminal trials in courts. Freedom of the Press is a fundamental right entrenched in the constitution. The media has the right to make fair comments on matters of public interest but this is subject to the law of libel and contempt of court.

The media has often been accused of interfering with judicial proceedings by publishing articles and comments that instigate the public in an attempt to mount pressure on the judiciary. An early example can be seen in the English case of *AG v Times Newspapers (The Thalidomide case)*[26], where sometime in the early sixties, some pregnant women in England had taken a drug called thalidomide manufactured by a pharmaceutical company, Distillers. When they gave birth, their babies were born deformed. The parents sued the company. The company tried to settle the matter out of court. They succeeded in settling with some set of the parents who discontinued their suits. They could not settle with another set of parents who were constrained to continue their own suits. The suits became protracted and dragged on for over ten years. The Times Newspaper became sympathetic with the plight of the distressed parents who were seeking for compensation in court. The Newspaper decided to publish some articles to mount pressure on the company to settle with the parents out of court and pay them adequate compensation. They launched a media campaign against the pharmaceutical company. The Attorney General issued a writ against the Times Newspapers to restrain them from publishing the articles. The case went up to the House of Lords. In their final verdict, the House of Lords established the principle that newspapers should not publish comments or articles which

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25 Microsoft® Encarta® 2008. © 1993-2007 Microsoft Corporation. All rights reserved

26 (1974) A.C. 273.

"prejudged the issue in pending proceedings". Lord Reid remarked that, "What I think is regarded as most objectionable is that a newspaper or television programme should seek to persuade the public, by discussing the issues and evidence in a case before the court, whether civil or criminal that one side is right and the other is wrong."

Such a situation whereby the media creates a perception that an individual or group of individuals are guilty of a criminal offence, through the dissemination of prejudicial materials, with the intention of creating a perception of guilt is known as "trial by media" or "media trial". In an article published in the Vanguard Newspapers of 9 April 2017, captioned: BETWEEN MEDIA TRIAL AND COURT TRIAL, one Richard Akinnola observed that, "trial is essentially a process to be carried out by the courts. In fact, 'trial' is a word which is associated with the process of justice. It is the essential component in any judicial system that an accused should have a fair trial. Trial by the media would therefore be an undue interference in the process of justice delivery".

During the 2009 Annual NBA Conference in Lagos held at the Eko Hotel, Lagos between August 16th - 21st, Chief (Mrs.) Farida Waziri in her remarks at the Lawyers in The Media (LIM) of NBA session with the theme: Crusade Against Corruption and The Effect of Trial by Media" noted the effects of media trial on the judicial process thus: "The judiciary is referred to as the last hope of the common man. It is the bastion or citadel of justice; it rests and carries out its functions on the pillars of the rule of law, and public confidence. Anything that undermines public confidence in the judiciary is inimical to the judicial process. The media should be wary of this. Trials by the media of criminal matters, prejudices the minds of the populace and make them hold the court in contempt and dishonoured where it ultimately reaches a conflicting or different verdict. More often than not, allegations of compromise and corruption are made against the judge. This is very unhealthy for the development of our legal system, and judicial process.

Conducting media trial of accused persons is tantamount to the media assuming jurisdiction to try offences that should be tried by the regular courts. This is a naked usurpation of the judicial function and a threat to the independence of the judiciary.

4.6 Independence of the Judiciary in Other Countries.

In other to determine the independence of the judiciary in Nigeria, it is important to take a look at other countries where there appears to be a predominantly independent judiciary. Independence of the judiciary is recognised globally as an important instrument in guaranteeing human rights. The Universal Declaration of Human Rights[27] and other international instruments agree on the need for an independent judiciary.

Independence of the Judiciary in the United Kingdom

In contrasting the independence of the judiciary in Nigeria with other parts of the world it is anticipatory to first begin with the nation that introduced our present judicial system. The United Kingdom is a unitary state under a constitutional monarchy. UK is a sovereign state which comprises of four countries: England, Scotland, Wales and Northern Ireland. The UK does not have a codified constitution that sets out the rule of law or clear separation of powers, but that does not mean that the rule of law has not prevailed and that the judiciary has not been independent. UK practises parliamentary democracy where the Head of State is different from the Head of Government. This is a system of democratic governance where the executive derives its democratic legitimacy from its ability to command the confidence of the legislature, typically a parliament, and is also held accountable to that parliament.[28] In Britain the Act of Settlement 1701 gave judges a measure of independence by guaranteeing their salary and that a senior judge could only be removed by a motion in both Houses of Parliament. More important is the fact that the Convention was accepted that neither the Monarch nor Parliament would interfere with the legal process. The doctrine of separation of powers which proposes an independent judiciary was not observed in the UK until recently, as the Executive (the Government) was drawn exclusively from members of the Legislature(parliament), while in the office of the Lord Chancellor the three arms of government were fused. The lord chancellor was a Cabinet Minister, a member of the House of Lords and also the head of the Judiciary.

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27 Article 10.

28 https://en.m.wikipedia.org/wiki/Parliamentary_system

In the 19th century, the Lord Chancellor was responsible for the independence of the Judiciary and judicial appointments. It was his responsibility to ensure that the Rule of law prevailed. Contact between the judges and Government was through the Lord Chancellor and other contacts between the ministers and the judiciary were very limited. The convention was that judges did not criticise judicial decisions. Many members of parliament(MP) were lawyers and judges and MPs did not criticise the judiciary or comment on court cases. Judges could not question acts of parliament but could only interpret them.[29]

In July 2003, the British Government announced plans to abolish the post of Lord Chancellor, making the Lord Chief Justice head of the judiciary as President of the Courts of England and Wales, as well as abolish the system of Law Lords sitting in the House of Lords and replace it with a separate Supreme Court and also establish a new Judicial Appointments Commission.

These plans provoked considerable controversy and eventually the then Prime Minister Tony Blair decided to modify the ancient role of Lord Chancellor. The Office of Lord Chancellor was retained but the holder of the office no longer presides over the House of Lords. The Lord Chief Justice (a judge) took over responsibility for the legal system from the Lord Chancellor with control over the budget and some joint responsibility with the Secretary of State for Justice of the courts system. The Lord Chief Justice chairs a Judicial Executive board which acts as a sort of Cabinet of senior judges. There is a Judicial Communications Office to deal with the media. The reform of the Lord Chancellors role has separated its different responsibilities and made a clear distinction between government, Parliament and the Judiciary.[30]

The independence of Judges in the UK is protected in several ways:

- Judges are independent of the executive and the legislature (vice versa) and they do not get involved in political debate. Apart from modern rules relating to age and health, judges of the High Courts and above cannot be removed from office without an address passed by both

29 <https://www.britpolitics.co.uk/independent-judiciary-a-level-uk-politics/>

30 <https://www.politics.co.uk/reference/judicial-independence>

Houses of Parliament. Judges are almost entirely immune from the risk of being sued or prosecuted for what they did in their capacity as a judge.

- The Constitutional Reform Act 2005, which came into force in April 2006, considerably modified the role of the Lord Chancellor and in so doing, strengthened the independence of the judiciary.
- In April 2006, a new Judicial Appointments Commission began to operate. This ended the Lords Chancellor's position as head of the judiciary and power to appoint judges. Also, in July that year, members of the House of Lords elected their first Lord Speaker. This new role assumed some of the Lord Chancellor's responsibilities, such as chairing debates in the Lords' chamber and speaker for the House on ceremonial occasions.
- The Ministry of Justice was created in May 2007. It has the responsibility for courts, prisons, probation and constitutional affairs. The present Lord Chancellor combines his role with that of the Secretary of State for Justice.
- The judicial function of Parliament ended in 2009 when an independent UK Supreme Court was established. The Court assumed the jurisdiction of the Appellate Committee of the House of Lords and the devolution jurisdiction of the Judicial Committee of the Privy Council. The Supreme Court is an independent institution preside doer by twelve independently appointed judges, known as Justices of the Supreme Court. The Court is much better staffed than the Law Lords were. However, although the Supreme court will be responsible for disputes over the devolution legislation, it is still not a Constitutional Court.

The recent case of *R (on the application of Miller) (Appellant) v The Prime Minister (Respondent)*[31] is a positive reflection of the independence of the judiciary in the UK and a lesson on judicial independence for Nigeria. What happened in this case was that on the 28th of august 2019, the British Prime Minister Boris Johnson asked the queen to hold her customary speech in mid-October, a move many believed was calculated to suspend parliament for a month and tactically limit law makers time

31 [2019] UKSC 41

to block a no deal Brexit[32] . The Queen acting pursuant to the request by the Prime Minister ordered that Parliament should be Prorogued till October 2019. The purported prorogation of Parliament led to a public outcry in the UK, the speaker of the House of Commons said it represented a constitutional outrage and in light of what the UK was passing through, it was important for the elected parliament to have its say, after all the UK operates a parliamentary democracy. The matter was later brought before the court and the main issue was whether the Prime Minister acted unlawfully in giving advice to the Queen to suspend parliament at a time of momentous political disturbance. This action was first dismissed by the High Court of England. However, on the 11th of September 2019, a Scottish Court ruled that Boris Johnson's decision to prorogue parliament for five weeks was unlawful.

The case thus headed to the Supreme Court and on the 24th of September 2019, the SC in a unanimous decision held that the prorogation was justiciable, and it was in the power of the court to rule on it. It further held that the prorogation was unlawful, as it had the effect of preventing parliament from carrying out its constitutional functions. The Court also found that the Prime Minister's advice to the Queen was unlawful, void and of no effect.[33]

This case a clear reflection of the UK judiciary's independence from the influence of the executive and helped serve as a lesson to the Nigerian Judiciary. To lend credence to the firm confidence of the Court, the Prime Minister though disagreeing with the judgement complied forthwith with it. The media also played a commendable role throughout the hearing of the matter, particularly in broadcasting the Prime Minister's compliance with the judgement and his subsequent acts to show his total surrender to the judiciary, thereby enforcing the rule of law. The speed at which the matter was held and delivered by the court, both at the High Court and Appeal Court is also commendable and a challenge to Nigeria's judiciary that is notorious for its delay in delivering judgements.

This landmark decision has definitely placed the UK's judiciary on the pedestal of nations with a strong penchant for adherence and compliance to the rule of law.[34]

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32 British Exit, the UK was already negotiating their exit from the European Union.

33 *R v The Prime Minster* [2019] EWHC 2381 (QB); *Cherry and others (Respondents) v Advocate General for Scotland (Appellant) (Scotland)* [2019] CSIH 49.

34 https://www.thisdaylive.com/index.php/2019/10/04/important-lessons-from-uk-supreme-court-for-the-independence-of-judiciary-in-nigeria/amp/

Independence of the Judiciary in the United States of America(USA)

According to Wikipedia, the United States Constitution[35] establishes the federal courts as part of the federal government. The Constitution provides that federal judges as well as judges of the Supreme Court, are appointed by the President on the advice and consent of the Senate. Judges once appointed shall hold their offices, "during good behaviour" and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office. Federal judges in the U.S. vacate office only upon death, resignation, or impeachment and removal from office by Congress.[36] The President has the right to appoint any person to the federal bench, yet he typically consults with the American Bar Association, whose standing committee on the federal judiciary rates each nominee as "well qualified", "qualified" or "not qualified".

As for state courts, several forms of judicial selection are used for both trial courts and appellate courts, varying between and even within states. In some states, judges are elected (either in a partisan or nonpartisan ballot), while in others, judges are appointed by the governor or state legislature.

In the U.S., administrative offices were set up at both federal and state branches for the self-administration of the judicial branches. These administrative offices of the courts are responsible for the court budget preparation, personnel administration and compiling statistical data on the business of the courts. The judicial branches develop their own estimates of need and present them either directly to the legislature or to the executive for incorporation, without change, into a government-wide budget document. The judicial branch also defends the request before the legislature and administers the funds granted. This hasn't completely freed the courts from the other branches interference but it has helped in limiting the control of the other branches, unlike before the administrative offices were set up. These administrative offices also helped in securing judicial control of discipline and protection against legislative control over judges.[37]

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35 Article III, the Constitution of the United States of America, as amended.

36 So far only 13 federal judges have ever been impeached.

37 Mira Gur-Arie**,** Russell Wheeler, 'Judicial Independence in the United States: Current Issues and Relevant Background Information**'**

Independence of the Judiciary in Ghana.

The republic of Ghana is one of the closest West African countries to Nigeria. Ghana is a unitary presidential constitutional democracy with a parliamentary multi-party system dominated by two parties, the National Democratic Congress(NDC) and the New Patriotic Party(NPP). Like Nigeria, Ghana too alternated between civilian and military governments until January 1993, when the military government gave way to the Fourth Republic of Ghana after Presidential and Parliamentary elections in late 1992. The 1992 Constitution of Ghana was enacted and is said to contain a number of shortcomings and ambiguous articles that can be exploited by the executive to hinder the independence of the judiciary.[38]

The independence of the judiciary in Ghana has been established by Article 125(1) of the Ghanaian Constitution which states that "justice emanated from the people and shall be administered in the name of the Republic by the judiciary which shall be independent and subject only to the Constitution". Clause 1 of Article 127 provides that the judiciary shall not be subject to the control or direction of any person or authority in the exercise of judicial power in terms of judicial function, administrative responsibilities and financial administration. Article 127(2) also provides that "neither the President nor the Parliament nor any person whatsoever shall interfere with judges and judicial officers or other persons exercising judicial power, in the exercise of their judicial functions", also all state organs are to afford the courts the assistance they need in order to protect their "independence, dignity and effectiveness". Article 179 gives the judiciary autonomy in the preparation of its annual budget. Also the salaries and other emoluments of judges are charged to the Consolidated Fund, and cannot be varied to a judge's disadvantage.

However, despite the Constitution's efforts in attempting to secure the independence of the judiciary, studies conducted to gauge public opinion on the independence of the judiciary in Ghana showed that some members of the public do not believe in the independence of the Ghanaian judiciary, rather they

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[38] https://mobile.ghanaweb.com/GhanaHomePage/features/Is-the-Ghanaian-Judiciary-independent-147581.

believe that the executive influences the judiciary. The Ghanaian Judiciary has faced numerous accusations of corruption that has decreased public faith in the judiciary.

The appointment and dismissal of judicial officers in Ghana is said to be the most popular tool used by the executive to limit the independence of the judiciary.[39] The president plays a key role in appointing judicial officers while "acting in consultation with the Council of State" or on the advice of the Judicial Council, as the case may be, with the approval of Parliament. The word consultation is not properly defined, and it could merely mean "informing". Unlike Nigeria, Ghana does not have a judicial service commission, National Judicial Council or a Judiciary body with strong role in judicial appointments. The Ghanaian Judicial Council does not play any role in judicial appointments besides giving unspecified advice to the president and for the appointment of the Chief Justice, no role is given to it by the Constitution.

Appointment of judges to the Supreme Court has also been controversial as there is no specified limit on the number of judges to be appointed to the Supreme Court. Article 128(1) of the Constitution simply states that the "supreme court shall consist of the Chief Justice and not less than nine other Justices of the Supreme Court". It is therefore possible for the Court to be packed full of the government's favourites who would sit on particular cases.[40]

The removal of a judge is carried out by the executive upon receipt of a petition for removal. This could also give way to interference, especially in the absence of a strong judicial council or committee for the removal of judges.

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39 Ibid.

40 See, the case of *Tsatsu-Tsikata v A-G* in March 2002.

CHAPTER FIVE

5.1 Conclusion

As stated earlier, this paper sets out to determine whether or not independence of the judiciary exists in Nigeria, and to what extent the judiciary could be said to be independent. A history of the Nigerian Judiciary and its stages of development and measures of independence have been considered. Looking at the definition of judicial independence and the fundamental requirements of judicial independence highlighted in Chapter 1, can the Nigerian Judiciary be said to be independent?

On the 26th of May 2020, it was reported in the Vanguard Newspaper that the federal government has given a warning to the state governments that are withholding funds meant for their respective House of Assembly and judiciary, that they would get their allocations deducted at source by the Accountant General of the Federation if they failed to remit the amount meant for the Legislature and the Judiciary. This was in furtherance of the Executive Order[1] signed by the President, Muhammadu Buhari into Law the previous year. It was reported that this presidential action would help strengthen the two arms of government as well as securing their independence. The Order mandates the Accountant General of the Federation to deduct from source amounts due to state legislatures and judiciaries from the monthly allocations to each state for states that refuse to grant such autonomy. This Order made it mandatory for all states of the federation to include the allocations of both the legislature and the judiciary in the first line charge of their budgets in compliance with Section 121(3) of the CFRN 1999 as amended. The Executive Governors have argued against this executive order calling it an 'overkill' of section 121(3) of the 1999 constitution. The Executive Order also asked the state judiciaries to set up a State Judiciary Budget Committee

[1] Executive Order No. 10 of 2020 cited as "the implementation of financial autonomy for state legislature and judiciary Order, 2020".

to serve as an administrative body to prepare, administer and implement the budget of the state judiciary with such modifications as may be required to meet the needs of the state judiciary.

What led to the Executive Order was the 4th Alteration to the Constitution of the Federal Republic of Nigeria which was initiated by the National Assembly in 2017. In order to grant full autonomy to the legislature and judiciary of the States, a Bill was passed by the National Assembly granting financial autonomy to the Judiciary and State Houses of Assembly. In June 2018, the President assented to the said Bill and it became part of the laws of the Federal Republic of Nigeria. However, some state Executives stubbornly refused to implement the law. The President then decided to set up a 22-man Committee known as the Presidential Implementation Committee on the Autonomy of State Legislature and Judiciary, with the Attorney General of the Federation as Chairman. The mandate of the Committee was to ensure the full implementation of the 4th Alteration to the Constitution and thus free the two arms of government from the stranglehold of the Executive. As a follow up to this, the President signed the Executive Order to give effect to the 4th Alteration. Some states in Nigeria like Bayelsa and Delta have since passed their own municipal legislations granting financial autonomy to the judiciary. The *Financial Autonomy of State Legislatures and State Judiciaries (Fourth Alteration, No. 4) Act of 2018* has been described as a bold and innovative provision that clears the road for the funding of the Houses of Assembly and Judiciary of states, directly from the Consolidated Revenue Fund of the States. The Act amended the existing Section 121(3) of the 1999 Constitution by stating that "any amount standing to the credit of the House of Assembly of the State and the Judiciary, in the Consolidated Revenue Fund of the State shall be paid directly to the said bodies respectively;

in the case of the Judiciary, such amount shall be paid directly to the heads of the courts concerned".[2]

This executive order has been praised and criticised by different writers. Some see it as a stepping stone to the financial and complete autonomy of the judiciary. However, the fact remains that the judiciary is not as independent as it should be, especially with regards to international standards set by countries that seek to follow the rule of law. Also, even if the executive order were to solve the issue of financial independence of the judiciary, there are still other challenges that affect the independence of the judiciary in Nigeria. In other for the Nigerian Judiciary to claim true independence it must possess all the essential elements of an independent judiciary.

Recommendations.

What then is the solution to the long standing problem of independence of the judiciary in Nigeria? In discussing the subject of independence of the judiciary, it has been argued that the 1999 constitution does not ensure enough security to the judiciary, especially in terms of finance, and other areas, such as the appointment and removal of judges. Suggestions have been made to review certain provisions of the constitution, in order to make the necessary amendments to secure the independence of the judiciary. In the past, there has been missed opportunities to fix the nagging problem of Nigeria's lack of financial autonomy. The draft of the 1979 constitution, dusted up with minor changes and adopted as the 1999 constitution was said to have included a provision in the document that stated that in respect of the capital and recurrent expenditure of the judicial service of the federation, resources shall be withdrawn from the Fund and paid into a special account of the Federation **under the control of the Judiciary of the Federation.** However, this provision was deleted by the outgoing

[2] https://barristerng.com/why-the-courts-are-locked-by-ebun-olu-adegboruwa-san/

military government headed by General Olusegun Obasanjo, from the final document that the military government later signed into law. Another missed opportunity came in 1994 when a constitutional conference set up by another military government proposed an amendment that would have enabled the judiciary to prepare and defend its own annual budget. The approved budgetary allocation for the judiciary would have been disbursed directly to the judiciary. The proposal provided for the judiciary to have its own accounting administration with a Chief Accounting Officer who would be responsible directly to the Chief Justice or Head of Superior Courts of Record as the case may be. However, just like the aforementioned proposal in 1979, this one too did not become law and the judiciary remained dependent on the executive to receive the necessary funding to run its courts. Thus, although the constitution appears to cater for the financial wellbeing of the judiciary[3], it is clear that practically, it is lacking in securing the financial independence of the judiciary, it therefore calls for the amendment of the constitution to contain a provision which states clearly that the salaries and allowances of judicial officers to be paid from the consolidated revenue fund, should be paid directly to the Judiciary, leaving no room for the judiciary to go cap in hand to the executive for the money allocated to them. The new Executive Order[4] would be more effective were it to be incorporated and entrenched in the Constitution.

Another part of the Constitution that appears to call for amendment, are the sections that provide for the appointment and removal of judicial officers. The 1999 constitution provides for judges to be appointed and removed by the President or Governor, as the case may be, acting on the recommendation of the National Judicial Council. The provision has created many problems for the judiciary, from illegal removal of judges to undue delay in the appointment of judicial officers. There is therefore need to reflect and consider the need for

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3 Section 84 & 124 of the CFRN 1999, as amended.

4 Executive Order No. 10 of 2020.

the executive to be involved directly in the appointment and removal of judicial officers in Nigeria.

Also, in order for the judiciary to be more independent, there must be;

1. Strict compliance to the provisions of Section 121(3) of the Constitution 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". Non-compliance to this provision should be severely punished by the federal government.
2. Meritocracy should be enforced within the judiciary in order to reduce the importance of political influence and other non-merit based considerations in appointing judges.
3. Precise rules and performance standards for the promotion and appointment of judges should be secured.
4. Public awareness regarding code of conduct for members of the judiciary should increase and members of the public should be encouraged to report cases of breach of judicial code of conduct to the NJC. This will help to curb corruption within the judiciary.
5. Judicial officers should be given training on the ethics of the profession for proper performance of their duties. They must appreciate their roles first as public servants over and above their personal interests.
6. Reported cases of corrupt practices must be dealt with objectively, transparently and seriously by the NJC in order to deter would be offenders. The NJC must maintain a balance between enforcing disciplinary standards so that judges do not abuse their position, while also allowing them sufficient autonomy and independence.
7. Chapter II of the 1999 Constitution should be made justiciable especially as regards Section 17(2)(e) that provides for the "independence, impartiality and integrity of

courts". The independence of the judiciary from the remaining arms of government should be clearly spelt out and enforced by sanctions.

8. Other States in Nigeria should also take a cue from the example of states such as Bayelsa and Delta, in passing laws that secure the financial autonomy of the Judiciary. This will go a long way towards securing judicial independence in the country. The provisions of the *Executive Order No 10* should also be incorporated into the Nigerian Constitution.

Countries around the world operating a democratic system continuously face threats to their judiciary's independence. The challenges being faced by our nation's judiciary can be overcome if the issues are faced squarely and diligently. Nigeria operates a democratic system of government. A democratic system of government is guided by the rule of law and for the rule of law to be upheld there must be separation of powers, and such separation is anchored on a system of checks and balances. Thus, while the arms of government are to be allowed to perform their duties and exercise their powers without undue interference, each arm is also to maintain a watch on the other in order to ensure that there is no abuse of power by any arm of government. This doctrine of checks and balances is what makes many to doubt whether there can ever be complete independence of the three arms of government, especially the Judiciary. As under the guise of acting as a check on the Judiciary, the other arms of government have infringed on the powers of the courts.

Besides the remaining two arms of government, the judiciary faces threat from society as well as itself. Thus there is the need for the judiciary to look inwards and make efforts to heal itself of some of the wounds that have been inflicted on our courts and build public confidence in the judiciary. All these will help to secure the independence of the Judiciary.

BIBLIOGRAPHY

Books

Asein JO, Introduction to Nigerian Legal System (2nd Edition, Ababa Press Ltd 2005)

Dibie CC, Essential Government (5th Edition, Tonad Publishers Ltd 2012)

Evbuomwan E, Legislative Powers Uses and Abuses (Evanco Printers)

Inegbedion NA and Odion JO, Constitutional Law in Nigeria (2nd Edition)

Oshisanya O, An Almanac of Contemporary Judicial Restatements with commentaries Volume Ia (Spectrum Books Limited 2008)

Journals

Abdullahi I, Independence of The Judiciary in Nigeria: A Myth or Reality?

Aka PC, 'Judicial Independence under Nigeria's Fourth Republic: Problems and Prospects' (2014) 45 Cal W Int'l LJ 1

Ikhariale MA, 'Independence of the Judiciary under the Third Republican Constitution of Nigeria, The ' (1990) 34 J Afr L 145

Olowofoyeku AA, 'Beleaguered Fortress: Reflections of the Independence of Nigeria's Judiciary, The ' (1989) 33 J Afr L 55

Articles.

Adangor Z, Depoliticising the Appointment of the Chief Judge of a State in Nigeria: Lessons from the Crisis Over the Appointment of the Chief Judge of Rivers State of Nigeria.

Alao A, *The Republican Constitution of 1963: The Supreme Court and Federalism in Nigeria*, 10 U. Miami Int'l & Comp. L. Rev. 91 (2015)

Ezike EO and Wingate EO, 'Judicial Independence and Accountability in The Enforcement of Contracts Against the Nigerian Government'.

Gur-Arie M and Wheeler R, 'Judicial Independence in the United States: Current Issues and Relevant Background Information'.

Sule I, 'Judicial Independence in Nigeria: Between Global Trends, Domestic Realities and Islamic Law'.

Tobi N, 'Judicial Independence in Nigeria' (1981) 6 Int'l Legal Practice 62

Internet Sources.

[Nigeria during the Abacha Years (1993-1998) - The Management of Transition to Civil Rule by the Military in Nigeria (1966-1996) - IFRA-Nigeria] https://books.openedition.org/ifra/634?lang=en

'NJC Sacks 2 Judges for Misconduct' *Channels Television* (18 July 2016) <http://www.channelstv.com/2016/07/18/njc-sacks-two-judges-for-misconduct/>

'Why the Courts Are Locked'- By Ebun-Olu Adegboruwa, SAN. <https://barristerng.com/why-the-courts-are-locked-by-ebun-olu-adegboruwa-san/>

The Chronicle, 'Is the Ghanian Judiciary Independent?' <https://mobile.ghanaweb.com/GhanaHomePage/features/Is-the-Ghanaian-Judiciary-independent-147581>

Online Newspapers.

CJN canvasses financial autonomy for judiciary'. <https://businessday.ng/uncategorized/article/cjn-canvasses-financial-autonomy-for-judiciary/amp/>

'Nigerian Judge Sanctioned, Placed on Watch List' (2 March 2016) <www.premiumtimesng.com/news/headlines/199397-nigerian-judge-sanctioned-placed-on-watch-list.html>

'Okowa Signs Judicial Autonomy Bill into Law'. <https://www.thisdaylive.com/index.php/2020/06/06/okowa-signs-judicial-autonomy-bill-into-law/amp/>

'Senator Dickson signs financial autonomy bill'- <https://www.msn.com/en-xl/africa/nigeria/dickson-signs-bayelsa-assembly-financial-autonomy-bills/ar-BBYeF2f >.

'Wike misled NJC in appointment of Rivers Chief Judge, Amadi – Group alleges', by Samson Atekojo Usman. <https://dailypost.ng/2021/03/26/wike-misled-njc-in-appointment-of-rivers-chief-judge-amadi-group/?amp>

Bridget Chiedu Onochie, 'There is nothing like judicial independence in Nigeria says Oguche' *The Guardian Newspaper* (Port Harcourt, Nigeria, 22 October 2019) <https://m.guardian.ng/features/there-is-nothing-like-judiciary-independence-in-nigeria-says-oguche/amp/>

Ikechukwu Nnochiri, 'NJC sacks 2Judges over alleged judicial misconduct, age falsification' (19 April 2016) <http://www.vanguardngr.com/2016/04/njc-sacks-2-judges-alleged-judicial-misconduct-age-falsification/>

Judiciary Groans as Buhari delays Judges' Appointment- Ade Adesomoju. <https://newswirelawandevents.com/judiciary-groans-as-buhari-delays-judges-appointment-by-ade-adesomoju/>

Kayode Ajulo, 'Important Lessons from UK Supreme Court for the Independence of Judiciary in Nigeria' <https://www.thisdaylive.com/index.php/2019/10/04/important-lessons-from-uk-supreme-court-for-the-independence-of-judiciary-in-nigeria/amp/>

Yusuf Alli, 'Judgment for sale: NJC probes 23 judges' (6 April 2013) <http://thenationonlineng.net/new/news/judgment-for-sale-njc-probes-23-judges/>