

**CONGESTION OF CASES AND ADJOURNMENT AS AN IMPEDIMENT TO
CRIMINAL JUSTICE IN NIGERIA: A CRITIQUE**

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NOVEMBER, 2025

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**A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF LAW,
UNIVERSITY OF BENIN IN PARTIAL FULFILMENT OF THE REQUIREMENT
FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL.B) OF THE
UNIVERSITY OF BENIN, BENIN CITY.**

NOVEMBER 2025

CERTIFICATION

I, **Areghe Phoebe OKUNA**, with Matriculation Number **LAW2009706**, hereby certify that apart from references made to the works of other people which have been duly acknowledged herein, this entire project is the product of my personal research, and it has neither in part nor in whole been presented for another degree elsewhere.

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APPROVAL

We certify that this project was written and completed by **Areghe Phoebe OKUNA**, with Matriculation Number **LAW2009706** in partial fulfilment of the requirements for the award of a Bachelor of Laws (LL.B) degree.

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DEDICATION

This research work is dedicated to God Almighty..

ACKNOWLEDGEMENT

First and foremost, I would like to express profound gratitude to God Almighty, Adonai El Roi, whose unfailing grace, wisdom, and steadfast presence have been the foundation and strength throughout this academic journey. Every success recorded in the course of this work is a reflection of divine guidance and mercy.

Sincere appreciation is expressed to the project supervisor, Dr. Julius Edobor for invaluable insights, scholarly guidance, and fatherly patience. The academic direction, constructive feedback, and freedom granted to explore this research area were instrumental in shaping and refining this long essay.

My heartfelt gratitude is also given to my parents, Barrister Okuna Kenneth and Mrs. Joy Okuna, whose love, prayers, and unwavering support, both financial and emotional, have been central to the completion of this work. I also extend my deepest appreciation equally to Barrister Okuna Richard, Sophia, Jeffrey, Ewoma, and Ufoma for their encouragement, understanding, and steadfast belief in this academic pursuit.

Special thanks to my brother, Okuna Ufoma for his constant encouragement, insightful advice, and unwavering support throughout the completion of this essay. The dedication and belief expressed at every stage of this journey are deeply appreciated.

To my friends, Godwin-Obata Oselene Norris, Iselobhor Genesis, Ogbodu Eseoghene Joan, Omoregie Mary Osaretin, Ewoigbokhan Andreas Omoyeme, and my other friends, I cannot fully express the magnitude of what your support has meant to my academic journey; your friendship, advice and encouragement have continually bowed my heart in gratitude before Almighty God.

Finally, appreciation is expressed to the Faculty of Law and this esteemed institution for providing the knowledge, resources, and academic environment that made this research possible.

This long essay stands as a testament to the collective support, guidance, and encouragement of all who contributed to its success, for which enduring gratitude is deeply expressed.

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LIST OF ABBREVIATIONS

A.C	Appeal Cases
NLR	Northern Law Reports
NMLR	Nigeria Monthly Law Reports
NWLR	Nigeria Weekly Law Reports
SCNLR	Supreme Court of Nigeria Law Reports
U.S.	United States
WACA	West Africa Court of Appeal

ABSTRACT

This project "Congestion of Cases and Adjournments - A CRITIQUE" is aimed at examining the adjudication system in Nigeria and dispensation of justice. Adjudication in Nigerian courts for the dispensation of justice is through adversary method. Under this system a litigant is required to put his case before the court and call witness, he needs to establish his points.

The judge is required to look at both sides and assess the strength of each party's case. But under the present dispensation of justice the price the society is being compelled to pay is delay and therefore denial of justice. "Delay in court proceeding" has led to congestion of cases in Nigerian courts, which gives negative effect on the role of the Judiciary and the society. The delay in justice represents the Judiciary's biggest problem in Nigerian legal system which is the denial of the individual right of justice. This has led to people seeking alternative means.

This project will examine the judiciary as an organ. Chapter one deals with the Historical evolution of the judiciary in Nigeria. Chapter two takes up the legal framework. Chapter three X-rays the causes of delay leading to congestion and adjournment. Chapter four deals with the implications of the delay in Justice. Chapter five will proffer solutions and recommendations.

CHAPTER ONE

HISTORICAL EVOLUTION OF JUDICIARY IN NIGERIA

1.1 Introduction

Prior to the advent of western civilization, no Traditional African Society existed without its own culture, religion and justice system, subsumed under its ways of life. Then the people, within the confines of their knowledge and understanding cherished and owed their loyalty to the dictates of social norms.

They knew the taboos and the penalties and their efficacy and generally none dared violate any of the taboos. But central to these value systems was the issue of equity, the kernel of the justice system. Wrongs were redressed in the best way known and generally acceptable to the people. The modes of redress were sacrosanct and potent.

Before 1842, with the advent of European traders and empire builders, native courts with both original and appellate jurisdiction already existed. This is as a result of the various kingdoms, Emirates or groups of villages which were Mini republics and were within the Territorial boundaries of present day Nigeria had established governmental and administrative systems and court of law run by chiefs and civil and military personnel. They had systems of taxation, civil laws and procedures penal laws and procedures as well as sentencing policies including the death sentences.

Sir James Marshal paid growing tributes to the efficiency of the native governmental Administrations and testify with admiration to the good quality of justice administered in those courts.¹

¹ Sir James Marshall's Article in the Times, London 17 July 11886

Lord Lugard² and a Scholar named Anderson³ also corroborated those views, today native courts exist as customary, Area and Sharia Courts.⁴ Foreign Courts: Received Judiciary Southern Nigeria 1843 -1913, under the enactment of the Foreign Jurisdiction Act of 1843. In 1890, 1913 the British had the power to establish laws and institutions and to constitute courts and officers thereof for peace, order and good government of her majesty's within the existing future settlements on or adjacent to the coast of Africa.

The life and growth of the Judiciary in West Africa under British rule was subject to force of arms or by unequal lionine or acquisition by subjugation, the earliest courts called Courts of Equity established by the British in Southern Nigeria from 1854 were in use in Bonny and in Brass, Benin, Okrika, Opobo and Calabar in 1870.

The British consul in Fernando Po supervised the Courts of Equity, but court orders were sometimes, flouted with impunity. The consular courts orders are not obeyed by the British Consul. The British Consuls Judicial powers which traditional executive and administrative powers in ensuring peace and order and good government of her majesty's, which comes old, Calabar, Cameron Degema, Brass. Alongside the court of Equity and consular courts was established by the Royal Niger Company.

This was administered along the Niger waterways and its riverine areas since the late 1870's. The charter gave the company the power to govern and administer justice in its areas of operation until the charter was revoked in 1899. It is significant to note that in southern Nigeria in spite of establishment of British courts, native courts⁵ were still allowed to function in the areas under the British influence, in so far as it is not repugnant to natural justice, equity and

² Lugard, F. D. *The Dual Mandate in British Tropical Africa*. (London: William Blackwood & Sons, 1922),25.

³ Anderson, J. N. D. *African Law*. (London: Butterworths, 1962).

⁴ Oba, A. A. "Islamic law in Nigeria: Problems and prospects." *Nordic Journal of African Studies*, 11(3) (2002), 356-382.

⁵ The Emirate of Northern Nigeria, page 131 - 132

good conscience from 1885 -1891 Nigeria Coast Protectorate Courts gave way to Governing Council as courts over which the consul presided.

The introduction of English law⁶ into the British colony of Lagos marked a turning point in the history of the legal system of Nigeria. Although the reception of English law was affected by local legislation, it should be noted that the legislation was passed not by a body of indigenous people but by the British Administration. It is worthy of note, however, that the three classes of English law received during this period- the common law, equity and English status⁷ are today, more than one century after the first reception, still sources of Nigeria law.

The British Administration averted trouble by not rejecting local laws and customs in their entirety. No doubt, by subjecting local laws and customs to the tests of repugnancy to natural justice, equity and good conscience, and incompatibility with and good conscience, and incompatibility with local statutes, the Administration had relegated local laws and customs. However the subjection had produced salutary effects for there where at that time certain customs that were quite objectionable to the civilized world and only slavishly adhered to by the community. In any case, those tests are contained in the current statute books of Nigeria.

1.2 The role of the Judiciary in Society

The Judiciary has been correctly described as a mighty fortress against oppressive and tyrannous laws.⁸ It is also said that the judiciary is the last hope of the common man. It is the judiciary that will compel the legislature to act within its constitutional limits by striking down as unconstitutional all laws that the legislature either has no power to enact or else that conflict with the spirit or letter of the constitution. It is the judiciary that has to ensure that even the state is subject to the laws and that government that is the Executive Branch should respect the

⁶ Ordinance No: 3 of 1863

⁷ Status of General Application in First in England on January, 1st 1900

⁸ Elias and Jegede M. I. *Nigeria Essays in Jurisprudence*. (MIJ Publishers, 1993),228

rights of the individual under the law. It is the judiciary that has to ensure that parties who come before it go out satisfied that justice has been done. It is thus clear that without the judiciary there can hardly be any effective challenge to unconstitutional laws nor can there be any challenger at all to executive lawlessness. The court adjudicates between the citizen and inter se as well as between the citizen and all other concentration of powers, namely, the state powerful combines and monopolies and multinational companies.

The main function of the courts can then be seen as protection from power. How can these powers be protected?

1.3 The Doctrine of Separation of Power

The three arms of the government emanated from the doctrine of separation of powers is to ensure that the same person do not have opportunity of been a member of the legislature, the executive, and the Judiciary at the same time. It is to ensure that each arm do not weigh undue influence on the other. The end product of the doctrine of separation of power is to curb tyranny, oppression and absolutism. Thus in a loco classicism case of *Kilbourn. v. Thompson*⁹, the Supreme Court declared that all powers of government are divided into executive, legislative and judiciary, and that it is "essential to the successful working of this system that the person entrusted with power in any of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to exercise of the powers appropriate to its own department and no other..."

This dictum was founded upon the doctrine of separation of powers as propounded by Plato, Aristotle, Polybius, Cicero, Machiavelli, Harrington, Locke and Montesquieu.¹⁰ The scheme of the constitution is to divide the powers of government into three; section 4 of the 1999

⁹ (1881) 103 U.S. (part 168) 191.

¹⁰ Sharp: The Classical American Doctrine of The Separation Of Power" 2 *Univ. Chi. L. Rev.* 385

Constitution gave power to the legislative to make laws. Section 5 of the 1999 Constitution gave power to executive to assent by signing the bill into law. While section 6 of the 1999 Constitution gave power to the judiciary to interpret the laws.

It also sets down the limits of these bodies in the exercise of the power rested in them. In *Festus Keyamo v. Lagos State House of Assembly and 4 Ors.*¹¹ Galadima JCA said that "basically, the 1999 constitution of the Federal Republic of Nigeria has enshrined the principles of separation of power that is the executive, legislative and judiciary.

The complete separation of the three arms of government of the state of nature is impossible. The reason is that government is an art as well as a practical science with the single aim, which is the advancement of the common good. That being so, the three co-ordinates powers of the state constitute one brotherhood, working side by side with mutual tolerance and co-operation. The primary end of the state is justice - the building and the maintenance of a just society where no man is oppressed.¹² The maintenance of the judiciary order to this end, the legislature by the law it passes enunciates the general norms of justice while the executive oversees these laws as they apply at large. But the state through the judiciary pronounces justices in the concrete. When a dispute arises the issue becomes a practical issue of where does justice lie in the particular case? The judiciary has assigned to it the peculiar and particular case responsible of resolving issue in dispute authoritatively and of pronouncing that law has been violated and that the justice of the case demands a judgment in favour of one party or the other. This important function of adjudication is assigned to the judiciary.

¹¹ (2000) 12 NWLR. (Part 680) 196

¹² Elias and Jegede, *Nigerian Essays in Jurisprudence*, 229.

1.4 The Judiciary and Justice

The judiciary is the branch of government responsible for interpreting laws, adjudicating disputes, and safeguarding the constitution. It functions independently from the executive and legislature to ensure fairness, equity, and the protection of rights.¹³ Its primary mandate is to resolve conflicts between individuals, between individuals and the state, and between different arms or levels of government.¹⁴ Justice, on the other hand, refers to the principle of fairness, equity, and moral rightness within society. It is the ultimate goal of the judiciary: to uphold the rule of law, protect human rights, and maintain social order by ensuring that laws are applied impartially.¹⁵

The Judiciary and Justice are critical components of a functioning democracy, ensuring that the law is applied fairly, equally, and in accordance with societal values

1.5 What is Justice?

Justice is the moral and legal principle of fairness, equality, and impartiality in the treatment of individuals and resolution of disputes. It ensures that people receive what they are due—whether protection of rights, punishment for wrongdoing, or equitable distribution of resources.¹⁶

According to Aristotle's *Ethics* captioned "Justice"¹⁷ Aristotle asked the question: what do we mean by justice and injustice? His answer: unjust means both unlawful and unfair. Therefore just means lawful and fair (Equitable). Justice in the former sense is complete virtue this is universal justice.

¹³ Nwabueze, B. O. *The Presidential Constitution of Nigeria*. (C. Hurst & Company, (1982).

¹⁴ Dicey, A. V. *Introduction to the Study of the Law of the Constitution*. (London: Macmillan, (1959).

¹⁵ Okeke, C. N. "The Judiciary and the Rule of Law in Nigeria." *African Journal of Law and Criminology*, 3(2) (2013), 45–58.

¹⁶ Nwabueze, B. O. *The Presidential Constitution of Nigeria*. (C. Hurst & Company, 1982), 110–125.

¹⁷ Aristotle: *The Nicomachean Ethics*, Translated JAK Thompson Penguin Classics 1955

Particular justice is either distributive or rectificatory. The first can be illustrated by the distribution of honour or money or such others assets which are divisible among the members of the community.

Rectificatory justice remedies an inequitable division between two parties by means of a sort of Arithmetical progression. Thus when one party has inflicted, and the other suffered a blow, or one has killed and the other has been killed, the active and passive aspects of the affair exhibit an unequal division. The judge tries to equalize them with the help of a penalty.

The ordinary citizen is interested in seeing to it that "Justice" as he conceives it is done in a particular case in which he is interested directly or indirectly is not interested in the technicalities which he is unable or unwilling to comprehend. On the other hand most of our judges are bent on applying the same technicalities of the law with their eyes shut against what the ordinary citizen will regard as "justice".

This is where the court is faced with an imponderable problem of possible conflict between the law and rules of procedure in particular on the one hand, and what the common man feels that justice demands on the other. Here the law giver, be it an elected Assembly or a military government invariably lays down not only the law but also the rules of procedure meant for the administration of justice. The lawyers- and including the judges cannot in some and must not in other cases decide outside them. The fact is that in some cases to decide contrary to those rules may lead to injustice on the other hand too much reliance on technicalities rules of procedure may lead to absurd decisions - to injustice in some cases, it is for a good judge to try whenever possible to make justice prevail over law, not the other way round. There is no doubt that law and justice do not always coincide. However, it should be pointed out that law is near

an end by itself. The reason for the existence of law must be justice; law is under justice, not above it as Lord Denning has said, as to the proper role of a judge.¹⁸

"My root belief is that the proper role of a judge is to do justice between the parties before him. If there is any rule of law which impairs the doing of justice then it is the province of the judge to do all he legitimately can do to avoid that rule - or over to change it so as to do justice in the instant case before him. He need not wait for the legislature to intervene; because that can never be of any help in the instant case. I would emphasize, however, the word legitimately: the judge is himself subject to law and must abide by it".

The sensible approach to the matter would be that whenever there appears to be a conflict between what the law dictates and what justice demands, a judge should attempt to resolve the apparent conflict in favour of justice. The ordinary citizen of Nigeria does not expect anything less than this from our judges and lawyers. If the courts lean too much on the side of legalism that may be a sure part to the danger zone of chaos and political instability.

"Angered by the continuing humiliation of the courts by the government the Nigeria Bar Association braces up to defend the honour and independent of the judiciary¹⁹,

¹⁸ Lord Denning, *The Family Story*, (Butter Worth London, 1981), 174.

¹⁹ Kuye. F. N.B.A. "President; The Lawyers Revolt" *Tell Magazine* No. 27, 27, (1992).

CHAPTER TWO

THE LEGAL FRAME WORK OF THE JUDICIARY

2.1 Introduction

Courts in Nigeria may be classified in several ways. But the most important forms or classification are first, classification into superior courts and inferior courts and second, classification into courts of record and courts other than courts of record.

A court of record as the name implies is a court which keeps records of proceedings. In this sense, all the courts in Nigeria are courts of record. Superior courts of record are courts, which have power to punish for contempt committed both in the face of the court and also outside' the court. Inferior courts of record on the other hand are courts, which can only punish for contempt committed in the face of the court.¹

The High Courts and other higher courts are superior courts of record. Magistrates and Customary Courts are inferior courts of records. All other court existing in Nigeria apart from those expressly enumerated in the constitution exist by virtue of section 6 (5). These are courts, which were established or deemed established by an Act of the National Assembly or by law of the State House of Assembly. In this class are Magistrates and Customary Courts, the National Industrial Court and the code of conduct tribunal.

2.2 Extent of Courts Power

The 1999 constitution² delimits the general powers of the judicature. It provides that the jurisdiction of the courts shall extend to all inherent powers and sanctions of a court of law e.g. the power to punish for contempt.

¹ *Omoijahe v. Umoru* (1999) 69 LRCN 1344

² Section 6 (5) of the 1999 Constitution

The courts are also given jurisdiction over any person authority, government and over all civil matters between them.³

However the courts have no jurisdiction to enquire into any issue or question as to whether any act or omission by any authority or person or as to whether any law or any indicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter two of the constitution.⁴ The fundamental objectives and directive principles of state policy are therefore regarded as non justifiable".⁵

Also, the courts do not have powers to entertain any action or proceedings relating to any existing law made on or after January 15, 1966 for determining any issue or question as to the competence of any authority or person to make any such law.⁶

2.3 The Legal Framework

The legal framework provides the foundation upon which courts operate, outlining their jurisdiction, independence, appointment of judicial officers, and accountability.⁷ In democratic states, this framework is usually anchored in the constitution, supplemented by statutory laws, judicial institutions, and international conventions that promote judicial independence and fairness.⁸

Section 6 (1) and (2) of the 1999 constitution vests the judicial powers of the Federation and of the states on the following courts.

(a) The Supreme Court of Nigeria

³ Section 6 (6) (a) of the 1999 Constitution

⁴ Section 6 (6) (b) of the 1999 Constitution

⁵ Section 6 (6) (c) of the 1999 Constitution

⁶ Section 6 (6) (d) of the 1999 Constitution

⁷ Nwabueze, B. O. *The Presidential Constitution of Nigeria*. (London: C. Hurst & Company, 1982),110–140.

⁸ Okeke, C. N. "The Judiciary and the Rule of Law in Nigeria." *African Journal of Law and Criminology*, Vol. 3(2) (2013), 45–58.

- (b) The Court of Appeal
- (c) The Federal High Court
- (d) The High Court of the Federal Capital Territory, Abuja
- (e) The State High Court
- (f) The Sharia Court of Appeal of the Federal Capital territory, Abuja
- (g) The Customary Court of Appeal of the States
- (h) Such other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws and
- (i) Such other courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which the House of Assembly or a state may make laws.

The legal framework of the judiciary is the foundation upon which the administration of justice rests. It consists of constitutional provisions, statutory laws, institutional mechanisms, and international standards that collectively guarantee the independence, fairness, and efficiency of the courts.⁹ A well-established framework ensures that the judiciary can serve as the true guardian of justice, uphold the rule of law, and protect the rights of citizens.¹⁰

However, for the judiciary to remain effective, continuous reforms are necessary to address challenges such as political interference, corruption, and underfunding.¹¹ Ultimately, a strong legal framework is indispensable for building a society where justice, fairness, and equality prevail.

⁹ Okeke, C. N. "The judiciary and the rule of law in Nigeria." *African Journal of Law and Criminology*, 3(2) (2013), 45–58.

¹⁰ Dicey, A. V. *Introduction to the Study of the Law of the Constitution*, 10th ed., (London: Macmillan, 1959).

¹¹ Ojo, E. O. "The judiciary and democratic consolidation in Nigeria." *Journal of Sustainable Development in Africa*, 12(7) (2010), 282–298.

2.4 The Supreme Court

The Supreme Court is deemed established by section 230(1) of the 1999 constitution. The courts replaced The Judicial Committee of The Privy Council as the highest court in Nigeria by virtue of section 120 of the 1963 constitution. The Supreme Court is composed of the Chief Justice of Nigeria and such number of justices of the Supreme Court not exceeding twenty-one, as may be prescribed by the Act of the National Assembly.¹² The Supreme Court has original jurisdiction in any dispute between the Federal and a State or between States if and in so far as that disputes involves any question (whether of law or fact) on which the existence or extent of a legal right depends.¹³ The National Assembly may also by an Act confer original jurisdiction upon Supreme Court, but the National Assembly cannot thereby confer original jurisdiction in respect of any criminal matter.¹⁴

The Supreme Court has exclusive appellate jurisdiction over appeals from the Court of Appeal.¹⁵ Appeals lie from the decisions of the court of Appeal to the Supreme Court as of right in the following cases.

- a. Where the ground of Appeal involves questions alone, decisions in any civil or criminal proceedings before the court of Appeal.
- b. Decisions in any civil or criminal proceedings on questions as to the interpretation or application of the constitution.
- c. Decisions in any civil or criminal proceeding on questions as to whether any of the provision of chapter four of the Constitution has been, is being or is likely to be contravened in relation to any person.

¹² Section 230 (2) of the 1999 Constitution

¹³ Section 232 (1) of the 1999 Constitution

¹⁴ Section 232 (2) of the 1999 Constitution

¹⁵ Section 233 (1) of the 1999 Constitution

- d. Decisions in any criminal proceedings in which any person has been sentenced to death by the Court of Appeal or in which the court of Appeal has affirmed a sentence of death imposed by any other court.
- e. Decisions on any question:
 - i. Whether any person has been validly elected to the office of president or vice president.
 - ii. Whether the term of office of the president or vice president has ceased.
 - iii. Whether the office of the president or vice president has become vacant.
- f. Such other cases as may be prescribed by an Act of the National Assembly.

In all other cases, appeals lie from the decisions of the Court of Appeal to the Supreme Court with leave of Court. The Supreme Court is constituted when it has at least five justices, but when it is sitting in exercise of its original jurisdiction, it may be constituted with at least seven justices.¹⁶ The Supreme Court is the final court in Nigeria and no judicial appeal shall lie to any other body or person from any decision of the Supreme Court.¹⁷

2.5 The Court of Appeal

The Court of Appeal is deemed established by section 237 (1) of the 1999 constitution. The court consists of not less than forty-nine justices, out of which not less than three each must be learned in Islamic Personal Law and Customary Law.

The Court of Appeal has original and Appellate Jurisdiction. The court has original jurisdiction to hear and determine any question as to whether.¹⁸

- a. Any person has been validly elected to the office of president or vice president.
- b. The term of office of the president or vice president has ceased

¹⁶ Section 239 (1) of the 1999 Constitution

¹⁷ Section 240 of the 1999 Constitution

¹⁸ Section (1) of the 1999 Constitution

- c. The office of the president or vice president has become vacant.

The Court of Appeal has exclusive appellate jurisdiction to hear and determine appeals from the Federal High Court the High Court of the Federal Capital Territory Abuja and of the States, the Sharia Court of Appeal both of the Federal Capital Territory Abuja and the States, the Customary Court of Appeal both of the Federal Capital Territory and the States. The Court also has appellate jurisdiction over the decisions of court martial or other tribunals as may be prescribed by an Act of the National Assembly.¹⁹

Appeals lie from these enumerated courts or tribunals either as of right or with leave. An Appeal lies as of right in the following cases.²⁰

- a. Final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance.
- b. Decision in any civil or criminal proceedings where the ground of Appeal involves questions of law alone.
- c. Decisions in any civil or criminal proceedings on questions as to the interpretation or application of the constitution.
- d. Decisions in any civil or criminal proceedings on question as to whether any of the provisions of chapter four of the constitution has been is being or is likely to be contravened in relation to any person.
- e. Decisions in any criminal proceedings in which the Federal High Court or a High Court has imposed a sentence of death.
- f. Decisions of the Federal or State High Courts concerning the following –
 - i. Final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance.

¹⁹ Section 240

²⁰ Section 241

- ii. Decision in any civil or criminal proceedings where the ground of Appeal involves questions of law alone.
- iii. Decisions in any civil or criminal proceedings on questions as to the interpretation or application of the constitution.
- iv. Decisions in any civil or criminal proceedings on questions of chapter four of the constitution has been is being or is likely to be, contravened in relation to any person.
- v. Decisions in any criminal proceedings in which the Federal High Court or a High Court has imposed a sentence of death.
- vi. Decisions of the Federal or State High Courts concerning the following-
 - a. Where the liberty of a person or the custody of an infant is concerned.
 - b. Where an injunction or the appointment of a receiver is granted or refused.
 - c. Where the case of a creditor or the liability of a contributory or other officer is determined under any enactment is relating to companies.
 - d. In the case of a decree Nisi in a matrimonial cause or a decision in an admiralty action determining liability.
 - e. In such other cases as may be prescribed by any law in force in Nigeria.

Appeals also lie as of right to the Court of Appeal from decisions of the code of Conduct Tribunal, the National Assembly Election Tribunals and Governorship and Legislative House Election Tribunals.²¹

²¹ Section 246 (1) of the 1999 Constitution

There is no right of appeal from the decisions of the Court of Appeal in respect of appeals arising from decisions of the election petition Tribunals referred to above.²² There is also no right of. Appeal to the Appeal from the Federal and States High Court in the following case.²³

- a. Where a decision grants a party unconditional leave to defend an action.
- b. Where an order absolute for the dissolution or nullity of marriage is given. The rationale for the prohibition in the latter case is that any party aggrieved by such an order had sufficient time between the grant of the decree nisi and decree absolute to appeal.

In all other cases appeals lie from the decisions of the Federal High Court and High Court with leave. Appeals lie from the decisions of the Sharia Court of Appeal and Customary Court of Appeal to the Court of Appeal in the following cases:-

- a. In the case of the Sharia Court of Appeal, with respect to any question of Islamic Personal Law which the Sharia Court of Appeal is competent to decide.²⁴
- b. In the case of Customary Court of Appeal with respect to any question of Customary Law²⁵

The National Assembly may confer jurisdiction upon the Court of Appeal in respect of appeals from any decision of any other Court of Law or tribunal established by the National Assembly.²⁶

2.6 The Federal High Court

The Federal High Court was first established as the Federal Revenue Court by the Federal Revenue Court Act of 1973. It was restyled as Federal High Court by section 230 (2) of the

²² Section 246 (3)

²³ Section 241 (2)

²⁴ Section 244 (1)

²⁵ Section 245 (1)

²⁶ Section 246(2)

1979 constitution. The Federal High Court is now deemed established by section 249 (1) of the 1999 constitution.

The court has exclusive jurisdiction over law suits concerning the following matters.²⁷

(a) Federal Revenue

(b) Federal and Company Taxation

(c) Customs and Excise

(d) Banking, Banks and other Financial Institutions.

(e) Matters arising from the companies and Allied Matters Act.

(f) Federal Enactments on Copyright, Patent, Designs and Trade Marks.

(g) Admiralty Matters

(h) Diplomatic and Consular Relations

(i) Citizenship

(j) Bankruptcy and Insolvency

(k) Aviation and Safety of Aircraft

(l) Arms, Ammunition and Explosives

(m) Drugs and Poisons

(n) Mines and Minerals

(o) Weights and Measures

²⁷ Section 246(2)

(p) The administration or the management and control of Federal Government or any of its agencies

(q) Any action challenging the validity of any executive or administrative action or decision by the Federal Government or any of its agencies

(r) Such other jurisdiction as may be conferred upon it by an Act of the National Assembly

The Federal High Court has jurisdiction in respect of criminal causes and matters concerning the matters in which jurisdiction is conferred on it.²⁸ The court also has jurisdiction in respect of treason, treasonable Felony and allied offences.²⁹

Before the jurisdiction was thus expressly delimited, there was legal controversy as to the exact scope of the jurisdiction conferred on the Federal High Court under the Federal Revenue Court Act. But in the case of *Savannah Bank v. Pan Atlantic*,³⁰ the Supreme Court held that section 8 (1) of the Federal Revenue Court Act of 1973 which purported to confer exclusive jurisdiction on the Federal High Court in areas within its jurisdiction was void in so far as it was inconsistent with section 236 of the 1979 constitution which conferred unlimited jurisdiction on States High Courts. This decision is no longer relevant as the 1999 constitution has expressly set out the areas of jurisdiction of both Federal and States High Courts.

2.7 State High Courts

The 1999 constitution provides for High Courts for all the States and the Federal Capital Territory. The High Court of the Federal Capital Territory is provided for under section 255 while State High Courts are provided for under section 270 (1).

²⁸ Section 251 of the 1999 Constitution

²⁹ Section 251 (2)

³⁰ (1987) INWLR (Part 49)

The High Courts have jurisdiction, subject to that conferred on the Federal High Court by section 251 of the constitution to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, inability, privilege, interest, obligation or claim is in issue. The High Court also has jurisdiction to hear and determine any criminal matter and impose any forfeiture etc. Forfeiture, punishment or other liability in respect of an offence committed by any person.

The High Court has original and appellate or supervisory jurisdiction. Its appellate jurisdiction is exercised over magistrate courts. The courts also have appellate jurisdiction over Area Customary and Alkali Courts on questions of law arising from decisions of those courts.

The jurisdiction conferred upon the High Court by the constitution to be subject to section 251 which confers jurisdiction on the Federal High Court. Such a proviso was not in the 1979 constitution and this lacuna resulted in controversy.

2.8 Magistrate Courts

Magistrate Courts exist all over the country. They are established and regulated by different Magistrate Court laws of the various jurisdictions, Magistrate Courts law cap. 97 laws of former Bendel State 1976 as amended by the Magistrate Courts amendment Edicts, 1977 and 1979 applicable in Edo and Delta States.

The Chief Judge of a state is empowered to divide the state into magisterial district or districts, constitute in any part of the state a magisterial district or distinguish such districts by such names or number as he may think proper and vary the limits of any such districts.

The civil and criminal jurisdictions of the various grades of magistrates are set out in Magistrate Courts Law.³¹

³¹ Section 19, 21 and 22 of the 1999 Constitution

2.9 The Customary Courts

Customary Courts were established by the Customary Courts laws of the various states of the federation. In Edo and Delta States the governing law is the customary courts law of 1984 of the Defunct Bendel State the law established these grades of Customary Court.³² Every Customary court, whether district or Area is a Court of Record. The jurisdiction of the District and Area Customary Courts are set out in the first schedule to the Customary Courts Law.

Customary Courts are vital grassroots judicial institutions designed to provide accessible, affordable, and culturally relevant justice.³³ While they play a significant role in preserving indigenous values and resolving local disputes, their effectiveness depends on reforms that balance respect for customs with adherence to constitutional principles of justice, fairness, and human rights.

³² Section 3 (1) of the 1999 Constitution

³³ Elias, T. O. *The Nature of African Customary Law*. (Manchester: Manchester University Press, 1956).

CHAPTER THREE

CAUSES OF DELAY IN ADMINISTRATION OF JUSTICE

3.1 Introduction

Adjudication in our courts under the present dispensation is through adversary method. Under this system a litigant is expected to put his case before the court and call witnesses he needs to establish his points. The other side is also required to do likewise. The judge is aloof. He is required to look at both sides and assess the strength of each party's case and then decide. He has no control, at least not much control over most of the activities. The judge is not expected to descend into the arena (as it is described).

The rules of court are meant to be obeyed, but they are not to be treated as tyrannical masters. Where there is a failure to comply with the requirements of some rules, such failure is treated as an irregularity and are not to nullify the. The Judge does not see himself or herself as under any duty to consider the speed, time, money and energy expended on a case.

He grants adjournments as a matter of course and grants leave to amend processes almost at will of the litigant. The award of costs is at the discretion of the court. The discretion must be exercised judicially and judiciously not arbitrarily.¹ That is to say that the discretion must be exercised according to the rules of reason not according to private opinion.² The exercise of the discretion must not be affected by questions of benevolence or sympathy.³ Generally, costs must not be punitive. It must be for some reasons connected with the case

¹ *Worbi v. Asamanayiah* (1953) 14 WACA 669

² *Harco Ltd v. S. M. Daps Brown* (1973) NMLR, 158

³ *Sunmony & Ors v. Gbadamoshi Asorota* (1975) 2 W. A. C. A.

3.2 The Role of the Law in the Society.

The purpose of the law in any society claiming to be civilized is to bring order stability and interdependence consciousness in a given society. To that end, the courts through the well oriented reasoned and seasoned legal activism and social engineering will by their liberal interpretative powers focus on the egalitarian aspect of the life of the society and make the society become responsive to the norms and demands of some philosophical tenants which guarantee the well being and orderliness of the community.

The efficacy or otherwise of a country's adjudicatory process is an index of its growth from crude jungle justice where "mighty is right" to a developed justice system which gives of the litigants their due in time, with minimum anxieties, rigours and at a reasonable cost. In general access to justice in a civil adjudicatory system entails the following attributes as goals, just results, fairness in the treatment of litigants, reasonable costs, certainty, and reasonable speed. It must also be responsive and understandable to those who use it, and effective in terms of resources and organization.

3.3 Delays and Denials of Justice as a Price

The price the society is being compelled to pay under the present dispensation is very costly. Therefore it is delay and therefore denial of justice. Many of our jurists have made pronouncements on the issue. Idigbe (J S C) (as he then was) (and now or blessed memory) puts it thus.⁴

"A State exists to do justice - Justice to the state and justice to the citizens. The doing of justice is an obligation which the state owes to its citizens and which it exercises principally through its third arm, namely, the judiciary. Any functionary of the judiciary to whom the discharge of this sacred obligation is entrusted on behalf of the state Owes it as a duty to the corporeal of the citizenry of which the state is a representation and a

⁴ *Ariori v. Elemo* (1933) 1 SCNLR 1

crystallization to do undiluted and unmitigated justices to which society is entitled and from which no member of the Society is permitted to derogate, speedy trial and fair hearing therefore become an aspect of public justice which sets a standard fixed by law and society, which a judge must attain in the determination of cases before him, and in respect of which no person in society is allowed to compromise.

Fair hearing, of which speedy trial is one of the factors that goes to make it fair, is therefore in my view a right involving the public policy that judicial proceedings shall not fall below a certain standard, namely a standard that trials of cases must be fair. Immutable Justice Demands that justice must be even-handed and where injustice has been done by unfair adjudication nobody can set a subjective standard of justice for himself by acquiescing to it. Indeed, in such a circumstance, ideally, both the winning party and the losing party have a duty to society, to have the injustice, in the interest of society, rectified. Onalaja (JCA) Puts the matter thus:-

The ancient philosophers stated that "Justice Delayed is Justice Denied" which incorporated in the Great Magna Carta of 1215 chapter 40 that To NO one will we Deny or Delay Right or Justice whilst Shakespeare put in laconically in Hamlet Act III Scene I: - All through the years men have protested at the law's delay, counted as a grievous wrong hard to bear among the whips and scorns of time" Also "Charles Dickens" made a parody of the inordinate delay of trials in court of equity over a century ago in his book. Bleak House" Chapter 1 that: - Delay of trial exhausts finances, patience, courage and hope".

To ameliorate delays of trials and judgments conscious of its injustice made the drafts man of 1979 Constitution of Nigeria to provide

Section 258 (I) that:- Every court established under this constitution shall deliver its decision in writing not later than 3 months after the conclusion and furnish all parties to the cause or matter determined with duly authenticated copies of the decision on the date of the deliver to the cause or matter determined with duly authenticated copies of the decision on the date of the delivery thereof".

Any act or conduct of a judge which denies Justice to the parties within the time stipulated by the constitution amounts to miscarriage of justice in the determination of a case. This

miscarriage cannot but be fatal to the decision and renders it null and void a decision delivered in a contravention of section 258 (1) or the 1979 constitution it brings Justice or an opportunity to see that Justice is done to the parties'.⁵

3.4 Causes of Delay

Causes of delay of trials and adjournments in the court are the rule of court itself. Especially in the lower court, the magistrate court civil procedure rules have some problems inherent in it, which inhibit smooth operation of cases. For example there are difference process and procedure of a litigants claims before the court by way of plaint or originating application⁶ it is also impossible to agree on a common form by which a litigant can place his beliefs before the court no matter the nature of that relief e.g. the principles of law relating to amendment⁷ of processes are too relaxed and permissive, with the principles of amendment a litigant can amend his process at any time before Judgment. So long shall the resultant and delay in trial remain.

The liberty provided by rules of procedure, by which a litigant can make all sorts of interlocutory applications and seek various directions⁸ is one of the causes of delay inherent in our Civil procedure Rules. The procedure by way of reference for inquiry and Report⁹ is no doubt another area capable of causing delay in trial of cases in the magistrate court. In his comments on the defects in our court procedure, Nasir (P.C.A) (as he then was) said as follows:-

"Can any one blame any member of the public who has failed to see Justice in this type of court process and procedure one can, with a lot of justification, reasonably complain that our court procedure is defective and self - defeating. It has now taken 30

⁵ *Ifenza v Madugba* (1984) I SCNR (Part 427) per. Obaseki (USC)

⁶ Order/Rules (1) & (2) of the Lagos State Magistrate Courts Civil Procedure Rules.

⁷ Order 9 of the Lagos State Magistrate Court Civil Procedure Rules.

⁸ Order 10 of the Lagos State Magistrate Court Civil Procedure Rules.

⁹ Order 13 of the Lagos State Magistrates' Court Civil Procedure Rules

months of the valuable time of the litigants and the courts. This type of thing should not allow continuing.

There must be finality to all cases if the credibility of our judicial process is to continue to enjoy some respects. While the answers to the above must depend on the facts and circumstances of each case nevertheless the courts must strive at all times to see that they are not being used as vehicles for delayed Justice or Injustice. If the blame is on the procedure then the time has come when we must review the court procedure. If the fault is attributable to the courts then the courts must pull up their weight and descend in the arena of Justice and protect Justice. That is what the rule of law is all about. There is no Justice in writing volumes of Judgments, if our people cannot understand what we are doing. There is no Justice in allowing complicity and at times irrelevant issues to cloud the rule of law.¹⁰

Another formidable source of delay in trials of cases is the abuse and mischievous use of the Rules of court. Such abuses include where applications for adjournment are indiscriminately made and granted; where objections are recklessly raised and where other unnecessary interlocutory are made and granted. Also that application for stay of execution and stay of further proceedings are made indiscriminately. Such abuses also include deliberate delay in filing court processes and the failure of dishonest and corrupt bailiffs to effect services of processes on time thus requiring counsel to file incessant application for extension of time within which to file processes. The point must also be made that the failure and reluctance of counsel to take advantage of time saving rules to attain a quick dispensation of Justice is another prominent cause of delay in trial of cases in the courts. Such procedure is default summons.

The procedure by way of default summons enables the plaintiff in any action in a court for a debt or liquidated money demand to apply for the issue of a summons (called default summons) and obtain either a default Judgment or a summary Judgment where there is no defense to the claim.

¹⁰ *Fawehimi v. Akilu* (1989) 3 NWLR (Part 112) 643

3.5 Injustice through Inordinate Delay

The present incredibly slow process of judicial administration is frightening and oppressive. The poor feel the weight of the oppression far more than the rich. A judicial system which can permit a simple case for example, a wrongful termination of employment to remain in the courts for over five years cannot be said to be running smoothly. Whatever happens at the end of such an aberration of court trial can hardly be said to be justice. The trouble with Nigeria courts is that whilst most modern countries, including some so called third world countries have their eyes on and footsteps directed towards the twenty – first century, this country would appear not only to be totally immune to and unaffected by the "century developments in technology all around us but we appear satisfied to continue to Re in the 19th century in so far as both our substantive law and procedural rules are concerned. The country operates a judicial administration system which is totally and completely out - dated for which reason it cannot enhance any search for true Justice. This point I am making is in relation of inadequate infrastructure and resources. Some lower Courts judges have to travel long distances from their homes every day to get to their courts.

In many cases the judges are not compelled to join public transport to their courts. The few of our judges who are mobile are not provided with drivers. They have to drive themselves through heavy traffic congestion with the result that by the time he gets to the court he/she is already worn out and tired. There are the problems of inadequate court accommodation.

Some of the courts are stuffy and humid especially the Magistrate Courts. The atmosphere and environment of the magistrate is not conducive e.g. leaking roof, at times no record book.

The judges and magistrate are not better off, he is suppose to manage the cases assigned to him in such a manner that there will be an easy flow of cases but when too many cases are assigned to him in rapid succession as it happens in the magistrate court in Delta State (Warri), the flow

of cases become impossible. An average magistrate in Delta State (Warri) in particular has a minimum of 35 cases to attend to every day. With that number, there is a little the magistrate can do. Whatever the ability of the magistrate is likely to be bogged down by the share number of cases in his/her court. There is bound to be congestion of cases.

Another factor that is most serious causes of delay in the trial of cases in this country is the approach of lawyers to litigation. Majority of the adjournments of cases are connected with the absence of counsel in court. There is the tendency to feel busier than they are. They portray themselves as being very busy apparently because of the idea that busyness equates to success while inactivity suggests failure.

The delay in bringing judicial proceedings to a final end is a rock that is hard to crack. The first case to which I wish to direct my attention originated at Ughelli in the then Bendel Cete now Delta State in 1969 Suit No. UHC/30/69,¹¹ *Joseph Ozoma and ors. v. M. Osanwuta and Ors* but for various reasons judgment was not given in the High Court until July 20, 1984. And it is clear that this is a case that is likely to go up to the Supreme Court to be decided possibly finally not earlier than 1986. And the possibility of an order of a retrial even after the case has been in court for over 17 years cannot be ruled out. Another suit - the case of *J. O. Ogubiyi v. David Adewoye*,¹² which is to the best of my knowledge still pending before Supreme Court. This case originated in an Area Court in Kwara State in 1973 from thence it went to the upper Area Court and finally to the High Court. The High Court ordered a re-trial on November 11, 1975. The retrial commenced on January 29th /1976 an appeal then went to the upper Area Court and from there to the High Court. The High Court delivered judgment on August 7, 1980. The aggrieved party file and appeal to the Court of Appeal, and that court delivered judgment

¹¹ UHC/30/69 unreported

¹² SC/123/83 unreported

on February 10, 1983 the party that lost has now appealed to the Supreme Court. In effect eight courts have dealt with this case in nearly twelve years, and the end is yet in sight. It is clear that whenever it ends, what has been achieved will be an aberration of justice.

The history of a third illustrative case *R. Ariori & ors. v. Muraino Elemo & Ors*¹³ is as follows:-

The plaintiffs filed an action against the defendants on October 15, 1960. Trial which commenced on November 18, 1964 was not concluded until July 18, 1974 judgment was not given until October 3, 1975 when the plaintiff claim was dismissed. The subsequent appeal to Federal Court of Appeal succeeded. The defendants thereupon appealed to the Supreme Court. The Supreme Court delivered judgment on January 21, 1983 more than 22 years after 58 commenced and ordered a re-trial. One wonders whether it will take another 22 years for the case to be finally disposed of at the Supreme Court, in such case many of the witnesses have died due to old age or otherwise. These cases are not isolated ones after some diligent research in my office. The High Court Ughell, there are hundreds of cases of similarly frightening delays in the Courts which must invariably result in "Injustice" whitewashed by our system and said to be justice", e.g. *Chief Amos Akpedeye & 2 ors. v. Chief Nelson Etor & 2ors*¹⁴, last Adjournment 27/7/04 – 18/10/04 claim – setting aside the certificate of occupancy.

*Thomas Akpofure v. John Ouwhebre*¹⁵ - Last Adjournment 13/7/04 – 14/10/04 claim [N100,000.00 as general and special damages for trespass. *Union Bank of Nig v. Ebivwie Igboze and Co. Ltd*¹⁶ last Adjournment 1/7/04 – 28/10/04 claim N1,327,420.36 being outstanding over balance.

¹³ Aguda, T.A. "The Crisis of Justice," Akure, Eresu HI/LS 1986, 16

¹⁴ UCH/55/91: Still Pending

¹⁵ UCH/102/88: Still Pending

¹⁶ UCH/12/89: Still Pending

*Julius Oghre & Anr v. Sunday Esegine & Anor.*¹⁷ Last Adjournment 29/8/04 - 12/10/04: Claim a declaration of Title to all piece of land. This is to mention but a few. The chief Justice of the United State¹⁸ Warren Burger is reported to have said:

“A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do in calculate damage to society: that people come to believe that inefficiency and delay will drain even a just judgment of its value, that people who have long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over reaching; that people come to believe the law in the large sense cannot fulfill its primary function to protect them and their families in their homes, at their work, and on the public streets.”

Recent cases continue to highlight this systemic delay. In *FRN v. Orji Uzor Kalu*,¹⁹ the Supreme Court nullified the entire trial and conviction of a former governor on technical grounds after years of proceedings, directing a retrial. This retrial order not only reintroduced the congestion of criminal dockets but also underscored how procedural defects and lengthy adjournments can erode public confidence in justice delivery

3.6 Injustice in our System of Administration of Criminal Justice

In our system of criminal justice it is firmly entrenched the principle that a person is presumed to be innocent until he is proved guilty. There are a number of factors that causes delay in cases like this e.g. Non-availability of witness or witnesses is one of such causes. This is because; in most cases a policeman is the prosecutor whose responsibility it is to produce witnesses. For that reason, the personal touch to ensure the presence and availability of witnesses is never there. The police prosecutor or the state council who handles the prosecution is left at the mercy

¹⁷ UCH/19/12: Still pending

¹⁸ Sikes M.P. Administration of Justice, 75 cited in Aguda, T.A. The Crisis of Justice, Akure Eresu Hills, (1986), 16

¹⁹ (2019) 9 NWLR (Pt. 1676) 523

of the witness or witnesses. It is unlike the civil cases where the plaintiff or the defendant ensures the availability of his or her witness or witnesses.

Another causes of delay in the hearing of criminal cases is the unavailability of the investigating Police Officer who investigated the matter on many occasions the Police Officer who investigated a case gets transferred out of the jurisdiction where he/she conducted the investigation and it becomes very difficult and in many cases impossible to contact such Police Officer to appear in court to testify as to his investigation. This same situation also affects production of exhibits and when exhibits are not available to be tendered, the trial gets stuck and progress cannot be made.

The delay can also arise when the Police fail to conduct proper investigation at the preliminary stage as a result of which many cases which need not have been filed at all in the courts are filed. The result is the heavy congestion experience in the magistrate courts. Another formidable cause of delay in trial of criminal cases is the undue delay occasioned in the process of procuring the advice of the Director of Public Prosecutions by the police. It takes so much time by the police to compile their proof of evidence before forwarding same to the office of the Director of public persecution for the advice as to whether or not the suspect should be persecuted. At the office of Director of Public prosecution bureaucracy and red tapeism make it impossible to treat the case file sufficiently easily enough. After the case file is registered, it is assigned to a very junior officer who looks through the case file and gives his/her opinion. The case file is then passed through not less than those senior officers -fore it gets back to the Director of Public Prosecutions and eventually the Attorney General here the final decision is taken as to whether there should be prosecution or not.

This cumbersome process causes delay, which invariably causes congestions particularly in our Magistrate's court. Which in turn occasion miscarriage of justice. A vivid modern example

is *Evans v. State* (2020) LPELR-51178(SC), where the Supreme Court condemned the prolonged pre-trial detention and trial delay of the defendant, emphasizing that the right to a fair hearing within a reasonable time under Section 36(4) of the 1999 Constitution was breached. The case reflects the continuing tension between slow criminal investigations and constitutional mandates for timely justice.

Another peculiar problem which causes delay in the trial of criminal matters is the non-production of accused persons in court from custody where they are kept. The law is very clear that every accused person shall, subject to the provision of section 100 and of subsection 2 of section 223 be present in Court during the whole of his trial unless he misconducts himself by so interrupting the proceedings or otherwise as to render their continuance in his presence impracticable²⁰ it is not part of our criminal jurisprudence to try a defendant in absentia. Section 210 of the Criminal Procedure Act requires a defendant to be present throughout his trial except in the cases provided for in sections 100 and 223 of the Act.²¹ The excuse most of the time is lack of transportation. It is either that the black Maria has broken down or it is not available at all or that there is no fuel. The result is delay in trial of criminal cases and the eventual congestions in courts and the consequential miscarriage of justice arising from the delay.

An Ikeja High Court has release a 30 years old suspect, Donatus Ihejirika, detained since February 1980 for Manslaughter.²²

Another problem of inadequate facilities both in the chambers of the judges and Magistrates and in the Open Court Halls. Some of the court halls and chambers are leaking. Most of the chambers are barren of essential and necessary books. The chambers and the courts halls are ill equipped, unequipped and unfurnished. The general atmosphere are usually not conducive for proper adjudication for example when an authority is cited in court, because of ill equipped

²⁰ Section 100 (2) of the Criminal Procedure Act and Section 223 of the Criminal Procedure Act

²¹ *Daniel Adeoye v. The State* (1994) 4. Sc. Part II 69

²² The National Concord Newspaper of September 7, 1984.

chambers, the lawyers are made to send in any book that has been cited either for the ruling or judgment for reference.

There is also the problem of lack of training for the Magistrates, most of the legal practitioners who get employed particularly as magistrates are legal practitioners whose wigs are green. They have little experience in the practice of law. They enter the magistracy with little or no training.

The result is that they make mistakes and learn from those mistakes, some of such mistakes not only occasion miscarriage of justice, they result in unnecessary delays in the trial of cases.

In many cases, non-availability of interpreters causes inordinate delays in the trial of criminal matters. Section 242 of the Criminal Procedure code expressly requires that when any evidence is given in a language not understood by the accused; and the accused is present in court, shall be interpreted to him in a language understood by him. The said provisions are mandatory and must be strictly complied with and the details set out therein recorded.²³

The absence of an interpreter in a criminal trial where the accused person does not understand the proceedings of court is a clear violation of his constitutional right and a denial of his right to fair hearing".²⁴

There is no doubt that uneven distributions of cases in the lower courts do cause delays in the trial of cases. This is usually caused, most of the time, by ineffectiveness of the administrative head of the lower court or by the ulterior motives of some lower court head. Judges who consider some cases juicy and would want to keep such cases to themselves. The result is congestion in such courts and delays which occasion miscarriage of justice. The present system

²³ *Madu v. The State* (1997) 1. NWLR. (Part 482) 386

²⁴ Section 36 (6) (e) of The Federal Republic of Nigeria

has been criticized and condemned by prominent jurists over the years. In the case of *The State v. Akpabio*²⁵ Uwaifo J.C.A. (as he the was) stated as follows: -

I think we have come a long way in this country to ought to find no necessity to sound a warning that our sense of approach to justice in our courts should not be seen to be in any way underhand, such as is employed as if to take the society for a ride. The dispensation of justice is not left to the whims and caprices of any judge, founded on shabby reasoning and perfunctory performance. It is not too much to expect the judiciary to set the space in the guest for excellence in the discharge of public duty. It should be a sort of modulator of varying forces of change in a Socio-Political environment towards positive and beneficial ends. That is the sense in which the law is expected to be the catalyst of Societal Values, attitudes and development.

Much of the living aspect of the law depends on the alertness of judges. But if the judiciary takes a back seat through unsatisfactory input by judges even of superior courts, it will sooner become a lame duck and irrelevant in the reckoning of the astute or even the common man".

In the case of *U.B.N v. Ayoola*,²⁶ Abdullah J.C.A pronounced as follows: - The total amount in dispute is just about N19, 387.33. I wonder how much resources had been expended by both parties in pursuing this matter in court from March 1989 to date, almost 10 years. I think something is wrong somewhere. This is not one of the situations I can readily accept under the banner of development of the law except of course if the learned senior counsel on both sides are to bear all the costs of particularly this appeal. Regrettably this kind of situation led evidence to the thinking in certain quarters that our legal system is gradually becoming a lawyer's heaven rather than pursuit of real justice.

People in the area of administration of justice should collectively have a second hard look at our legal system. In yet another case, Abdullahi JCA²⁷ said as follows

Before I put the final dot in this judgment, I am constrained to reflect the time it took to get this case to this land. It is almost

²⁵ (1993)8 NWLR.

²⁶ (1998) 11 NLR Part 573

²⁷ (1993)6 NWLR (Part 297)124

twenty years now since it was commenced before the High Court just one step lower this court, I think this kind of situation calls for genuine concern to the authorities who responsibilities it is to lubricate the wheel of administrative of justice in the country, primarily the bench and the Bar if the role expected of the institutions is to remain relevant and in line with expectations of the members of the society".

Mention would also be made in the poor condition of service of judicial personnel in general is one of the structural problems in our system. There is no doubt that the poor conditions of service cause almost fifty percent of the corruption in the judiciary. It is known that corrupt officer will be corrupt even with the best of conditions of service but quite a considerable number of judicial personnel involved in corruption would keep away from such acts if encourage by satisfactory or tolerable conditions of service.

Another problem that causes delay is poor legal culture of lack of cooperation between some judges and lawyers is one of the dogs in the wheel of progress. This is a tradition which has been on for quite a long time when the British Colonial Legal Officers were in the system. It has continued until this day.

3.7 Justice and the Economic Condition of Litigants

The economic hardship in the country is another factor of delay to justice. It is a sad reflection of our administration of justice that to a very large extent the quality of justice one is able to achieve from judicial proceedings depends to a large extent on how much money one is able to spend on the proceedings. In our system of justice, the courts speaking generally, are empowered to adjudicate between the citizens and the state, but how can a poor existing at bare starvation level hope to have equal opportunity of success in any written between him and the state which has in his payroll a large number of seasoned years paid from the public funds. This is also similarly to a poor man engaged in litigation against as a millionaire, the millionaire will engage the best brains in the legal profession. What could have had the semblance of a bad

case may come out right for a wealthy litigant who is able to pay for the very valuable services of a competent and expensive lawyer.

The layman then wonders whether justice is being administered by the courts, speaking of the position in England someone once said²⁸

"The scales of justice are inevitably weighted in favour of the richest people, who can afford the best lawyers and advice, whereas the person of average income may be excluded from his rights unless he is so irresponsible as to gamble – since there is always a risk that even a small claim might escalate to the house of Lords, wafted on legal nicety which may be interesting but could result in bankruptcy for him and his family.

The position is even worse in this country where there may be between three to five steps along the hierarchy of courts terminating with the Supreme Court. Let us look at the Legal Aid Scheme, this scheme does not extend to civil Litigants and secondly it is extends only to certain crimes, which it pleased the lawmakers all of whom come from the elite group to qualify for such aid. By mid-December 1984, the Federal Government hand out news broadcast by all the radio and television stations in the country that youth service corps lawyers were to handle most of the legal aid cases, the only people |that can approach this group of lawyers are the poor ones.

A newly qualified lawyer with no experience whatsoever cannot, no matter how brilliant be expected to match wit with wit of an experienced prosecutor be he a Senior State Counsel or even a police prosecutor who has been in the business for ten or more years.

There is also a possibility of the perversion of justice either by the wealthy by the offer of substantial financial reward to judicial officers. Similarly there exists a real possibility of the prevention of justice by removal of judges by the executive without preferring a charge followed by public hearing particularly in cases which the executive has interest, either directly

²⁸ Krishina Ayer, Justice and Beyond; Deep & Deep Publications, 1980, 811, cited in Aguda T. A, The Crisis of Justice, 13.

or indirectly. The disruption of power supply in the court hall is one of the factors that cause delay in the administration of justice in the country, on many occasions the court cannot sit because of failure of electricity supply into the court hall sometimes in the middle of trial, supply of electricity in the court hall is taken away without notice, the court is bound to adjourn further hearing immediately, particularly where there is no generating set. Also in the magistrate courts especially stationery and office supplies are not made available to the courts. The consequences are obvious delay in trial of cases and denial of justice, Final Report by the Nigeria Institute of Advance Legal Studies on the Nigeria Court Procedure Project.²⁹

²⁹ Final Report by the Nigeria Institute of Advance Legal Studies on the Nigeria Court Procedure Project.

CHAPTER FOUR

THE IMPLICATION OF DELAY IN JUSTICE ON THE NIGERIA LEGAL SYSTEM

4.1 Introduction

The Judiciary has been correctly described as a mighty fortress against oppressive and tyrannous laws.

According to Hon. Chukwudifu Oputa, we can neither appreciate nor a advocate both in theory and in practice the complete independence of the judiciary if we do not understand the extreme important role of this third branch of government.³⁰ In 1907 Charles Evans Hughes declared the judiciary as the safe guard of our liberty and of property under the constitution.

In 1973, Judge Thurgood Marshall, the only black member of the United States Supreme Court, emphasised that judges sit astride the crucial nexus where the citizen means his government. The courts deal with people and their individual problems on a case by case, and day to day basis. If the system is working inequitably, the judges are likely to be the first to know, since they are the ones called upon to send innocent defendants to prison or to deny legal claims which in justice should be granted. Tyranny cannot flourish when governments recognized the worth of every individual, as the courts do when they resolve a law suit.

In this country amid the clash of arms, then laws are not silent. They may be changed but they speak the same language in war as in peace. It has been one of the pillars of freedom. One of the principles of liberty for which on recent authority we are now fighting that the Judges are no respecters of persons and stand between the subject and any attempted encroachment on his liberty by the executive alert to see that any coercive action is justified in law. Lord A Akin³¹ said those words during the Second World War, in a moment of national crisis when it is very

³⁰ Oputa C. "The Role of then Judiciary in Society", *Nigeria Essays on Jurisprudence* (1993),228

³¹ *Liverside v. Sir John Anderson* (1942) A.C. 206. 244

tempting for the Executive branch to attempt to suspend the citizen's rights in the interest of national security.

The judiciary is the last hope of the common man. The judiciary is the citizen's last line of defence in his unequal combat with power or and its abuse". But there is a yawning gap between the profession and practice. We have of late heard much about the appallingly slow process of the judicial process in our courts³² lamented how backlog of cases due to adjournments had hindered effective industrial justice, noting that "delay in court processes breeds discontent and undermines the faith of citizens in the rule of law." Similarly, in *FRN v. Dasuki*,³³ the court reiterated that unnecessary detention and trial delays constitute a direct affront to constitutional safeguards and fair trial rights.), which are mentioned as factors of delays and denial in chapter III. I do not claim that the diagnosis is completely exhaustive, some others who are in one way or the other connected with the administration of justice e.g. court bailiffs, typists, library staff, etc. are to some extent lacking in probity, motivation and commitment, thus contributing to delay of justice.

4.2 The Implication of Delay

The implication of the delay and continuous adjournments of cases has led to many new innovations. Before the white men came there existed our culture, religion and justice system. The people within the confines of their knowledge and understanding cherished and owed their loyalty to the dictates of society norms. They knew the taboos and penalties and their efficacy and no one have violated any of the taboos.

In the blink of an eye Sango or Amadioha, for example would deal with an unrepentant culprit in a case of theft, robbery or fraud. Then came the invading civilization, which changed the

³² *The National Industrial Court in NICN v. NLC* (2021)

³³ (2020) 10 NWLR (Pt. 1731) 136

traditional approach and replace it with a more humane justice system through the law-enforcement agencies and the courts.

The August 5, 2004³⁴ revelations of activities at Ogwugwu Isiula, Ogwugwu Akpu and Ogwugwu Idigo at Okija in Anambra State are just a replay of the traditional approach to the administration of justice.

The Okija development is in a way a manifestation of a people's disbelief in the orthodox justice system hence the temptation to settle for is virulent short cut to justice. It is a reminder that something must be ungently to heal the infirmities of the judiciary and quicken dispensation of justice. What defence has a nation that a few years ago lost its number one law officer to insecurity in a most bizarre manner, worse still, without the minutest iota of readiness to uncover the culprits? The too many leaks in the roof of the security system still remain to be plugged Chief Rewane, Marshall Henry, Chief Layi Balogun, Barnabas Igwe, Abigail Igwe, Aminasoari Dikibo and Andrew Agom to mention but a few fell to assassins bullets some of the case are still in the law courts years after the deeds had been done, such is the system.

Also in the recent fire outbreak in Oba market titled Oba Market Disaster:³⁵ Applause Galore For Aiyelala. The ultra-modern Oba Market was gulted by fire and it was another spree and free for all lootings by hungry and jobless Nigerians who saw the fire as a yuletide blessing. As those whose goods got burnt were crying, others whose shops the fire did not spread to lost their goods to looters who broke into these stores and carted away their goods. Instead allowing the law enforcement agent to look out for the looters and arrested them and charge them to court, which will cause the delay in justice and bring hardship on the owner of looted goods an

³⁴ Reported by Adeniji Bamigbade, Ogwugwu Isiula and The Orthodox Judicial System. (Published Sept. 3, 2004. 15.

³⁵ Reported by Friday Otabor/Sekinetu Momoh and Christy Okololise (Published in The Weekend Observer, November 2004. 6

alternative means was employed by the Oba of Benin on the November 12th of 2004, following the warning the Ogieroba of Benin Kingdom, Chief Adun Osamede brought Aiyelala.

There was mass return of looted goods even a police officer returned a stolen one bag of rice. The priest that offers prayers at Emotan Stature was told to question those that come for prayers if they had come so as not to incur the wrath of Ewase and Aiyelala.

Call it fetish, paganism, barbaric, ungodly or whatever names, they deserve a gold medal or at least applause, for them the goods would not have been found. It is because of their unrecorded achievements that make people seek them for quick justice and not adjournment as obtained in our regular courts of law. They are not recognized in the Nigerian constitution similarly take Anajemba and Co who depend a Brazilian Bank and they are still in court over the year, take them to any of the shrine or juju, they would have long returned the money.

Another implication of delay in justice has made the Oyo State Governor³⁶ Alhaji Rashidi Ladoja, has advocated the American legal system whereby anybody who loses a case will pay the litigation cost to the winner. The governor inaugurated a mediation Centre in Ibadan said this would reduce the number of cases in the law courts. According to him the centre would provide convenient, speedy and costless alternatives to the present legal system.

Similarly at a time the citizens are getting disturbed over delay in getting justice at the regular courts. The Lagos Multi-Door Court houses (LMDC) an alternative dispute resolution (ADR) centre has 114 cases. The setting up of a multi-Door courthouse is as a result of delay and incessant adjournment this measure has been recommended it was established in 2002.

According to the Guardian Newspaper³⁷ sixteen months after the 2003 POLLS, litigations arising from the election are still pending in some of the election petition tribunals, Dr. Abel

³⁶ Let's embrace U.S. Legal System (Published In Punch) October 29, 2004. 10

³⁷ Written by Clifford Ndujihe, Lagos Multi-Door Handles 114 Cases, (Published in The Guardian, August 31, 2004, 9.

Ibude Guobadia Chairman of the Independent National Electrical Commission (INEC) complained that the delay in concluding the cases was dangerous to the well being of the country's fledgling democracy.

The Alternative Dispute Resolution has come to ameliorate the suffering of the common man in getting justice, cases mainly handle are family cases, land matters property and debt recovery case, most of the case were referred to them by the regular court to reduce congestion in the courts.

According to Mr. Kehinde Aina director of (LMDC) and the negotiation and conflicts Management group (NCMG) said that the Lagos Multi-Door Courthouse initiative would be replicated in all the state of the federation. This aim is to have every courthouse in this country to have an (ADR) Centre. He said that the move would boost foreign investments in the country.

He is of the view that for any potential investor to invest in Nigeria, he must have two things in mind, first the security in the political landscape and the way disputes in the country and commerce are managed. With the present state of our judicial system in terms of administration is nothing to go by, it is not encouraging, no investor would like to have his investments exposed to a judicial system that takes as long as five to ten years to resolved a commercial dispute.

Aina continued, the whole essence of the (ADR) crusade particularly the Lagos Multi-Door Courthouse is not in any way an attempt to supplant litigation or bring litigation to the back burner or seek relevance. Rather, it is intended to supplement it by enlarging the access to justice, by making the justice system a lot more effective, efficient, user friendly, faster providing a wide array of doors to resolve disputes instead of the mono-door of litigation. The Chief justice of federation, Justice Mohammed Uwais delivering a key note address at the

launching of (LMDC). He is of the view (LMDC) will be the fore runner to such initiatives that will be established in other states of the federation. Stressing the necessity of the ADR in the country's justice system, Aina said cases were resolved after two sessions unlike in the regular courts where cases adjourned for several times. At the Lagos Multi-Door Courthouse, the process is very similar; three doors are available mediation, arbitration and neutral evaluation. A case will commence when a party fills and signs a request form. Contact is made with the other party and the case is screened by a dispute resolution specialist who determines the most appropriate door for the case, from the nature of relief sought, the matter could be sent to the mediation door, arbitration or neutral evaluation doors, on the other hand. If the matter is not suited to the ADR initiative, the parties are advised to go through litigation, which is already in existence. "Once that is done, a preliminary meeting is held with the parties, at which point issues of confidentiality and working processes are explained to them and questions are answered. They will appoint from the list of LMDC panel of neutral evaluators the person they will like to mediate the case for them, upon the appointment, a mediation session is scheduled, the mediator is contacted, and process will begin.

With the advent of Ogwugwu system in the Okija Shrine, and recommendation of the adoption of the U.S. system of litigation and the Lagos Multi-Door courthouse is a reminder that the judicial system should be overhauled, and urgently too.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1 Conclusion

The Judicial System of Civil and Criminal Justice Administration should include impartial justice, corruption free justice, prompt justice, affordable justice, visible justice, effectively managed and properly organized justice system geared towards the following objectives:

- (1) Adopting case management tracks techniques in allocation of case
- (2) More active participation of the judge in the process of administration of justice
- (3) Ensuring co-operation amongst the parties through their counsel
- (4) More effective use of time saving procedures provided in the rules
- (5) Early determination of issues
- (6) Entering summary judgment in matters, which are straightforward and not complicated.
- (7) More effective and efficient use of time table
- (8) More effective and efficient use of costs
- (9) Cutting down on number of amendments permissible

With the objectives enumerated above at the back of our minds, we can then proceed to consider and find solutions to many of the problem, which cause delay in the administration of justice in this country both in magistrates courts and also in all other courts throughout the length and breadth of this country.

Perhaps one of the most effective solutions would be to take many steps that can avoid litigation. It refers to the "Avoidance of Litigation System" which is recommended to be

introduced as an integral part of the civil justice system both in the High Court and in the lower Courts. The steps in trial processes reduced or trial procedure are more quickly utilized especially through a reduction in the number of adjournments.

5.2 Recommendations

In view of the foregoing the following recommendations are hereby made the implementation of which will no doubt aid the efficiency and ameliorate the bottleneck in delay of justice. There must be a series reformation of the judiciary before its introit into the 21st century. Recent judicial reforms, including the Administration of Criminal Justice Act (ACJA) 2015 and state-level adaptations like the Lagos State Administration of Criminal Justice (Amendment) Law 2021, have been judicially endorsed in cases such as *State v. Olamide*¹, where the Court of Appeal praised the ACJA's case management provisions for reducing adjournments and promoting speedy trial. However, inconsistent implementation across states continues to frustrate these objectives. Building upon these developments, the following reforms are crucial to ensure that the ideals of the ACJA are effectively realized across all states

1. The judiciary should be allowed to control its budget. It should be prepared presented and defended by the judiciary with the executive. The National Judicial Council should be allowed to serve as a parliament to disbursing the fund. The judiciary should be given constitution control over its approved budged.
2. The provision of adequate infrastructure must become compulsory, Material, such as stationary, file jacket's writing materials etc. should be adequately provided. Power failure is a canker worm in this country. It has virtually grounded every aspect of life; Administration of justice is not an exception. Power generator should be provided in the court.

¹ (2022) LPELR-58094(CA)

3. The lower court judges should be provided with comfortable vehicles to ease their movement. Good accommodation should be provided for them.

Adequate funds should be provided to rejuvenate judicial administration and make it effective and efficient. Introduction of time limits for the completion of Requisite procedure at each stage of the proceedings is recommended. The courts should learn to impose a deadline within which the parties are to complete certain procedures or take stipulated actions. It is recommended that costs should now become realistic and become commensurate with the amount of expenses incurred and time expended in the courses of the proceeding. The comparative value of the naira should be put into consideration at all times. Costs should be able to indemnify a party for frivolous applications and adjournment. In other words, it is time to make costs punitive.

The time is overdue for the installation of mechanical recording system in all our courts. The secretaries attached to judge should be specially trained to make maximum use of new gadget e.g. Tape recorders, computers and even complicated gadgets, with the recommendation of mechanical recording, it would be easy to give litigants a daily supply of transcripts of proceeding. This makes for justice.

The rule of courts is another aspect, which I sincerely recommend more attention. At present there is a serious congestion in every court from trial courts to the Supreme Court. One sure way to ameliorate the situation is by paying attention to the rules of all the courts. I recommend that it should be amended so as to permit the tendering in evidence of the reports of experts, without prejudice to the right of cross-examination. This will save time spent on hearing of cases.

Also certified true copies of all judgments of courts of al record should be made available to litigants' immediately after delivery and certainly on the day of delivery. This will hasten the

process of appeals whether from the courts to the court of Appeal or to the Supreme Court. It is good for the magistrate courts and high courts to have verbatim reporters to record court proceedings.

It is recommended that regular training of lower court judges and court officials should become part of our system of administration of justice. At least a three month period of training is recommended for every lower court judge just entering the judiciary for the first time. There should be a regular school for court administration and officials. It should be established in each state. Also, the transfer of lower court judges from one district to another should be arranged in such a way that each magistrate or judge can continue to take and hear his/her past heard matters in his/her new district.

The idea of a past heard matter starting *de novo* by another judge should be erased. The transfer of investigating police officer should be done in a way that he would be made to complete his case before going on transfer.

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