



JOSEPH AYO BABALOLA UNIVERSITY LAW JOURNAL

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INJUSTICE IN THE HALLOWED TEMPLE OF JUSTICE: THE NATIONAL JUDICIAL COUNCIL IN PERSPECTIVE**

INTRODUCTION

“The rain it raineth on the just And also on the unjust fella:

But chiefly on the just, because The unjust steals the just's umbrella”

The above aptly indicates a situation (grave one) where the 'just' suffers unjustly in the course of helping the 'unjust'. This situation can be rightly equated with the existence of apparent injustice in the administration of justice itself. In other words, it is a situation where the administrators of justice are themselves denied justice within the same system where they administer justice.

The above depicts the precarious situation which the National Judicial Council finds itself in the course of meting out discipline or removing erring Judges. Many questions have arisen as to the actions of the NJC in dealing with erring judges especially on perceived double standards. Cases abound where erring judges who commit almost the same degrees of misconduct are subjected to varying degrees of punishment without any justification or explanation for the variance.

The situation is further compounded by the lack of clarity in the roles of the NJC, its seeming almighty powers which it exercises, its checkered leadership, its dubious membership, etc which no doubt is a situation that has not endeared the NJC to the hearts of many. The NJC is fast creating an impression that some eggheads are untouchable in the judiciary like the “cobwebs, where the small flies were caught and the great brake through.”

THE NATIONAL JUDICIAL COUNCIL: RATIONALE AND ITS POWERS

Without losing sight of the crux of this work, it is imperative albeit briefly to take a look into the coming into being of the NJC, the rationale thereof and its powers. It has often been said that when the purpose of a thing is not known, abuse is inevitable.

While the judiciary has long been in existence in Nigeria since the colonial era, the NJC only came into force in 1999. The reason for the coming into being of the NJC was to ensure the independence of the judiciary which was hard to ensure considering the previous legal regimes in the country.

The mischief, probably sought to be cured was the likely arbitrary removal of judges which would have been wanton and likely to impugn the independence of the judiciary. The advent of the NJC is thus a watershed in the annals of the Nigerian judiciary. However, to argue that the effects of the NJC have been all-positive is

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¹ Sichel's Sands of Time, Book of Quotations, Geddes and Grosset.

² Hereinafter referred to as the NJC or the Council

³ Francis Bacon, Baron Verulam of Verulam and Viscount of St. Albans, 1561-1626 in the Apothegms.

⁴ The 1999 Constitution of Nigeria (as Altered)

⁵ Under the 1963 Republican Constitution, the powers of appointment, discipline and removal of judicial officers resided in the President, Prime Minister and the Parliament. See sections 112, 113, 123 and 124 of the 1963 Constitution. Same thing can be said of the 1979 Constitution under which the powers of appointment, discipline and removal of judicial officers lied in the President and the National Assembly. See section 255 of the 1979 Constitution.

⁶ For clarity on what the mischief rule connotes, see *Pepper v Hart*

arguable and remains to be seen.

Composition

The members of the NJC are as follows:

- a. The Chief Justice of Nigeria who shall be the chairman;
- b. The next most senior Justice of the Supreme Court who shall be the Deputy Chairman;
- c. The President of the Court of Appeal;
- d. Five retired Justices selected by the Chief Justice of Nigeria from the Supreme Court or Court of Appeal;
- e. The Chief Judge of the Federal High Court;
- f. Five Chief Judges of States to be appointed by the Chief Justice of the Nigeria from among the Chief Judges of the States and of the High Court of the Federal Capital Territory, Abuja in rotation to serve for two years;
- g. One Grand Kadi to be appointed by the Chief Justice of Nigeria from among Grand Kadis of the Sharia Courts of Appeal to serve in rotation for two years;
- h. One President of the Customary Court of Appeal to be appointed by the Chief Justice of Nigeria from among the Presidents of the Customary Courts of Appeal to serve in rotation for two years;
- i. Five members of the Nigerian Bar Association who have been qualified to practice for a period of not less than fifteen years, at least one of whom shall be a Senior Advocate of Nigeria, appointed by the Chief Justice of Nigeria on the recommendation of the National Executive Committee of the Nigerian Bar Association to serve for two years and subject to re-appointment. Provided that the five members shall sit in the Council only for the purposes of considering the names of persons for appointment to the superior courts of record; and
- j. Two persons not being legal practitioners, who in the opinion of the Chief Justice of Nigeria, are of unquestionable integrity.

As straight forward as the composition of the NJC would seem to be, dust has been raised on the practicability or the implications which it has. Perhaps, the main issue is the issue of appointment by the Chief Justice of Nigeria could bring the allegiance of the NJC into question as it is logical for appointees to do the biddings of the appointor. This situation came to the front burner of national discourse when the Justices KatsinaAlu and Salami issue rose to the peak.

Commenting on the foregoing, a legal luminary, A.O Mohammed, SAN had the following to say:

"The National Judicial Council as currently constituted is defective. These defects have denied the Council the required freedom and powers to act decisively. The Council is made up of twenty three (23) members, inclusive of the Chief Justice, who is the Chairman. Fourteen (14), out of the twenty three members are singularly appointed by the Chief Judge as the Chairman and such appointment is not subject to any control or

⁷ Paragraph 20, 3rd schedule, 1999 Constitution

⁸ Hereinafter referred to as the CJN

⁹ Okoye A.O, "Issues in the Membership, Powers, and Autonomy of the National Judicial Council in Nigeria, Nigeria Judiciary: Contemporary Issues (ibid) 379 at 381

¹⁰ Mohammed, A.O (Ibid)

consultation with any person or body. The five members from the Bar are also appointed by the Chief Justice upon the recommendation of the Nigerian Bar Association. In effect, the Chief Justice, as the Chairman, appoints nineteen out of the twenty – three members of the council. This is not too democratic. Under such undemocratic scenario in the appointment of members of the Council, it is not surprising that majority members perform their duties with predetermined mind-sets of the Chief Justice of Nigeria, their appointer. The apparent mischief inherent in such bizarre arrangement was brought to the fore in what is now known as “Hon Justice Ayo Salami saga.”

The NJC by the above score leaves little to be desired in its composition which consequently has an impact on its actions.

Powers

Very briefly, the powers of the NJC as enshrined in **section 158 (1) and paragraph 21 to the 3rd Schedule to the Constitution** are as follows:

“a. Recommend to the President from among the list of persons submitted by –

- i. The Federal Judicial Service Commission, persons for appointment to the offices of the Chief Justice of Nigeria, the Justices of the Supreme Court, the President and Justices of the Court of Appeal, the Chief Judge and Judges of the Federal High Court, and;
- ii. The Judicial Service Committee of the Federal Capital Territory, Abuja, persons for appointment to the offices of the Chief Judge and the Judges of the High Court of the Federal Capital Territory, Abuja, the Grand Kadi and Kadis of the Sharia Court of Appeal of the Federal Capital Territory, Abuja, and the President and Judges of the Customary Court of Appeal of the Federal Capital Territory, Abuja, and the President.

b. Recommend to the President the removal from office of the Judicial officers specified in sub-paragraph (a) of this paragraph, and to exercise disciplinary control over the officers.

While the above could be thought not to include Judges of the States (that is, Judges who are not Chief Judges), this perceived dichotomy has been settled quite emphatically by the Supreme Court in the case of **ELELU-HABEEB V A.G. FEDERATION & ORS** where the contention that the NJC has disciplinary powers over all judicial officers in the country received tacit judicial imprimatur of the Supreme Court.

REMOVAL OF JUDGES

For a judicial officer to be guilty of misconduct, it is rational for there to be some body of laws regulating their conduct and same are regarded as code of conduct. These Codes of conduct are of two kinds; those enshrined in the Constitution and those laid out by the NJC. The Constitution provides for two grounds upon which a judge can be removed which are:

¹¹ See also Okpoko, T.J.O, “Reinvigorating National Judicial Council for a Stronger Judiciary in Nigeria, being a paper presented at the two day seminar of the NBA Anti-Corruption Commission on 1/7/2013; Razaq K.O, “The Constitutional Crisis on the Removal of Chief Judge of a State or Chief Justice of Nigeria”, *Confluence Journal of Jurisprudence and International Law*, Vol. 3, No.2, 2010, pp. 28-34

¹² (2012) 13 NWLR (PT. 1318) 423 AT 494 PARAS C-E; 495 PARAS D-H; 497 PARAS C-D

¹³ See also Okoye A.O, “Issues in the Membership, Powers and Autonomy of the National Judicial Council in Nigeria: Nigeria Judiciary Contemporary issues (ibid) pp. 379 at 403

¹⁴ See generally par

¹⁵ See Daded (ibid)

¹⁶ 2002

¹⁷ 1998

¹⁸ 1997

¹⁹ 1982

²⁰ See generally Da

²¹ Aguda T.A, The C

- Inability to discharge the functions of office or appointment;
- Misconduct or breach of the Code of Conduct stated in the Constitution.

The Constitution through the Code of Conduct precludes the doing of certain acts such as engaging in private business, collection of bribes and other benefits, abuse of office, membership of associations or organizations considered incompatible with the functions of public office.

The NJC has also prescribed a code of conduct which applies to all judicial officers across the federation. It prohibits judicial officers from acts like improper social relationships, associating with groups that practise invidious discrimination, abuse of power, communicating or commenting on pending cases, sexual harassment, nepotism and favouritism, etc.

According to Dadem, International Standards and Conventions on Ethics and Code for Judicial Officers also regulate the conduct of judicial offices in Nigeria, Nigeria being a signatory to such Standards and Conventions. They include the Bangalore Principles of Judicial Conduct, the Latimer House Guidelines, the Beijing Statement on the Principles of Independence, IFES and USAID Office of Democracy and Governance "Guidance for promoting judicial independence and impartiality (Guidance Principles)", and the International Bar Association, Minimum Standards of Judicial Independence. Breaches of these standards are sanctioned by the NJC. It must however be noted that what amounts to these breaches lie within the discretion of the NJC. As a matter of fact, the NJC determines the rules of the game and to whom those rules are applied, hence double standards in the application. These double standards are perhaps done under the garb of human foibles and inadequacies.

THE NATIONAL JUDICIAL COUNCIL AND DOUBLE STANDARDS

The Holy Quran Chapter 5 verse 22 states:

"But if thou will judge, judge between them with equity. Lo! Allah loveth the just."

The imperative need to attain justice in all spheres particularly the NJC cannot be over-emphasized. The NJC, like all administrative bodies have a compelling duty to ensure justice is done. Failure of this would give credence to talks from persons in the nature of **Mr. Bumble** in **Charles Dickens' "Oliver Twist"** when he stated that **"the law is an ass, a laughable buffoon."** The need for sanctity and justice is further brought to the fore by the legendary **Hon Justice Akinola Aguda** when he noted that:

"It is urgent and imperative that we must be able to effect at least a semblance of fair and just administration of justice, if this nation is to survive."

²⁴ See generally part I, 5th Schedule to the Constitution. See Dadem (ibid)

²⁵ See Dadem (ibid)

²⁶ 2002

²⁷ 1998

²⁸ 1997

²⁹ 1982

³⁰ See generally Dadem at page 83

³¹ Aguda T.A, The Crisis of Justice, Nigeria, 1986, p.6

The NJC, which is saddled with the appointment and removal of judicial officers, can be rightly described as the foundation for a sound judicial system. After all, if the system that produces Judges is faulty, the “products” cannot be expected to perform miracles. Seemingly commenting on the need for a solid foundation, my Lord, Hon. Justice KayodeEso, JSC in the case of **IFEZUE V MADUGHA** had the following to say:

“If the foundation is muddy in one part, the mud would spread throughout and pollute all that flowed from it...Times had changed and the courts had changed with them”

The double standards with which the NJC apparently deals with Judges is particularly better understood and appreciated if two cases are considered side by side; the cases of Hon Justice Rita OfiliAjumogobia of the Federal High Court and Hon Justice Gbajabiamila of the Lagos State High Court. We are all aware of the stories surrounding the discipline meted to them but for the sake of clarity, same shall be summaraized in ensuing paragraphs.

Justice Rita OfiliAjumogobia's case of misconduct was that she failed to deliver judgment in a pre-election matter (FHC/AB/CS/31/2011) between Victoria A. AAyeni and OlusolaSonuga. She adjourned ruling in the pre-election matter till the end of the tenure of office of the candidate whose qualification in pre-election was being questioned. It must be noted that the matter had been filed even before the 2011 general election. It was alleged that she out rightly failed to deliver judgment in the suit denying the plaintiff and her supporters their constitutional right to have their grouse ventilated in court. The term of office which the plaintiff was contesting became over and thus rendered her case academic.

The NJC in its wisdom barred Hon. Justice Rita Ofili-Ajumogobia from being elevated to the Court of Appeal or any other judicial body till her retirement. She was also not to be considered for any appointment to any Ad-hoc judicial committee of post till her retirement from the Bench. She was sanctioned for “misconduct and alleged injustice” and placed on the NJC “watch list” for the next four (4) years.

In the case of **Hon. Justice Gbajabiamila**, it was alleged that the Judge delayed judgment in a suit ID/1279/2007 between P.K Ojo v. SDV & SCOA NigPlc for 22 months after adoption of written addresses and 35 months after conclusion of evidence. He also did not publish the said judgment until after 40 days, as against the 7 days required by the Constitution. He was also alleged to have continued to hear the case after he had been notified of the pendency of a motion for stay of execution at the Court of Appeal and that an appeal had been entered. He was also alleged to have failed to administer properly his court Registrar, who prior to the issuance of a writ of attachment in the case, falsely misrepresented to the Deputy Sheriff in a memo dated 28th November, 2014 that there was no appeal or motion in the case file as at 28th

²² (1984) 1 SCNLR 426

²³ It is settled that pre-election matters can only be filed at the regular courts before the election; otherwise it has to be filed at the election petition tribunals. See **WAMBAI V DONATUS** (2014) 14 NWLR (PT. 1427) 223 AT 249 PARAS A-C; 257-258 PARAS D-B

²⁴ Available at <file:///accounts/1000/shared/downloads/Nigerianjudgesanctionedplacedonwatch-list-premiumyimesnigeria.html> assessed on 5th June, 2016 at 3:43pm

²⁵ Available at file:///accounts/1000/shared/downloads/NJCretiresjudgesoveragefalsificationdelayofjudgment_PunchNewspapers.html assessed on 5th June, 2016 at 3:48pm

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²⁸ (1991) 5 NWL

November, 2014 meanwhile, there were two notices of appeal and two summons to settle records in the court's file. He was also alleged to have given an order upon ex parte application substituting the name of a company with another without serving the order of substitution on the affected party or its legal representative. Hon. Justice Gbajabiamila was suspended from office and a recommendation was made to the Governor of Lagos State to remove him from office, a situation which is expected to happen rather sooner than later.

In my opinion, the offence of both Judges are hugely similar but with varying punishments meted out to them thus depicting unfairness. If Gbajabiamila delivered judgment after 22 months of adoption of written address, a situation which is bad, Ajumogobia's refusal to deliver judgment at all, especially in a case which is time sensitive and interest-filled like a pre-election matter is worse and if the gravity of their offences is anything to go by at all, Ajumogobia's punishment should be greater than Gbajabiamila's but alas, the reverse is the case. The other sundry offences deemed to be committed by Gbajabiamila are in my respectful opinion, offences which Judges commit daily. The acts attributed to him are either expressly done by the court Registrar (in the case of misinformation about the status of an appeal or not) and the court Bailiff (in the case of non-service of the order of court. May God forbid a time when it is a Judge who has made the order that ensures the service of the said order on the party against whom it is made.

Perhaps it will not be out of place to recall the punishment meted against Hon. Justice Taiba in the PENCOM matter where he exercised his discretion in accordance with the law to give effect to the agreement of parties to the case before him.

The draconian style and nature of the decisions of the NJC is dreadful and does not seem to show any sign of respect for equality of persons before the NJC. The NJC is fast becoming a realm of phantasmagoria or fantastic possibilities where anything can be expected from it.

CONCLUSION AND RECOMMENDATIONS

No doubt, the role of the NJC in the sustenance of the judiciary and by implication, democracy cannot be taken for granted. As a matter of fact, it is patently clear and beyond doubt to anyone who has had the most minimal of contacts with the Nigerian judicial sphere cum jurisprudence.

In **ONAGORUWA V. INSPECTOR GENERAL OF POLICE**, the Court of Appeal, per TOBI J.C.A (as he then was) held as follows:

"Nigeria is a democracy and by the grace of the Almighty God, it will remain a democracy for all times. The foundation for any democracy is anchored on the Rule of Law both in its conservative and contemporary meaning. Putting it naively, we are paid mainly and essentially to uphold the Rule of Law in the entire polity. And so, once we fail to uphold the Rule of Law, anarchy, despotism and

²⁶ It remains to be seen however whether the offices of the Judge and his Registrar are not different from each other and whether the Judge should be made liable for his Registrar's actions.

²⁷ The effect of a non-service of an order of court is that a party against whom such order was made is not bound by same. See *UWAZURUIKE V A.G FEDERATION* (2013) 10 NWLR (PT. 1361) 105 AT 130 PARA A; 134-135 PARAS G-A; 135 PARAS E-F. It can however be argued that the duty of service of a court process on a party never lies on the Judge who made the order.

²⁸ (1991) 5 NWLR (PT. 173) 593 at 650

totalitarianism will pervade the entire society. The social equilibrium will be broken. Law and order breaks down. Everybody will be his own keeper and God for us all. We, as Judges, cannot afford to see society decay to such an irreparable level. We must rise up fully to our duties by vindicating the tenets of the Rule of Law in our practiced democracy.”

Thus, the NJC which has assumed for itself the role of being a watch-dog in the judiciary must be seen to be above board in its dealings with the judges. The law is settled that he who comes to equity must come with clean hands. The NJC must not only come with clean hands but a clean body if it is to remain relevant and earn the respect which it desires. In the drive towards achieving this, the following should be attempted at achieving same:

1. The modes of appointment into the NJC should be revisited. The apparent almighty powers of the CJN in this regard must be bridled down. The reason for this should be a query that “what if the CJN himself is guilty of the alleged misconduct?” can he be a judge in his own case or appoint the judges in his own case? The answer is an obvious “No”.
2. The codes of conduct of judicial officers should be clearer and more spelt out so as to attain clarity in the law.
3. Sequel to (2) above, the punishments for the offences should be spelt out and clearer to meet the offences prescribed. The punishments should not be at large and should be circumscribed to attain certainty.
4. It must be noted that no single Justice of the Court of Appeal or the Supreme Court has ever been punished for running afoul of the NJC code of conduct. The net should be extended to the higher bench. Who knows what would be found therein.

The above are not exhaustive of the situations where the NJC needs to improve but I dare say that if the foregoing are adopted, they would really go a long way in making the NJC the toast of a typified Nigerian system.

²⁹ *Iliyasu v. Ahmadu* (2011) 13 NWLR (Pt. 1264) 236 at 259 Paras A-B; *Ejike v. Egbuagba* (2008) 11 NWLR (Pt. 1099) 627 at 658 Para A; *JAMB v. Orji* (2008) 2 NWLR (Pt. 1072) 552 at 571 Paras B-C

³⁰ It must be noted that the NJC apologized to and reinstated Hon. Justice Isa Ayo Salami after his initial suspension and nothing was done to Hon Justice Katsina Alu. The apology offered to Hon Justice Isa Ayo Salami could only mean one thing, that Hon Justice Katsina Alu was guilty. It remains to be seen if and how the two Justices could be vindicated at the same time considering the nature of the accusations made by them against each other.