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TABLE OF CONTENTS

TABLE OF CONTENTS

Ibrahim Sambo Farouq, Zunaidah Sulong, and Saádatu Suleiman Sanusi: The Empirical Relationship Between Economic Growth, ICT, Financial Globalization Uncertainty and Financial Development: Evidence from Selected

TABLE OF CONTENTS

Ibrahim Sambo Farouq, Zunaidah Sulong, and Saádatu Suleiman Sanusi: The Empirical Relationship Between Economic Growth, ICT, Financial Globalization Uncertainty and Financial Development: Evidence from Selected Leading African Economies..... 1

Yusuf Nsanja: Hand-Drawn Illustrations and Family Support Systems: Missing Interventions in Addressing Domestic Conflicts During Covit-19 Lockdown in Uganda..... 15

Nabukeera Madinah Sebyala: The Covid-19 Pandemic Effect on Agriculture Governance and Food Security in Uganda.....

Nabukeera Madinah Sebyala: The Covid-19 Pandemic Effect on Agriculture Governance and Food Security in Uganda..... 31

Abubaker Basajjabaka: Vaccines, Still a Contestable Subject in Medical Development..... 42

Dayo I. Akintayo, Rasheed Oyaromade, Isola O. Ayantunji and Kolawole S. Ajibola: Engagement and Compensation: A Historical Perspective of Wage Determination and National Minimum Wage in Nigeria 52

Maryam Bayero-Jimoh and Jimoh Yahaya: Waste Control and Management in Places of Worship within Ilorin Metropolis of Kwara State, Nigeria..... 61

Akinadewo Israel S, Asaolu T. O **and Oyedokun G. E:** Application of Forensic Accounting Skills on Government Revenue in Nigeria: The Domestic Debt Factor..... 69

Abimiku John, Daniel L. Ishaya and Bawa Basil: Assessing the Implementation of E-Government on the Performance of Nigerian Immigration Service Headquarters, Abuja..... 77

Ogundele Stephen Omobolade, Akinadewo Israel Seriki and Oloowokere Johnson Kola: Determinants of Bank Credit Risk: Evidence from Deposit Money Banks in Nigeria..... 93

Umar Tabari Yero and Dezi Ngambeki: Profitability and Technical Efficiency of Chicken

Umar Tabari Yero and Dezi Ngambeki: Profitability and Technical Efficiency of Chicken Production in Kaduna State, Nigeria..... 103

Khairat Oluwakemi Akanbi and Abdullateef Abubakar: Revisiting the Principle in Foss V. Harbottle: A Comparative Analysis of Nigeria and the United Kingdom..... 114

Hamza Abdulazeez Okene, Muritala-AbdulRasheed Barakah Bolanle, Adetutu Deborah Aina-Pelemo, Rilwan Funsho Mahmud and Oluwabusayo T. Wuraola: Constitutional Perspectives of the Trial of Judges Within the Context of Judicial Independence in Nigeria..... 124

Jimoh Yahaya: Cultural Property Preservation and the Challenges of Land use Planning: The Kwara State Experience..... 145

I. Osemwengie and P. K. Osemwengie: Nigerian Economy in Precolonial Times: An Argument of Globalization as New and Old Phenomenon..... 151

Nabukeera Madinah Sebyala: The Performance of the Free Electricity Connection Policy in Uganda 163

Abubakar Yakubu and Fatihi Tahir Usman: Population Aging and the Potentialities of Islamic Values of Support and Care for the Elderly..... 178

Oluwakemi T. Olayemi: Structural Dimensions and Communicative Functions of *Like* Occurring before Content Words: Implications for Nigerian

Abdulrahman B. Hamid: Islam, Socioeconomic Sustainability and Leadership Tussle..... 193

Nabukeera Madinah Sebyala: Governance of Gender Based Violence, Domestic Violence, Health Status of Women and Child Abuse in Times of Covid-19 in Uganda..... 201

T. A. Falaye: Divorce in the Church of God in Nigeria: Causes and Possible Solutions..... 215

Adepoju Adetokunboh Abayomi: Assessing Comprehension Questions Used in Primary Schools Pupils' Textbooks..... 222

Saleh Sule, Muhinat Bolanle Bello and Dawaki Ibrahim Abubakar: Perception of Stakeholders on the Graduates' Entrepreneurial Skills Acquisition in Reducing Unemployment in Bauchi State Nigeria..... 233

Asaaju Olayemi Aderokun: Using Active Learning Strategies to Enhance Pre-Service Biology Teachers' Achievement and Self-Efficacy in a Mandatory Course..... 240

Ahmad Abdulganiy Kayode and Jimoh Ismael Bimpe: Re-Engineering the Nigerian Nation with the *"Madinan"* Model: The Principles and Applications..... 249

Basirat Ashabi Oyalowo: Imperatives for Community-Led Settlement Management in African Cities 261

Yasin S. Musa, Furaha Chai and James O. Onyango: Kilio Cha Mwalimu Julius Kambarage Nyerere 271

Adeleye A. O, Yerima M. B, Nkereuwem M. E, Shiaka P. G, Shina I. S, Onokebhagbe V. O, Amoo A. O, Bate G. B and Edem I. D: Enhanced Heavy Metal Decontamination Potential of *Pseudomonas aeruginosa* and *Alcaligenes faecalis* Co-Culture Isolated from Spent Engine Oil Polluted Soil..... 281

Saka A. J, Adeleke M. O, Adeleke B. L and Akeyede I: Seven Treatments from Mutually Orthogonal Latin Square of Order 7 in Symmetric Balanced Incomplete Block Designs..... 294

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AUTHORS' NOTICE

Constitutional Perspectives of the Trial of Judges Within the Context of Judicial Independence in Nigeria

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Abstract

The judiciary as represented by courts in Nigeria occupies a pre-eminent position in the scheme of governance, especially in any constitutional democracy. Judiciary within the context of doctrine of separation of power is one of the arms of Government and enjoys independence against any interference in the conduct of its constitutional mandate by the other organs. Though without prejudice to the principle of separation of powers and the concomitant independence of the arms of Government, (the executive, the legislative and Judicial arms), there exist inherent powers of checks and balance among the institutions. In this perspective the judiciary with the constitutional powers of dispute resolution, interpretation of the laws also has the constitutional mandate to check the constitutionality of the conducts of other organs of Governments including legislation. Instructively, the judiciary and in particular the judicial officers like any human beings are not completely immune from committing crime which is common phenomenon in every human society. Consequently, notwithstanding the position the judiciary occupies in governance, they are not exonerated from criminal prosecution against any offence committed by judges against the state. It is against this background that this project examined the constitutional perspectives of the trial of judges in Nigeria for criminal offences, considering the propriety of judicial independence in line with principle of separation of powers. This article found that even though the judges are not immune from prosecution however where the offence relates of misconduct the executive lack the power to prosecute judges unless NJC has concluded its disciplinary steps. The article concluded that all discussed, relates to separation of power and need to preserve judicial independence free from unnecessary interference and further recommended the compliance with the procedure set down in the constitution and to make sure that the condition precedent manifest prior to the trial of judges or judicial officers.

Keywords: Nigeria, judiciary, constitution, trial, independence, judges

Introduction

The judiciary as represented by courts in Nigeria occupies a pre-eminent position in the scheme of governance, especially in any constitutional democracy. Judiciary within the context of doctrine of separation of power is one of the arms of Government and enjoys independence against any interference in the conduct of its constitutional mandate by the other organs. Though without prejudice to the principle of

separation of powers and the concomitant independence of the arms of government (the executive, the legislative and Judicial arms), there exist inherent powers of checks and balance among the institutions. In this perspective the judiciary with the constitutional powers of dispute resolution, interpretation of the laws also has the constitutional mandate to check the constitutionality of the conducts of other organs of governments including legislation. Instructively, the judiciary and in particular the judicial officers like any human beings are not completely immune from committing crime which is common phenomenon in every human society. Consequently, notwithstanding the position the judiciary occupies in governance, they are not exonerated from criminal prosecution against any offence committed by judges against the state. It is against this background that this study posits to examine the constitutionality of the criminal trial of judges in Nigeria within the context of the independence of the judiciary. The article shall also examine the disciplinary powers of the Nigeria Judicial Service Commission (NJC) disciplinary powers with particular reference to the types of crimes which the NJC is expected to deal with in the trial of judicial officers as well as the role of NJC when a judicial office is indicted of crime not within the scope of the NJC. The purpose is to determine whether or not there is any condition precedent to the trial of judges and the constitutionality of same. To achieve this purpose of this study, the study is divided into six chapters. The first chapter is devoted to general introduction, while chapter two dwells on the conceptual analysis of some salient issues on the study such as justice, separation of powers, judicial independence and criminal prosecution. The third chapter will examine the constitutional powers of the judiciary, judicial independence and the creation and disciplinary powers of the NJCJ. The Fourth chapter shall explore crimes generally as related to judges, the trial of judges for offences and the roles of NJC in the prosecution of judges and when NJC intervention is a condition precedent to trial of judges in Nigeria. Chapter Five will explicate from reported cases the trial of judges in Nigeria to demonstrate the constitutional perspective of criminal trial of judges in Nigeria, the implication of criminal trial to the institution of judiciary. Chapter Six is the conclusion and suggestion.

Concept of Justice

Generally the concept of justice is connected with equity, impartiality, fairness[1] on one hand it concerns the distribution of benefits or burden upon individuals, and on the other hand second is where court decision is against a party to litigation and he/she is directed to pay to relinquish his/her right in favour of the other or to pay compensation against injury sustained by the victims for the injuries caused. Here what is been projected is that the conception "just" or "unjust" and "fair" or "unfair". This description can be perfectly situated within the great philosopher's, Aristotle's understanding of justice based on equality and embellished, same with distinction between definition and criteria of application.[2] The common notion of justice is what an individual is entitled as a right or obligation in respect of another to a certain level of equality and inequality.

Instructively in adjudicatory process justice transcends adherence to doctrine of natural justice expressed in the Latin Maxim *audi altarem pertem* and *nemo judex in causa sua*, giving parties equal opportunity to present their case and time and facility to present their case. Giving the parties right to defend themselves in person or through a legal representation of their choice, appraisal of evidence presented before the court, application of relevant law and deciding cases impartially, fairly and justly based on evidence. The term "justice in adjudicatory process," as described above is of two distinct connotation, thus: it first connotes that it is principally put to use to describe the conduct or procedure of adjudication proceedings based on the premise of relevant "law";' thus conforming with an established rule of procedure for presentation of parties case.[3] In this sense justice denotes all necessary ingredients that are required and ethically allowed

[1] Hart , HLA (1963) Law Liberty and Morally Stanford: Stanford University Press, pp 154-155

[2] Bayles D Michael (1992) Hart's Legal Philosophy- An Examination, London, Dordrecht, Boston: Kluwer Academic Publishers, p 111.

[3] For instance; Rules of Court are meant to be obeyed. They serve as beacon light to the parties to a dispute illuminating the path leading to justice. Court have an inherent jurisdiction to ensure compliance by litigant with rules of court and

to be presented by disputing parties to convince an arbiter of the existence or non-existence, probability or non-probability of facts asserted or denied by the disputing parties.[4]

Similarly, 'justice' is construed as a judge or an arbiter's ability to dispense justice without fair or favour, without undue influence or interference. To be more exact, a 'fair' disposition of disputes base on facts supported by evidence and within the stipulation of the law. It is this second meaning of Justice in which we are primarily interested, since it constitutes the mechanism for measuring a judge adequacy or inadequacy in the analysis of facts, evidence and application of the law to a case in litigation, and not that of a mere moral conduct of a judge that could be evaluated specifically.[5]

Concept of Judicial Independence

Judicial self-determination is the concept that the courts ought to be independent from the other branches of administration. That is, courts should not be subject to extraneous pressure from the other branches of Government or from private or partisan interests. In general, judicial autonomy is an important idea of division of powers.

Judicial sovereignty can be achieved through different ways such as appointment, control of finance, discipline of judges etc. For instance, in order to ensure judicial liberty, judges are granted long tenure for judges to be ideally free to decide cases and make rulings according to the rule of law and judicial discretion, even if those decisions are politically unpopular or opposed by powerful interests **(Hope Uzodinma v Emake Ihadioha).**

In some countries, the ability of the judiciary to check the legislature is enhanced by the power of judicial review. This power can be used, for example, by mandating certain actions when the judiciary perceives that a branch of Government is refusing to perform a constitutional duty or by declaring laws passed by the legislature unconstitutional. The imperative role of the Judiciary is found in its traditional role, which is the basic purpose of the existence of the Judiciary. The traditional role is seen when the Judiciary decides disputes between citizens and other residents in the State and between the citizen and the State or any of its agencies. Nnaemeka-Agu,[6] laid credence to the indispensable role of the Judiciary in achieving sustainable democracy in Nigeria, thus:

> *What happens in traditional judicial role is that the Judiciary determines the claim on the basis of the law and facts, it examines and states the law before applying that law to the facts, it interprets relevant Statues including rules of procedure and states on the application of the Statute. The Court carefully examines the relevant law as embodied in decided cases, overruling or modifying them while taking into account the dynamics of our ever-changing Society. It is part of the responsibility of the Judiciary to see to it that living men and women are not ruled by dead law.*

It is fundamentally important in a democracy that individual judges as well as judicial institution as a whole are impartial and independent of all external pressures and of each other so that those litigants appearing before the court have confidence that their disputed issues will be decided fairly, judicially and judiciously. Notwithstanding the pre-eminence of judiciary in the scheme of governance the susceptible to or not free from influences improper pressure by the executive or the legislature, by individual litigants, particular pressure groups, the media, self-interest or other judges, in particular more senior judges.

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to sanction breaches. See Onjoye v Onu (2018) LPELR-44212; Nnolye v Anyichie (2005) 124 LRCN 357 and Ugo v Ugo (2008) 5 NWLR (pt 1079) 1

[4] Amartya Sen, The Idea of Justice (The Belknap Press of Harvard University Press, 2009) vii

[5] Aristotle 1976 Ethics. Trans. by JAK Thomson. England: Penguin Books Ltd.

[6] Nnaemeka-Agu, P. (1994). The Role of the Judge in the Democratic State in Commonwealth Secretariat List of Documentation and Reading Materials for Workshop on Administrative Law. Blantyre, Malawi

It is pertinent to note that judicial liberty is better understood from its responsibilities in any democratic state. In the first instance are judicial responsibilities as arbiters in settlement of disputes between citizens or between the state and an individual or corporate body. This has even increased Court's roles added is the growth in Governmental functions; the contribution of election petition cannot be over-emphasized. In the second instance is the court's responsibility to protect citizens fundamental rights against unlawful acts of government, ensure compliance with rule of law, this also has increased in modern Nigeria democracy, consequent of which is the need for the judiciary to self-government.

In summary it is important that judges are not just seen to be independent and impartial, they however must see to the later that Justice ought not only to be done, but must be seen to have been done within the tenants of law.

Judiciary under the 1999 Constitution

The Judiciary is the last resort for obtaining redress against violation of citizens' right. Because dispute is an inevitable phenomenon in every human interrelationship, the judiciary as represented by judges is more often called upon for intervention in the form of settlement of disputes, interpretation of law or enforcement of fundamental rights of the poor and deprived section of the society. This phenomenal circumstance has made the judiciary as an institution of state and the judges' roles more dynamic and important. Judiciary as an organ of the state has to administer fair justice according to the direction of the Constitution and the mandate of law. Though, judges who are the pillars of the institution of judiciary are human beings and as such, are not free from human errors and frailties. Any error or failure to exercise due care by a judge in dispensing justice, may, if or when it occurs, have disastrous consequences not only to litigants but the society at large. Note that judicial errors whether it occurred on purpose or otherwise often cause damage to the justice seekers and sometimes the damage suffered is irreversible.[7] Consequently, judges must at all-time exhibit trait of independent and fearless, being the necessary qualities to best protect the right of the citizens.

The Doctrine of Separation of Powers and Judicial Independence

Separation of power has been understood as the constitutional decentralization of the states' powers (i.e. law making, execution and adjudicating powers) among the three organs of government.[8] To this end, the principal object of this allocation, is to prevent abuse of powers, autocracy and despotism in Government. The doctrine of division of authority was developed by great philosophers such as John Locke, who was an English Political theorist, is premised on the argument that Legislative and Executive powers were different[9] conceptually. The idea of allocation of responsibilities in government is meant to prevent one institution from interfering in the powers of the other. Thus, under this principle, exercise of power is limited by, person, institutions and responsibilities.[10] This description found credence in court statement in *Abdullahi Maccido Ahmad v. Sokoto State House of Assembly & Anor*[11], where the court held per Justice Salami JCA inter alia that:

The doctrine of separation of powers has three implications.

a. That the same person should not be part of more than one of the arms or division of Government;

[7] Justice Bassey Ikpene of the Federal High Court Abuja granted an order stopping June 12 election on June 13, 1993 while the final knock on June 12 free and fair election was the order granted by Justice Saleh of the Federal High Court Abuja stopping the further announcement of June 12 election result by Humphery Nwosu (NECO chairman)

[8] https://www.merriam-webster.com/legal/separation%20of%20powers accessed on the 24th of December 2019.

[9] John Locke, Second Treatise on Government, 1690

[10] Ogoloma Fineface, The theory of Separation of Powers in Nigeria: An assessment, African Research Review (an International Multidisciplinary Journal), Vol. 6 (3), Serial No. 26 2012,

[11] (2002) 44 WRN 52

b. That one branch should not dominate or control another arm. This is particularly important in the relationship between (the) executive and the courts;
c. That one branch should not attempt to exercise the function of the other…,

Be that as it may, the doctrine of severance of authority has its exceptions rooted in another principle known as checks and balances. This principle gives an arm of Government leverage to put in proper order by way check the function of the other. For instance, by section 4(8) of the 1999 Constitution as altered, the judiciary can nullify the unconstitutional action of the Legislative Assembly or any legislation which is incompatible with the Constitution (section 1(3).

In Nigeria, this doctrine can be inferred from provisions of the 1999 Constitution of the Federal Republic of Nigeria (as altered). For instance, section 4 vests the law-making authority for the federation on the National and States on Houses of Assembly. So also, sections 5 and 6 vests the duty to execute policies on the "Executive" and resolution disagreements between two or more individuals, the construction of laws and review of agencies actions on the "Judiciary:, as represented by courts.[12] It is to be noted that the concept of verifying and weighing scale of one arm of authority by the other is accommodated in the constitution to prevent one arm of government from being an island to itself, to prevent arbitrary use of command and then claim constitutional protection. As Prof. Ben Nwabueze[13] said:

> "*Concentration of government powers in the hands of one individual is the very definition of dictatorship, and absolute power is by its very nature arbitrary, capricious and despotic*."

It was in this bid to create a check and balance arm that the framers of the constitution carried out a sort of fusion of powers between all the arms of Government. Instructive, there are situations in the constitution of Nigeria where powers are blended, i.e. performable by two institutions at the same time, though one may have the potential of overriding the other. In *sections 58 (1) & 100 (1)*[14] the president or the governor shares the legislating power of the law makers by virtue of the Constitutional provision for executive assent to bills before they can be accorded the status of law. This however shrinks at the event of presidential or gubernatorial refusal in which case the respective legislature can override[15] the said refusal with 2/3 majority vote at fulfilment of relevant conditions[16].

Furthermore, the exercise of the law-making powers legislature at the federal and state levels is subjected to the jurisdiction of the law court and of judicial tribunals established by law[17]. The second part of the

[12]In Lakanmi and Ors, v. Attorney General of Western State the court recognized the importance of the concept of separation of powers by noting as follows; "we must here revert once again to the separation of powers, which the learned Attorney General himself did not dispute, still represents the structure of our system of Government. In the absence of anything to the contrary, it must be admitted that the structure of our Constitution is based on separation of powers – the legislature, the executive and the judiciary. Our Constitution clearly follows the model of the American Constitution. In the distribution of powers, the courts are vested with the exclusive right to determine justifiable controversies between citizens and the state…. Also, in Samuel L. Ekeocha v. Civil Service Commission, Imo State and Anor. (1981) 1 NCLR 154, the court held inter alia that in the Presidential System entrenched in our 1979 Constitution, powers are deliberately separated and balanced between the legislature, executive and judiciary.

[13]B. O. Nwabueze, The Presidential Constitution of Nigeria (London: Sweet and Maxwell, 1981) at pg.32.

[14]Constitution of the Federal Republic of Nigeria

[15]National Assembly v. President FRN (2003) 41 WRN 94.

[16]sections 58 (5) & 100 (5).

[17]In Senator Abraham Adesanya v. President of Nigeria (1981) 2 NCLR 358, it was decided inter alia by majority of the Justices of the Supreme Court that the courts have no power to challenge an Act of the legislature except in certain circumstances, for example, where civil rights are violated. According to Idigbe JSC in that case, the circumstances in which the judicial power of the court under section 6(6)(b) can be exercised by the court to pronounce on the constitutional validity of any legislation must be limited to those occasions in which it has become necessary for it, in the determination of a justifiable controversy or case, based on bona fide assertion of rights by adverse litigants before

provision is to the effect that the legislature will not push for enacting any law that ousts the courts of law jurisdiction or judicial tribunals established by law.[18] The above puts a check on the powers of the legislature and in the same vein positions the Judiciary as the custodians of the rule of law. The view of the courts[19]per Mustapha JSC is to the effect that:

> "*The courts have the jurisdiction and the competence and indeed are duty bound, to exercise their jurisdiction to ensure that the legislature comply with Constitutional requirement*."

The Presidents' ability to make certain orders such as the granting of pardons or the prerogative of mercy is also another limitation to the principle of the separation of powers as contained in Section 175 of the constitution. A similar provision is granted to state governors under section 212 of the constitution, and these powers take away from the judicial powers of imposition of punishments for crimes that have been committed and properly adjudicated upon.

Furthermore, the legislative confirmation of the presidents' or governors' appointments to the Executive Council of either the Federal Government or the State Government[20] is another instance of where there is a fusion of powers between all the arms of Government, which in turn serves as a limitation to observance of separation of powers.

The President is also allowed to make legislation that borders on Citizenship and Immigration as seen in *Section 32*[21].Section 32(2) then further goes to state that whatever regulations are made by the President are to be laid before the Legislature. What is worthy of note in the above is the promulgating body for the regulation, which is the Executive arm of the Government.

Looking further at the Constitution and instances where there may be a fusion or what is termed the principle of Checks and Balances, Section 292(1)(a)(i) is to the effect that president may remove a judicial officer at the Federal level acting on a recommendation from and supported by 2/3 majority of the Senate. Section 292(1)(a)(ii) gives similar power to the Governor of a state with an address supported by 2/3 majority of the House of Assembly of the state in respect of removal of Judicial officers at the State level.

Section 315 of the constitution states; there can be modifications made to existing laws to bring it to conformity, by "appropriate authority". The proper authority is as enumerated in Section 315(4) (a) (i)-(ii) to include Mr. President in the case of Federal laws and then the Governor in the case of laws deemed to have been made by the State House of Assembly.

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it, to make such a pronouncement. The court does not possess general veto power over Acts or Legislation by the National Assembly. Its powers are supervisory and can only be properly exercised in the circumstances above

[18]In Honorable Godwin Jideonwu & Ors v. Governor of Bendel State & Ors. (1981)1 NCLR 4, the High Court held inter alia that the constitution clearly sets out the powers of the three arms of Government, and if the legislature passes any law which is beyond its competence, and which it has no jurisdiction to pass, whether or not it was passes by all the members of the House, any member of the house or the public who is affected can challenge it in court, and nothing prevents the court from setting it aside and declaring it ultra vires the legislature. Indeed, nothing prevents a court of competent jurisdiction from hearing and determining matters that had been discussed in the House: Tony Momoh v. Senate of the National Assembly & Ors. (1981) NCLR 105. In Attorney-General of Bendel State v. Attorney-General of the Federation and 22 Ors. (1982) 3 NCLR 1, the court held inter alia that by virtue of section 4(8) of the 1979 Constitution, the courts of law in Nigeria have the power and duty to see to it that there is no infraction of the exercise of legislative power, whether substantive or procedural, as laid down in the Constitution. If there is such infraction, the courts have the power to declare any legislation passed pursuant to it unconstitutional and invalid: Bello v. Sanni & Ors. (1982) 3 NCLR 831.

[19]Inakoju V Adeleke, (2007) 13 NWLR 427 at pg. 670

[20]Sections 147(2) and 192(2) 1999 CFRN.

[21]the Constitution of the Federal Republic of Nigeria.

The respective heads of the constitutional courts can make rules for the regulation of the practice and procedures of the said courts[22]. Therefore, if the power to make laws and rules is the prerogative of the legislature and such powers even in its limited form, have been granted to certain judicial officers via the constitution, this serves as a limitation and a fusion to the strict principle of Separation of powers. Looking further into the constitution[23], the legislature which has the duty of making laws is also granted powers by the constitution to conduct investigations in order to amongst other things uncover corruption, inefficiency or wastes in the execution or administration of funds appropriated by it. In addition, the constitution further gave what is judicial powers,[24] to the Senate or the House of Representatives or to a constituted Committee for such purpose. Among the powers granted are *inter alia*¸ the authority to issue warrant compelling the attendance of any such individual who having been summoned, fails, refuses or neglect to attend and does such without any valid any verifiable excuse, refusal or outright neglect to the satisfaction of the House or the Committee in question.

The legislature is allowed on its part to initiate, carry out and conclude impeachment proceedings of the President or Vice- President[25]; the Governor or the Deputy-Governor.[26] Additionally, although a panel is to be constituted by the Chief Justice of Nigeria or the Chief Judge of a State to carry out certain investigations, the report of the panel is to be submitted to the Legislature. Subsection 10 of the sections that grant the legislatures at both the Federal and State levels the powers of impeachment also ousts the court's jurisdiction to inquire into the outcome of the impeachment proceedings.

Following from the above exposition, the doctrine of judicial independence can be underscored from the fact that the constitution granted each institution of government its separate and distinct obligations. The concept of justice with independence of the judiciary is a matter on which courts reflect in-depth in the discharge of constitutional responsibility especially in adjudication. Determination of judicial independence is tangentially considered significant in attempt to justifiably determine whether a dispute between parties is justly or fairly determine or not. All of law and justice depend on vast concepts that stretch across time, space, causation, and agency. Far-reaching judgments make law and justice possible from application, enforcement and adjudication; from weighing evidence to establishing motive and intent; and from imposing fines or sentences to awarding compensation. Thus, judges' application of discretion, thought and memory in adjudication has vast implications on the outcome of any litigation and must exist in individual judge's brains.

Establishment of National Judicial Council (NJC)

The National Judicial Council (NJC) is the executive authority under the judicial organ, established under section 153(1) of the 1999 Constitution and empowered to *appointments and exercise of disciplinary control over Judicial Officers* specified in paragraph 21 of Part I of the Third Schedule of the Constitution.[27]From years immemorial, the roles of the NJC have been misconstrued and tampered with especially by the executive in flagrant disregard for the principle of separation of powers as enshrined in the Constitution.[28]

The judiciary, being an arm of government with its independence guaranteed in the constitution, reflects the doctrine of separation of powers which the constitution recognizes. While other arms like the executive

[22]Sections 236, 248, 259, 264, 269, 274, 279 and 284 1999 CFRN.
[23]Section 88 for Federal and Section 128 for State
[24] Section 89 CFRN
[25] Section 143 CFRN 1999
[26] Section 188 CFRN 1999
[27]Chidi, H, and Modupe, B. 'Appraisal of the Constitutional Powers on Removal and Exercise of Disciplinary Control over State Judicial Officers in Nigeria', Journal of Private and Property Law, pp.39-42
[28]Hon Justice UmaruEri 'The Role of the Judiciary in Sustaining Democracy in Nigeria' Essays in honour of Hon. Justice M.L. Uwais (GCON), (CJN), p.169 at 171

and legislature implements the laws and make the laws respectively for the good of the public, the judiciary balances the role through its interpretative functions.

To avoid conflicts and a situation where one arm of government forces its whims on the other arm, the constitution has guaranteed the independence of each arm. This is why the NJC has been designed in a way to be insulated from other arms of government through its independence.

By the provision of paragraph 21 of Part One of the Third Schedule to the 1999 Constitution of the Federal Republic of Nigeria, as amended; the NJC accordingly shall have the power to:

a. recommend to the President a person from among the list of persons submitted to it by - the Federal Judicial Service Commission, for appointment as 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 the Judicial Service Committee of the Federal Capital Territory, Abuja; persons for appointment to the Offices of the Chief Judge and 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;

b. recommend for removal from office to the President Judicial Officers specified in sub-paragraph 'a' of this paragraph, and to exercise disciplinary control over such Officers;

c. recommend to the Governors from among the list of persons submitted to it by the State Judicial Service Commission persons for appointment to the Offices of the Chief Judges of the States and Judges of the High Courts of the States, the Grand Kadis and Kadis of the Sharia Courts of Appeal of the States; and President and Judges of the Customary Courts of Appeal of the States;

d. recommend to the Governors the removal from office of the Judicial Officers specified in sub-paragraph (c) of this paragraph, and to exercise disciplinary control over such officers;

e. collect, control and disburse all monies, capital and recurrent, for the Judiciary;

f. advise the President and Governors in any matter pertaining to the judiciary as may be referred to the Council by the President or the Governors;

g. appoint, dismiss and exercise disciplinary control over Members and Staff of the Council;

h. control and disburse all monies, Capital and Recurrent, for the services of the Council; and

i. Deal with all other matters relating to broad issues of policy and administration.

j. The Secretary of the Council shall be appointed by the National Judicial Council on the recommendation of the Federal Judicial Service Commission and shall be a Legal Practitioner.

By the same paragraph, it also has power to collect, control and disburse all monies, capital and recurrent, for the judiciary and to deal with all matters relating to policy and administration even as it advises the President and Governors on issues relating to the judiciary. The body also performs disciplinary functions as well as appointment and nomination of executive members of the Council.

Composition of the NJC

One area which has received criticism from academic circle and political analyst especially the integrity of NJC has been on the composition of the Council. Be that as it may the legal framework for the establishment and composition of NJC is the provision of Paragraph 20 of Part One of the 3rd Schedule to the 1999 Constitution (as amended). It states, the National Judicial Council shall comprise the following Members:[29]

1. the Chief Justice of Nigeria, as Chairman;

[29]Paragraph 20 of the Third Schedule to the Constitution

2. the next most senior Justice of the Supreme Court, as Deputy Chairman;

3. the President of the Court of Appeal;

4. 5 retired Justices of the Supreme Court or Court of Appeal, to be selected by the Chief Justice of Nigeria;

5. Chief Judge of the Federal High Court;

6. President of the National Industrial Court of Nigeria;

7. 5 Chief Judges from the States and the FTC, appointed by the Chief Justice of Nigeria, in rotation among the 36 States to serve for two years;

8. a Grand Kadhi appointed by the Chief Justice of Nigeria from States Shariah Court of Appeal and the that of the FCT Grand Kadis on a two years rotation;

9. a President of the Customary Court of Appeal from the 36 States including the FCT, appointed by the Chief Justice of Nigeria on a two years rotation;

10. 5 members (including a Senior Advocate of Nigeria) of the Nigerian Bar Association that are qualified to practice in Nigeria for a period not less than 15 years, appointed by the Chief Justice of Nigeria following a recommendation from the National Executive Committee of the Nigerian Bar Association to serve for two years and subject to re-appointment: this category shall only sit in the Council meeting or proceeding for the purposes of considering names of individuals put up for consideration of appointment as a judge to any superior courts of record; and

11. 2 persons outside the legal profession, who appears to the Chief Justice of Nigeria, as individuals of unquestionable integrity.

Legal Frame Work for NJC Disciplinary Discretion

Though judicial officers are expected to demonstrate the highest level of discipline in their conduct and actions in the course of discharging their duties and responsibilities, they are equally not unsusceptible to misdemeanours. And from time to time, complaints and several allegations have been made against the officers.

This is why the NJC promulgated the Judicial Discipline Regulations 2017[30], to govern allegations and complaints of misconduct against Judicial Officers and proceedings initiated in exercise of the power of the National Judicial Council pursuant to Part 1 of the 3rd Schedule of the Constitution, to exercise disciplinary control over Judicial Officers against whom allegation of misconduct has been made[31]. The regulations which came into force on 29th day of June, 2017[32]apply to the discipline of-

1. All Judicial offices created under the 1999 Constitution (as amended);

2. All judicial officers appointed pursuant to the 1999 Constitution (as amended) and

3. An office or officer that has been designated by law to be subject to the supervisory or regulatory powers of the Council

The council usually sets up investigative committee to look into the allegations dispassionately with fair hearing given to all the parties concerned and at the end a report is submitted to the council based on the

[30]http://Newtelegraphng.com.ng/2018/10/njc/sacks-justices-ajumogobiu-agbadu-fishini-17 accessed on 23rd December, 2019

[31]Nwosu, U.W. 'Separation of Powers and the Constitutional Basis of the Court of Appeal Judgment in Hon. Justice Nganjiwa v Federal Republic of Nigeria: A Critique' International Journal of Public Administration and Management Research, Vol.5, 2019, p.33

[32]http://Newtelegraphng.com.ng/2018/10/njc/sacks-justices-ajumogobiu-agbadu-fishini-17 accessed on 23rd December, 2019

findings of the committee. While many judicial officers have been sacked, others were suspended while there are instances when the judicial officers are exonerated. There is a provision concerning an interim suspension of a judicial officer in the Regulations as contained in regulation 24[33]which reads thus

1. Prior to taking the final decision, the Council may suspend the subject from performing judicial functions.
2. In the event of an interim suspension, the Council shall: a. notify the office holder of the suspension, the reasons for it and if the suspension is not immediate, the time when it comes into effect; b. notify the office holder of the factors that will be taken into account in determining when the suspension will end; c. inform the office holder of any action required by the Council.

This provision is in compliance with the strict requirement of our labour laws that suspension of a worker in the federal civil service can only be applied where a *prima facie* case is established against an officer and thus underscored necessary and expedient in the interest of the public that such an officer should forthwith be relieved of the exercise of his/her duties.[34]

Suspension should not be used as a synonym for interdiction. It shall apply where a prima facie case, the nature of which is serious, has been established against an officer and it is considered necessary in the public interest that he/she should forthwith be prohibited from carrying out his/her duties. Pending investigation into the misconduct, the Federal Civil Service Commission or the Permanent Secretary/Head of Extra-Ministerial Office (if within his/her delegated powers) shall forthwith suspend him/her from the exercise of the powers and functions of his/her office and from the enjoyment of his/her emolument.[35]

Thus under the Regulations, interim suspension of a judicial officer is only applied by the NJC after the investigative committee set up by the Committee has submitted its report to the Council containing; findings of facts on each of the allegations in the complaint; whether the case is substantiated or not, if the case is substantiated the nature of misconduct or misconducts or disability found; whether disciplinary action should be taken, and if so what disciplinary action should be taken; and findings with regard to any other matters in its terms of reference.[36]

So far so good the NJC has been able to perform its function effectively since the promulgation of the disciplinary act. From 2000 till date, the NJC claimed that more than 1808 petitions and complaints against judicial officers and CJNs, justices of Supreme Court and Court of Appeal were received and attended to effectively.

Legal Frame Work for NJC Notification and Final Decision

Upon a consideration of the report of the investigating Committee, the Council may decide:

a. that the case is unsubstantiated and is dismissed

b. the case is substantiated wholly or in part, but does not require further action and is dismissed.

c. the case is substantiated wholly or in part, but should be dealt with informally by the Chief Justice/Chairman of the Council or any person nominated by him where the misconduct is not grave

d. the case is substantiated wholly or in part and the Council will exercise one or more of its disciplinary powers-to censure or reprimand the subject Judge; or

[33]Titled: Interim Suspension Pending Final Decision

[34]Attoh, N.R. 'The Power to suspend a judicial officer is a disciplinary procedure which is constitutionally the sole preserve of the National Judicial Council', available online at http://www.educationalresourceproviders.com/the-power-to-suspend-a-judicial-officer-is-a-disciplinary-procedure-which-a-constitutionally-the-sole-preserve-of-the-national-judicial-council-by-nonso-robert-attoh/ accessed on 3rd January, 2020

[35] Rule 030406 of the 99 Public Service Rules

[36]Ibid.

i. to suspend the subject Judge; or

ii. to direct that the subject Judge be put on a 'watch list' for the purpose of monitoring and reporting his conduct or ability to perform the functions of his office for a period specified by the Council; or

iii. to prohibit the nomination of the subject Judge for appointment to a higher Judicial Office for a specified period or permanently;

iv. the Council will exercise its power to recommend that the subject Judge be removed from judicial office.

Notification of Final Decision

1. The decision taken in regulation 25 of these Regulations shall be notified to the following persons:
   a. The subject of the decision
   b. The Complainant
   c. The relevant Head of Court
2. Upon a request made to the Council, the decision may be notified to any other person. The grant or refusal of such request is in the absolute discretion of the Council.

However, it will be safe to say that NJC is not given the whole disciplinary power to deal with judicial officers under the law. This is because of the power granted to the President under section 292 of the 1999 Constitution to REMOVE judicial officers like the Chief Justice of Nigeria, acting on a recommendation of the legislature (the Senate), which must be supported by a 2/3 majority of the members of the Senate. This power if read alongside paragraph 21 (b) of Part 1, third Schedule, 1999 Constitution, paragraph 18(2), Part 1, fifth Schedule, may imply that prior to such address that must be supported by two thirds majority of the Senate, a recommendation may have been made for the removal of the CJN by the NJC or the Code of Conduct Tribunal must have imposed a punishment on the CJN requiring him to vacate his office after he had been found guilty of contravening the provisions of the Code.[37]

NJC Decision as a Conditions Precedent

In generic terms, the NJC does not have an investigative arm or unit that monitors the conduct of judicial officers. However, it relies on the several petitions and complaints from members of the public who are "victims of actions or inactions of the judicial officers."[38] A complaint against a judicial officer must be addressed to the CJN that is the chairman of the council and filled at the office of the secretary. Thus, it is at the discretion of the CJN to act on any report addressed to him and refers it to the preliminary complaint assessment committee.

More judicial officers have been disciplined but the most recent of it all was the case of Justice Walter Onnoghen.[39] The travail of Onnoghen started with a petition written by the Executive Director of Anti-Corruption and Research-Based Data Initiative following which the President suspended him while an acting CJN was appointed.

The suspension was seen in the country's legal circle as a subtle attempt to sack the CJN and usurp the powers of the NJC which only has the power to recommend any judicial officer for sack.

[37]Code of Conduct of Judicial Officer

[38]Ibid.

[39]African News, 'Nigeria's suspended chief Justice Walter Onnoghen Ordered to appear before Tribunal' 04-02-2019, https://www.africannews.com/amp/2019/02/04/Nigeria's-suspended-chief-Justice-WalterOnnoghen-Ordered-to-appear-before-Tribunal' accessed on 4th January, 2020

In the case of the CJN, the constitution is so explicit on the procedure of sacking the CJN. Section 231 sub-sections 1 and 2 of the 1999 Constitution, underscores the mandatory involvement of the three organs of government in the appointment of the CJN. The President makes the appoint of the CJN on the recommendation of the National Judicial Council (NJC) subject to the approval /confirmation of the Senate.

By the context of Section 292 sub-section 1, paragraphs 20 and 21 (b, d, g) of the 3rd Schedule to the 1999 Constitution (as amended), the CJN a secured tenure of office and the CJN may not be removable from office as the CJN except within the strict procedure and specific reasons enshrined therein. The CJN as a judicial officer may be removed from office by the President of the Federation when acting on a recommendation of the legislature (the Senate), which must have the support of at least 2/3 majority of the members of Senate, stating the inability of the CJN to discharge the functions of his office or appointment (either arising from infirmity of mind or the body) or for an act of misconduct or contravention of Code of Conduct. Thus, where the recommendation for the removal of the CJN is sort for reasons outside the above provision or contrary to the procedure stipulated by the constitution, such shall amount to an unconstitutional act and shall be declared null and void *abinotio*.[40]

But this was not the case with the unilateral removal of CJN by the President thereby fuelling controversy within the legal circle over the constitutionality of the President's action which was seen as an attempt to trample on the constitutional powers of the judiciary as an independent arm of government.

The NJC as a body representing the Nigerian judiciary has not shirked in its duty of instilling discipline on judicial officers and sanitizing the temple of justice. It is on record that the council has disciplined many judges who, after due diligence of investigation, were found to have had their hands soiled in corrupt practices.

For instance, the NJC in 2018 sacked Justice R. N. Ofili-Ajumogobia a Federal High Court Judge and Justice James T. Agbadu-Fishim of the National Industrial Court. The Council, arrived at the decision to sack the two judges at its 87th Meeting which was held on October 3rd. Also, the NJC ordered Justice Joshua E. Ikede of the Delta State High Court to refund two-year salaries over falsification of age.[41]

According to a statement issued by the Council's spokesperson, Soji Oye, Justice Ofili-Ajumogobia was recommended to President Muhammadu Buhari for removal by dismissal from office pursuant to the findings by the Council on the allegations of misconduct contained in a petition to the Council by the Acting Executive Chairman of the Economic and Financial Crimes Commission (EFCC), Ibrahim Magu.[42]

The petition alleged that: "Justice R. N. Ofili- Ajumogobia is a Director/ Chief Executive Officer and sole signatory to Nigel and Colive Company contrary to the Code of Conduct for Judicial Officers in Nigeria. "Several personalities, individuals, government officials and business partners lodged funds into various accounts belonging to the Hon. Judge; and "There was an ex-parte communication between the Hon. Judge and Mr. Godwin Oblah (SAN), during the pendency of his matter before the Her Lordship." The Council, however, could not consider other allegations in the petition because they are already before a court where the judge is standing trial. The Council left those matters for the trial to take its legal course.

Justice Agbadu-Fishim of the Industrial Court was also recommended for removal by dismissal from office sequel to the findings of the Council on the allegations contained in another petition by the EFCC, alleging that the Judge received various sums of money from litigants and lawyers that had cases before him and some influential Nigerians, under the false pretence that he was bereaved or that there was delay in the payment of his salary.

[40] Section 1 sub-sections 1 and 3 of the 1999 Constitution (as amended).

[41] http://Newtelegraphng.com.ng/2018/10/njc/sacks-justices-ajumogobiu-agbadu-fishini-17 accessed on 23rd December, 2019

[42] Daily-trust.com.ng accessed on 2nd of January, 2020

Other cases decided at that time by the NJC include: Justice Joshua E. Ikede of the Delta State High Court over allegation of age falsification; Justice K. C. Nwakpa of High Court of Abia State over unwarranted utterances in matters before him.

The Council also considered the reports of various Investigation Committees and dismissed the petitions written against Justice Yusuf Halilu of the High Court of the Federal Capital Territory, Justice E. O. Osinuga of the High Court of Ogun State, and Justice E. O. Ononeze-Madu of the High Court of Imo State. NJC said: "The petition by Wema Bank against Justice Yusuf Halilu of the FCT High Court was dismissed because the allegation of misconduct was not established. The judge's handling of the related matter did not amount to the alleged misconduct. "The petition on allegation of inducement, bias and alteration of ruling written by David Olawepo Efunwape, Esq. against Justice E. O. Osinuga of High Court, Ogun State was found to be false.

All these cases and several others have proved that the accusation that the NJC is a toothless bulldog does not hold water. The council has more often than not acted on petitions written and submitted to it by members of the public. It is only advisable that the public should always put their trust on the NJC to discipline any erring judicial officer whom they feel has acted in violation of his code of conduct. Resorting in self-help through intimidation, threat or summary dismissal of judicial officer by the executive arm of government certainly negates the principle of separation of powers and an assault on judicial independence.

Review of Cases

In this part of the project the focus is on the procedure for the trial of judicial officers in Nigeria. One of the major challenges in fighting crime and particular judicial corruption in Nigeria is the palpable nightmare of the National Judicial Council (NJC) which is embedded in its composition as provided for under the law. A keen examination of Paragraph 20 of the 3rd Schedule to the Constitution 1999 (as amended), which is the enabling Law, on the basis of which the NJC was established reveal that, apart from the appointment of the next most senior Justice of the Supreme Court who shall be the Deputy Chairman, the President of the Court of Appeal, the Chief Judge of the Federal High Court, and the Five members of the Nigerian Bar Association, the Chief Justice of Nigeria enjoys absolute discretion in the discipline of judges for misconduct in course of official duty. Given the enormity of such discretionary powers, there is a strong likelihood of its abuse by NJC shielding judges from prosecution at any point in time who may use such position in pursuit of a corrupt or personal agenda and several cases of the likes have happened in the country.

It is thus undisputable that NJC has skilfully exploited the provisions of the constitution in advancing the right of the council to discipline judges or considers its disciplinary action as condition precedent before the executive can take further action against an indicted judge such trial for corruption. The popular claim for this proposition is for protecting the integrity of the system and independence of the institution. This is the disadvantage to the country stride at anti-graft war, particularly for the fact that the judiciary is not insulated from the crime of corruption.

Procedure for NJC Disciplinary Trial

Some political pundits have argued that the composition is subject to a high likelihood of misuse, except serious consideration is given to distinct the two positions of misconduct and criminal conduct of judges visa-vis the power of the executive to prosecute judicial officers.

Pertinently, the requirement that the Anti-graft institutions cannot prosecute earring judicial officer until such a judicial officer has been sanctioned by the National Judicial Council. Thus, this has a very serious controversies for the holistic approach and indeed could be a subject of litigation in some instances.

In light of the above, reference could be made to the Court of Appeal Landmark judgment with regards to the exclusive powers of the National Judicial Council to oversee issues pertaining to the discipline of serving judicial officers. In construing Section 158 of the Constitution, it was held that a judicial officer

may not be arrested or arraigned before a court of law where the subject matter rests on an infraction of his oath of office, hence, in such circumstances, such Judge must be found wanting by the NJC and removed as a Judge, before he could be brought before a court to face criminal prosecution. In justifying its position, the Revised Code of Conduct for Judicial Officers 2016 where corruption is listed as a misconduct and doctrine of division of authority as legal basis for NJC disciplinary action before prosecution as well as the fact that its necessary condition for distribution of power in a democratic state that the judicial arm of government be guaranteed independence.

Since the National Judicial Council is designed as a mechanism to insulate the Judiciary from outside influence, it must therefore be allowed to carry out its constitutional duties without interference.

However, this procedure does not exonerate the judges and judicial officers of the duty of accountability, because accountability is properly designed and indispensable for judicial self-determination. This is important due to the fact that accountability cannot be divorced from the reason why public's support the courts irrespective of the judgment or ruling they make (Burbank, 2006).

It is instructive to note that it is not sufficient to merely allege a judge of misconduct for him to be subjected to disciplinary action except all the mechanism set down in the Constitution as per the proper procedure must be complied with. The following is the summary of the procedure for NJC disciplinary action against judicial officers

1**. FORMAL COMPLAINT:** In first instance, any individual who alleges a judge of misconduct or using his/her position for personal aggrandizement must file a written petition against such officer before the NJC for necessary disciplinary action.

2**. PRELIMINARY COMPLAINT ASSESSMENT COMMITTEE:** In the second premise the NJC will investigate and consider the merit or otherwise of the allegation(s) contain in the written petition and where there no merit in same exonerate the alleged judge but when there is merit therein then consider the next step.

3. The third step where there is merit in written petition, the judge shall be notified in writing of complaint against him/her for response in written with specified period. The complainant has the right to withdraw his petition.

4. The fourth step is the proper hearing. The parties will be given the opportunity to present their own side of the allegation. All the requirements of principles of fair hearing shall be observed. The fifth and the last stage is for the council to make their findings and give a final decision on the allegation based on the evidence provided by the parties.

5**. PROPOSED DISCIPLINARY ACTION AND NOTIFICATION OF DECISION:** The sixth is for the NJC to give directive i.e. when he is found guilty recommend the culprit to the executive for dismissal, or order the suspension of the judge for a fixed period or in the alternative warn the judge.[43]

Instructively, where a judge is found culpable and discipline i.e. dismissed and the recommendation accepted by the appropriate authority in compliance with the provisions of the Constitution, then the relevant law enforcement agent or agency is at liberty to arrange the judge before a competent court to face the wrath of the law.

It has been rightly observed that when the law enforcement agency failed to allow the condition precedent to manifest or act in violation of the summarized disciplinary procedure for judicial officers will amount to rebuffing the NJC's powers to discipline Judges in line with constitutional contemplation in Section 153(1) and paragraph 21(a) & (b) Part 1 of the Third Schedule to the 1999 Constitution (as amended). It will equally amount to interference with judicial independence and infringement of the principle of separation of power.

[43] See generally, 2014 NJC Judicial Disciplinary Regulation, Regulation 7 - 16

By implication therefore an allegation of official misconduct against a judicial officer the Constitution with creates and empower NJC to disciple it official following the enumerate procedures amounts to jumping the gun and ipso facto a direct aberration of the Constitution. In summary, resort to the NJC is an incontrovertible condition precedent as succinctly set out by the Nigerian Constitution 1999 (as altered). Though it has been contended that making NJC disciplinary action a condition precedent before the trial of judges as indirect way of conferring immunity on Judges, some have argued that the mechanism is created to strengthen the compliance with of constitutional democratic principles in Nigeria.

More importantly, of all the other division of government the Judiciary occupies pre-eminence position which must be accorded autonomy and independence, free from executive or legislative or any other form of interference capable affecting its integrity and public confidence. Judges embracing impartiality in the discharge of function will serve to strengthen democracy and the separation of powers in the manner envisaged by the Constitution and interpreted by the Court in the judgment in this decision.

CASE ONE: ONOGHEN v CCT

The Federal Republic of Nigeria operates a constitutional democracy where all actions of citizens and government is governed by the constitution. The supreme law of Nigeria which is a ridged Constitution[44] created the organs of government and lays the foundation and principles upon which their actions and inactions are predicated. By this constitution, all powers, actions, inactions, functions and authorities are sanctioned and regulated and any exercise of power, authority, discharge of functions, creation of any institution, action or inaction etc, not recognized or sanctioned by this constitution is/are unconstitutional and a nullity. The Constitution provides for the three arms of Government and empowers the Judiciary to interpret the law and dispense justice according to law. The Judicial arm of Government is headed by the Chief Justice at the federal level (CJN), appointed by the President of Nigeria, on the recommendation of the National Judicial Council, subject to the confirmation of the Senate arm of the National Assembly of Nigeria[45]. The constitution also provides for the removal of the CJN either by the President acting on an address supported by two-thirds majority of the Senate[46] or by the President, acting on recommendation from the National Judicial Council[47] that the CJN be removed from office for his inability to discharge the functions of the office (CJN) or appointment (justice of the supreme court) whether as a result of infirmity of the mind or body or for misconduct or contravention of the Code of Conduct. On the 25th of January, 2019, the President of Nigeria, Muhammadu Buhari announced the suspension of the Chief Justice of Nigeria, Honorable Chief Justice Walter S. C. Onnoghen, GCON and his replacement by Honourable Justice Ibrahim Tanko Mohammed as the acting Chief Justice of Nigeria with immediate effect, pursuant to an *Exparte* Order made by the Code of Conduct Tribunal on Wednesday, 23rd day of January 2019. However, prior to his suspension, the Code of Conduct Tribunal had commenced his trial pursuant to a six-count charge filed against him by the Attorney General of the Federation on behalf of the Federal Government. At the end of his trial, he was found guilty of all the counts, convicted and removed has CJN; barred from holding any public position for 10 years and his undeclared assets in five bank accounts forfeited to the Federal Government. This paper seeks to examine the proprietary of Justice Walter S. C. Onnoghen's suspension, trial and removal from office.

Facts of the Case

Justice Walter Onnoghen's trials started before the Code of Conduct Tribunal (CCT) on the **11th January, 2019,** after a petition was filed by Anti-Corruption and Research-Based Data Initiative (ARDI) (a civil rights group) at the Code of Conduct Bureau (CCB) dated **9th of January, 2019,** alleging that Justice Walter Onnoghen owns sundry accounts primarily funded through cash deposits made by himself up to 10th August

[44] Secion 9 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[45] Section 231 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[46] Section 292 (1)(a)(i) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[47] Section 292 (1)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

2016[48] and that he failed to declare and submit written declaration of them in his Assets and Liabilities Forms after he was sworn in between June 8, 2005 and December 14, 2016, as the Chief Justice of Nigeria, and false declaration of his assets in the Asset Declaration Form submitted to the Code of Conduct Bureau (CCB) in 2005 and 2016 respectively and thereby contravened the provisions of the Code of Conduct Bureau and Tribunal Act and punishable under the same Act.

On this score, the Attorney General of the Federation filed a six counts charge against Justice Walter Onnoghen on the 11th of January, 2019. Alongside the charge, the Prosecution filed a Motion Exparte seeking for an interim order directing that Justice Walter Onnoghen (the Defendant at the Trial CCT) to step aside as the Chief Justice of Nigeria (be suspended) and Chairman of the National Judicial Council over allegation of contravening the provision of the Code of Conduct Bureau and Tribunal Act, CAP C15, LFN, 2004 pending the determination of the case and an interim order of the Tribunal directing the President of Nigeria to take all necessary measures to swear in the most senior Justice of the Supreme Court as acting Chief Justice of Nigeria and Chairman, National Judicial Council in order to prevent a vacuum in the judicial arm of Government, pending the determination of the case[49].

The Defendant filed a Notice of Preliminary Objection challenging the jurisdiction of the Code of Conduct Tribunal[50] but before the motion could be held, the Tribunal made an Exparte Order directing the President to immediately suspend the Chief Justice of Nigeria, (the Defendant) and swear in the most senior judicial officer in the Supreme Court as acting CJN. This order was carried out despite the fact that, where was a pending application challenging the jurisdiction of the Tribunal to hear and determine the suit in the first place. The matter when to trial wherein, the prosecution called three witnesses while the Defendant called only one witness. At the end, the Defendant was found guilty and convicted. All the applications filed by the Defendant were dismissed as the Tribunal held that, it has jurisdiction to hear and determine the matter.

Decision of the Court

The tribunal headed by Mr. Danladi Umar delivered a ruling on the preliminary objection the former CJN filed to challenge the legal propriety of his trial before the Code of Conduct Tribunal (CCT) and not before the regular courts.

In the ruling, the Tribunal held that the CCT had the requisite jurisdiction to try the ex-CJN on the allegation that he falsely declared his assets.

However, prior to this ruling, the Federal Government had suspended the CJN via an Exparte Order made, directing the President of Nigeria to immediately replace Justice Walter Onnoghen as Chief Justice of Nigeria (CJN), which led to the suspension of the embattled CJN on the 25th of January, 2019, by the President in a broadcast.

According to the Tribunal in its ruling on Onnoghen's objection, the prosecution did not violate any provisions of the law in bye-passing the National Judicial Council (NJC), to file the charge and that it was minded to overrule itself by departing from the position it took in a similar case the government instituted against Justice Sylvester Ngwuta of the Supreme Court.

The Code of Conduct Tribunal held that Sections 158(1) and Paragraph 21(6) of the Third Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) was not applicable in the case since Federal Government did not charge the former CJN as a serving judicial officer, but as an ordinary public officer that acted in breach of the code of conduct for public officers.

[48] Usman I., LL.B, LLM, BL, "Controversies Surrounding the Jurisdiction of Code of Conduct Tribunal (CCT) and National Judicial Council (NJC) on Discipline of Judicial Officers" (2019), Retrieved from https://nils.gov.ng/themes/nils/newnils/dlss_lb/10.pdf Accessed on 5/1/2020.

[49] Justice Onnoghen Nkanu Walter Samuel v. Federal Republic of Nigeria (2019) LPELR-47689 (CA)

[50] Ibid

The Tribunal thereafter found him guilty of the six-count charge brought against him by the Federal Government through the Code of Conduct Bureau (CCB). Convicting the erstwhile CJN, the tribunal chairman said, "Having regard to Section 23(2) of the Code of Conduct Tribunal and Bureau Act, the defendant has clearly contravened the Code of Conduct for Public Officers and he is here by convicted."

The tribunal in a unanimous judgment also ordered the removal of Onnoghen as Chief Justice of Nigeria (CJN) and Chairman, National Judicial Council (NJC). He was also barred from holding public office for 10 years for contravening the Code of Conduct Bureau and Tribunal Act in his Assets Declaration Form. The Tribunal also ordered Onnoghen's forfeiture to the Federal Government, various sums of money some of which are, N26.8 million, $137,700 and £13,730, found in his domiciliary accounts with Standard Chartered Bank and his other two bank accounts with Standard Chartered Bank, having failed to declare them.

In the words of the Tribunal, "The admission by the defendant in his own handwriting that he forgot to declare the five bank accounts in his asset Declaration Form CCB001 amounts to a partial confession that the defendant has breached the provision of the CCB/CCT Act as it amounts to refusal to declare assets.

Analysis of the Decision and its Constitutionality

The most important questions to ask in this situation are: the position of the grand norm of Nigeria on the suspension of the CJN? Who has the constitutional powers to suspend the CJN and a Judicial Officer in Nigeria? And was due process followed in this case? Section 292(1)(a) of the Constitution provides that the CJN, and indeed any of the heads of the other superior courts of record established by the Constitution, shall not be removed from office or appointment before his age of retirement except , by the President or Governor as the case may be, acting on a recommendation of the Senate supported by a 2/3 majority of the Senate or House of Assembly of the State, praying that such Judicial Officer be removed from office on the basis of his or her inability to discharge the functions of his or her office or appointment (which may arise either from the infirmity of mind or of body), or the grounds of misconduct or contravention of the Code of Conduct. Section 292 (1) (b) on its part states that, in any other case, i.e. in the case of other Judicial Officers, not being the head of other superior courts of record established by the Constitution, by the President or by the Governor of a State acting in accordance with the recommendation of the NJC, that such Judicial Officer be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or for contravention of the Code of Conduct.

From the above constitutional provisions, the removal of the CJN before his age of retirement can only be effected by the President where he is acting on an address supported by two-thirds majority of the Senate. It is therefore instructed that the President did not remove the CJN from office in this case, but merely purported to have suspended him. There is however nowhere in the Constitution where the powers to suspend the CJN is donated to the President. The NJC is the body conferred with the power to recommend to the President or Governor of the State, the removal of a Judicial Officer from office and to generally exercise disciplinary control over such a Judicial Officer. The Constitution defines a Judicial Officer to include Chief Justice of Nigeria. It is also the National Judicial Council (NJC) that is vested with the power to suspend a Judicial Officer including the Chief Justice of Nigeria. Regulation 24 of the extant Judicial Discipline Regulations 2017[51], issued pursuant to Part 1 of the Third Schedule to the Constitution, provides that prior to taking a final decision on the report of an investigating Committee into a complaint against a Judicial Officer, the NJC shall have power to suspend such Judicial Officer. In the event of an interim suspension, the NJC shall notify the office holder of the suspension, the reasons for it and if the suspension is not immediate, the time when it comes into effect; notify the office holder of the factors that will be taken into account in determining when the suspension will end; and inform the office holder of any action required by the Council.

[51] Accessed on 12th January, 2020, from https://njc.gov.ng/judicial-discipline-regulation

In this case, the President placed reliance on an ex parte Order of the CCT of 23 January, 2019, which was granted: in the face of an objection challenging the competence of the Code of Conduct Tribunal (CCT) from deciding the case and which meant that the CCT had no powers to determine any application and/or make any orders except to decide its jurisdiction; in the face of several Orders of other superior courts of record, including the Court of Appeal restraining the CCT from further proceedings in the case; and despite the fact that an interlocutory application seeking essentially the same reliefs had been served on the CJN, and adjourned for hearing by the CCT. The only conclusion from the above is that an Order of the CCT directing the President to suspend the CJN is unknown to the Constitution and cannot be superior to the Constitution. Consequently, the move by the President predicated on such a substantially and procedurally flawed Order is unconstitutional and illegal. Same is antithetical to the basic tenets of democracy, rule of Law and greatly undermines the judiciary of Nigeria. Due process has not been complied with in the purported suspension of the CJN, which has made the well-meaning Nigerians to question the motives of the President. It can be seen that the motives of Mr. President are fully political and in full force to influence the appointments of the election tribunal.[52]

Summary

It is very instructive to note that, the charge, prosecution and conviction of Justice Walter Onnoghen violates the principles of separation of powers, rule of law and fair hearing which are all some of the most potent pillars of our Constitution and ultimately violated the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)[53]. It is thus concluded that the constitutional authorities or powers of the President to appoint and or remove a Judicial Officer (sitting Chief Justice of Nigeria) is not an absolute power, rather, it is shared with the National Judicial Council and the Senate arm of the National Assembly as the case may be. This is another veritable check of the powers of the President which may be abused as in the instant case. By virtue of the Nigerian Constitution, the National Judicial Council has disciplinary control over every judicial officer in Nigeria and thus, any disciplinary control outside this is unknown to law and unconstitutional.

The hearing and order made pursuant to the Motion Exparte filed even when the application challenging the jurisdiction of the case had not been determined one way or another is with due respect an aberration. This has set a very bad precedent in the judiciary especially concerning a judicial officer's removal from office.

The suspension and subsequent removal of Justice Walter Onnoghen from office as the CJN violates the principles of administrative law as well as the principle of constitutionalism and is a bad precedent.

NGANJIWA V FRN

This case is about a serving judicial officer who was charged with "unlawful enrichment" As at the time the case was brought to the high court, he was a judge of the federal court. This case was first brought to the federal high court, the Hon. Justice, upon being served with the information filled a "NOTICE OF PRELIMINARY OBJECTION" challenging the "JURISDICTION" of the trial court to hear the case against him.

Facts of the Case

The appellant was by 14-count charge offences ranging from unlawful enrichment, to making false information contrary to section 82 (a) of the criminal law of Lagos State and section 39 (2) (a) of the EFCC (Establishment) Act, 2004. Upon being served with the information, he filled a notice of preliminary objection contending the competence of the trial court to hear the case. The ground for the objection is that EFCC failed to allow the condition precedent for indicted judicial officer to manifest before the filing of

[52] Accessed on 12th January, 2020, from https://www.sbmintel.com/wp-content/uploads/2019/01/201901_Buhari-v-Onnoghen.pdf

[53] See the case of Elelu-Habeeb V. A.G. Federation (2012) 13 NWLR (PT. 1318) 423

the information against him. The trial court overruled the preliminary objection. Dissatisfied with the trial court ruling he appealed to the Court of Appeal and later to the Supreme Court. In a unanimous decision, the appeal was allowed and ruling of the Lagos state High Court was set aside, while the preliminary objection was upheld.

Analysis of the Decision and its Constitutionality

In resolving the appeal, the court of Appeal considered the provisions of Section 158 (i) and paragraph 21 (b) of the 3rd Schedule to the 1999 Constitution (as amended), and Rules 1,2,3 (i) and 10 (i) (iii) of the Revised Code of Conduct for Judicial Officers 2016.

Section 158 (i) of the 1999 constitution as a mended provides: (i) "in exercising its power to make or to exercise disciplinary control over persons, the code of conduct Bureau, the National Judicial Council, the Federal Civil Service Commission, the Federal Judicial Service Commission, the Revenue Mobilization and Fiscal Commission, the Federal Character Commission and, the Independent National Electoral Commission, shall not be subject to the direction or control of any other authority or person".

Also, paragraph 21 of the third schedule of the constitution states:

The NJC have the power of recommending to the President of the Federal for the removal from office of a judicial officer and to exercise disciplinary powers over such officers.

Also, Rule 3 of the code of conduct for judicial officers February, 2016 makes provision in relation to faithful to the constitution and the law, uphold the course of justice by abiding with the provisions of the constitution and the law and should acquire and maintain professional competence.

The position of the court is that, once an act of judicial office constitutes a breach of judicial oath as enumerated in the Code of Conduct for Judicial Officer, it is the NJC that has the right to discipline the officer before any further action. This is what is considered as condition precedent and contrary to general public understanding; it is not meant or designed to shield judicial office from prosecution for criminal offences by the appropriate agency.

This procedure is in line with the doctrine of division of government responsibility and a safeguard against one institution interfering in the assigned powers or functions of the other. Thus, whenever there is an allegation of official misconduct against a judicial officer and the NJC is not made recourse to it amounts to jumping the gun and ipso facto a direct violation of the constitution. Recourse to the National Judicial Council is a condition precedent as clearly set out by the constitution, and any attempt by Any Agency of Government to by-pass the council will amount to failure to observe the condition precedent thereby leading to flagrant violation of the constitution.

Summary

The condition precedent for the filing a charge against judges as in this case did not fulfil the constitutionally stated procedure for disciplinary action. This is more important because, the crime of corruption or receiving gratification is contained in judicial code and stated to be misconduct. It is no doubt that corruption has penetrated the judicial arm of government like all institutions of government, which must be confronted seriously; however, the normal procedure cannot be overlooked. It is must be noted that NJC disciplinary measure as a condition precedent for trial of judges is constitutional power granted to the commission, the procedure does not immune judges from prosecution especially when where such judicial officers commit theft, fraud, murder or manslaughter, arson and the likes which are crimes committed outside the scope of the performance of his official functions.

The foregoing focuses on analysing cases relevant to the determination of whether or not judges can be tried for crime and the procedure for doing so. This project has chosen Onoghen v CCT and Nganjiwa v FRN with particular reference to the implication of procedure of separation of power and judicial independence. This section also posits to resolve in order of preference, which step must come first that is, disciplinary measure or direct institution and trial of judges by the executive.

Conclusion

The judges as ministers in the temple of justice are supposed to conduct trials impartially in an open court, hears all the witnesses and any other evidence presented by the parties in the case, assesses the credibility and arguments of the parties, apply relevant law and then issues a ruling on the matter at hand based on his or her interpretation of the law and his or her own personal judgment. In this context, the propriety or otherwise of justice, law and burden of proof in adjudication is determined. Only an independent Judiciary is able to render justice impartially on the basis of law, thereby also protecting the human rights and fundamental freedoms of the individual. For this essential task to be fulfilled efficiently, the public must have full confidence in the ability of the Judiciary to carry out its functions in this independent and impartial manner. Whenever this confidence begins to be eroded, neither the Judiciary as an institution nor individual judges will be able fully to perform this important task, or at least will not easily be seen to do so.

Bibliography

Abubakar D. Sani, 'Ngajiwavs.FRN: The Limits of Judicial Precedence', (The Cable 2019). <https://www.thecable.ng/nganjiwa-vs-frn-the-limits-of-judicial-precedence>. accessed on 23 September 2019.

African News, 'Nigeria's suspended chief Justice Walter Onnoghen Ordered to appear before Tribunal' 04-02-2019, https://www.africannews.com/amp/2019/02/04/Nigeria's-suspended-chief-Justice-WalterOnnoghen-Ordered-to-appear-before-Tribunal' accessed on 4th January, 2020

Alabi M.O.A., The Supreme Court in the Nigerian Political System 1963 – 1992, p.14

Amartya Sen, The Idea of Justice (The Belknap Press of Harvard University Press, 2009) vii

Aristotle 1976 Ethics. Trans. by JAK Thomson. England: Penguin Books Ltd.

Attoh, N.R. 'The Power to suspend a judicial officer is a disciplinary procedure which is constitutionally the sole preserve of the National Judicial Council', available online at http://www.educationalresourceproviders.com/the-power-to-suspend-a-judicial-officer-is-a-disciplinary-procedure-which-a-constitutionally-the-sole-preserve-of-the-national-judicial-council-by-nonso-robert-attoh/ accessed on 3rd January, 2020

B. O. Nwabueze, The Presidential Constitution of Nigeria (London: Sweet and Maxwell, 1981) at pg.32.

Bayles D Michael (1992) Hart's Legal Philosophy- An Examination, London, Dordrecht, Boston: Kluwer Academic Publishers, p 111.

Chidi, H, and Modupe, B. ' Appraisal of the Constitutional Powers on Removal and Exercise of Disciplinary Control over State Judicial Officers in Nigeria', Journal of Private and Property Law, pp.39-42

Daily-trust.com.ng accessed on 2nd of January, 2020

Daniel Iro, 'Judicial Immunity: Contextualizing NgajiwaVs FRN; CA/L/969C/2017' <https://www.odujinrinadefulu.com/content/judicial-immunity-contextualizing-ngajiwa-vs-frn-cal969c2017> accessed on 20September 2019.

Earnest, A. Young, Judicial Activism and Conservative Politics, p. 1139 at 1144

Egbewole W. O., Nigerian Judiciary and Consolidation of Democracy: An Analysis of Election Petitions, in Olarinde O. N. & Wale Akinlabi (eds) Footprints of an Icon (Crown Golmine Communication Ltd, 2008) p 83

Hart , HLA (1963) Law Liberty and Morally Stanford: Stanford University Press, pp 154-155

Hon Justice UmaruEri 'The Role of the Judiciary in Sustaining Democracy in Nigeria' Essays in honour of Hon. Justice M.L. Uwais (GCON), (CJN), p.169 at 171

https://saharareporters.com/2019/01/14/chief-justice-nigeria-eye-storm-stanley-imhanruor accessed on 25 September 2019.

J.B Dauda (SAN), Nigerian Judiciary in 2018: Prospects, hopes and aspiration' <https://www.pressreader.com/Nigeria/thisday/20180206/281805694380118> accessed on 28 September, 2019.

John Locke, Second Treatise on Government, 1690

Kolawola Olaniyan, 'Nigeria's Anti-Corruption war and the Rule of Law' (African Liberty 2018) <https://www.africanliberty.org> accessed on 20 September 20,2019.

Nnaemeka-Agu, P. (1994). The Role of the Judge in the Democratic State in Commonwealth Secretariat List of Documentation and Reading Materials for Workshop on Administrative Law. Blantyre, Malawi

Nonso Robert Attoh, 'Constitutional Issue Raised by the Proposed Trial of The Chief Justice Of Nigeria by the Code of Conduct Tribunal' (Educational Resource Providers)

Nwabueze, B. O., Judicial Guardianship of Constitutional Limitations in Emerging Democracy in Africa, pp 33- 100

Nwosu Uchechukwu Wilson, 'Separation of Powers and the constitutional basis of the Court of Appeal judgment in Hon. Justice Nganjiwa V. Federal Republic of Nigeria- A Critique' International Journal of Public Administration and Management Research' 2019, Vol.5

Nwosu, U.W. 'Separation of Powers and the Constitutional Basis of the Court of Appeal Judgment in Hon. Justice Nganjiwa v Federal Republic of Nigeria: A Critique' International Journal of Public Administration and Management Research, Vol.5, 2019, p.33

Ogoloma Fineface, The theory of Separation of Powers in Nigeria: An Assessment, African Research Review (an International multidisciplinary Journal), Vol. 6 (3), Serial No. 26 2012,

Shehu A.T. and Imam-Tamim, M.K. 'Suspension of Justice Isa Ayo Salami: Implications For Rule of Law, Judicial Independence and Constitutionalism' African Journal and Criminology and Justice Studies, 2016, Vol.9 , p.41

Stanley Imhanruor, 'The Chief Justice of Nigeria in the Eye of the Storm' (Sahara Reporters, January 19, 2019)

Usman I., "Controversies Surrounding the Jurisdiction of Code of Conduct Tribunal (CCT) and National Judicial Council (NJC) on Discipline of Judicial Officers" (2019), Retrieved from https://nils.gov.ng/themes/nils/newnils/dlss_lb/10.pdf Accessed on 5/1/2020.

Uwais, M. L., The Evolution of Constitutionalism in Nigeria: The Role of the Supreme Court Under the 1979 and 1999 Constitutions, (2006) Nigerian Institute of Advanced Legal Studies Inaugural Distinguished Fellows' Lecture.