

THE BAR-BENCH RELATIONSHIP: MAINTAINING THE BALANCE (PERSPECTIVE FROM THE BENCH)

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INTRODUCTION

I thank the Administrator Of the National Judicial Institute for this invitation to present a paper on the above topic at this Refresher Course for Magistrates. I am greatly honoured. The theme of the workshop “Promoting Judicial Performance through Innovations and Reforms” is very apt given the much talked about delays in the administration of justice in our courts. Further, continuing legal education such as is provided by the institute is now an established and indispensable part of the Nigerian judicial system for keeping judicial officers abreast of new trends and development in the law. The seminars and workshops in addition offer a respite for judicial officers from the tedium and arduous task of judgment writing; and also create opportunity for interaction and exchange of views amongst judicial officers from different parts of the country.

THE BAR AND THE BENCH

The main objective of our judicial system is the attainment of justice for all parties involved in a case and the society at large. The Bar and the Bench are indispensable partners in the achievement of this objective, with the judiciary at the top of a strong and vibrant bar and complimented by it.

There must be mutual understanding and respect between the partners. Each partner has its own duties which if faithfully professionally, diligently and effectively performed will enable the system function optimally. Failure by one partner to perform its duty will naturally affect the other. Thus the principal duty of both the Bench and the Bar is to work diligently, effectively, honestly and sincerely towards achieving justice in the polity. This is a duty they both owe the society primarily and each other. In the case of *Calabar East Cooperative Thrift & Credit Society Ltd v. Ikot (1999) 14 NWLR (pt.638) 225 at 242 G-H*, Achike, JSC of blessed memory summed the respective duty of the Bench and the Bar in administration of justice thus:

"The whole purpose of adjudication in our adversary system is for a party to explicitly put his case across the table which will enable the opponent to respond appropriately to that case he has fielded, and then the Judge, as an impartial umpire will adjudicate on the issues in controversy. That and nothing more is the epitome of what justice or fair trial is all about."

I am to speak from the perspective of the bench which presupposes that someone else will speak from the perspective of the bar. However the two are opposite sides of one coin such that it is impossible to speak on one without touching on the other. I shall therefore begin by examining briefly the duties of the bar. For the purposes of this discourse, the bar means simply lawyers, barristers and advocates as concerns their work in law courts and tribunals.

DUTIES OF THE BAR:

Counsel's duty is not only to his client, but extends to the society at large, whose overriding interest is in ensuring that justice is done to all in all cases. In this regard, justice has been defined judicially as not a one-way traffic but indeed three-way traffic: justice to the plaintiff or complainant; justice to the defendant and justice to the society. See the case of *Aliyu v. Ibrahim (1992) 7 NWLR (pt.253) 361 at 375 C.* In this country the duties of the lawyer are clearly spelt out in the Rules of Professional Conduct in Legal Profession made by the General Council of the Bar (the Bar Council) pursuant to Section 1 of the Legal Practitioners Act for the maintenance of the highest standards of professional conduct, etiquette and discipline. The relevant parts of the Rules provide:

"1. The Duty of the Lawyer to the Court

- (a) It is the duty of the lawyer to maintain towards the Court respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamour. Where there is proper ground for serious complaint against a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.
- (b) A lawyer should be punctual in all court appearances and, whenever possible, should give prompt notice to the court and to all other counsel in the case, of any circumstances requiring his tardiness or absence.

- (c) A lawyer should make every reasonable effort to prepare himself fully prior to court appearances. He should promptly inform the court of any settlement, whether partial or entire, with any party, or the discontinuance of any issue.
- (d) A lawyer should see to it that all depositions and other documents required to be filed are filed promptly, should stipulate in advance with opposing counsel to all non-controverted facts, should give the opposing counsel, on reasonable request, an opportunity in advance to inspect all evidence of which the law permits inspection, and, in general, should do everything possible to avoid delays and to expedite the trial.

2. Relationships with Judges

A lawyer should never show marked attention or unusual hospitality to a judge, uncalled for by the personal relations of the parties. He should avoid anything calculated to gain or having the appearance of gaining special personal consideration or favour from a judge.

3. Conduct Towards Judges During Trial

- a) During the trial, the lawyer should always display a dignified and respectful attitude towards the judge presiding, not for the sake of his person, but for maintenance of respect for and confidence in the judicial office. It is both the right and duty of the lawyer fully and properly to present his client's case and to insist on an opportunity to do so. He should vigorously present all proper arguments against any ruling he deems erroneous and should see to it that a complete and accurate case record is made. In this regard, he should not be deterred by any fear of judicial displeasure or even punishment. In no circumstances should the lawyer reveal the confidences of his client.

- (b) Save where the opposing lawyer fails or refuses to attend and the judge is advised of the circumstances, a lawyer should not discuss a pending case with any judge trying the case, unless the opposing lawyer is present.
- (c) Except as provided by rule or order of court, a lawyer should never deliver to the judge any letter, memorandum, brief or other written communication without concurrently delivering a copy to opposing counsel.
- (d) A lawyer ought not to engage in the exchange of banter personalities, argument or controversy with opposing counsel. His objections, requests and observations should in every case be addressed to the judge presiding.
- (e) Subject to the foregoing, a lawyer may submit to the judge any reason for expediting or delaying the decision.

4. Candour And Fairness

- (a) The conduct of the lawyer before the Court and with other lawyers should be characterized by candour and fairness; and the lawyer should in court inform the presiding judge of subsisting decided cases even where the decision is against his client. The lawyer is however entitled to distinguish any such case.
- (b) It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a textbook; or with knowledge of its invalidity, to cite as authority a decision that has been over-ruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved, or in those jurisdictions where a side has the opening and closing arguments, to mislead his opponent by concealing or withholding in his

opening argument positions upon which his side intends to rely.

- (c) It is unprofessional and dishonorable to deal other than candidly with the facts in taking statements of witnesses, in drawing affidavits and other documents, and in presentation of causes.
- (d) A lawyer should not offer evidence which he knows the Court should reject, in order to get the same before the jury by arguments for its admissibility; nor should he address to the Judge arguments upon any point not properly calling for determination by him. A lawyer should not in any argument addressed to the Court introduce inadmissible remarks or statement likely to influence the jury or bystanders.
- (e) A member of the Bar must not promote a case which to his knowledge is false, nor should he file a pleading or other document which, he knows to be false in whole or in part, or which is intended to delay the trial.
- (f) The matters mentioned in paragraphs (b) and (e) are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding the administration of justice.

5. Attitude Towards Certain Tribunals

Tribunals are complementary to our judicial system. They operate in the context where the use of court would not be considered appropriate. Where a judicial officer is presiding, he should be accorded respect befitting his judicial office. If a non-judicial officer is presiding, a lawyer must prosecute his case in a language and manner to suit the tribunal with no sounding legal language. The tribunal should be treated with courtesy and respect.

6. Courtroom Decorum

- (a) A lawyer should rise when addressing, or being addressed by the Judge.
- (b) While the court is in session a lawyer should not assume an undignified posture, and should not, without the judge's permission remove his wig and gown in the courtroom. He should always be attired in a proper and dignified manner and abstain from any apparel or ornament calculated to attract attention to himself."

DUTIES OF THE BENCH

There is also the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria which sets out in great detail Rules to be observed by judicial officers in the performance of their duties. In the Code, 'judicial officer' is defined thus:

"(i) In this code, the term 'Judicial Officer' shall mean a holder of the office of Chief Justice of Nigeria, a Justice of the Supreme Court, the President or Justice of the Court of Appeal, the Chief Judge or Judge of the Federal High Court, of a State and of the Federal Capital Territory, Abuja, the Grand Khadi or Khadi of a Sharia Court of Appeal of a State and the Federal Capital Territory, Abuja, President or Judge of a Customary Court of Appeal of a State and of the Federal Capital Territory, Abuja and includes the holder of a similar office in any inferior court whatsoever.

(ii) The code applies to all categories of judicial officers throughout the Federation.

(iii) Violation of any of the rules contained in this code shall constitute judicial misconduct or misbehavior and may entail disciplinary action.”

Magistrates are consequently judicial officers subject to the provisions of the Code in all its ramifications.

The Code provides:

“In the performance of his duties, a Judicial Officer should observe the following rules;

Rule 1

A Judicial Officer should avoid impropriety and the appearance of impropriety in all his activities

(1). A Judicial Officer should respect and comply with the laws of the land and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.

(2). Social Relationships

(a) A Judicial Officer must avoid social relationship that are improper or give rise to an appearance of impropriety, that cast doubt on the judicial officers ability to decide cases impartially, or that bring disrepute to the Judiciary.

(b) A Judicial Officer shall not be a member of any society or organization that practices invidious discrimination on the basis of race, sex, religion or ethnic origin or whose aims and objectives are incompatible with the functions or dignity of his office.

Rule 2

A - Adjudicative Duties

1. A judicial Officer should be true and 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.
2. A Judicial Officer must avoid the abuse of the power of issuing interim injunctions, *ex parte*.
3. In judicial proceedings, a Judicial Officer should maintain order and decorum.
4. A Judicial Officer should be patient, dignified and courteous to accused persons and litigants, assessors, witnesses, legal practitioners and all others with whom he has to deal with in his official capacity and should demand similar conduct of legal practitioners, his staff and others under his direction and control.
5. (i) A Judicial Officer should accord to every person who is legally interested in a proceeding, or his legal representative full right to be heard according to law, and except as authorized by law, neither initiate, encourage, nor consider *ex-parte* or other communications concerning a pending or impending proceeding.

(ii) For the purpose of this sub-rule. An "ex-parte communication" is any communication involving less than all the parties who have a legal interest in the case, whether oral or written, about a pending or impending case, made to or initiated by the Judicial Officer presiding over the case.

6. A Judicial Officer should promptly dispose of the business of Court. In order to achieve this, the Judicial Officer is required to devote adequate time to his duties, to be punctual in attending Court and expeditious in bringing to a conclusion and determining matters under submission. Unless ill or unable, for good reason, to come to court, a Judicial Officer must appear regularly for work, avoid tardiness, and maintain official hours of the court.
7. A Judicial Officer shall endeavour that there is strict compliance with the provisions of the Constitution which require that a copy of judgment of the superior court of record be given to parties in the cause within seven days of the delivery thereof.
8. A Judicial Officer should abstain from comment about a pending or impending proceeding in any court in this country, and should require similar abstention on the part of court personnel under his direction and control. This provision does not prohibit a Judicial Officer from making statements in the course of his official duties or from explaining for public or private information the procedure of the court provided such statements are not prejudicial to the integrity of the Judiciary and the administration of justice.
9. A Judicial Officer shall be bound by professional secrecy with regard to his deliberations and to confidential information acquired in the course of his duties other than in public proceedings.
10. A Judicial Officer should prohibit broadcasting, televising, recording of or photographing in the court room and areas immediately adjacent thereto during sessions of court or recesses between sessions in order to prevent the distortion or dramatization of the proceedings by such recording or reproduction. A Judicial Officer may authorize:

- (a) the broadcasting, televising, recording or photographing of investigative and other proceedings;
- (b) the electronic recording and reproduction of appropriate court proceedings by means of recording that will not distract participants or impair the dignity of the proceedings.

B - Administrative Duties

1. A Judicial Officer should diligently discharge his administrative duties, maintain professional competence in judicial administration and facilitate the performance of the administrative duties of other Judicial Officers and court officials.
2. Judicial Officer should require his staff and other court officials under his direction and control to observe the standards of fidelity and diligence that apply to him.
3. A Judicial Officer on becoming aware of reliable evidence of unethical or unprofessional conduct by another judicial officer or a legal practitioner should immediately take adequate steps to report the same to the appropriate body seized with disciplinary powers on the matter complained of.
4. In the exercise of his administrative duties, a Judicial Officer should avoid nepotism and favoritism.
5. A Judicial Officer must refrain from engaging in sexual harassment.
6. A Judicial Officer shall not be a member of a tenders' board or engage in the award of contracts.

C - Disqualification

1. A Judicial Officer should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to the instances where:

- (a) he has personal bias or prejudice concerning a party or personal knowledge of facts in dispute;
- (b) he served as a legal practitioner in the matter in controversy, or a legal practitioner with whom he previously practiced law served during such association as a legal practitioner concerning the matter or the Judicial Officer or such legal practitioner has been a material witness in the matter;
- (c) he knows that he individually or as a Judicial Officer or his spouse or child, has a financial or any other interest that could be substantially affected by the outcome of the proceeding;
- (d) he or his spouse, or a person related to either of them or the spouse of such person;
 - (i) is a party to the proceedings, or an officer, director or trustee of a party;
 - (ii) is acting as a legal practitioner in the proceedings;
 - (iii) is known by the Judicial Officer to have an interest which could be substantially affected by the outcome of the proceedings.
 - (iv) is to the Judicial Officers knowledge likely to be a material witness in the proceedings.

2. A Judicial Officer should inform himself about his personal and fiduciary financial interests.
3. For the purpose of this section -
 - (a) "fiduciary" includes such relationships as executor, administrator, trustee guardian;
 - (b) "financial interest" means ownership in a substantial manner of a legal or equitable interest or a relationship as director, adviser or other active participation in the affairs of a party except that;
 - (i) ownership in a mutual or common investment fund which holds securities is not a financial interest in such securities unless the Judicial Officer participates in the management of the fund
 - (ii) an office in an educational, religious, charitable or civil organisation is not a "financial interest" in securities held by the organisation;
 - (iii) the proprietary interest of a policy holder in a mutual savings' society or similar proprietary interest, is a "financial interest" in the organisation only if the outcome of the proceedings could substantially affect the value of the interest;
 - (iv) ownership of government securities is a "financial interest" in the issues only if the outcome of the proceedings could substantially affect the value of the securities.

D - Waiver of Disqualification

A Judicial Officer disqualified by the terms of Rule 2 C (1) (c) or Rule 2 C (1) (d) may, instead of withdrawing from the proceedings disclose on the record the basis of his disqualification. If based on such disclosure, the parties, their representatives and or their legal practitioners, independently of the Judicial Officer's participation, all agree that the Judicial Officer's relationship is immaterial or that his financial interest is insubstantial, the Judicial Officer is no longer disqualified and may participate in the proceedings. The consent by the parties, their representatives *and /or* their legal practitioners shall be recorded and shall form part of the record of proceedings.

Rule 3

A Judicial Officer should regulate his Extra-Judicial Activities to minimize the risk of conflict with his judicial duties.

A - Vocational Activities

A Judicial Officer may engage in the arts, sports and other social and recreational activities if such vocational activities do not adversely affect the dignity of his office or interfere with the performance of his judicial duties.

B (i) - Civil and Charitable Activities

A Judicial Officer may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. He may, therefore, serve as an officer, director, trustee, or non-legal adviser of an educational, religious, charitable or civil organization not conducted for the economic or political advantage of its members subject to the condition that he should not serve if it is likely that the organization will be engaged in proceedings which would ordinarily come before him or will be regularly involved in legal proceedings in any court.

B (ii) - Freedom of expression and association

In accordance with the fundamental rights enshrined in the Constitution, a Judicial Officer is like other citizens entitled to freedom of expression, belief, association and assembly, provided, however, that in exercising such rights; he shall always conduct himself in such a manner as to preserve the dignity of his office and the impartiality and independence of the judiciary.

B (iii) - Judicial Officers shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

C - Chieftaincy Titles

A Judicial Officer shall not take or accept any Chieftaincy title while in office.

D - Fiduciary Activities

A Judicial Officer should not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust, or person of a member of his family, and that only if such service will not interfere with the proper performance of his judicial duties. *"Member of his family"* includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the Judicial Officer maintains a close familiar relationship. In this capacity a Judicial Officer is subject to the following conditions:

- (i) he should not serve if it is likely that as a fiduciary he will be engaged in proceedings which would ordinarily come before him, or if the estate, trust, or ward becomes involved in legal proceedings in the court to which he serves or one under its appellate jurisdiction;
- (ii) while acting as a fiduciary, a Judicial Officer is subject to the same restrictions in financial activities which apply to him in his personal capacity.

E - Business and Financial Activities.

1. A Judicial Officer may own investments and real property Provided that in the management of his investments he shall not serve as an

officer, director, manager, general partner, adviser or employee of any business entity.

2. Otherwise permissible investment or business activities are prohibited if they:

- (a) Tend to reflect adversely on judicial impartiality,
- (b) Interfere with the proper performance of judicial duties.
- (c) Exploit the judicial position, or
- (d) Involve the Judicial Officer in frequent transactions with legal practitioners or with people likely to come before the Judicial officers court.

F - Acceptance of Gifts

1. A Judicial Officer and members of his family shall neither ask for nor accept any gift, bequest, favour, or loan on account of anything done or omitted to be done by him in the discharge of his duties.

2. A Judicial Officer is, however permitted to accept:

- (i) personal gifts or benefits from relatives or personal friends to such extent and on such occasions as are recognized by custom;
- (ii) books supplied by publishers on a complimentary basis.
- (iii) A loan from lending institution in its regular course of business on the same terms generally available to people who are not Judicial Officers;

- (iv) A scholarship or fellowship awarded on the same terms applied to other applicants.

G - Practice of Law

A Judicial Officer should not practice law nor act as an arbitrator.”

BAR AND BENCH RELATIONSHIP:

If both the Bar and the Bench are fully conversant with their duties as set out in their respective Rules of Conduct and actually comply with the Rules, there will be little room for disharmony. On the contrary, there will be much greater cooperation, respect and understanding between the two arms which in turn will promote due and orderly administration of justice and lead to speedier dispensation of justice in the country. Any default by one side negatively impacts and impedes the work of the other side. For instance, where a lawyer fails to play his role either as a prosecuting or defence counsel in a case effectively it reflects on the quality of justice in the outcome of the proceedings. In the case of *Okasi v. State (1989) 2 SCNJ 183*, Oputa, and JSC made the following comment regarding conduct of counsel:

"How did learned counsel for each of the appellants deal with the evidence of this most important witness? Mr. Ibekwe for the 1st appellant asked only one feeble and irrelevant question which did not address itself to any of the serious allegations made against his client. One wonders whether Mr. Ibekwe really understood the gravity of the charge against his client and the seriousness of each allegation of fact made by PW5 against the 1st appellant.... By this

failure to cross-examine PW5 one is allowed to assume that the 1st appellant was not disputing the facts the PW5 deposed to.”

This clearly illustrates how failure to effectively cross-examine a witness could affect the quality of justice the court can dispense in its judgment especially where the Judge is also not industrious. If the accused is wrongly convicted or where the prosecution commits a serious error that results in the culprit escaping conviction which he deserves, justice will not be served. Also where counsel in a matter demonstrates exceptional diligence and professionalism, if there is no corresponding industry and professionalism on the side of the Bench, the whole exercise may not result in justice for the parties. This robs off on the image of the judiciary and the confidence of the public in the administration of justice.

As an officer in the temple of justice, a lawyer is duty bound to ensure that the ends of justice are always achieved, and not to think he must win his case at all cost. Some lawyers go to the extent of bearing a chip on their shoulders against a judge for losing a case in his court. Late Chief Gani Fawehinmi demonstrated the right attitude when he handled the case of Colonel Obasa, the former NYSC Director. After the conviction of his client by the court, Chief Gani Fawehinmi commended the court that convicted his client for doing justice in the case. This is rare in our society but it is proper and must be encouraged. These days it is not unusual to see counsel publicly condemning a Judge in the media after losing a case. This is reprehensible as it undermines the judicial system and does not encourage good relationship and mutual trust that should exist between

the Bench and the Bar. Further, it conveys the wrong impression to the general public about the efficacy of judiciary. Lawyers must not engage in conduct that tends to unduly destroy the Judiciary upon which the practice of their profession hinges, rather they should take positive action to build it. The Bench and the Bar must cooperate in building the judicial system of our dream. All hands must be on deck. They must respectively desist from all actions that will undermine the integrity and effectiveness of the institution. Indeed a lawyer ought to be aware that by engaging in conduct which lowers the repute and dignity of a court, he degrades the legal profession of which he is a member.

In the case of *Rondel v. Worsley (1967) 1 QB 443* which was cited with approval by the Court of Appeal in *Free Enterprises Nigeria Ltd v. Global Transport Oceanico S. A. (1998) 1 NWLR (pt.532) 1 at 21-22 F-B*, it was stated with respect to the duty of counsel that:

"As an advocate he is a Minister of Justice equally with the Judge. He has a monopoly of audience in the higher courts. No one save he can address the Judge, unless it be a litigant in person. This carries with it a corresponding responsibility.... He must accept that brief and do all he honourably can on behalf of his client. I say 'all he honourably can' because his duty is not only to his client. He has a duty to the court which is paramount. It is a mistake to suppose that he is the mouth piece of his client to say what he wants or his tool to do what he directs. He is none of these things. He must not consciously mis-state the facts. He must produce all the relevant authorities even those that are against him. He must see that his client discloses, if ordered, the

relevant documents, even those that are fatal to his case. He must disregard the most specific instructions of his client if they conflict with his duty to the court. The code which requires a barrister to do all this is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline. But he cannot be sued in a court of law. Such being his duty to the court, the barrister must be able to do it fearlessly. He has time and time again to choose between his duty to his client and his duty to the court. This is a conflict often difficult to resolve and he should not be under pressure to decide wrongly. ”

In another Nigerian case on the duty of counsel not to mislead the court, *CCB (Nig) Plc v. Okpala*.(1997) 8 NWLR (pt.518) 673 at 696 G-H, it was observed:

“Counsel, while putting across his client’s case is duty bound to do so fearlessly and courageously but he is not permitted to descend to the arena of mischief or calculated attempt to misguide or mislead the court with submission that border on ridicule and which if erroneously acted upon by the court will precipitate a miscarriage of justice.”

Judges also must be above board. They must demonstrate the requisite competence, diligence and honesty. I have heard it said that when some lazy counsel unwarrantedly desire an adjournment, they come to court with a huge number of law Reports and books and display same before the Judge to make an equally lazy judge quickly give in to an application for adjournment. While that shows clear indolence on the part of such Judges,

it is unprofessional for counsel to descend to this level of practice. No lawyer worth his salt should engage in such conduct. It is unprofessional and undermines the integrity of the judicial system.

CONTEMPT OF COURT:

One area of importance in this discourse from the perspective of the bench is the issue of contempt of court. Contempt of court is defined in the Dictionary of English law as follows:

"Contempt of Court is where a person who is a party to a proceeding in a superior Court of record fails to comply with an order made against him or an undertaking given by him or where a person whether a party to a proceeding or not does any act which may tend to hinder the course of justice or show disrespect to the Court's authority. Contempts are direct, which only insult or resist the powers of the Court or the persons of the judges who preside there; or consequential, which without such gross insolence, or direct opposition plainly tend to create a universal disregard of their authority. Contempt may be divided into acts of contempt committed in the court itself (IN FACIE CURIAE) and out of Court. Among the former, are all acts, as talking boisterously, applauding any part of the proceedings, refusing to be sworn or to answer a question as a witness, interfering with the business of the court..... and refusing to acquiesce in the ruling of the Court or speaking disrespectfully of or to the judge.....Among the latter is the attempt by intimidation to cause any suitor to discontinue his action, kidnapping or corrupting or attempting to do soobstructing or attempting to obstruct the officers of the Court on their way to their duties, speaking or writing disrespectfully of the authorities of the Court, etc..."

What concerns us here are acts of contempt committed *in facie curiae*. Some members of the bar sometimes exceed their bounds during

proceedings in court and engage in conducts that clearly amount to contempt of court. It is important for judicial officers to be able to distinguish between acts which are merely discourteous to the judge or magistrate and acts which are contemptuous. For an act to amount to contempt of court, it must be an act which diminishes the dignity of the court and not an act that merely annoys the judge or magistrate. A lawyer has the right to present his client's case in the manner he deems fit. He may be long winded and his advocacy may not be pleasing to the judge. If counsel refuses to be directed by the court as to how to present his client's case, such refusal and strong headedness cannot amount to contempt of court. It is advisable that magistrates do not unduly interrupt counsel while they are presenting their case. Where counsel reacts to such undue interruptions and interference in the presentation of his client's case, it ought not to be regarded as contempt of court. As partners in the administration of justice, judicial officers must mind their language when addressing counsel. If a judge or magistrate provokes an unpleasant retort from the lawyer, the judge or magistrate should be careful not to see the retort as contempt of court. To be respected, you must respect yourself and others. One of the qualities of a good judge or magistrate is the ability to remain calm even in the face of extreme provocation. This is very well illustrated by the case of *Candide-Johnson v. Edigin (1990) 1 NWLR (Pt. 129) 660*. The Respondent an Ag. Chief Magistrate Grade 2 ordered the detention of the Appellant, counsel for the accused in a criminal matter before her for contempt. Counsel sued the magistrate for breach of his fundamental rights. On the need for restraint in the exercise of judicial

power to punish for contempt, Achike J.C.A (as he then was and of blessed memory) @ pp 671-672 H-B observed:

"Apparently, when tempers rose rather meteorically, the respondent exacerbated by the situation, unleashed this incisive question: "When did you leave the law school?". The response going by the record was equally unrelenting: "I will refuse to answer that question in the rudest manner." It was the refusal to answer this question, according to the record, that broke the camel's back, and led to the detention of the appellant for contempt of court. It was unfortunate, to say the least, for the respondent, according to the records, to have taken leave of her exalted bench, invited counsel to extra-judicial dialogue, and thereafter descended into the arena of vituperative conflict with him."

Further down in the judgment @ 673 D-F Achike JCA observed:

"From the foregoing, I am unable to hold that the extra-judicial vituperative exchange between the appellant and the respondent in the peculiar circumstances of this case amounted to contempt of court. On the contrary, I think that the invocation of the power of contempt in the instant case bordered on abuse of judicial authority...."

This is one area where judicial officers should be very circumspect and should avoid using the discretionary power of the court to punish for contempt except when absolutely necessary for the protection of the dignity of the Court. Oputa JSC in a paper he delivered at the Faculty of Law UNN on 21/3/81 'Ten Commandments for the Judge' succinctly put the matter thus:

"The test whether or not a judge takes himself, too seriously or thinks too much of himself is in his attitude towards contempt

of his court. Undoubtedly, one of the most important powers of a judge is his power to make orders. If these orders are disobeyed, the judge has one weapon in his armour, which he can always use. He can punish the defaulting and disobedient party for contempt of court either by fine or imprisonment. All contempts of court have one thing in common – they obstruct one or other of the streams of justice. If the contempt is in the face of the court (in facie curiae) it is tried summarily by the Judge who may be the very judge who had been injured by the contempt. How he deals with the contempt shows and proves his maturity.”

CORRUPTION

An established and known corrupt judicial officer cannot hope for any kind of respect from the bar. It is one of the easiest ways of bringing ridicule and contempt to the bench. It has not been easy for the bench in Nigeria today. All magistrates and judges are looked upon by the public as corrupt which is such a pity. There is an adage amongst the Ibos that once one finger is smeared with palm oil, it invariably spreads to all the other fingers. The activities of a few corrupt judicial officers have tainted the reputation of others. In this regard, some unscrupulous members of the bar have not helped matters. While charging their fees, they extract from their clients sums which they claim is for the magistrate or judge who is unaware of what is going on. There is need for both members of the bar and bench to look inwards and search themselves to see whether they can be found wanting in this very unfortunate malaise and resolve to turn a new leaf. One assurance I can give to corrupt judicial officers is that they have no hiding place. They are known! Once you take, the person you took from will spread the word and tell others your modus operandi. That, of

course will create room for more approaches. Corruption undermines justice and lack of justice undermines the relationship between the bar and the bench.

CONCLUSION:

In the course of my research for this paper, I came across a quotation which I found quite intriguing and relevant here. I crave your indulgence to reproduce it. It is taken from Louisiana Law Review Volume 20 Number 4 June 1960 Forum Juridicum: The Ideal Relationship between the Bench and the Bar by Joe B. Hamiter

".....You are pleading an important case.....a case where a man's life or the happiness of a family depends upon the outcome. You are convinced that your client is in the right. Not only that the law is on his side, but the moral conviction of society, which is far more important. You know that you must win if justice is to prevail, but you are full of fears and doubts. Your adversary is more learned, more eloquent, and has greater prestige than you have. His briefs are composed with the subtlety you do not possess; the presiding judge is his personal friend; the judges consider him a master, and you know there are powerful interests behind his client. On the day of the trial you are sure you have argued badly, that you have overlooked your strongest points and have wearied the judges, who were wreathed in smiles at the brilliant defense of your opponent. You are exhausted and discouraged. Failure seems inevitable. Bitterly you repeat to yourself that you can hope for nothing from the court. And then when the decision is handed down, you hear that you have won, despite your inferiority, the eloquence of your adversary, the dreaded friendships and the vaunted protection. These are a lawyer's red-letter days, when he learns that against every expedient of art or intrigue he can win with justice on his side."

These quoted observations reflect the proper functioning of the judicial process, with the judiciary - standing at the pinnacle of a strong bar and complemented by it – harnessing the illusive standard of justice which honorable and upright members of the legal profession hold so dear and ever seek.”

So this is it! The bottom line is justice. If the cases coming out from our courts are based always on justice, irrespective of the interests involved, the Bar will feel obligated to show (and to promote in others) respect for the dignity of judicial office. For after all, where the judiciary commands no respect, the bar will equally suffer. It is surely in the interest of both the bar and the bench to work assiduously and with mutual respect for the protection of the dignity of the profession for the enhancement of due administration of justice in the polity.

Thank you for your attention.

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