

EMERGING ISSUES IN CIVIL AND CRIMINAL PROCEEDINGS IN THE MAGISTRATE COURTS.

INTRODUCTION

Having perused through the instant topic “Emerging issues in civil and criminal proceedings in the Magistrate Courts”, I realized that it is pertinent to define some key phrases and words therein.

The word “emerge” means “come out into view, as from concealment”¹ whilst the word “emerging” means coming to maturity”² which is synonymous to “rising” From a general perspective, the word “issue” is defined as “a subject or problem that people discuss or argue about”³

From the above given definitions it could be rightly deduced that “Emerging Issues” therefore means issues that have arisen calling for discussion or debate or argument. Obviously, the fellow who framed the topic is asking me to point out the arising issues and proffer solutions that would go a long way to make the career of a Magistrate an enviable one. And this I am disposed to do to the best of my ability.

EMERGING ISSUES

What then are the imminent “emerging issues”. The emerging issues to be discussed specifically hereto in details are as follows:

1. The position or status of Magistrate courts in the hierarchy of courts in Nigeria.
2. The jurisdiction of the Magistrate Courts
3. Whether Robing of the Magistrates of all cadres is necessary?
4. The qualities of the Magistrate
5. Administration of Justice.

¹ Arcus Dictionary. (Internet)

² (Supra)

³ Macmillan Dictionary

6. Prison congestions
7. The court's proceedings vis-à-vis other courts proceedings.
8. Holding charge: The position of the law.
9. Physical structures and facilities of the Magistrate courts.
10. Corruption in the Judiciary.

THE POSITION OR STATUS OF MAGISTRATE COURTS IN THE HIERARCHY OF COURTS IN NIGERIA.

According to Blacks law Dictionary "A Magistrate is a judicial officer with strictly limited jurisdiction and authority often on the local level and often restricted to criminal cases"⁴.

Courts in Nigeria maybe classified in several ways. But the most important forms of classification are first, classification into Superior Courts and Inferior Courts and second, classification into courts of record and courts other than courts of record⁵.

Superior courts are usually described as courts of unlimited jurisdiction. In the strict sense of the term "Unlimited Jurisdiction, no court in Nigeria has such jurisdiction. But Superior courts are so described because the limits to their Jurisdiction are minimal. They have minimal jurisdictional limits with respect to the type of subject matter but they are not limited in jurisdiction with respect to the mere value of the subject of a case⁶.

Thus, the High Court of a State is a Superior court for it has unlimited jurisdiction throughout the state with respect of the value of the subject-matter. Whilst inferior courts are courts, which have jurisdictional limits with respect to the type and value of subject matter⁷.

Magistrate Courts are example of inferior courts. The inferior courts are normally subject to the supervisory jurisdiction of High courts.

⁴ Blacks Law Dictionary 9th Edition. Page 1036, Para 4, Bryan A. Garner, Editor in Chief.

⁵ Nigerian legal system, Professor Obilade P. 169.

⁶ (Supra)

⁷ (Supra)

A court of record maybe a Superior Court or an inferior court. For example High Court of a State is a superior court of record and a Magistrate court is an inferior court of record⁸.

Under section 6 (5) of the 1999 constitution of the Federal Republic of Nigeria (as amended) the Superior Courts of record were therein listed. They are as follows:

- a. The Supreme Court of Nigeria
- b. The Court of Appeal
- c. The Federal High Court
- d. The National Industrial Court of Nigeria.
- e. The High Court of the Federal Capital Territory, Abuja.
- f. A High Court of a State.
- g. The Sharia Court of Appeal of the Federal Capital Territory, Abuja.
- h. A Sharia court of Appeal of a State
- i. Customary court of Appeal of the FCT Abuja.
- j. Customary Court of Appeal of a State.

It was in 2011 that the National Industrial Court was placed under the list of Superior Courts of record⁹. The court was once declared by Supreme Court in 2010 as an inferior court having not been listed in Section 6 of the 1999 constitution¹⁰.

The Supreme Court which was established in 1963 by the Constitution of the Federation is the highest court in Nigeria. Thus, it is the final judicial authority in Nigeria, the next court on the pyramid of superior court is the court of Appeal. The “Court of Appeal” formerly called Federal Court of Appeal was first established on 1st October, 1976. Just like the Supreme Court, the Court of Appeal has both original and appellate jurisdiction.

Other superior courts of record that follow the court of Appeal in terms of hierarchy of rank are the courts that have co-ordinate jurisdiction, that is appeal from each of them goes to the court of appeal and none can sit over the appeal from another. They are Federal High Court, National Industrial Court, High court

⁸ See *Nuruku V. Police* (1955) 15 WACA 23

⁹ See Section 254a of the CFR,. 1999 (as amended)

¹⁰ *National Union of Electricity Employees V. Bureau of Public Enterprises* (2010) 7 NWLR (Pt 1194) 538.

of the FCT, Abuja, High Court of a state, Sharia court of appeal of a state and that of FCT , Abuja and the Customary Court of Appeal of a State and FCT, Abuja.

The inferior courts in Nigeria include Magistrate courts, customary courts and Sharia courts etc. They are indeed seen as “grassroot” courts.

The superior courts of record are of higher bench whilst those inferior courts are of lower bench.

The Magistrates are of various grades namely; Chief Magistrate (Grades I & II), Senior Magistrates (Grades I & II) and Magistrates (Grades I, II & III).

Magistrates have jurisdiction in both civil and criminal cases. The extent of the jurisdiction of a Magistrate depends on his grade and so does the amount of fine or imprisonment he can impose¹¹.

HOLDING CHARGE: THE POSITION OF THE LAW.

The right to personal liberty is one of the fundamental rights that have received and is still receiving immense attention in terms of the number of litigation founded on its breach and enforcement¹².

Also, it is one of the most crucial fundamental rights because of the constant need to balance individual liberty against what the governments are apt to describe as national interest or national security¹³.

It is the right not to be subjected to imprisonment, arrest and any other physical coercion in any manner that does not admit of legal justification¹⁴.

The question of civil liberty is one which has dominated constitutional jurisprudence and firmly rooted in constitutional history¹⁵. In Modern government, the presence or absence of civil liberty has become the indices to

¹¹ The law is for all. Justice Akinola

¹² Ike D. Uzo, Guide to fundamental Rights litigation P.D

¹³ Akin Ibidabo – Obe – Essays on Human Rights Law in Nigeria (2005) P. 34.

¹⁴ ECS Wade, Law of the Constitution 10th Ed. Chap. 5 pp. 207-208

¹⁵ The Supreme court decision in LUFADAJU V. JOHNSON (2007) 8 NWLR (pt. 1037) 535: Matters Arising by Amadi Jerry, Esq in the solicitor – a journal of the law students association of Rivers state University of science and Technology, Port Harcourt, 2007 Vol. VII, PP. 13 and 40

measure whether a constitutional government, the rule of law, due process and constitutional behaviour are available in any given society¹⁶.

Even during the period of War, the language of the law has always been to maintain civil liberty, and the courts in different jurisdictions have fought to guarantee it and secure same.¹⁷

Apart from the philosophical and legal theories of the past the universal declarations of human rights and expectations of the civilized world, the issue of civil liberty forms part of the most entrenched provisions of our constitutional framework.

Under section 35(1) of the 1999 constitution (as amended) which is right to personal liberty it is provided as follows:

“Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law”

- a. In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty.
- b. By reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law.
- c. For the purpose of bringing him before a court in execution of the order of court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence”

Incidentally, the rights of citizens to personal liberty must be weighed against the powers of the police to arrest and detain suspects as well as their power to investigate criminal allegations made against persons suspected to have committed offences.

Some of the laid down principles of liberty are that a person who has been detained for any alleged offence must be brought to court within a reasonable

¹⁶ (Supra)

¹⁷ (Supra)

time¹⁸. Although in legal parlance reasonable time has always been a relative concept, determinable by the facts of individual cases, the constitutional prescription as it affects civil liberty is one or two days as the case maybe¹⁹.

For the purpose of charging a person before a High Court, the prosecution is required to file an information. The process of filing information and obtaining leave to prefer a charge may not be secured within the reasonable time contemplated under the constitution.

However, in order not to detain a suspect beyond the constitutional limits, which may occur in the process of filing information, the police almost always charge suspects before Magistrate courts in order to obtain remand orders from the court, and give legal colouration to the continual detention of the accused persons. Most times the offences with which the accused are charged before the Magistrates are beyond their jurisdictional competence. Quite often the Magistrates while admitting want of jurisdiction on their part will remand the accused to custody, and give directives to the police to forward the case files to the Director of Public Prosecution (DPP) or any designated law officer.

This practice known as “holding charge” has become so common or conventional to prompt one to conclude that it is constitutional. But activist lawyers and judges have consistently maintained that the practice is unknown to Law.

Nevertheless, the first legislative attempt to give hue of constitutionality to the practice was made in Lagos State, where its House of Assembly inserted into section 236 of the criminal procedure law, subsection 3, to the effect that:

“If any person arrested for any indictable offence is brought before Magistrate for remand, such magistrate shall remand such person in custody or where applicable grant bail to him pending the arraignment of such person before the appropriate court or tribunal for trial”

This innovation was perceived by some analysts as a conferment of jurisdiction by legislative means beyond the contemplation of the constitution and it was

¹⁸ S. 35(4) of the 1999 constitution (as amended)

¹⁹ Amadi Jeny, Esq (Supra)

expected in no distant time, the supreme court of Nigeria will strike out the provision as its American Counterpart had done in Marbury V. Madison²⁰

Incidentally, the expectation howbeit ironically was answered in Lafadeju V. Johnson²¹. Here pursuant to section 236(3) of the criminal procedure law, the 1st Appellant, a chief magistrate grade 1, remanded the respondent to custody. The respondent applied at the High Court of Lagos State for the enforcement of his fundamental rights, and sought in particular a declaration that the remanding order was unconstitutional.

At the court of Appeal, the appellate court held that holding charge is unknown to law and unconstitutional.

The Appellant being aggrieved and not satisfied with the decision of the court of appeal, appealed to the Supreme Court, and the Supreme Court in the course of considering the constitutionality of section 236(3) of the Lagos State CPL held that the subsection rather than being in discord with the constitution was indeed in accord with the constitution, The Supreme Court per, Onnoghen, JSC held as follows:

“Section 236 (3) of the CPL is not unconstitutional... if anything the said section clearly complements the provisions of section 32 of the 1979 constitution²² and is designed to aid the administration of criminal justice in this country. We owe it a duty not to toy with an allegation as grave as treasonable felony neither should we play down the importance of individual liberty and freedom.

What section 236(3) of the CPL does is to maintain a balance between the two by doing away with the tendency of arbitrary and near detention of suspects without order of court”

In his own digest of the case Lufadeju V. Johnson²³, Jerry Amadi, a learned Author and University lecturer laid down the following Matters arising” which I agree

²⁰ 1 Cranch (1903) V.S. 137

²¹ (Supra)

²² Now section 35 of the 1999 constitution

with him “The debate is over. The scope of the jurisdiction of Magistrate courts has widened in a very material area. This expansion of jurisdiction is however not procured by judicial means, but by legislative prescriptions. In *Lufadeju V. Johnson* the Supreme Court interpreted the effect of section 236 (3) of the Lagos State CPL. It is the statute that conferred the jurisdiction and not their Lordship’s decision. In effect, the decision will not apply to extend the jurisdiction of Magistrate Courts in other states nor coat them with power to remand where equivalent provisions have not been enacted in the laws of such States by the appropriate Houses of assembly.

Consequently, it will be holding charge in any other state where the Magistrate in want of jurisdiction remands a suspect.

Jurisdiction is without doubt wanting where provisions equivalent to section 236 (3) CPL Lagos state is not contained in the statute book of any state. It is recommended that in order to draw from the policy – laden decision of the Supreme Court in the *Lufadeju’s* case, the Houses of Assembly of the other states should incorporate the essence of section 236 (3) of the Lagos state law into their statutes on criminal procedure”. We have similar provision in Delta State Criminal Procedure Law 2006.

Lufadeju V. Johnson validated the provision in the Lagos State section 236(3) CPL. It did not validate “an assumption” that such a provision exists where in fact it does not. Therefore, in any state where a provision similar to that of Lagos State does not exist, Court of Appeal decisions like *Olawoye V. Cop*²⁴, which declared that holding charge is unknown to our law would still be good authority

In line with the decision of the Supreme Court in *Lufadeju’s* case as regards section 236 (3) of the CPL of Lagos State, the National Assembly has enacted some provisions almost like that of Lagos State under S. 373 of the Administration of Criminal Justice Act, 2015 which is nevertheless distinctly coined as follows:

²³ (Supra)

²⁴ (2006) ALLFWLR (Pt 309)1482 at 1495

S. 373 (1) – “A law officer, in case where a charge of an indictable offence is being proceeded with summarily by a Magistrate, may, at any time before judgment request the Magistrate to deal with the case as one for trial on information.

(2) On receipt of the request the Magistrate shall adjourn the proceeding until such a time as information or charge is filed in the High court, provided information shall be filed within a period of thirty days of the date the order granting the request.

(3) The Magistrate shall make the case returnable for a period not exceeding thirty-two days from the date of the grant of the request.

(4) Where at the end of the period of thirty days provided in subsection (2) of this section, the information or charge against the defendant has not been filed at the High Court, the Magistrate shall proceed on the return date to try the charge summarily where he has jurisdiction, or make an order releasing the defendant on bail pending his arraignment on the information or charge as requested by the law officer.

When one compares section 236(3) of the Lagos State CPL and section 373 of the Federal Administration of criminal justice act, 2015, it is apparent that the Magistrate in Lagos State has no limit as to when his remand could last whilst that of the magistrate under Federal Administration of Justice Act 2015 has only 30 days, otherwise the Defendant or Accused will be released on bail, if the information is yet to be filed at the High court. Many states of the Federation are yet to insert similar provisions in their criminal procedure law like Lagos State and that of the federal Administration of Justice Act.

It has since been noticed that some magistrates have rather appropriated this power to remand the Accused pending when information is filed in the High Court to perpetrate a kind of polarization. In a paper presented by Emeka Ngige, SAN titled **“Due process and the Nigerian Judiciary: Where did we go wrong?”**²⁵

²⁵ (a) At the section on legal practice forum (civil litigation committee) of Nigerian Bar Association Annual Bar Conference holding in Lagos from August 17-21, 2009.

(b) See – Also – Civil litigation Journal of 2008 – 2010, P. 78

He lamented as follows:

“it is no longer news that Magistrates have become willing tools in the Hands of state Governors and some security agencies to persecute political opponents of the ruling party. Every day we read reports of Magistrates remanding to prison custody political opponents of the ruling party arraigned in their courts. They do not care whether the offences to which the accused persons are charged are bailable.

They are not bothered by the provisions of Section 32 of the constitution dealing with liberty of Nigerian citizens. Once arraigned, the victim finds himself remanded in prison custody while the case is adjourned for months for ruling on bail application. A recent illustration of the point being made took place in Abuja where a magistrate on an *ex parte* application ordered the police to detain a legal practitioner accused of forgery for 21 days pending investigation! In Osun, Sokoto, Kebbi, Gombe and Bauchi States it has become a regular feature for the Magistrates to detain political opponents of the ruling party for inordinate lengthy periods without trials.

These magistrates are supposed to be members of the legal profession and are supervised by the Chief Judges of their various state Judiciaries”

Prof. Muhammed Tawfig Ladan²⁶, is credited to have stated as following:-

“The practice of the magistrate who grants remand order not inquiring into the connection between the suspect and the crime. Conversely, an accused person is not heard before he is remanded. In effect individuals who have nothing what so ever to do with a crime can be detained indefinitely for a crime they know nothing about”.

²⁶ See Nigeria Bar Journal No1, August 2011, PP47-48 by Muhammad Tawfiq Ladan Phd. Professor of Law, Dept of Public Law faculty of law, Abu, Zaria, See his Article in the Nigerian Bar Journal No. 1, August 2011, PP. 47-48

PRISON CONGESTION

A February 26, 2008 press release of the Amnesty international rightly captured the conditions of our prisons when it stated thus:

“Nigeria’s prisons are filled with people whose human rights are systematically violated. Approximately 65 percent of the inmates are awaiting trial, most of whom have been waiting for their trial for years. Most of the people in Nigeria’s prison are too poor to be able to pay lawyers and only one in seven of those awaiting trial have private legal representation”

“Living conditions in the prison are appalling. They are damaging to the physical and mental well being of inmates and in many cases, constitute clear threats to health conditions such as overcrowding, poor sanitation, lack of food and medicines and denial of contact with families and friends, fall short of U.N. standards for the treatment of prisoners”.

The worst conditions constitute ill-treatment. In many Nigerian prisons, inmates sleep two to a bed or on the floor in filthy cells.

Toilets are blocked and overflowing or simply non-existent, and there is no running water. As a result, disease is widespread”

The above snippet information shows that there is no cheery news from the Nigerian prisons.

However, a careful study of the views of Amnesty International as encapsulated above will show that the blame for all the depressing information can hardly be placed at the doorstep of the prisons²⁷. The prisons are nothing but mere receptacles. Their role is to receive the inmates sent to them by the courts²⁸.

That frequent jail deliveries by Chief Judges of various states has only minimal impact on the problem of overcrowding in prisons is underscored by the fact that

²⁷ Hon. Justice Obie Daniel Kalio, (now JCA), in his paper “An overview of the shortcoming of the Justice Delivery system in Nigeria on 27/5/2009 at Port Harcourt

²⁸ (Supra)

a presidential taskforce on prison reforms and decongestion led to the release of about 8, 000 prison inmates in 1999, yet, the problem of prison overcrowding remains²⁹.

The shortcomings in the prisons can be overcome if some degree of financial autonomy is given to the prisons in the states under a programme of decentralization of management.

This is to overcome the problem of prison Authorities in the states expecting everything needed to run their local prisons from the Head quarters in Abuja.

In the same press release, cited above the Amnesty International also commented on prison officials as follows:

“Prison staff work long and stressful hours for low wages that are often paid late. Poor pay often leads to petty extortions of prisoners and staff shortages create security risks for both staff and inmates. Inmates are often relied on to govern themselves and have taken on disciplinary functions, including meting out corporal punishment, confinement and diet restrictions – all of which do not comply with international standards”.

As part of solutions, more modern prisons facilities should be built, other than continued accommodation of the prison inmates in the colonial facilities.

One of the goals of a prison is to reform the prisoner. The goal is defeated if a prisoner returns to the society as a greater menace.

There is therefore need for more staff, more training and better salaries.

No doubt, if the shortcomings highlighted herein above are addressed, the prison as a pillar in the justice delivery system will be strengthened and thus enabled to contribute. Its part towards a better justice delivery system.

The Nigerian Prisons have no operational vehicles, especially the “**Black Maria**” to convey awaiting trial inmates to and from courts as when due to answer to their charges, resulting in backlog of cases in courts and ultimately prison congestion.

²⁹ (Supra)

The need to reform the Nigerian prison service to enable it perform effectively is now more compelling than hitherto. The Prison Act Cap. 36 laws of the Federation 1990 is not in consonance with acceptable global standards³⁰.

The review of the Act should agree with the social objectives of the state as contained in Section 17 of the 1999 constitution³¹.

ROBING: SHOULD THE MAGISTRATES ROBE LIKE THE SUPERIOR COURT JUDGES

One of the attractive features of the legal profession, mostly to young people is the mode of dressing³². Dark suits, bibs, collarettes studs, wigs and gowns, all these are law apparels which form an important aspect of the profession³³.

The “wig and gown” sum up the lawyer in the public mind³⁴.

On successfully completing his course at the law school, the student is “called to the bar” with pomp and pageantry and subsequently enrolled to practice at the Bar as a Solicitor and Advocate³⁵. On that memorable day of his call to Bar, he put on his wig and gown for the first time.

The “wig and gown” as costume is one thing that is even enough to prompt some people get into the profession, That is, it is so admired by all. Lawyers and Judges started wearing wigs in court around 1680. They were simply following the fashion of the day. At that time they signified “**wealth and status**”.

In this European seventh century costume, there is a small hidden pocket in the hood at the back of the gown for the “**Honorarium**”. This supposed to preserve the reluctance of the profession to move into the modern world. It is fair to say that this costume has been deliberately maintained to make lawyers, as “**officers**” of the court as impersonal and dignified as possible³⁶

³⁰ See LACON NEWS – A quarterly publication of the legal Aid Council of Nigeria 5th Edition Vol. 2, No. 5 June 2009.

³¹ (Supra)

³² Esq Legal Practices, NBA Special Edition, 2009 at P. 42.

³³ (Supra).

³⁴ The law is for all: Justice Akinola Aparo (A retired Chief Judge of Osun State), P. (Supra) P. 107.

³⁵ See Bar News – A monthly Publication of the Port Harcourt Bar – 28th Oct. 2009, A. 17.

³⁶ Justice Akinola Aparo (Supra)

The wigs are worn to provide anonymity not in the sense of providing a disguise or camouflage, but a distancing from personal involvement³⁷.

According to the Author of the Lawyers' Dress Code³⁸. "the Wig is an emblem of privilege and young Barrister are keen to retain them, Senior members of the Bar less so. Wigs confer dignity and solemnity on court proceedings" therefore if one agrees with the fact that wigs and gown confer dignity and solemnity on court proceedings, it should therefore be recommended herein that our Magistrates should be robed in court as well as the counsel that appear before them. One still wonders why the magistrates do not robe during court proceedings like the Judges despite the fact that they are all "dispensing justice". The reason could be for the sake of distinguishing a lower Bench/Inferior court from a Higher Bench/Superior court of record. And it is a convention Nigerian legal system inherited from Britain and it is still so in Britain. But the time is ripe for us to change this aspect of Magistrates mode of dressing.

When the Magistrates are allowed to robe, surely, there will be a new inbuilt aura, confidence, job satisfaction, enthusiasm and dignity that the Magistrates will naturally exhibit for good.

THE QUALITIES OF A MAGISTRATE/JUDGE

The quality of Justice depends more upon the quality of the men who administer the law than on the content of the law they administer³⁹.

Unless those appointed to the Bench are competent and upright and free to judge without fear and favour, a judicial system however sound its structure may be on paper is bound to function poor in practice⁴⁰.

There is no better test of the excellence of a government than the efficiency of its judicial system⁴¹ for nothing nearly touches the welfare and security of the citizen

³⁷ Bar News

³⁸ (Supra)

³⁹ Schwarts, the learned Author of "American Constitutional Law published in 1955, P. 130

⁴⁰ (Supra)

⁴¹ Bryce, Mordern Democracies Vol. II, P. 421

than his knowledge that he can rely on the certain, prompt and impartial administration of justice⁴².

Judicial Independence cannot be complete unless the Judges on whose shoulders lie the responsibility for the dispensation of justice, are endowed with certain qualities and attributes⁴³.

Basically, the person to be so appointed as judge or Magistrate shall have satisfied the minimum requirement in terms of professional qualification and appropriate experience. Many Jurists have recommended the attributes expected of those to be appropriated as Judges and Magistrates over their fellow men since the Bench of any country is in no doubt a reflection of its Bar.

At this juncture, let us turn to the recommended attributes laid down by a retired Supreme Court Justice, Hon. Justice Philip Nnaemeka Agu⁴⁴, That a Judge to be must possess:

1. A man of sound learning and intellect as well as one who has an avid thirst for knowledge. He must be a man of learning with a searching and avid thirst for reading: for our legal system and laws are complex and complicated and rely so much on precedent. He must by his studies be able to catch up with the dynamics of our ever changing society. The Judge must be a man whose learning and broad education tower above many other well educated lawyers.
2. He must be possessed of intelligence above the ordinary, otherwise he may not be able to sift the wheat from the chaff after a well researched and reasoned argument from both sides on complicated issues of law and facts.
3. He must be a man of transparent honesty and high integrity. A reputation for uprightness is an indispensable qualification for a Judge, more often than not a highly religious man, whether a Muslim or a Christian is more likely to be of the type of character expected of a Judge than an irreligious man. The former has standards as a guide, the later has not.

⁴²Dr. Appadorai, the substance of polities, P. 567

⁴³ Justice Buba Ado (of blessed memory, than as Chief Judge of Gongola State) in his paper delivered during all Judges conference at Ilorin in 1982 titled "The place of the Judiciary in constitution.

⁴⁴ Justice Nnaemeka Agu, JSG Chapter 21 "Independence of the Judiciary, Law development and Administration in Nigeria" p. 516.

4. Such a man should however be known to be a courageous man rather than a timorous religious stooge. That courage is necessary not only for the Judge to hand down his Judgments where Justice lies without fear or favour but also to resist the temptation of outrageous influences and pressure of power. He should be able to interpret and apply the law to the facts of any case without caring whose ox is gored.
5. He should be a man of patience, impartiality and independent outlook even in most critical situations.
6. The judge should be able to resist any temptation of bribe.
7. A good judge should have a good standing in the legal profession.

In conclusion, I humbly suggest that heads of Judiciaries should endeavour to see that only those lawyers that have the qualities enumerated above are appointed as Judges and Magistrates; otherwise wrong ones if let in will later pose more problems to the justice delivery system.

PROVISION OF INFRASTRUCTURES AND FACILITIES

There is need for prompt provision of the infrastructure and renovation of the Judges and Magistrates quarters and court halls if the justice delivery system must be enhanced, the infrastructure for Judicial officers including the Magistrates. Hon. Justice Obie Kalio, (then of the Rivers State High Court)⁴⁵. Had an occasion to make the following statement.

“I must say that we in Rivers State are blessed with some of the best infrastructure – Court halls, residential accommodation, and court equipment – in the country. More of such facilities are being added in the various judicial divisions old and new, across the state and in the headquarters in Port Harcourt. The same thing however cannot be said of many states in the country”

“Good infrastructure makes for a conducive atmosphere thereby contributing to productivity. Infrastructure is not only about functional buildings, it includes the provision of books

⁴⁵ Now of the Court of Appeal.

*regularly and also the provision of effective recording facilities*⁴⁶.

As a matter of fact, most of our court halls are not conducive enough to support Justice delivery system. Some of them are colonial buildings, without good doors, windows and ceilings – lack of functional air conditions or indeed non-existent air conditioners. Sometimes cases are prematurely adjourned as a result of lack of facilities that have been prevailing.

Here, I enjoin various Governments to see that steps are taken to build structures of high standard in respect of the Judicial officers residence and court halls.

JURISDICTION OF THE MAGISTRATE COURTS – WHETHER TO BE INCREASED?

1. CRIMINAL JURISDICTION OF MAGISTRATE COURT

Magistrate courts are creations of the states and their jurisdiction in criminal matters are limited to those contained in the statutes creating them⁴⁷. Depending on the particular law creating or establishing Magistrate courts, in trying indictable offence a Magistrate court cannot impose more term of sentence or fine than. It has power to do statutorily.

For example, where with the consent of the accused person a Chief Magistrate tries an offence contrary, to S.40 of the criminal code, an offence carrying imprisonment for life, the Chief magistrate cannot impose more than 7 years imprisonment term on the accused person if he is convicted. In the same vain if a Magistrate in one trial tries and convicts an accused person in a 4-count charge, imposing separate terms of imprisonment on the accused person. The aggregate of the sentences passed shall not exceed the statutory limit of the Magistrate or 4 years

⁴⁶ See the Nigeria bar Association The Civil Litigation committee conference papers delivered on Wed 17th – Thurs may, 2009 Justice Obie kalio.

⁴⁷ Cases and materials on criminal procedure Act and Code with criminal procedures Rules – laws of the federation 2004 – BY Princeton publishing company.

whichever is greater⁴⁸. In *Emone V. IGP*⁴⁹, the trial Magistrate convicted the accused person for 3 different offences and imposed different sentences of imprisonment to the extent that the total term exceeded 1 year which he statutorily has power to impose. On appeal, it was held that though he had power to impose consecutive sentences of imprisonment the aggregate of such should not exceed his statutory limit. The same principle is applicable to fines.

The Magistrate in imposing terms of imprisonment can order the sentences to run concurrently or consecutively, and note that order of fine in lieu of imprisonment can be made⁵⁰.

As I have pointed out earlier, the Magistrate Courts are graded from the Magistrate Courts of various grades to Chief Magistrate Grade 1, which is the highest of all the Magistrate Courts hierarchy. However, the power to hear and determine an offence and, the punishment to be imposed depended on the status and class of the Magistrate Court as enshrined by the laws establishing the court and the offence⁵¹.

The Chief Judge of the State has the power to divide the state into Magisterial Districts⁵².

⁴⁸ (Supra)

⁴⁹ S. 382 CPA, See *Fashisi V. The Police* (1953) 20 NLR 126

⁵⁰ S. 382 CPA, See *Fashisi V. The Police* (1953) 20 NLR 126

⁵¹ Niki Tobi JSC (Retired) *Sources of Nigerian Law*, Lagos, M.J. Professional Publishers Ltd. 1996, 16.

⁵² Section 3 of the Delta State Magistrate Court Law, 2008

MAGISTRATE COURT OF DELTA STATE JURISDICTION TO IMPOSE PUNISHMENT⁵³

S/N	COURT	GRADE	YEARS OF IMPRISONMENT	AMOUNT OF FINE
1	Chief Magistrate	Grade I	7 years	N7000
2	Chief Magistrate	Grade II	6 years	N5000
3	Senior magistrate	Grade I	4 years	N5000
4	Senior Magistrate	Grade II	2 years	N5000
5	Magistrate	Grade I	1 year	N2000
6	Magistrate	Grade II	1 year	N2000
7	Magistrate	Grade II	1 year	N2000

MAGISTRATE COURT OF EDO STATE JURISDICTION TO IMPOSE PUNISHMENT

S/N	COURT	GRADE	YEARS OF IMPRISONMENT	AMOUNT OF FINE
1	Chief Magistrate	Grade I	7 years	N7000
2	Chief Magistrate	Grade II	6 years	N5000
3	Senior magistrate	Grade I	5 years	N3000
4	Senior Magistrate	Grade II	4years	N2000
5	Magistrate	Grade I	3 year	N1000
6	Magistrate	Grade II	2 year	N500
7	Magistrate	Grade II	1 year	N200

⁵³ Sections 21 and 22 of the Delta State Magistrate Court Law 2008

5. POWER OF GOVERNOR TO INCREASE JURISDICTION OF MAGISTRATES

The Governor may upon recommendation of the Chief Judge, by writing under his hand authorize an increased jurisdiction in civil and criminal matters or in both to be exercised by any magistrate to such extent as the chief Judge may on such recommendation specify. Such authority may at any time be revoked by the Governor by writing under his hand.

6. CIVIL JURISDICTION OF THE MAGISTRATE COURT

By virtue of section 19 (1) (a) – (e) the Delta State magistrate courts Law 2006, the civil jurisdiction of the Magistrate Court is cover as follows:

- a. In all personal suits whether arising from contract or from tort or from both where the debt or damages claimed whether as balance claimed or other wise, is not more than N250, 000 for a chief magistrate grade I and ~~N~~200,000 for Chief Magistrate Grade II.
- b. In all suits between Landlord and Tenant for possession of any lands or Houses claimed under agreement or refused to be delivered up, where the annual value or rent does not exceed N250,000 for Chief Magistrate grade I and N200,000 for Chief Magistrate grade II.
- c. To appoint guardians ad litem and to make such orders and give and issue directions relating thereto
- d. To grant in any suit instituted in the court injunctions or orders to stay waste or alienation or for detention and preservation of any property the subject of such suit, or to restrain breaches of contracts or torts.
- e. In any appeal for the decision of an Assessment Appeal Tribunal constituted under the provisions of the Local Government (Rating provisions) Law.

7. RECONCILIATION OF PARTIES BEFORE THE COURT

Under sections 33, 34 and 35 of the magistrate court law of Delta State, 2006, the magistrate courts are given the power to reconcile the parties before them and for the matters they have jurisdiction to deal with

S.34 “Where a civil Suit or proceeding is pending, the Magistrate may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof”

S. 35 “Magistrates in certain criminal cases may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceeding for common assault, any other effect not amounting to felony and not aggravated in degree, on terms of payment of compensation or other terms approved by him and thereupon order the proceedings to be stayed”.

The above provisions on reconciliation are related to Order 25 Rule 2 (c) of the High Court, of Delta State (Civil Procedure) 2009, wherein Judges too are enjoined to encourage ADR justice delivery system. And this is in consonance of the burning fire agitation for Alternative dispute resolution (ADR) the world over. The Delta State Government in pursuance to amicable and quick settlement of the parties disputes has duly set up the Multi Door Court House, which has since resumed resolving disputes to buttress what the conventional courts are doing as regards justice delivery.

8. COMMENCEMENT OF CIVIL ACTION IN MAGISTRATE COURT

The commencement of Civil action proceedings in the Magistrate Court is by filing of the plaint whilst that of High Court is by filing of the writ of summons or originating summons or as the case may be, at the High Court, the writ of summons is filed along with the statement of claim.

IS INCREASING OF THE MAGISTRATES JURISDICTION NECESSARY?

I think increase of Magistrate Court jurisdiction may be viable where:-

1. The work load of some superior courts of record with particular reference to state High Court is increasing daily.
2. The fact that judges could be appointed from the roll of the Chief Magistrate, therefore, apart from the Bar, the Magistrates are also potential judges, just like judges of the High Court , Federal High Court, Customary Court of Appeal and National Industrial Court are potential justices of the Court of Appeal and even Supreme Court. The earlier the Magistrates are exposed to increased jurisdiction, whether subject matter or value jurisdiction or party jurisdiction or otherwise, the better they will turn out to be as Judges in the future.
3. Most of the magistrates in our rural areas are less busy whilst the litigant file their cases in the High Court within their district as the magistrate court lacks subject matter and value jurisdiction thereby overloading the High Court with cases whilst some of these Magistrate courts are less busy.
4. No doubt what a man does presently is what builds him up later. This is natural. Therefore, an increased jurisdiction as in area of subject matter will enhance our Magistrates intellect, creativity and skill thereby the reward of their productivity and adjudicatory prowess will be an immense benefit to the society.

2. THE MODE OF INSTITUTING CRIMINAL PROCEEDINGS. THE MODE OF INSTITUTING CRIMINAL PROCEEDINGS

At Magistrate Court is by laying a complaint before a Magistrate whether or not on oath⁵⁴. Whilst at the High Court criminal proceedings are initiated by information preferred by the direction or with the consent of a Judge⁵⁵.

In Attorney General V. Isong⁵⁶, an information containing two counts of being in possession of fire arms and ammunition was preferred against the accused person without first obtaining the consent of the High Court Judge. The High Court declared the information invalid and it was quashed.

In Ikomi V. State⁵⁷, an information containing a count of murder was preferred against the accused person after obtaining the consent of the Chief Judge.

The first accused person brought a motion to quash the offence charged and that the information was an abuse of proceedings of the court. The High Court and the Court of Appeal rejected the application.

In Bature V. State⁵⁸, the accused was charged with culpable homicide punishable with death, on appeal against conviction, it was contended that the charge upon which the accused was tried, was filed without obtaining leave of the Judge as required under section 185 (b) of the CPC. The Supreme Court held that leave was obtained before the charge was preferred.

⁵⁴ See S. 78 CPA, See S. 77 (a), See S 1 of the CPC, DPP V. Aluko (1963) 1 All NLR 383 (Section 1 CPC), R V. Adamson (1875) 1 QBD 201 – Section 60 (1) CPC, S. 175 CPC

⁵⁵ S. 77 (b) of CPA.

⁵⁶ (1986) 1 QLRN 75

⁵⁷ (1986) 5 SC 313 – See S. 340 (2) CPA.

⁵⁸ (1993) 1 NWLR (pt. 300) p. 267

3. INSTITUTION OF CRIMINAL PROCEEDINGS.

a. Office of the Attorney General

SS. 150 and 195 of the 1999 constitution creates the offices of the Federal Attorney General and State Attorney General respectively.

By virtues of S. 174 (1) and S. 211 (1) both the federal Attorney – General and the state Attorney General constitute criminal proceedings in any court established by any law in Nigeria. The Attorney-General cannot institute a proceeding in matters outside his legal unit⁵⁹.

b. PRIVATE PERSONS:

Section 342 of CPA.

A private person has a right to prosecute another in criminal cases. Even though there is no statutory provisions to the effect, however, following case law, it appears he can, the right to prosecute is a right in a broad sense⁶⁰.

c. SPECIAL PROSECUTORS

Some specific legislation authorize officers other than police officer to institute criminal prosecution in respect of offense created by them;

- i. Custom offences
- ii. Rating Authorities
- iii. Inspectors of factories
- iv. Health Inspectors.

d. SPECIAL COMPLAINANTS

Under the CPC, to prosecute for adultery, if a girl under age is involved, the complainant must be the father or guardian, if a wife, then the husband must be complainant and no other person.

e. POLICE

⁵⁹ See the following cases, Queen V. Owoh (1962) 1 All NLR 659, Layiwola V. Queen (1957) 4 FSC 119, State V. Ilori (1983) 2 SC 155 and Ibrahim V. The State (1986) 1 NWLR 650

⁶⁰ See – Gani V. Akulu (1986) 11-12 SCN 151, A.G. Anambra V. Nwobodo (1992) 7 NWLR 9 (pt 256) at 711

The police, by statute has authority to prosecute criminal cases in court. S. 4 of the police act, 1990 LFN defines the general duties of the police, apart from the special duties under S.23 of the Act⁶¹.

4. LIMITATION OF TIME TO CRIMINAL PROSECUTION.

Criminal proceedings maybe brought at anytime after the commission of the offence. Thus, there is generally no limitation of time to bringing criminal proceedings, there are however some exception to the general rule:

- a. Seduction is 6 months
- b. Conspiracy: No limitation to time for conspiracy even when the substantive offence is statute barred.
- c. Treason and treasonable felony: Contrary to S.41 of criminal code, the time limit is 2 years.
- d. Custom and excise laws: offences are to be instituted within 7 years of the commission.
- e. Public officers: No limitation of time for bringing action against public officers.

The Magistrate Courts are courts of summary Jurisdiction from which appeals lay to the High Court⁶². The magistrate court has both civil and criminal jurisdiction.

The jurisdiction of Magistrates is strictly limited⁶³. First, it is usually defined and limited geographically, and although each magistrate has jurisdiction throughout the state by which he is appointed, he is in practice assigned to a specific Magisterial District⁶⁴. While stationed in his district he is not expected to exercise jurisdiction beyond the limits of that district, except

⁶¹ See *Olusegun V. The COP* (1998) II NWLR 9pt. 575) at p. 547

⁶² Dr. Y.A. Fobur, PhD Senior Research Fellow, Nigerian Institute of Advanced Legal Studies. In his legal Article titled "Jurisdiction of Magistrate/District Courts in the Northern states of Nigeria in the book "Jurisprudence of Jurisdiction" Chapter 20, PP. 481 – 497 particularly P. 484.

⁶³ Dr. Y.A. Fobur (Supra) P. 485.

⁶⁴ C.O. Okonkwo (Professor), Introduction to Nigerian Law, London See Dr. Y.A. Fobur (Supra) P. 485, See section 8 of the Magistrate Court Law, 2008.

when temporarily moved to another district to help in the disposal of arrears of cases accumulated there.

He may however be transferred from one district to another by the Chief Judge of a state⁶⁵.

The legal authority or jurisdiction of Magistrate Courts in criminal matters to try offences is as conferred upon them by either the CPA in the Southern States of Nigeria or CPC as regards those in the Northern States of Nigeria or any other written enabling law in that regard.

CORRUPTION IN THE JUDICIARY

We cannot talk about a virile and high standard magistracy without looking into the current trend of corruption in the judiciary generally.

In recent times, there have been incessant and increasing complaint or allegations of the corruption leveled against the Judiciary.⁶⁶ The allegations attained alarming crescendo with references being repeatedly made to the election tribunals and the court of appeal⁶⁷. It even gets to a stage when a dissention opinion among the panelist constituting the tribunal or court is regarded as proof of having been reached and or compromised⁶⁸. It was that bad and sad.⁶⁹

Recently, President Buhari Muhammadu during his state visit to a foreign land, expressed his concern and worry against the corrupt practices of some Nigerian Judicial officers. These allegations whether proved or unproved have in fact opened the door to drag the name of the judiciary to the mud.

The role of the Judge/Magistrate: For the purpose of this paper, a judge will include a magistrate. The judge is the umpire that decides between the litigants

⁶⁵ Section 23 of Cap. 33 Laws of Northern Nigeria, 1963, Also See Dr. Y.A. Fabur (Supra) P. 485.

⁶⁶ Justice Massoud Abdulrahman Oredola (JCA) see a paper titled corruption, the Dwindling economy and the disappearing frontiers of the legal practices delivered during the 4th Annual conference of the section on legal Practices (SLP) of the NBA at Calabar 9th – 12th November 2010, P.4

⁶⁷ Supra

⁶⁸ Supra

⁶⁹ supra

and at the end administers justice.⁷⁰ His role is crucial as a decision can alter the course of political governance, the life of a man or a company.⁷¹

The duties of a Judge / Magistrate include⁷²:

1. To hear and decide matters assigned to the court on the pillars of fairness and equality.
2. Be faithful to the law and maintain professional competence in it. A Judge should not be swayed by partisan interest, public clamor or fear of criticism, financial gains or material temptation.
3. A Judge should perform judicial duties without bias or prejudice. A Judge should not in the performance of judicial duties by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based on race, sex, religion, national origin, disability, age, marital status, sexual orientation or socio-economic status and should not permit staff, court officials and others subject to the judges direction and control to do so.

Whilst answering the question **“Is there corruption and high profile life style among some of our judges?”** Chief Emeka Ngige, SAN, in his paper titled **“Due process and the Nigerian Judiciary: where did we go wrong”**⁷³, said:

“The answer to this question without any equivocation should be in the affirmative. Evidence of corruption abound. At least we have the examples of two justices of the Court of Appeal being dismissed for corruption over their handling of an election Appeal. The full report of the sub-committee set up by the NJC to investigate the allegation against some Justices of Court of Appeal are fully set out by the editors of Nigerian weekly law Report in the case of UKachukwu Vs. Uba (2005) 18 NWLR (Pt 956) 1 at 3-56. The details of how the justices were bribed are extensively covered by the

⁷⁰ Etigwe Uwa, SAN, see his paper titled “ The ligant and the corrupt judge; what remedies” presented at the 2010

⁷¹ Supra

⁷² supra

⁷³ A paper presented at the section on Legal practice forum (Civil litigation committee) of NBA annual Bar Conference holding in Lagos from August 17-21, 2009

report. The Justices were later dismissed by the President on the recommendation of NJC. We are also aware of the bribe scandal involving members of the Governorship election petition Tribunal for Akwa Ibom State. The NJC found that the members headed by Hon. Justice Matilda Adamu collected bribe to dismiss an election petition against the state Governor”

Samson Uwaifo, JSC was credited to the following statement which illustrates the gravity of the danger posed to the society by corruption within the judiciary

“A corrupt judge is more harmful to the society than a man who runs amok with a dagger in a crowded street. While the man with dagger can be restrained physically, a corrupt judge deliberately destroys the foundation of society”⁷⁴.

There have been serious allegations of corruption against the judiciary, especially the lower courts and the High Courts⁷⁵ Commenting on the problems of corruption in the judiciary, A.A Adeyemi condemned the increasing rate of judicial corruption, which has become a widely phenomenon⁷⁶. Corruption in the judiciary, reached its peak during the past military regimes. This prompted Hon. Justice Okay Achike to comment as follows:

“The last Military regime (Babangida’s regime) is the most corrupt in the country. The judiciary has not been exempted from this moral decadence. The position of the members of the lower bench has been scandalous”.

The Judiciary is at the apex of the legal profession. Judicial officers must do their best to engender confidence in their performance of this largely essential function⁷⁷ while exercising their discretionary powers, judicial officers should in

⁷⁴ Quoted in Nigeria Bar Journal of volume 7 No. 1, August 2011 by comfort Chinyere Ani Phd, P.114, also quoted by B. Akinyemi, State of the Judiciary and Legal System in the punch Oct. 31, 2005, P. 63.

⁷⁵ B. Akinyemi, State of the Judiciary and legal system in the punch Oct 31, 201, P.63

⁷⁶ Supra

⁷⁷ supra

the interest of justice and the renewed fight against corruption, resist any application that is capable of creating the impression in the estimation of the public, that its authority is being used to shield criminality in general and corruption in particular⁷⁸. Judicial officers including the Magistrates should also bear in mind the statement credited to Hon. Justice Niki Tobi, when he said:

***“A Judge who takes bribe is not only a criminal who should be prosecuted, he is also a sinner who is for eternal condemnation”
The bench is not a place to make money, it is a place to make a name⁷⁹***

The erosion of people’s confidence in the judiciary’s capacity to give impartial and dispassionate judgments will centrally lead to anarchy and the obliteration of the rule of law in the society⁸⁰. The bad eggs in the judiciary have to be shown the way out. Nobody should be above the law and anybody found guilty of corrupt practices within the legal profession in general, should be tried and the appropriate punishment meted out⁸¹

To mention but a few, the following Judges like Justice Egbo Egbo, and Justice Lambo Akanbi, both of the Federal High Court and Justice Nnamani of the Enugu State High Court have all gone into oblivion for misconduct and corruption.

A judge of the Kano State High Court was arraigned in 2002 before a High Court on a three count charge of demanding and accepting the sum of N100, 000 as gratification in the course of his duties. In August 2005, the Niger State government suspended a chief magistrate, Saidu Ibrahim for allegedly extorting N100, 000 from a Cattle Rearer.

CONCLUSION

Lafadeju V. Johnson validated the provision in the Lagos State section 236(3) CPL. It did not validate “an assumption” that such a provision exists where in fact it does not. Therefore, in any state where a provision similar to that of Lagos State

⁷⁸ Supra

⁷⁹ The Statement was made by Justice Niki Tobi, then a Justice of the Court of Appeal in a public lecture in 1997

⁸⁰ Comfort C. Ani (Supra)

⁸¹ Supra

does not exist, Court of Appeal decisions like *Olawoye V. Cop*, which declared that holding charge is unknown to our law would still be good authority

I humbly suggest that heads of Judiciaries should endeavour to see that only those lawyers that have the qualities enumerated above are appointed as Judges and Magistrates; otherwise wrong ones if let in will later pose more problems to the justice delivery system.

The Magistrate Courts are graded from the Magistrate Courts of various grades to Chief Magistrate grade 1, which is the highest of all the magistrate Courts hierarchy. However, the power to hear and determine an offence and, the punishment to be imposed depended on the status and class of the Magistrate Court as enshrined by the laws establishing the court and the offence.

The Judiciary is at the apex of the legal profession. Judicial officers must do their best to engender confidence in their performance of this largely essential function while exercising their discretionary powers, judicial officers should in the interest of justice and the renewed fight against corruption, resist any application that is capable of creating the impression in the estimation of the public, that its authority is being used to shield criminality in general and corruption in particular.

As part of solutions, more modern prisons facilities should be built, other than continued accommodation of the prison inmates in the colonial facilities. One of the goals of a prison is to reform the prisoner. The goal is defeated if a prisoner returns to the society as a greater menace. There is therefore need for more staff, more training and better salaries.

I support the school of thought that the magistrates should robe just like the Superior Court Judges which will duly boost their dignity and honour.

Thanks for tolerating me.

HON. JUSTICE M. UMUKORO
CHIEF JUDGE
DELTA STATE
APRIL, 2016