

**ENFORCING THE PRINCIPLE OF INDEPENDENCE OF
AREA/SHARIA/CUSTOMARY COURTS: A REVIEW OF THE
POWER OF INSPECTORATE.**

By

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INTRODUCTION:

The power of inspectorate division is quite unique in the administration of justice in the Area, Sharia and Customary Courts in Nigeria. Indeed it is both fundamental and elementary principle that every court should enjoy high degree of independence in carrying out its judicial duty and expected to be free from influence from other institutions including the internal ones. This becomes crucial in dispensation of justice without fear or favour. Meanwhile, the statutes creating these courts do also provide for the inspectorate division and saddled it with the power to monitor and supervise the activities of the judges.

It therefore goes without saying that the judicial activities of the officers of these courts are not totally immune from control of the Inspectorate division. Thus, it becomes the focus of this discourse to examine the roles, duties or powers of the Inspectorate division in the administration of justice in the lower court with much attention to it in the light of judicial independence enjoyed by the Courts under its supervision.

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Consequently in an attempt to meet the theme of this topic, I will start by examining the concept of judicial independence before giving a brief historical background of the Area, Sharia and Customary Courts in Nigeria. I will also give attention to the legal frame work creating these Courts. Further attention will be donated to delineation of the statutory powers of the Inspectorate divisions and observe it in the light of the judicial independence of the Courts to freely adjudicate over matters before them.

JUDICIAL INDEPENDENCE:

Judicial independence is not a privilege or prerogative of judicial office. It is the responsibility imposed on each judge to enable him or her to adjudicate disputes honestly and impartially on the basis of law and evidence, without external pressure or influence and without fear of interference from anyone. The core of the principle of judicial independence is the complete liberty of the judge to hear and decide the cases that comes before the court. No outsider- be it government, pressure group, individual or even an institution within- should interfere, or attempt to interfere, with the way in which a judge conducts his or her case and makes his or her decision.

Judicial independence refers to both the individual and the institutional independence required for decision- making. Judicial independence is, therefore, both a state of mind and a set of institutional and operational

arrangements. The former is concerned with the judges' independence in fact; the latter with defining the relationships between the judiciary and others, particularly the other branches of government, so as to assure both the reality and the appearance of independence. The relationship between these two aspects of judicial independence is that an individual judge may possess that state of mind, but if the court over which he or she presides is not independent of the other branches of government or that of internal institution, in what is essential to its functions, the judge cannot be said to be independent.

The Judiciary, which enforces the people's liberty and rights, must be independent at every level as this is indispensable in a free society under the Rule of Law². *Honourable Justice Oputa* (Of blessed memory) had attempted to list the qualities of an independent Judiciary to include:

- i. The decision of important and controversial cases and issues on the basis of merit and principle rather than on the basis of expediency.
- ii. Resisting the pressures of hysteria and fanaticism.
- iii. Necessity for a Judge to rise above passion, above public clamour, and above the politics of the moment.
- iv. Insulation of the Judge from Executive and Legislative violence and mob hysteria.

² I.E Sagay "the Doctrine of Separation of Powers; highlights of the third republic" a paper delivered at the 1999 NBA conference held at Concorde Hotel, Owerri, Imo State.

To emphasize its importance, the learned jurist added:

“Without Judicial independence, no Judge however, brilliant and hardworking, however, well-prepared by qualities of heart, mind and professional training can give full effect to the enduring values enshrined in our Constitution or even do justice to people”³.

There is no doubt that the 1999 Constitution does provide a frame work upon which an independent judiciary can be built. As the foregoing discussions have shown, the formal structure of judiciary, such as provided in the constitution, however properly fashioned, cannot be an end in itself. Indeed, the independence of the judiciary, in a real sense, is what the judiciary will have to continue to wrest for itself and guard jealously so that it does not slip out its hands. In this connection, it should be observed that the independence of the judiciary will probably not face greater threats than when the judiciary has decide in disputes between the citizens and the state.

Alluding to this, in a speech delivered to the House of Commons in March 1954, Sir Winston Churchill observed that:

“The judge is not only to do justice between man and man. He also- and this is one of his important functions considered in comprehensible in some large parts of the world-has to do justice between the citizens and the state. He has to ensure that the administration conforms with the law, and adjudicate upon the legality of the exercise by the executive of its powers”.

³ I.E Sagay quoting Oputa JSC ibid

It is in consequence of the above that, it must be said the manner in which judges carry out their function must, in utmost analysis, be seen to reflect the much vaunted judicial independence.

Now this bring me to the topic of discuss. How independent are the Area, Sharia and Customary Courts under the supervision of the Inspectorate division?

However, I find it very pertinent for better appreciation of this topic to make a short and relevant digression to the origin and legal framework for the creation of these two courts before the examination of the crux of the topic.

HISTORICAL PERSPECTIVE OF AREA AND CUSTOMARY COURTS:

Nigeria comprises people of various cultures and values coming together to form a nation. Therefore, it goes without saying that there were various native regulations controlling their relationship in order to secure harmonious and peaceful coexistence in the various communities. This automatically gives the impression that there were native laws in place before the introduction of the common law by the British.

In the northern part of the country, the Sharia law regulates the affairs of the people. The Emirs were the administrative head of the northern communities, as they exercise the power of appointment of judges with knowledge of Islamic law to adjudicate over their disputes in the region.

They equally enjoyed the power to control the police force and prison. In short, there was a well structured legal system in the north before the arrival of the English legal system.

In the south, there were customary courts presided over by elders with both experience and knowledge of native laws and custom. The indigenous or traditional laws were used in the southern part of the country to satisfy the needs of the people in terms of regulation. One major advantage of the law was its simplicity. This system had also worked well in the south before the advent of the colonial system.

Upon the arrival of the colonial masters, these courts were not abolished but were rather allowed to work in conjunction with the common law. This therefore led to the operation of the three laws in forming the Nigerian Legal System that we all enjoy today. It is therefore very safe to say that the three laws are like channels of streams flowing side by side which all eventually gained recognition in the Constitution of Nigeria⁴. It is by virtue of these constitutional provisions that recognize the Courts administering the indigenous laws as appellate courts that led to the creation of its trial court at the lower level which forms the basis of the next sub topic in this paper.

LEGAL FRAMEWORK FOR THE ESTABLISHMENT OF AREA, SHARIA AND CUSTOMARY COURTS:

⁴ Section 275 and 280 of the Constitution of the Federal Republic of Nigeria

Section 6 of the 1999 Constitution makes provision for the establishment of Courts in Nigeria. Therefore, the courts listed therein are regarded as superior courts of record. However, the same Constitution further empowers the National Assembly and the State Houses of Assembly to create courts with subordinate jurisdiction to the superior courts directly established by the afore mentioned provision⁵. This becomes crucial for the obvious reason that there is need for courts that will operate at the grass root level, so as to bring access to justice to the door steps of the people.

It is gratifying to note that both the National Assembly and the Houses of Assembly have fully exploited the provision to enact laws for creation of these courts to serve the administration of justice at the lower level⁶. This is the reason why these courts are referred to as lower courts. The Courts created by virtue of these laws are the Magistrate, Area and Customary Courts.

Of particular significance to this topic is the Area, and Customary Courts which serve as courts of first instance for matters that may thereafter proceed to the Sharia and Customary Court of Appeal. It therefore goes without saying that in the absence of these two courts, that is Area and Customary Courts, the appellate superior court of records established by the Constitution at the state level becomes

⁵ *Ibid* Section 4 (a)

⁶ FCT Abuja Area Court Act 2010; FCT Customary Court Act 2007; and Plateau Area Court law

malfunction. It is worthy of importance to also state that the Area courts and Customary courts are established by the legislative arm of the state that desire to have them. This has accounted for their absence in some states. For instance, this is the reason why there are no Sharia Courts in southern parts of the country.

Having briefly discussed the origin of Area and Customary Courts and the legal framework for their creation, it is due to observe the control of these courts by the inspectorate divisions.

THE ROLE AND DUTES OF INSPECTORATE DIVISION IN THE ADMINISTRATION OF AREA AND CUSTOMARY COURTS:

A good start up to this aspect of this paper is to first find a helpful meaning of the key word “inspection”. The oxford dictionary has defined inspection as,” *to visit an institution officially to see that rules are obeyed, that work is done properly*”.

Therefore, usually, inspection is carried out by physically visiting the courts by inspectors to ensure that work is properly carried out. It may be carried out without giving prior notice to the staff of the court concerned, this is usually the case, while it may also be carried out by giving prior notice to the staff. It may further be carried out upon complaint lodged by the staff of the court concerned.

According to law, inspection is meant to serve the following purpose;

1. To monitor the activities of the members of Customary Court
2. To inspect the record of Customary Court including revenue
3. To report any irregularity or excesses of members of Customary Courts to the President of the Customary Court of Appeal.
4. To receive and look into any complaints by any party to any proceedings before a Customary Court⁷.

There is need to further disclose that the inspectorate division enjoys not only the power to receive complaint against any member of the courts, they also enjoy the power to enquire into the merit of the complaint lodged. If the complaint is found to be of merit, the inspectorate division is to proceed to report the complaint to the President of the Customary Court of Appeal, who would carry out further investigation and may refer the matter, if need be, to the Judicial Service Committee for appropriate punishment.

The Inspectorate under the Department of Area Court of the Sharia Court of Appeal, FCT Abuja, established pursuant to Section 32 and 33 of the Area Courts Repeal and Enactment Act 2010, comprising of the Chief Inspector as the Head of Unit and Inspectors as may be required by the Hon. Grand Kadi.

While the duties of Inspectors as contained in the Act⁸ which include:-

- a. Carrying out the General Inspection of Records of Area Courts;

⁷ Section 43 of the Federal Capital Territory Customary Court Act 2007

⁸ Section 32(2) of the Area Courts Repeal and Enactment Act 2010

- b. Carrying out the General Supervision, Organization and Guidance of officers deployed to Area Courts;
- c. Investigate Complaints and Petitions brought by any party in any Proceedings before the Area Courts;
- d. Advising the Chief Registrar in respect of the Constitution, Jurisdiction and Membership of Area Courts;
- e. And such other functions as May from time to time be conferred upon him by the Chief Registrar.

While Section 34, 35 and 36 of the Act⁹ gives the Inspectors additional Powers to:-

- I. To require Area Courts to submit a report of any case tried in their Court;
- II. To cause a matter before an Area Court, by order, to stay the hearing of the cause or matter on terms as the Inspector may consider Just;
- III. If in the Opinion of Inspector there has been miscarriage of Justice in any case before an Area Court to which he has access to under this Act, may of his own motion or in his discretion on the application of any person concerned, report that case to which an appeal would lie.

⁹ The Area Courts Repeal and Enactment Act 2010

While in a similar jurisdiction, of North central of Plateau State, the Area Court Law of Plateau State, on the power of inspectors, also provides thus;

1. An inspector may require an Area Court to submit a report to him of any case tried in such court.
2. An inspector shall at all times have access to all Area Courts within the state and to the records and proceedings of such court.
3. An inspector shall have power at any stage of the proceedings before final judgment either of his own motion or on the application of any party to a cause or matter before an Area Court by order to stay the hearing of any cause or matter on such terms as he may consider just¹⁰.

It is very clear from the above legal provisions that the inspectors have the duty to oversee the courts. The power and duty to supervise the court is quite enormous ranging from administrative to disciplinary role of erring judges. Without doubt, it is meant to ensure efficiency of the courts but it remains to be seen whether it has not encroached on the independence of the Court to an extent.

¹⁰ Section 46-48 of Plateau State Area Court Law

SUPERVISION OF COURTS BY INSPECTORATE DIVISION VIS A VIS THE INDEPENDENCE OF THE COURTS:

The first observation that is evident from the provision made for the powers of inspectorate is that they have the power to inspect the records of both the Area and Customary Courts. The other observation is that, in the Area courts, they have the power to stay the hearing of matter before the court.

In my own respectful view, the stand taken, in respect of the first observation, is that in the inspection of the records of the courts, it should be limited to the form in which the judge adopts in taking its record. This is necessary to ensure that the record of the court is properly taken. This includes that the record of proceedings is reflecting the appropriate heading of the court, the judicial division of the court, names of the judges, the suit number, the date of the proceedings, the substance of the matter especially at the first day of hearing and the signatures of the judges. It may also include observing that record is not taken on the left margin of the record book to ensure clear recording thereby preventing clumsiness. It is still within the power of inspectors in ensuring efficient operation of the court to observe how often the courts sit and the duration of adjournment given through record, so as to be able to evaluate the performance of the judges.

It is my further view, on the contrary, that it will be an encroachment amounting to undue external pressure for the inspectors to read the substance and import of the evidence on record thereby commenting and advising the judges on the merit of the matter before them. For this reason, I deem it necessary to refer to Section 17 (2) (e) of the Constitution¹¹ that provides for the protection and maintenance of the independence of courts of law as follows:

(2) In furtherance of the social order-

(e) “The independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained”.

In respect of the second aspect of the observation, which relates to the power of the inspectors to halt proceedings of an Area Court, in plain language, the inspectors, who are not judicial officers should not enjoy such powers in my respectful and considered view. It is clearly against the background that courts are to be liberated from external influence in the course of exercising their power. In other words, the drafters have departed from the total independence of the judges of the courts.

It is of note that this law has become obsolete to an extent, as it was meant for the inspectors to check the excesses of the judges, who were not competent by virtue of their qualification, therefore had the tendency of exceeding their jurisdiction, in so doing, leading to a miscarriage of

¹¹ 1999 Constitution of the Federal Republic of Nigeria As Amended

justice. The philosophical foundation of the provision is therefore to forestall such anomaly, especially in the light of the fact that legal practitioners were not allowed to hold brief for litigants then, in these courts¹². It therefore stands to reason that the error or injustice might remain intractable as the litigants might not want to go on appeal either on the basis of ignorance or not wanting to pass through the rigour of a more complex and formal procedure of correcting the wrong before an appellate court. It is for this reason of high tendency of not going on appeal that made the law vests the power to correct the error in the inspectors, who were far more qualified, as the early set of inspectors were lecturers of Islamic law who enjoyed the charisma and dignity as teachers of judges which enhanced their success in the inspection of courts¹³.

Times indeed are changing. I therefore make bold to state that, in this present circumstance, the mischief the provision is set out to cure has drastically reduced due to the level of experience, competence and qualification of the judges that now man the bench of the Area and Customary Court, as empirical evidence even shows that some judges of these courts enjoy equal qualification with the inspectors.

Section 38 of the Federal Capital Territory Area Court Act deserves attention at this moment. The provision is worthy of commendation. It

¹² Section 31 of Native Courts Law

¹³ Ajetunmobi M.A *Shariah Legal Practice in Nigeria 1956-1983*, Kwara State University Press, Ilorin, 2017. p. 84

allows for judicial review by an appellate court upon the report of an inspector. Thus an appellate court is in a better place and position than an inspector to intervene with the proceedings of the lower courts.

CONCLUSION:

While the control and supervisory role apparently catered for in the statutes creating Area and Customary Court, to a large extent, is very significant in promoting the efficiency of the administration of justice in the lower courts, it must be carried out diligently in the form of general administrative control and not at the sacrifice of the independence of the judges of the court in the performance of their judicial and adjudicatory duty.

One cannot over emphasize the point that the courts, at every level of our legal system, must remain independent of any influence or pressure from any quarter in the performance of their judicial acts. It must be clothed with respect, dignity and honour in the minds of the litigants and the society at large. Whilst the role of the inspectors to check the excesses of the judges in respect of their activities ,apart from the freedom to decide the matters before them in accordance to their best understanding of the law, must be duly carried out. Inspectors are therefore urged to perform their task without hindering on the independence of the judges.

I thank you for listening and God bless you all.

