

**THE RELATIONSHIP BETWEEN HEAD OF THE JUDICIARY
(THE CHIEF JUDGE) AND OTHER HEADS OF COURT
(GRAND KADI, SHARIA COURT OF APPEAL OR
PRESIDENT, CUSTOMARY COURT OF APPEAL)
- CUSTOMARY COURT PERSPECTIVE**

PROTOCOL

1. Some time in March, 2019, I received a letter dated 18th February, 2019 from the Administrator National Judicial Institute, Honourable Justice R.P.I. Bozimo, OFR requesting me to write and present a paper on this rather interesting topic. I appreciate my Lord the Administrator NJI, for choosing me to present this paper. I do not know why she chose me. I believe it is a privilege extended to me, probably because of my presumed experience, having been the head of the Delta State Customary Court of Appeal for nearly 20 years. Since I became a Head of Court, this is the first time we are gathered together to have a round table conference about relationship between Heads of Courts. We thank my Lord so much for this initiative. Having been called to speak on this topic, I soon realized that not much has been written on it. It is like marriage; although every where, it is only those in it that know how it tastes. I would therefore generally speak a little from personal experience and leave the rest of the discussion for the interactive session.

2. The State Judicature consists of three Court systems:

The High Court, headed by the Chief Judge.

The Sharia Court of Appeal, headed by the Grand Kadi and

the Customary Court of Appeal, headed by the President Customary Court of Appeal.

The three offices are Constitutional creations. They go through the same processes of appointment.

Section 271(1) of the 1999 Constitution of the Federal Republic of Nigeria as amended, provides “ *The appointment of a person to the office of Chief Judge of a State shall be made by the Governor of the State on the recommendation of the National Judicial Council subject to confirmation of the appointment by the House of Assembly of the State*”.

Section 276(1) provides “ *The appointment of a person to the Office of the Grand Kadi of the Sharia Court of Appeal of a State shall be made by the Governor of the State on the recommendation of the National Judicial Council, subject to confirmation of such appointment by the House of Assembly of the State*”

Section 281(1) provides “ *The appointment of a person to the office of President of a Customary Court of Appeal shall be made by the Governor of the State on the recommendation of the National Judicial Council, subject to confirmation by the House of Assembly of the State.*”

The processes of appointing a person to act in the same capacity are also the same. See Sections 271(4), 276(4) and 281(4).

The processes of removal of the Chief Judge, the Grand Kadi or the President of the Customary Court of Appeal are still the same under Sections 292 (1) (a) (ii) and 292 (b) of the Constitution. It is by the Governor acting on an address supported by a two third majority of the House of Assembly or upon recommendation by the National Judicial Council.

The processes of appointment for the three heads are the same. None is easier, none is more stringent.

In Section 185(2) of the Constitution, the power to administer Oath of Allegiance and the Oath of Office on the Governor is a shared power among the three heads of Court. It provides thus:

S. 185(2) *“The Oath of Allegiance and the oath of office shall be administered by the Chief Judge of the State or Grand Kadi of the Sharia Court of Appeal of the State, if any, or President of the Customary Court of Appeal of the State, if any, or the person for the time being respectively appointed to exercise the functions of any of those offices in any State”.*

It is in the letters and spirit of these provisions that Section 5 (1) of the Customary Court of Appeal Law, Cap C24 vol. I Laws of Delta State 2006 provides:

“There shall be paid to the President of the Court the same salary and allowances as are payable to a Chief Judge of the State.” (Court here means Customary Court of Appeal).

From the above provisions, it is clear that the Constitution has created three distinct heads of Court. One for the High Court, one for the Sharia Court of Appeal and the other for the Customary Court of Appeal. The Constitution went further to create separate Jurisdictions for them, giving each Head of Court

powers to make rules regulating practice and procedure in his Court. See Section 274 for the Chief Judge, Section 279 for the Grand Kadi and Section 284 for the President, Customary Court of Appeal.

3. On account of the above, there is the tendency for some heads of Court to interpret the Constitution to mean that each Court and the head of Court is separate and distinct from the other. There may be some sense in it. After all that is the literal interpretation of the Constitution. Each Court system and its head does not however, exist in isolation. Every department is the part of a bigger body. Like various body parts, it is only when they work together in harmony and in unity towards one goal that the whole body can function effectively. This whole body – which is the Judiciary – has a head called the Chief Judge. One may say that he is first among equals. The fact remains that he is the collective head. The Constitution designates him “the Chief Judge”. Apart from Such designation, the Constitution in part II of the 3rd Schedule pursuant to section 197 makes him and him alone, the Chairman of the Judicial Service Commission, which is the body vested with the power to appoint, promote, discipline and dismiss all Staff of the State Judiciary . That establishes the Chief Judge’s position as the head of the trinity of heads of Courts in the Judiciary.

There is no Conflict in the Constitution as regards the relationship between the Chief Judge and other heads of Court. It is human attitude that brings conflict and frictions wherever they exist.

4. Usual sources of Conflicts amongst heads of Courts.

- Gossips and undue attachment of importance to gossip
- Unnecessary Rivalry
- Ego and Personality Conflicts
- Greed and Ambition

From these, flow rivers of conflict and lots of unhealthy competitions. Some Judges in the High Court struggle to move over to the Customary Court of Appeal when there exists vacancy in the headship of the Customary Court of Appeal and vice versa. This causes serious conflicts between the Judges who are in line and such Judges who want to move over. This is greed playing out. The ambition to become head of Court is so inordinate in some cases that people resort to unprintable pettiness. I was a victim of this when vacancy for the office of President Customary Court of Appeal, Delta State, which is my department, came up. We thought that normally and as provided by S. 281(4) of the Constitution, the next most Senior Judge in the department would act in that capacity until a substantive head was appointed. However, another Judge in the State High Court desired that position. What were the points of attack against me: one was that I was too young in age. Another was that I was relatively young as a Judge, all these in clear disregard of the Constitution and Institutional policy. I eventually acted as President, Customary Court of Appeal, and was subsequently sworn in as the substantive President. God is benevolent for, my competitor

later became the Chief Judge of my State. Then hell was let loose. Instead of deploying energy and resources to improve the system, it became a war of vendetta. The relationship between the High Court then and the Customary Court of Appeal became very rustic. Although, all that is now history, the unnecessary competition was counter productive. No meaningful growth was recorded as the two heads of Court concentrated more on how to outdo or outsmart the other. This was greatly inimical to achieving the main goal of the Judiciary – effective, speedy and efficient justice delivery to Court users.

As espoused in modern scientific management, in the management of the three 'M's, "Money", "Materials" and "Men", the management of "Men" is most problematic. Therefore, a person in any leadership position, must acknowledge that other people have varying character traits and come from different backgrounds and cultures, requiring the need to sometimes accommodate their shortcomings.

It is worthy of mention that, most developed nations achieved greatness by developing and fortifying their public institutions, which in turn grew their economies. Equally, with collective determination and good will, we can grow our judiciary to great heights.

I thank God that the relationship changed when that Chief Judge retired and another head of Court took over. Those were my only dark days in my Career as President, Customary Court of Appeal, Delta State .

Sometimes a situation arises where a Judge who has crossed to the Customary Court of Appeal to become head, struggles to move back to

the High Court to become Chief Judge when the space becomes available. This is greed.

Not too long ago, a serving President Customary Court of Appeal was sworn in as Acting Chief Judge of one of the States in clear violation of Section 271(4) of the Constitution which reserves that position for the next most senior Judge of the High Court. This also is greed. Where a Judge has left one court system for another, he should stop being interested in his erstwhile seniority position in the Court he has left.

Ego is another problem. Instead of objectively confronting issues as they come, there is this divisive feeling of absolute power of being in charge. The Presidents, Customary Court of Appeal on the other hand see themselves as being in charge of their departments and would not want to be dictated to by Chief Judges. These are ego issues. What one President of Customary Court of Appeal, sees as an intrusion might in fact be co-operation. What a Chief Judge, sees as insubordination or competition might turn out not to be. It is a question of subjective interpretation, based on the mindset. Where ego dominates the mind, there will be a negative interpretation. Where synergy is the mindset, there will be a positive interpretation. A situation where mere donation of money caused problem between a Chief Judge and President, Customary Court of Appeal, is a petty ego issue. Surprisingly, it has resulted in litigation in one of the States.

Interestingly, the unwholesome rivalry between some Presidents, Customary Court of Appeal and some Chief Judges in the Southern part of the Country is not too common between Grand Kadis and Chief

Judges in the Northern part of the Country. It appears that the spiritual significance of the Grand Kadis fosters more cordial relationship between them and the Chief Judges. Their Southern brothers are encouraged to learn from this and build cordial relationships.

In 2011, the Governor of Kogi State, Captain Inuwa Wada was sworn in by Honourable Justice Ibrahim Shaibu, the President, Customary Court of Appeal of Kogi State, under the powers conferred on him by S. 185(2) of the 1999 Constitution. The heavens did not fall; but in another state mere social donation of money resulted in a Court action. Again, this is an issue of attitude.

5. The panacea to these ugly phenomena is simply attitudinal change. The Constitution has spelt out roles for each of the three (3) heads of Courts in a state. It is suggested that we should be mature and careful in the way and manner information received are managed to avoid unwarranted rifts. Heads of Court should play the roles assigned to them by Law and avoid unnecessary and unproductive rivalry.

Presidents Customary Courts of Appeal, recognize the fact that although they are the heads of their Courts, their brother Chief Judges are the heads of their State Judiciaries. They are entitled to be respected as such. We also expect corresponding respect from them as regards our positions as the heads of our Courts. Mutual respect is very essential. Belief in team work is very important. Working in Synergy, two can achieve ten times what one can achieve. Respecting a Chief Judge does not reduce the respect due to a President Customary Court of Appeal. An over bearing Chief Judge will however attract natural resistance.

Most importantly is the impression that is created in the eyes of the general public. When the relationship is not cordial, it creates a negative perception, which demeans the image of the judiciary before right thinking members of the society.

6. In my almost twenty years as President, Customary Court of Appeal, Delta State, I have worked with five Chief Judges including the current Administrator National Judicial Institute, Hon. Justice R.P.I Bozimo OFR. It has been generally wonderful working with them. We always have shared our collective responsibilities for every important function or activity like; valedictory court sessions, welcoming of a new Chief Judge or President, Customary Court of Appeal, Annual Chief Judge's Award for deserving staff; (from the High Court, Customary Court of Appeal and Judicial Service Commission), Book launch. A committee is set up comprising Honourable Judges, Chief Registrars and Directors of Protocol from both Departments. This cooperation always ensures resounding success for all such occasions and it extends to nominations for appointments etc.

I think that is part of the reason why My Lord chose me to write and present this paper. I want to assure My Lord the Administrator and all here gathered that the situation is still the same since she left. I am working in perfect harmony with the Chief Judge of my State, Hon. Justice Marshal Umukoro. The cordial relationship throughout the years has been sustained by mutual respect and belief in team work.

As a popular African adage goes, *“if you want to go fast, go alone.*

If you want to go far, go together.”

Thank you for listening.

**HON. JUSTICE S. O. N. OGENE (MRS.)
PRESIDENT,
DELTA STATE CUSTOMARY COURT OF APPEAL**