

**PAPER PRESENTED BY HON. JUSTICE MOHAMMED LAWAL  
GARBA, JCA AT THE 2019 ALL NIGERIA JUDGES ' CONFERENCE  
HELD AT THE NIGERIA JUDICIAL INSTITUTE, ABUJA ON THE  
TOPIC: "THE COURT AS THE GUARDIAN OF THE CONSTITUTION"  
18TH NOVEMBER, 2019**

**Introduction:**

The notices of the request from the Administrator of the National Judicial Institute; the **Hon. Justice R. P. I. Bozimo, OFR** and the approval by the Hon. President of the Court of Appeal; **Hon. Justice Z. A. Bulkachuwa, CFR, FNJI**, for my release to serve as a resource person to present a paper at this Conference, came to me as pleasant surprises on the 26th August, 2019 whilst in the process of concluding a major National Assignment.

The Hon. President of the Court of Appeal, had earlier nominated me as one of the Justices of the Court to attend and participate in the conference.

I therefore feel highly honoured by and very delighted for the invitation and nomination not only to participate in but, also serve as a resource person at the Conference.

Very sincerely, I thank the Board of Governors of the National Judicial Institute under the distinguished Chairmanship of the Hon. Chief Justice of Nigeria; the **Hon. Justice Ibrahim Tanko Muhammad, GCON, FNJI**,

the amiable Administrator of the National Judicial Institute and the Hon. President of the Court of Appeal for the honour.

Nigeria, our dear country, like all other nation States governed by way of constitutional democracy, operates under the Constitution as its *grund norm* (foundation) from which all authority and powers are derived by the State for purposes of governance and development of the country. In simple terms, a constitution in relation to a nation State and a sovereign country, is a written document that embodies or serves as the foundation from which all authority and powers of State institutions and departments, draw legitimacy, validity and lawfulness. For an independent sovereign, nation or country, the constitution originates from and is owned by the people of the country who come together to give unto themselves, through their true representatives, the basis or foundation upon which they agree to be governed. Black's Law Dictionary, 8th Edition, at page 330, defines "Constitution" in the following terms: -

***"1. The fundamental and organic law of a nation or State that establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties.***

**2. *The written instrument embodying this fundamental law, together with any formal amendments.***

On its part, Oxford Advanced Learner's Dictionary of Current English, 6th Edition published by A. S. Hornby and Edited by Sally Wehmeier, at page 264, defines "Constitution" as among others,

***"1. The system of laws and basic principles that a State, a Country or an organisation is governed by"***

I would refer to the judicial definition of "constitution" in the course of this paper to demonstrate how we; "the Judiciary" in the exercise of the powers and discharge of our primary duty as provided for by the Constitution itself, see the Constitution and say what it actually is, in law.

Since the topic assigned to me is on the role of the Court as the guardian to the Constitution in Nigeria, I take it that the Constitution in question would be and is the Constitution made by the people of Nigeria (or in their names) for themselves, as an independent sovereign nation State, after attaining independence from Colonial Rule.

At Independence in 1960, the newly born Nigerian Nation State was given a "Constitution" by the departing Colonial Masters which was popularly

known as the Independence Constitution of that year, and expectedly, provided for the British Westminster Parliamentary Model of government at the Central and Regional Levels into which the country was structured. Under this Constitution, the British Monarch; the Queen of England, was made and recognized as the Head of State with powers to appoint a representative or agent (as Governor or Administrator-General) to oversee the general administration of the country, while a Prime Minister elected by the Federal Parliament was the head of the Federal Executive Council and Premiers elected at the Regional Houses of Assembly acted as Regional Heads.

Although Regional High Courts were established and a Federal Supreme Court was created for the Country, final judicial authority for the Country was vested in the Privy Council in England, by this constitution.

Then came in the 1963 Republican Constitution when Nigeria became a Republic which replaced the Governor or Administrator-General appointed by the Queen of England, with a President to be elected directly by members of the Nigerian Federal Parliament. The Federal Supreme Court also replaced the Privy Council as the final judicial authority for the Country.

The 1979 Constitution, which was the first post independence homegrown or autochthonous Constitution made by or in the name of the

Nigerian people, introduced the system of government we now operate in the country, modelled after the American Presidential system. Under it, government operated, and still operates, by three (3) arms of: -

1. The Legislature; Bi-cameral at the Federal level, comprising of the Senate and the House of Representatives. At the States levels, State Houses of Assembly were provided for. See Section 4 of the 1979 Constitution.
2. The Executive – headed by the President at the Federal level and the Governors at the Federating States levels. See Section 5 of the 1979 Constitution.
3. The Judiciary that comprises of Superior Courts of Record established by and other Courts created or established pursuant to the provisions of the Constitution at Federal and State levels. See Section 6 of the 1979 Constitution.

Sir Udo Udoma, JSC in the book "History and the Law of the Constitution of Nigeria, published in 1994 by Malthouse Press Ltd.; Lagos, at page 321 had stated that: -

***"... there are three main characteristic features of the 1979 Constitution of the Federal Republic of Nigeria. These features or aspects ought to be the***

***subject of separate studies. The main characteristic features are (a) the supremacy of the Constitution; (b) the fundamental objectives and directive principles of state policy; and (c) fundamental rights."***

Also, in the case of ***Okegbu v. Attorney General of Imo State (1983) 1 SCNLR, 212***, the Supreme Court stated that: -

***"In many respects the 1979 Constitution is unique and it is in the knowledge that it is, indeed, unique that considerable care and originality must be employed, whenever the Courts are called upon to interpret its provisions and in the discharge of this duty the courts ought always to bear in mind the circumstances of our people."***

Then the Apex, in the case of ***Oloye v. Alegbe (1983) 2 SCNLR 35***, had said that: -

***"The Constitution of 1979 is not intended to be a merely academic model constitution. It is a pragmatic Constitution made for Nigerians by Nigerians, and by a process of Constitution – making which is expected to have benefitted from the experiences of this country under the previous constitutions and to provide as much as possible a panacea for the ills of our past."***

Substantially, the 1999 Constitution (as Amended) which we now operate, contains similar provisions as those of the 1979 Constitution and have the same main characteristic features enumerated by Sir Udo Udoma above. For the purpose of the topic under discussion, I would make reference to the provisions of both Constitutions, but more to the extant Constitution.

By definition, the Constitution of every nation state is the supreme law of the land and all other laws take their legitimacy, legality and lawfulness and efficacy from it such that any other law or any provision thereof which is in conflict with the provisions of the Constitution would be null, void and of no legal effect, to the extent of its inconsistency with the Constitution. Being the Fountain and Source of all laws in Nigeria, all the provisions of the Nigerian Constitution have a binding force on all authorities and persons without exception, throughout the Country. Section 1(1) and (3) of the current Constitution in Nigeria, the 1999 Constitution of Federal Republic of Nigeria (as altered and Amended) provides that: -

***"1.(1)This Constitution is Supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.***

***(3) If any other Law is inconsistent with the provisions of this constitution, this Constitution shall prevail, and that other Law shall to the extent of the inconsistency be void.***

In the case of ***Abacha v. Fawehinmi (2000) 4 SC (Pt. II) 1 (2000) 6 NWLR (660) 228, (2000) ALLNLR, 351, (2000) LPELR-14(SC)*** the Supreme Court; per Achike, JSC, dealing with these provisions in the then 1979 Constitution, had stated that: -

“The Constitution is the supreme law of the land; it is the grund norm. It’s supremacy has never been called to question in ordinary circumstances. For avoidance of doubt, the 1979 Constitution stated categorically in its Chapter 1, Section 1(1) as follows: -

***“1.(1)This Constitution is Supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.”***

For the purposes of clarity, its Section 1(3) goes further to state: -

***(3) If any other Law is inconsistent with the provisions of this constitution, this Constitution shall prevail, and that other Law shall to the extent of the inconsistency be void.***

See also *Obayuwana v. Gov. Bendel State* (1982) 12 SC (Reprint) 67;  
*Adeniran v. Interland Transp. Ltd* (1991) 9 NWLR (Pt. 214) 155;  
*Phoenix Motors Ltd v. N. P. F. M. B* (1993) 1 NWLR (Pt. 272) 718;  
*Momoh v. Senate of the National Assembly* (1981) 1 NCLR, 21;  
*FaskenFoods Nig. Ltd v. Shosanya* (2006) ALLFWLR (Pt. 320) 1059;  
*Attorney General of the Federation v. Abubakar* (2007) 10 NWLR  
(Pt. 1041) 1; *Attorney-General, Abia State v. Attorney -General of  
the Federation* (2003) 4 NWLR (Pt. 809) 124.

For the purpose of the governance of the country, the Constitution has created, established and maintained authorities or institutions which together, constitute the government, each vested with the constitutional powers, authority and responsibilities, specifically defined and prescribed for it to exercise and discharge in the governance. These authorities or institutions are what are commonly known as the Arms of government of the Legislature, Executive and Judiciary, provided for under Sections 4, 5 and 6 respectively, of the 1999 Constitution.

These provisions are predicated on the Preamble to the Constitution which declares the sovereignty and resolve of the people of Nigeria, as follows: -

**"WE THE PEOPLE of the Federal Republic of Nigeria:**

*HAVING firmly and solemnly resolved:*

*TO LIVE in unity and harmony as one indivisible and indissoluble sovereign Nation under God dedicated to the promotion of inter-African solidarity, world peace, international co-operation and understanding.*

*AND TO PROVIDE for a Constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of freedom, Equality and Justice, and for the purpose of consolidating the Unity of our people:"*

Section 4(1) provides for the Legislative Arm as follows: -

***"4(1)The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives."***

For the Executive Arm, Section 5(1) and (2) provides that: -

***"5(1) Subject to the provisions of this Constitution, the executive powers of the Federation –***

***(a) shall be vested in the President and may, subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the***

***Vice-President or Ministers of the Government of the Federation or other officers in the public service of the Federation; and***

***(b) shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws.***

***(2) subject to the provisions of this Constitution, the executive powers of a State –***

***(a) shall be vested in the Governor of that State and may, subject as aforesaid and to the provisions of any law made by a House of Assembly, be exercised by him directly or through the Deputy Governor or Commissioners of the Government of that State or officers in the public service of the State; and***

***(b) shall extend to the execution and maintenance of this Constitution all Laws made by the House of Assembly of that State and to all matters with respect to which the House of Assembly has for the time being power to make laws.”***

Judicial Arm of government has the powers provided for under Section 6(1) and (2) thus: -

***"6(1) The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.***

***(2) The judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution for a State"***

The above provisions on the specific powers and duties or responsibilities of the separate Arms of Government were recognized and restated by the Courts in the exercise of their judicial powers and authority of interpretation and application of the Constitutional provisions. For instance, in the case of ***Attorney-General, Abia State v. Attorney General of the Federation (2003) 4 NWLR (809) 124, 1 SC (Pt. II) 1***, Belgore, JSC, speaking for the Apex Court in Nigeria, in the leading judgement stated that: -

***"..... in a Constitutional democracy like Nigeria, the powers of government are categorized into three, i.e., "the Legislature, Executive and judicial" each of which is vested in a separate and distinct department/arm of government. In this regard, the***

**Executive power is to administratively implement the policies of governance made by the National Assembly in Laws. The National assembly is to make the laws but the implementation of the laws is vested in the Executive. The Judiciary is to interpret the laws. The executive powers are vested by Section 5 of the Constitution in the President; the judicial powers are vested by Section 6 thereof in the Courts established for the Federation. The Legislative powers, by virtue of Section 4 of the Constitution are vested in the National Assembly for laws within its competence and in the House of Assembly of a State for laws within its competence to make.”**

See also **Unongo v. Aku (1983) LPELR-3422(SC); Ortese v. Mil. Gov., Benue State (1991) 4 NWLR (Pt. 183) 102; Attorney-General, Abia State v. Attorney-General of the Federation (supra); Amadi v. NNPC (2000) 6 SC (Pt. 1) 66 @ 94-5.**

In the line with these provisions on the powers, authority, duty or responsibilities vested in the separate and distinct arms of the same government, in the exercise of such powers and authority vested in it, each of the arms is not subject to the control of the other, save as may be prescribed or otherwise stipulated by the Constitution, which is the giver or donor of the powers and authority. To that extent and in that context, each

of the arms is said to be independent of the other in the exercise of its powers and authority vested by the Constitution. This is what has evolved into the doctrine of separation of powers between the three (3) arms of government, in Constitutional law, which the Supreme Court, in the case of ***Attorney-General. Abia State v. Attorney-General of the Federation (supra)*** explained as follows: -

***"The principle behind the concept of separation of powers is that none of the three arms of government under the constitution should encroach into the powers of the other. Each arm: the Executive, Legislative and Judicial, is separate, equal and of coordinate department and no arm can constitutionally take over the functions clearly assigned to the other. Thus, the powers and functions constitutionally entrusted to each arm cannot be encroached upon by the other. The doctrine is to promote efficiency in governance by precluding the exercise of arbitrary power by all the arms and thus prevent friction."***

In the earlier case of ***Unongo v. Aku (supra)*** Obaseki, JSC, had put the position thus:

***"... the three departments of government are made equal, coordinate and independent, Lafayette M. & B. R. Co. v. Gerger (1870) 34 Ind. 185, and no***

***department of the government can be controlled or embarrassed by another department of the government unless the Constitution so orders. State v. Shumaker (1928) 200 Ind. 716, 721, 164 NE 408, 63 ALR 218."***

Similarly, in **Kadiya v. Lar (1983) LPELR-1643 (SC)**, Ayo Irikife, JSC, had held that: -

***"The doctrine of separation of powers is the bulwark or anchor on which the survival of this nation as a nation must depend. While each arm of government must need to respect the other arm in the interest of the smooth running of governmental machinery, such respect must never degenerate to the level of one arm being allowed to usurp or impinge on the exclusive domain of the other as spelt out in the Constitution."***

See also ***Ahmed v. Sokoto State House of Assembly (2002) 15 NWLR (791) 239; Atiyaye v. Perm. Sec. Min. for L. G., Borno State (1988) 1 NWLR (129) 58; Amedi v. NNPC (2000) 6 SC (Pt. 1) 66; Wabara v. Nnadede (2009) 16 NWLR (1166) 204; A. G. Lagos State v. Eko Hotels Ltd (20006) 9 SC, 46, (2006) 1 NWLR (1011) 378.***

**Courts Under the 1999 Constitution (as Amended)**

The Courts in Nigeria, like the other arms of Government, are creatures of the *Grund norm* which established them directly (in the case of the superior courts of record) or provided for their establishment by other statutes enacted by the Legislature at the Federal or State levels for the exercise of the judicial powers vested in them under the provisions of Section 6(1) & (2) above.

The Constitution, either in Section 6 or any other section, did not define "courts" in which judicial powers of the Federation were vested and being "courts" established for the Federation, although the courts were specifically named. However, we as Judicial Officers take and assume the meanings of the words for granted, as the institutions to which we are appointed.

Hon. Justice Okay Achike, JCA, in a paper titled **"COURTS, JUSTICE AND THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1989", SUB-TITLED "THE PLACE OF ALL COURTS OF LAW IN NIGERIA INCLUDING AREA COURTS AND CUSTOMARY COURTS UNDER THE CONSTITUTION"**, presented at the 1993 All Nigeria Judges Conference at Port Harcourt, Rivers State, defined the word "Court" at page 3 as follows: -

***"The word "court" is susceptible to many connotations. For example, the official homes of the***

*King or a Bishop are respectively referred to as the King's Court or Bishop's Court. Again, up to the medieval age, parliament was sometimes called the Court of the king, where nobility and commons assembled. But when the word "court" is immediately followed by the words "of law", then it is used in a restrictive sense to identify a body in the government to which is assigned the administration of justice. In this regard, the words "courts" and "judges" are used in enactments as synonymous particularly in relation to orders made by the court or a judge. Court may also be defined as a place where justice is administered. Similarly, in ordinary parlance, the words "courts", "judges" and "judiciary" are commonly used interchangeably in the administration of justice."*

In the **State v. The President Grade 'A' Customary Court, Ijebu-Ode Ex. N. B. Bakare (1971) 1 NWLR, 406**, Ayoola, J. (then) construed the word "court" in Section 53(b) of the Customary Court Law applicable in Ijebu-Ode, thus: *"The section uses the word "court" which in its legal meaning connotes the institution and not the person of whoever is presiding in that court at any point of time"*.

Then, in **Ogundiani v. Araba (1978) 1 LRN, 280**, Idigbe, JSC, at 286-7 had stated that –

***"...the expression, "the court" in Section 22 of the High Court Law must mean the court sitting en banc (being an expression used in the Act of Parliament, that is, a substantive statute) but that expression (i.e. "the court") when used in "rules" made pursuant to an Act of Parliament (or a substantive statute) does not necessarily mean the court sitting en banc; it can, and quite often does, mean the Judge or the court sitting in chambers ..."***

Dr. (later Professor) Jadesola O. Akande in the Book Introduction to the Nigerian Constitution, published by Sweet & Maxwell, 1982, while commenting on the Judicial powers vested in the Courts under Section 6 of the 1979 Constitution, stated at page 6 that: -

***"Judicial power is the power "of a court to decide and pronounce a judgement and carry it into effect between persons and parties who bring a case before it for decision. It is the right to determine actual controversies arising between diverse litigants duly instituted in courts of proper jurisdiction."***

The learned author cited, the American cases of *Muskrat v. United States*, 219 U.S. 346 @ 361 (1911) and *United States v. Arrendondo* (31 U.S) 691 (1832) for the definitions.

“Judicial power” is defined at page 924 of the 8th Edition of Black’s Law Dictionary in relation to courts, to mean: -

***“The authority vested in courts and judges to hear and decide cases and to make binding judgements on them; the power to construe and apply the law when controversies arise over what has been done or not done under it.”***

These definitions have clearly brought out our common understanding of the words “Courts” in which “Judicial powers” are vested by the Constitution.

### **Courts at the Federal Level:**

In Chapter VII, under the Title “THE JUDICATURE” in Part I with the Sub-title: Federal Courts, the 1999 Constitution provided for and established following Courts: -

- A. The Supreme Court of Nigeria, by the provision of Section 230(1);
- B The Court of Appeal, under Section 237(1);
- C. The Federal High Court, by the provision of Section 249(1);
- D. The National Industrial Court under Section 254 (A)
- D. The High Court of the Federal Capital Territory, Abuja, by the provision of 255 (1);

- E. The Sharia Court of Appeal of the Federal, Capital Territory, Abuja, by Section 260-(1); and
- F. The Customary Court of Appeal of the Federal Capital Territory, Abuja, under Section 265(1).

In Part II of Chapter VII, States Courts were created and established as follows:-

- A. High Court of a State under Section 270(1)
- B. The Sharia Court of Appeal for any State that requires it by Section 275 (1); and
- C. The Customary Court of Appeal for any State that requires it by Section 280(1).

Under Section 6(3) of the Constitution, the aforementioned courts are the only Superior courts of record in Nigeria in which the judicial powers of the Federation as provided for under Section 69(1) are vested and specifically set out in Section 6(5).

However Section 6(4) (a) provides that: -

***"6(4) Nothing in the foregoing provisions of this section shall be construed as precluding –***

***(a) the National Assembly or any House of Assembly, from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of a High Court;***

***(b) the National Assembly or any House of Assembly which does not require it from abolishing any court which it has power to establish or which it has brought into being."***

These provisions simply allow, permit and vest the National Assembly or any House of Assembly of a State to establish courts other than those set out in Section 6(5), with subordinate jurisdiction to that of a High Court.

In ***Olaloye-Ofe v. Babalola (2012) LPELR-9275(SC)***, Galadima, JSC in the lead judgement of the Apex Court, restated the position that: -

***"The 1979 and 1999 Constitutions created Superior Courts of Record in Nigeria under their respective section 6. These Courts include the Supreme Court, the Court of Appeal, The Federal High Court, the State High Court, and so on. By virtue of Section 6(5) (2) (k) of 1999 Constitution State Houses of***

***Assembly are enjoined to make laws establishing  
Courts beside those specifically mentioned as  
aforesaid."***

In addition to the courts set out in Section 6(5), which are ordinarily referred to and known as the "regular courts", Section 285(1) and (2) of the Constitution, establish for each State of the Federation and the Federal Capital Territory; the following:-

- (a) National and State Houses of Assembly Election Tribunal, and
- (b) Governorship Election Tribunal.

For the purpose of the topic under discussion, since the constitution did not define what 'a Court' is for the exercise of the judicial powers of the Federation vested by it, these Tribunals being creatures of the Constitution like the regular courts, they owe the Constitutional duty and responsibility, in the exercise of the specific and special jurisdiction vested in them by the Constitution, to act as guardians of the Constitution.

After all, the Tribunals are, pursuant to the provisions of Section 285(3), paragraphs 1(2) and 2(2) in Parts A and B of the Sixth Schedule to the Constitution, constituted by Judicial and Other officers of the regular courts established by or pursuant to the same Constitution, as shown earlier.

Furthermore, the Judicial and other Officers of the Regular Courts as well as the Chairmen and Members of the Election Tribunals, subscribe to the same Judicial Oath set out in the Seventh Schedule to the Constitution for the exercise of the respective jurisdiction vested in them by the Constitution which ends with the solemn oath/affirmation/undertaking and prayer thus: -

***"that I will preserve, protect and defend the Constitution of the Federal Republic of Nigeria. So help me God."***

In the above premises, reference to the Court in this discussion/paper, as the guardian of the Constitution, means and is one to all the regular Courts established by or pursuant to the provisions of the Constitution mentioned above and includes the Election Tribunals.

### **The Court as the Guardian of the Constitution:**

In the case of ***Attorney General, Abia State v. Attorney General of the Federation (supra)***, Tobi, JSC, in his usual proficiency and erudition, had stated that: -

***"The Constitution of a nation is the Fons and Origo, not only of jurisprudence but also of the legal system of the nation. It is the beginning and the end of the national***

***system. In Greek language, it is the "Alpha and Omega". It is the barometer with which all status are measured. In line with this kingly position of the Constitution all arms of government are slaves of the Constitution, not in the sense of undergoing servitude or bondage, but in the sense of total obeisance and loyalty to it. This is in recognition of the supremacy of the Constitution over and above every statute, be it on Act of the National Assembly or a law of the House of Assembly of a State."***

With this supremacy and "kingly position" as the "Alpha and Omega" and "the beginning and end of the national legal system, "the court", being the creature of the constitution, owes the primary obligation, responsibility and duty not only to safeguard, but to purposefully project, protect and defend its creator by ensuring that the provisions of the Constitution are not only obeyed, but also complied with by all persons and authorities in Nigeria over whom they are binding. In the exercise of the judicial powers vested in it by the Court, the immutable words of ***Udo-Udoma, JSC, in Rabi v. The State (1980) 8-11 SC, 130***, provide the foundation and firm terrain when he said: -

***"--- it is duty of the court to bear constantly in mind the fact that the Constitution has been proclaimed the Supreme Law of the Land, that it is a written organic***

***instrument meant to serve not only the present generation but also several generations yet unborn---."***

This primary duty and obligation of the court as the guardian of the Constitution in the exercise of its judicial powers of interpretation, application and enforcement of its provisions is underscored by the solemn oath/affirmation/undertaking and prayer subscribed to by all the judicial officers through and by whom the courts operate as official judicial institutions and authorities in Nigeria before they assume their office. For being instructive, it is expedient to invite the Judicial Oath, as set out in the seventh schedule to the Constitution, which is a condition precedent to the exercise of the judicial powers vested by the Constitution to speak for itself: Here it is: -

***"... do solemnly swear /affirm that I will be faithful and bear true allegiance to the Federal Republic of Nigeria; that as Chief Justice of Nigeria/Justice of the Supreme Court/President/Justice of the Court of Appeal/Chief Judge/Judge of the Federal High Court/President/Judge of the National Industrial Court/Chief Judge/Judge of the High Court of the Federal Capital Territory, Abuja Chief Judge of .....; State/Judge of the High Court .... State/Grand***

***Kadi/Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja/Grand KAdi of the Sharia Court of Appeal of .... State President Judge of the Customary Court of Appeal of the Federal Capital Territory, Abuja/President/Judge of the Customary Court of Appeal of .... State. I will discharge my duties, and perform my functions honestly, to the best of my ability and faithfully in accordance with the Constitution of the Federal Republic of Nigeria and the law; that I will abide by the Code of Conduct contained in the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, that I will not allow my personal interest to influence my official conduct or my official decision; that I will preserve, protect and defend the Constitution of the /federal Republic of Nigeria. So help me God.”***

As the Guardian of the Constitution therefore, the primary obligation of the court is to abide by, obey and comply with the clear wordings and intendment of the Judicial Oath subscribed to for the discharge of its judicial duty and performance of the functions of interpretation, application and

enforcement of the provisions of the Constitution in particular, and other statutory provisions, in general.

Since the judicial duty and function of the court involves the interpretation and application of the Constitution, it can only safeguard and protect it by making pronouncements which protect the purport, the intention and aim which the Constitution sets out to achieve in its preamble. i.e., among others;

**“ --- for the purpose of promoting the good government and welfare of all persons in our country on the principles of Freedom, Equality and Justice, and for the purpose of consolidating the Unity of our people.”**

The established and recognized primary responsibility of the court in the interpretation and application of Constitution provisions and indeed all other statutory provisions, to the facts of a case brought it, is to determine and ascertain the intention of the legislature from the words and language used therein.

Over the years, the Nigerian courts, led by the Apex Court, have evolved some principles and guidelines to assist them in the interpretation and application of the provisions of the Constitution and other statutes generally. These principles and guidelines have become known as the Canons/Rules or Principles of interpretation of statutes, including the

Constitution. I begin with the case *of Rabi v. State (supra)* where Udo-Udoma, JSC, stated the general rule thus: -

***" --- the function of the Constitution is to establish a frames work and principle of government, broad and general in terms, intended to apply to the varying conditions which the development of our several communities must involve, ours being a plural, dynamic society and therefore, mere technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the principles of government enshrined in the Constitution."***

Then in Attorney General, *Bendel State v. Attorney General of the Federation (1981) 10 SC, 132 (1981) NSCC, 314 @ 372-3*, Obaseki, JSC set out and listed eleven (11) rules or canons to be employed or used by the court in the interpretation and application of the provisions of the Constitution to the facts of a case, as follows: -

- (1) Effect should be given to every word,
- (2) A construction nullifying a specific clause will not be given to the Constitution unless absolutely required by the context,
- (3) A constitutional power cannot be used by way of condition to attain unconstitutional result,

- (4) The language of the Constitution where clear and unambiguous must be given its plain evident meaning.
- (5) The Constitution of the Federal Republic of Nigeria is an organic scheme of government to be dealt with as an entirety; a particular provision cannot be severed from the rest of the Constitution.
- (6) While the language of the Constitution does not change, the changing circumstances of a progressive society for which it was designed yield new and fuller import to its meaning.
- (7) A constitutional provision should not be construed so as to defeat its evident purpose.
- (8) Under a Constitution conferring specific powers, a particular power must be granted or it cannot be exercised.
- (9) Words are the common signs that mankind make use of to declare their intention one to another and when the words of a man express his meaning plainly and distinctly and perfectly, there is no occasion to have recourse to any other means of interpretation.
- (10) The principles upon which the Constitution was established rather than the direct operation or literal meaning of the words used, measure the purpose and scope of its provisions.

(11) Words of the Constitution are therefore not to be read with stultifying narrowness.

After setting out these principles His Lordship exhorted that:-

**“Courts, it must be emphasized, cannot amend the Constitution. They cannot change the words. They must accept the words, and so far as they introduce change, it can come only through their interpretation of the meaning of the words which change with the passage of time and age.”**

Because these rules, principles or canons are not exhaustive, ***Ogundare, JSC, in the case of Ishola v. Ajiboye (1994) 7-8 SCNJ (Pt. 1) 1 @ 34***, added the following: -

1. Constitutional language is to be given a reasonable construction and absurd consequences are to be avoided.
2. Constitutional provisions dealing with the same subject matter are to be construed together.
3. Seemingly conflicting parts are to be harmonized, if possible, so that effect can be given to all parts of the Constitution, and
4. The position of an article or clause in a Constitution influences its construction.

See also ***Kalu v. State (1998) 13 NWLR (Pt. 583) 531 @ 586-7.***

These principles or rules; individually or in combination, have been made into modes, forms or approaches to be adopted and used in the interpretation of Constitutional provisions by the court. Some of them are:

- A. The literal or textual meaning approach which requires that clear and unambiguous provisions of the Constitution must be given their plain and ordinary meaning in interpretation, unless an absurdity would result in such approach. The principle that underlies this cannon of interpretation is that if the words used are in themselves precise and unambiguous, then no more can be necessary than to expound them in their natural, grammatical and ordinary sense. The words themselves, in such a case, best declare the intention of the legislature; the law giver, which the court seeks to ascertain in the primary duty of interpretation. Here, I find the words of ***Lord Loreburn, L. C. in Attorney-General for Ontario v. Attorney-General for Canada (1912) A. C. 571 @ 583*** very instructive when he said "***In the interpretation of a completely self-governing Constitution founded upon a written organic instrument, such as the British North American Act, if the text is explicit, the text is conclusive, alike in what it directs and what it forbids.***

*When the text is ambiguous, as, for example, when the words establishing two mutually exclusive jurisdictions are wide enough to bring a particular power within either, recourse must be had to the context and scheme of the Act."*

See our own cases of ***Awolowo v. Shagari (1979) 1 ALLNLR, 120, Ifezue v. Mbadugha (1984) SCNLR, 427 @ 447, Ekeogu v. Aliri (1991) 31 NWLR (Pt. 179) 258, Dyktrade Nigeria Limited v. Omma Nigeria Limited (2000) 12 NWLR (Pt. 680) 1, Adewunmi v. Attorney General, Ekiti State (2002) 2 NWLR (Pt. 751) 474 @ 512, Uwazurike v. Attorney General, Federation (2007) 8 NWLR (Pt. 1035) 1, (2007) 2 SC, 169, PDP v. INEC (2011) 17 NWLR (Pt. 1277) 522 wherein the principle was restated by the Apex Court.***

- B. Liberal Approach which requires that the provisions of the Constitution should be interpreted in such a manner and way that where there are or appear to be alternative constructions equally open to the court, the one which will bring out an effective result that is consistent with the general object of the provisions and the intention of the legislature, should be adopted. In this regard, where a strict or narrow and a broad or wide constructions of the provisions are available to the court,

but the broad or wide construction would best achieve the purport of the provisions and meet the intention of the legislature, the court has a duty to adopt and employ such a broad and wide construction in applying the provisions to the facts of the case before it. In the case of ***Attorney General, Lagos State v. Attorney General, Federation (2003) 12 NWLR (Pt. 833) 1 @ 177***, the Supreme Court stated the position that: -

***“In interpreting the Constitution, a narrow meaning should not be given to it unless it becomes necessary to do so. Rather, a wide and liberal interpretation must be applied unless there is express provision to the contrary and this must be done in order to carry out or give effect to the intention of the makers of the Constitution.”***

In the earlier case of ***Bronik Motors Limited v. Wema Bank Limited (1983) 1 SCNLR, 296***, it was held by the Apex Court that:

***“It has also been accepted by all our courts that a broad and liberal spirit should prevail in interpreting the provisions of our Constitution although one has to bear in mind the objects which such provisions were meant to served.”***

See also ***Tukur v. Governor of Gongola State (1989) 4 NWLR (Pt. 117) 517, Amalgamated Trustees Limited v. Associated***

***Discount House Limited (2007) 7 SC, 168, (2007) 15 NWLR (Pt. 1056) 118, NBN Limited v. Weide & Company Limited (1996) 8 NWLR (Pt. 465)150, Obi v. INEC (2007) 11 NWLR (Pt. 1046) 436, Ekulo Farms Limited v. UBN, Plc (2006) 4 SC (Pt. II) 1, Ladoja v. INEC (2007) 7 SC, 99 (2006) 12 NWLR (Pt. 104) 115, Ehuwa v. Ondo State Industrial Electoral Commission (2006) 11-12 SC, 102, (2006) 10 NWLR (Pt. 1042) 44.***

- C. Purposeful Approach under which the court is required to look at and consider the Constitution as a whole and construe and apply its provisions in such a way as to give effect to the general and specific purposes for which it was enacted; that is, good governance and the welfare of all Nigerians based on the principles of freedom, equality and justice as contained in the pre-amble to the Constitution.

See ***Attorney General, Ogun State v. Attorney General of the Federation (1982) 3 SCLR, 166, (1982) 1-2 SC, 13, Bronik Motors Limited v. Wema Bank Limited (supra), Uzoukwu v. Ezenu II (1991) 6 NWLR (Pt. 200) 708 @ 763, Attorney General, Ondo State v. Attorney General, Ekiti State (2001) 9-10 SC, 116, (2001) 17 NWLR (Pt. 743) 706, Attorney General, Lagos State v. Attorney General, Federation (2003) 6 SC (Pt. 1) 24, (2003) 12 NWLR (Pt. 833) 1, Ali v. Albishir (2008) 3 NWLR (Pt. 1073) 94 @ 145.***

Perhaps, I should also say that in order for the court to effectively act as the guardian of the Constitution and safeguard its provisions in the exercise, discharge and performance of its judicial powers, duties and functions of interpretation, it needs to be independent and requires the co-operation of the other arms of government. Although each of the arms of Government is supposed to be independent in the exercise of the Constitutional powers specifically vested in it, for the effective and smooth running of the Government, each requires and needs the mutual co-operation of the other arms and so to that extent and in that context, the three (3) arms are inter-dependent for the successful conduct of their respective affairs and operation of the respective affairs and operation of the government in general.

As was stated by the United States Supreme Court in the case of ***O'Donoghue v. United States (Vol.77 Lawyers Ed., U.S. 1356:*** -

***"If it be important to separate the several departments of government and restrict them to the exercise of their appointed powers, it follows, as a logical corollary, equally important, that each department should be kept completely independent of the others – independent not in the sense that***

***they shall not co-operate to the common end in carrying into effect the purposes of the Constitution, but in the sense that the acts of each shall never be controlled by, or subjected, directly or indirectly to, the coercive influence of either of the other department."***

This statement was referred to by Dr. T. Akinola Aguda in the Book; The Judiciary in the Government of Nigeria, published in 1983, to mark his 60th Birthday, as the support for his opinion on the principle of the separation of powers between the arms of government. The learned Jurist had stated in the Introduction to the Book at pages 1-2 that: -

***"As is now well-known, the present Nigerian constitution is premised upon the separation, as far as possible, of the three usual arms of the government, namely the executive, the legislature, and the judiciary. I have inserted the phrase 'as far as possible' advisedly, since so far no known constitution has succeeded in keeping the three arms of government in three water-tight compartments and the Nigerian constitution has not attempted that***

***impossible task. Not only that such a task is impossible, I in fact hold the view that any constitution which purports to do that must be making a deliberate effort to create anarchy. For it must be remembered that in any single state there can be only one government – here I am not concerned with the concept and practice of federalism – and the various arms of that government must act in unison. They can act in unison only if there is some overlap in the various fields apportioned for them; and they must act in unison if the idea is to have an ordered government.”***

For the Hon. Justice Kayode Eso, JSC, CON, LLD, in a paper titled “Concept of Law and Justice Under the Nigerian Constitution”, presented at the 1991 Judicial Lectures for the Judiciary:

***“What the Constitution has in fact done is to create a tripartite government but act as if three in one. The tripartite government could be equated, mathematically, to a triangle, each angle providing the apex but not one angle or the apex is meaningful, without the other.”***

In these premises, in its pivotal role as the guardian of the Constitution, the Court in Nigeria is charged with duty to uphold the rule of law by ensuring that all the arms of government (including the judiciary itself) operate and conduct their affairs in obedience, with deference and compliance with the provisions of the Constitution and other Statutes. Because it is the constitutional power of the Court to state and say what the law is and apply it at all times, it is expected to put a check and hold a balance between the arms of government, the government and the governed, the "big and small", the rich and the poor, the "common and the uncommon men", the ordinary and extra-ordinary, etc., in the society, as an institution and instrument of good governance and welfare of all Nigerians on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of the people as declared in the preamble to the Constitution.

However, for the Court to be in a position to efficiently and effectively discharge its duty of safeguarding, protecting, defending and ensuring compliance with the provisions of the Constitution, as its guardian, it has to be virile, bold, dynamic, astute, upright, courageous, just, honourable, respectable and independent of external interferences and undue influences.

I now ask the question; how has the Court fared in its arduous task and duty as the guardian of the Constitution since the Country's return to

constitutional democracy in 1979. It may be recalled that I have stated that the primary duty of the Court as the Guardian of the Constitution, is to safeguard, protect, defend and enforce obedience and compliance with its provisions in all actions and activities by the other arms of government, and persons who are all bound by the Constitution. Putting it briefly, the duty of the Court is to ensure the application and maintenance of the Rule of Law in all actions by authorities and persons over whom the provisions of the Constitution apply.

What then, is the Rule of Law?

Although the concept of the Rule of law derived its roots from theories of early and ancient philosophers like Aristotle, it was popularized and made prominent by people like Prof. Albert Venn Dicey, a Professor of Law at Oxford University. In his book; Introduction to the Study of the Law of the Constitution, published in 1885, the learned Jurist assigned meanings to the concept in the following terms: -

**“First, it means the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness of prerogative or even of wide discretion by any authority on the part of the government. English men are ruled by the law and**

**by law alone, a man may with us be punished for a breach of the law but cannot be punished for nothing else.**

**Secondly, it means equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts.**

**Thirdly, the Rule of Law may be used as a formula for expressing the fact that with us the laws of the Constitution, the rules which in foreign countries naturally form part of a Constitution code are not the source but the consequence of the rights of individuals as defined and enforced by the courts."**

Black's Law Dictionary 8th Edition at page 1359 defines "Rule of Law"

to mean, among others: -

***"2. The supremacy of regular as opposed to arbitrary power. Also termed supremacy of law.***

***3. The doctrine that every person is subject to the ordinary law within the jurisdiction."***

By these definitions, Rule of Law only means, broadly, that all persons and authorities in a society are equally subject to existing laws at all times and bound to comply and obey them in their actions. In a democratic society governed by a Constitution, which is also a society in which the Rule of law

should thrive and prevail under the watch of the Court, the Constitution is protected by the application and enforcement of the Rule of law. The Constitution itself protects the Rule of law by provisions in regard to what is permitted and what is prohibited under the law since it is all about prescribing the scope and extent of governmental powers among the separate arms and institutions. It is the application and enforcement of the Rule of law by the Court that guard and protect the Constitution from being desecrated and frustrated in its objectives and values in the exercise of Constitutional and other statutory powers vested or given to such arms and institutions.

The Nigerian Courts, again led by the Supreme Court, have since independence, stoutly projected, defended and protected the Rule of law in legion of cases that came before them particularly, in respect of the validity or legality of actions of the other two (2) arms of government, i.e., the Executive and the Legislature. I would only refer to a few of such cases.

One of the earliest cases that come to my mind in respect of the provisions of the 1979 Constitution, is ***Samuel I. Ekeocha v. The Civil Service Commission, Imo State & Anr. (1981) 1 NCLR, 155***, decided by the very erudite, eloquent, bold and courageous Chukwudifu Akunne Oputa, CJ (then) of the old Imo State (later JSC). The main issue before the

High Court concerned the legality of the dismissal or retirement of Mr. Ekeocha; the Applicant/Plaintiff, by the Respondent/Defendant from the Public Service of Imo State. In the interpretation of Sections 179 and 275 of the 1979 Constitution, His lordship stated that: -

**“It is true that I invited members of the Civil Service Commission to appear and listen to the complicated arguments by counsel on both sides. I did that under order 15 of our High Court Rules because they were as first defendant parties to the case. I should have invited the Honourable members of the State House of Assembly if I had the power in this case so to do. That could have given everyone concerned an insight into the enormous problems connected with the interpretation of seemingly simple words in a statute. And that is why judicial powers including interpretation of statutes are specifically reserved by our Constitution to the Courts – (Section 6 and Cap 7 of the 1979 Constitution refer).**

**As I observed earlier on we operate a Presidential system of government. The success of this new system can only be achieved on the basis of co-operation among the three arms rather than confrontation and it is to, and in the interest of everybody, that the present Constitution succeeds. The relationship between the executive, legislative and judicial arms of the same government is largely**

**dictated by the doctrine of separation of powers. No arm is expected or even allowed to intrude into, or derogate from, or usurp the powers of the other two arms. There may be occasions or cases where the powers interlace, but by and large, law making is a legislative function; that is why bills presented by the House of Assembly becomes law on second passing even if the Executive refuses to assent."**

Then there was the case of ***Obaguwana v. The Gov., Bendel State (1981) 1 NCLR, 174*** where Uwaifo, J. of the then Bendel State High Court (later JSC) declared that the Governor lacked the power, acted ultra vires and unconstitutionally when he purportedly revoked the appointment or dismissed Customary Court members and that it was the Judicial Service Commission acting on its own that could dismiss or revoke the appointment of the members who were deemed to have been duly appointed by the Commission under the 1979 Constitution. His lordship eventually declared that the removal of the plaintiff as a member of the Oredo Customary Court 1, by the Governor, was unlawful, unconstitutional and of no effect.

Next is the very famous case of ***Ojukwu v. Gov., Lagos State*** decided by the Lagos State High Court which ended up in the Supreme Court in an appeal by the Governor of Lagos State and reported as ***Governor of Lagos State v. Ojukwu (1986) 1 NWLR (Pt. 18) 621***. In brief and only

for the records since they are common knowledge, the facts of the case were that as a result of dispute between Chief Odumegwu Ojukwu and the Lagos State Government over the Landed Property at No. 29, Queens' Drive Ikoyi, which belonged to Ojukwu Transport Ltd claimed and declared to be abandoned property under Abandoned Properties Edict promulgated by it. Chief Ojukwu challenged the order by the Lagos State Government for him to vacate the property which he used as his residence and sought for interim and interlocutory orders of injunction against Lagos State Government from ejecting and evicting him from the property pending the determination of the case.

While the case was pending, the Lagos State Government forcefully ejected or evicted him from the property and eventually, the High Court refused and dismissed his applications for joinder as a party interested or interested party in the case by the Ojukwu Transport Ltd. as well as for injunction. Dissatisfied, Chief Ojukwu appealed to the Court of Appeal against the decision by the Lagos High Court and also sought from that Court, mandatory injunction against the Respondents, an order restoring him to the property. The Court had granted an interim order, of injunction, ex parte, to stop his eviction pending the determination of his motion on notice.

In its Ruling on the motion on notice delivered on 13<sup>th</sup> November, 1985, the Court of Appeal, *inter alia*, ordered:-

***"Pending the determination of the appeal of the applicant against the said decision, against the respondents and in favour of the applicant an order of mandatory injunction restoring the applicant to his residence at No. 29, Queen's Drive, Ikoyi, Lagos, and restraining the respondents and all their officers, servants, agents and functionaries from evicting or taking any steps to evict the applicant from his residence at No. 29 Queen's Driver, Ikoyi, Lagos."***

The Lagos State Government and Commissioner of Police were aggrieved by the above orders and without complying with them, headed for the Apex Court: the Supreme Court, in an appeal and sought for an order staying the execution of the orders pending the appeal. The issues considered and decided by the very distinguished Panel of the Apex Court presided over by Andrews Otutu Obaseki, JSC, leading Kayode Eso, JSC; Muhammadu Lawal Uwais, JSC; Saidu Kawu, JSC and Chukwudipu Akunne Oputa, JSC, were as follows: -

1. Whether a party (particularly a Government) in breach of an order of Court can be granted a stay of execution of Court decision.

2. Whether a Government can resort to self-help while the subject matter of the self help is still pending in a Court of Law.

In an unanimous decision and voice, the application was not only dismissed by the Apex Court but each of their Lordships expressly, as guardians of the Constitution, condemned the acts of deliberate breach of the Rule of Law by the Military Government which exercised both Executive and Legislative powers at the time.

Eso, JSC in the lead Ruling did not mince words when he said: -

***"I think it is a very serious matter for anyone to flout a positive order of a court and proceed to taunt the Court further by seeking a remedy in a higher court while still in contempt of the lower court. It is more serious when the act of flouting the order of the court, the contempt of the court, is by the Executive. Under the Constitution of the Federal Republic of Nigeria, 1979, the Executive, the Legislative (while it lasts) and the Judiciary are equal partners in the running of a successful government. The powers granted by the Constitution to these organs by S.4 (Legislative powers) s.5 (executive powers) and s.6 (judicial powers) are classified under an omnibus umbrella known under Part II to the Constitution as "Powers of the Federal Republic of Nigeria". The organs wield those powers and one must never exist in sabotage of***

***the other or else there is chaos. Indeed there will be no federal government. I think, for one organ, and more especially the Executive, which holds all the physical powers, to put up itself in sabotage or deliberate contempt of the other is to stage an executive subversion of the Constitution it is to uphold. Executive lawlessness tantamount to a deliberate violation of the Constitution. When the Executive is the Military Government which blends both the Executive and the Legislative together and which permits the Judiciary to co-exist with it in the administration of the country, then it is more serious than imagined."***

On his part, Obaseki, JSC poignantly said:

***"The Nigerian Constitution is founded on the rule of law the primary meaning of which is that everything must be done according to law. It means also that government should be conducted within the framework of recognized rules and principles which restrict discretionary power which Coke colourfully spoke of as 'golden and straight metwand of law as opposed to the uncertain and crooked cord of discretion' (see 4 Inst. 41). More relevant to the case in hand, the rule of law means that disputes as to the legality of acts of government are to be decided by judges who are wholly independent of the executive. See Wade on Administrative Law 5th Edition p. 22-27. That is the***

***position in this country where the judiciary has been made independent of the executive by the Constitution of the Federal Republic of Nigeria 1979 as amended by Decree No. 1 of 1984 and No. 17 of 1985.***

***The judiciary cannot shirk its sacred responsibility to the nation to maintain the rule of law. It is both in the interest of the government and all persons in Nigeria. The law should be even handed between the government and citizen.***

***In the area where rule of law operate, the rule of self help by force is abandoned. Nigeria being one of the countries in the world even in the third world which proclaim loudly to follow the rule of law, there is no room for the rule of self help by force to operate. Once a dispute has arisen between a person and the government or authority and the dispute has been brought before the court, thereby invoking the judicial powers of the state, it is the duty of the government to allow the law to take its course or allow the legal and judicial process to run its full course. The action the Lagos State Government took can have no other interpretation than the show of the intention to preempt the decision of the court. The courts expect the utmost respect of the law from the government itself which rules by the law.”***

Uwais, JSC, exhorted that: -

***"I think I should still stress that it is a matter of grave concern that the Military Government of Lagos State should be seen to disregard a lawful order issued by a court of law. If Governments treat court order with levity and contempt the confidence of the citizen in the courts will be seriously eroded and the effect of that will be the beginning of anarchy in replacement of the rule of law. If anyone should be wary of orders of court it is the authorities; for they, more than anyone else, need the application of the rule of law in order to govern properly and effectively."***

Kawu, JSC entirely agreed with the reasons given in the lead Ruling for the dismissal of the application.

Oputa, JSC stated, inter alia that:-

***"Perhaps the most ominous, most menacing and most portentuous impact of these paragraphs 14 to 17 – is the assault they make on the entire court system itself. The court system cannot be maintained without the willingness of parties to abide by the findings and orders of a competent court until reversed on appeal. This presupposes that no party and no court of subordinate or even co-ordinate jurisdiction can say: - "I do not like the order made and I will not obey it." And that is exactly what the Lagos State Government***

***is doing in this case. And that posture has to be condemned in the strongest of terms if we are not to say goodbye to the Rule of Law. The Rule of Law presupposes –***

- 1. That the State (including the Lagos State Government) is subject to the Law.***
- 2. That the judiciary is a necessary agency of the Rule of Law.***
- 3. That Governments (including the Lagos State Government) should respect the right of individual citizens under the rule of law.***
- 4. That to the Judiciary is assigned both by the Rule of Law and by our Constitution the determination of "all actions and proceedings relating to matters in dispute between persons or between government or an authority and any person in Nigeria.***

***I can safely say that here in Nigeria even under a Military Government, the law is no respecter of persons, principalities, governments or powers and that the courts stand between the citizens and the government alert to see that the state or government is bound by the law and respects the law."***

Your lordships, this case says all that need be said on the application of the Rule of Law under a Constitutional Democracy and what should be

the attitude of the Court as the guardian of the Constitution in all matters that come before it for determination.

**Inakoju v. Adeleke (2007) 4 NWLR (Pt. 1025) 423** is another well known case wherein, the Court as the Guardian of the Constitutional democracy, declared a purported impeachment of the Oyo State Governor by a faction of the State House of Assembly sitting at a Hotel, unconstitutional, null and void. The Court of Appeal took that landmark decision which was affirmed by the Supreme Court.

Other decisions by the Courts in that line include ***Fawehinmi v. Akilu (1987) 4 NWLR (Pt. 67)***; ***Obeya Memorial Hospital v. A. G. F. (1987) 3 NWLR (Pt. 60) 323***; ***Garba v. Univer. Maiduguri (1986) 1 NWLR (Pt.4) 572***; ***Garba v. FCSC (1988) 1 NWLR (t, P71) 449***; ***Mil. Gov., Ondo State v. Adewunmi (1988) 3 NWLR (Pt. 82) 208***; ***Obi v. INEC (2007) 11 NWLR (Pt. 1046) 560***; ***AGF v. Abubakar (2007) 4 SC (Pt. II) 162, (2007) 6 NWLR (Pt. 103) 1.***

## **CONCLUSION**

What I have tried to do in this paper, is not an assessment of the performance of the court as the Guardian of the Constitution, but to present facts on the attitude of the Court in cases of alleged infractions of Constitutional or other statutory provisions in actions or decisions taken by

the other two (2) arms of government in the exercise of the power vested in them by the Constitution.

Whether or not the Court in Nigeria has very effectively discharged its duty as the Guardian of the Constitution is not a question that can fairly, be unilaterally answered. It is a question that should generate vibrant discussion among and between all the relevant stakeholders, including us; the participants at this August Conference, who constitute the Court and the 3rd Arm of Government under the Constitution.

I thank Your Lordships for your patience in listening to me.

**MOHAMMED LAW A GARBA, JCA  
Presiding Justice, Court of Appeal  
Lagos Division.**