

JUDICIAL ETHICS AND CODE OF CONDUCT

A PAPER PRESENTED BY S. D. KAWU, THE CHIEF JUDGE OF KWARA STATE AT THE VIRTUAL REFRESHER COURSE FOR JUDGES AND KADIS AT ANDREWS OTUTU OBASEKI AUDITORIUM, NATIONAL JUDICIAL INSTITUTE, ABUJA ON MONDAY 22ND MARCH, 2021.

The appointment of Justices, Judges, Kadis etc is a manifestation of the Grace of God and of the great confidence reposed in them by those charged with the responsibility to recommend and or appoint to the various judicial positions.

A judicial appointment is a unique one which carries great and grave responsibilities. Of course Judges are humans yet by dint of their appointments they play God and decide the fate of fellow men in consonance with the powers donated to the courts by Section 6 of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) as amended.

In the exercise of their criminal jurisdiction, Judges are empowered to decide who should live and who should die, who is to be incarcerated and who is to breathe the air of freedom. In matrimonial causes, Judges decide which marriages should stand and which should be dissolved. They decide whether or not a child belongs to a parent and which parent, if any, should take custody of the child in the event of dissolution of marriage. By virtue of their office, Judges decide who owns what properties and who does not. In election petition cases they are empowered to decide who becomes President of the Republic or the Governor of a State etc.

In fact Judges decide virtually everything under the sun, yet they are mere mortals just like those whose fate they decide.

Because they exercise these enormous and far reaching judicial powers, Judges stand out as the pivot around which the entire judicial system and the administration of justice in our country revolves. To whom much is given therefore, much is expected.

According to the Roman slave, PUBLICIUS SYRUS in one of his moral sayings, published in the PUNCH NEWSPAPER of 8th January 2010, "The greater a man is in power above others, the more he ought to excel them in virtue. None ought to govern who is not better than the governed". May i most humbly add, for our purpose, that none should sit in judgment over fellow human, except he is better in good behavior and character. In other words, Judges who judge their fellow men must be high up in the ladder of judicial ethics and conduct.

This brings me to the topic of my paper today – JUDICIAL ETHICS AND CODE OF CONDUCT.

Judicial ethics relate to the standard and pattern of behavior which Justices, Judges, Kadis, Magistrates and all those saddled with the duty of judging their fellow men, are required to possess, exhibit and practice at all times whether inside or outside of the Courts.

It encompasses the conduct, composure and competence of a Judicial Officer. It requires that Judicial Officers maintain independence, impartiality and avoid all acts of impropriety.

The prescription of impartiality and incorruptibility as virtues, which Judges must possess dates back to antiquity as reflected in the following injunctions contained in the two Holy Books.

Chapter 4 verse 16 of the Holy Quran states.

“O ye who believe, stand out firmly for justice, as witnesses to God, even as against yourselves, or your parents or your kin and whether it be (against) rich or poor; for God best protect both. Follow not the lusts (of your hearts) lest, ye swerve, and if ye distort (justice) or decline to do justice, verily God is well-acquainted with all that you do.”

It is also stated in Deuteronomy 16 verses 18 – 20 that,

“Thou shall appoint Judges and Magistrates in all the towns, which the Lord thy God shall give thee, in all thy tribes: that they may judge the people with just judgments, you shall not pervert justice, you shall not show partiality; and you shall not accept a bribe for a bribe blinds the eyes of the wise and subverts the course of righteousness. Justice and only justice you shall follow, that you may live and inherit the land which the Lord your God gives you”.

Because of the enormous responsibility and power wielded by Judges, several rules and laws have been put in place to ensure that none but the best and most outstanding in character and learning are appointed to the Bench.

The process for the appointment of Judges and Kadis which is governed mainly by the 2014 REVISED GUIDELINES & PROCEDURAL RULES FOR THE APPOINTMENT OF JUDICIAL OFFICERS OF ALL SUPERIOR COURTS OF RECORD IN NIGERIA

provides among others, for transparency, wide publicity, security screening and consultation with relevant stakeholders to ensure that only those with high standard of conduct and learning are appointed to the Bench. Rule 4 (4) (i)(a) specifically requires that candidates for appointment to judicial office must possess,

“Good character and reputation, diligence and hard work, honesty, integrity and sound knowledge of law and consistent adherence to professional ethics.”

After scaling over the rigorous process of appointment, successful candidates are required to take the judicial oath, contained in the 6th Schedule to the Constitution. The judicial oath is a solemn declaration by the Judicial Officer to discharge his duties HONESTLY, FAITHFULLY, to the BEST OF HIS ABILITY, with FIDELITY to the Constitution and the Law and to ABIDE by the CODE OF CONDUCT contained in the 5th schedule to the Constitution and to NOT ALLOW HIS PERSONAL INTRESTS TO INFLUENCE HIS OFFICIAL DECISIONS.

The use of such words as HONESTLY, FAITHFULLY, BEST OF ABILITY, FIDELITY etc in the judicial oath constitute a bidding pledge to abide by the prescribed conduct required of a Judicial Officer.

The oath taking, I must say, is not a mere ritual or ceremony but rather it is a weighty and binding covenant between the Judge and his creator, with members of the public as witnesses, for which the Judicial Officer shall be questioned on the day of judgment. After taking the judicial oath, the Judicial Officer becomes immediately bound by the Code of Conduct in the schedule to the Constitution which prohibits public officers,

including Judges from asking for or taking gifts in the discharge of their duties, accepting bribe, abuse of powers, membership of societies incompatible with the functions or the dignity of their office. The Code also enjoins Judges to declare their assets on appointment and once every four years, the breach of which shall be sanctioned.

Realizing the important Role of the Judiciary in Promoting Good Governance in Nigeria, which is the theme of this year's Induction Course for Newly Appointed Judges and Kadis, the framers of the Constitution of the Federal Republic of Nigeria provides in Section 17 (1) and (2)(e) that:

- "1. The State social order is founded on ideals of Freedom, Equality and Justice.*
- 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."*

The need to further ensure that those saddled with administering justice in our Courts have and maintain a high standard of conduct has led to the promulgation of the Code Of Conduct for Judicial Officers of the Federal Republic of Nigeria.

A discussion of today's topic will therefore involve copious references to the Code of Conduct for Judicial Officers Of The Federal Republic Of Nigeria, which represents the codified judicial ethics for the regulation of the behaviour of Judicial Officers put in place in 1998 and revised in February, 2016.

The principles behind the promulgation of the Code, the Officers to which it applies and the consequences for violations are contained in the Preamble and Explanatory notes as follows:

Preamble

The Nigerian Judiciary, as the Third Arm of Government under the Constitution of the Federal Republic of Nigeria recognizes, accepts and affirms that:

An independent, strong, respected and respectable judiciary is indispensable for the impartial administration of Justice in a democratic State.

It is the duty of every Judicial Officer to actively participate in establishing, maintaining, enforcing, and himself observing a high standard of conduct that will ensure and preserve transparently, the integrity and respect for the independence of the Judiciary.

The judicial duties of a Judicial Officer, which include all the duties of his office prescribed by law take precedence over all his other activities.

It is advisable that standard of conduct which a Judicial Officer is obliged to observe be prescribed and published for the information of and due compliance by the Judicial Officer himself and the public in general so that the objectives set out in this Code of Conduct may be achieved.

Therefore, this Code of Conduct for Judicial Officers of the Federal Republic of Nigeria is hereby adopted to serve as the minimum standard of conduct to be observed by each and every Judicial Officer as defined in this Code.

Explanatory notes

1. In this Code, the term “Judicial Officer” shall mean a holder of the office of Chief Justice of Nigeria, a Justice of the Supreme Court, the President or Justice of the Court of Appeal, the Chief Judge of the Federal High Court, the President or Judge of the National Industrial Court, the Chief Judge or Judge of High Court of a State and of the Federal Capital Territory, Abuja, the Grand Kadi or Kadi of a Sharia Court of Appeal of a State and of the Federal Capital Territory, Abuja, the President or Judge of a Customary Court of Appeal of a State, and of the Federal Capital Territory, Abuja and every holder of similar office in any office and tribunal where the duties involve adjudication of any dispute or disagreement between person and person (natural or legal) or person and Government at Federal, State and Local Government levels including the agents and privies of any such person.
2. Reference to the masculine gender shall include females.

Application of the Code

1. The Code applies to all categories of Judicial Officers throughout the Federation as defined in this Code.
2. Violation of any of the Rules contained in this Code shall constitute judicial misconduct and or, misbehavior and shall attract disciplinary action.

RULES

1. In the performance of his duties, a Judicial Officer shall adhere and observe strictly the rules set out in the Code.

Non observance of these Rules shall constitute misconduct or misbehavior.

2. The Preamble to this code shall be construed as an integral part of the Code and its provisions shall be as enforceable as the provision of the specific rules in the Code.

PROVISIONS OF THE CODE OF CONDUCT

It is not my intention in this paper to set out the entire provisions of the Code but i will attempt to highlight the key areas and then proceed to discuss them within the space of time allocated to me by the organizers of this Refresher Course without following any particular order.

RULE 1 - Propriety and the appearance of propriety, both professional and personal.

RULE 2 - Personal Relations with individual members of the Legal Profession.

RULE 3 - Fidelity to the Constitution and the Law.

RULE 4 - Duty to abstain from comments about a pending or impending proceeding in any court in this country.

RULE 5 - Right to freedom of expression.

RULE 6 - Duty to abstain from involvement in public controversies.

RULE 7 - Duty in regard to the Judge's personal and fiduciary financial interest.

RULE 8 - Duty in regard to the Judge's, Family, social or political relationship.

RULE 9 - Responsibility of the Judge in regard to non judicial activities.

RULE 10 -Prohibition of acceptance of gift, bequest, loan, favour, benefit, advantage, bribe etc.

RULE 11 -Responsibility in regard to discharge of administrative duties.

RULE 12 -Disqualification.

RULE 13 -Duty of a Judicial Officer to regulate his Extra-Judicial Activities.

RULE 14 -Duty of a Judicial Officer in regard to travels within and outside Nigeria.

RULE 15 -Publication by a Judicial Officer while in service.

The code requires that a Judge should avoid any dishonest, immoral or inappropriate behaviour. He should avoid breaching the laws of the land. If he does, then public confidence in the integrity of the entire judicial system will be eroded especially when the same Judge may be called upon to try those who contravene the same law, another day.

He must maintain professional secrecy and avoid discussing any confidential information which he may acquire in the course of his duties with his spouse, friends or family.

A Judge must avoid improper social relationship that may give members of the public an appearance that he will not be impartial in deciding cases.

In every of his activities, a Judge must show clearly that in respect to or in connection with proceedings in his court, he shall remain impartial. He is required to harbor no prejudice, passion or personal feelings against any party while deliberating over cases submitted to him for adjudication. He is required to evaluate facts as presented to him by the parties in a balanced manner without any predilection. He must hold the balance of the scale of Justice evenly.

It is important to emphasize that it is a fundamental requirement of impartiality that Justice must not only be done but must manifestly and undoubtedly be seen to be done. See: **THE ADMIN. & EXEC. OF THE ESTATE OF ABACHA VS. EKE-SPIFF & ORS (2009) LPELR-3152 (SC).**

The imperative for the impartiality of a Judge in the discharge of his judicial duties is aptly captured in the words of Irving R. Kaufman, Chief Judge of the Manhattan based U. S. Court of Appeal for the second circuit reported in the Time magazine of May, 1980, as follows:

“Whichever side you’re on, we are not on your side or your opponent’s side; you must persuade us not that you’ve got money or that you’ve got votes, but that your cause is lawful and just.”

Besides the requirement of impartiality demanded of Judicial Officers by the Code, Section 36 (1) CFRN as amended also provides for the Constitution of independent and impartial courts as follows:

“In the determination of his civil rights and obligations a person shall be entitled to a fair hearing within a reasonable

time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality."

It follows therefore that in any proceedings where he feels that his impartiality might be in doubt, a Judge should disqualify himself from such proceedings. Instead of outrightly disqualifying himself however, a Judge may disclose on the record the reasons why he feels he should not hear a case and allow parties and their counsel to decide whether in spite of the disclosed disqualifying factor, they still want him to proceed with the case. If the parties and their counsel decide that the reasons which the Judge gives for disqualifying himself are immaterial and that he can proceed with the case, such decision must be put on record and the Judge may then proceed with the matter.

In the case of **OLUE & ORS VS. ENENWALI & ORS (1976) LPELR – 2612 (SC)**, learned counsel to the appellant argued that the trial was unconstitutional and therefore void because the trial Judge conducted trial in the case in which he formerly served as a counsel. It was the further argument of counsel that the trial Judge erred in failing to observe that the consent of the parties cannot amount to a waiver of his disqualification to act as a Judge under Section 22 of the Constitution of Nigeria, now Section 36 of the 1999 CFRN as amended.

In dismissing the appeal, the Supreme Court held inter alia,

"In the circumstance of the present case we cannot see how the independence or the impartiality of the learned trial judge could be impeached. The learned trial judge expressly drew the attention of counsel and their clients to the fact

that he was counsel to one side at the early stages of the proceedings and offered to withdraw from continuing with the proceedings. Both counsel and clients expressly wanted the judge to go on. We cannot see how Section 22 can apply in this case. We also consider the argument of learned counsel for the respondents, that the parties have expressly waived their rights under Section 22, as well founded.

The right to challenge or impugn proceedings of any Court or Tribunal which was tainted by the adjudicator being disqualified by interest or likelihood of bias may be lost by express or even by implied waiver of the right to object to the adjudicator at the first opportunity during the proceedings."

A Judge is permitted to engage in the arts, sports and other social and recreational activities provided they do not adversely affect the dignity of his office or interfere with his judicial work.

He should avoid taking or accepting any chieftaincy title while in office.

The Judge is allowed to own investments and real property but must not be involved in the management of the investment as Officer, Director, Manager, Adviser or employee of any business.

The Judge and members of his family and staff shall not ask for or accept any gift, favour or loan in connection with the discharge of his judicial duties. This does not however prevent him from accepting gifts from relatives or personal friends on occasions and in quantities that are recognized by custom e.g at wedding, naming or burial ceremonies. He may accept books or law reports supplied by publishers on a complimentary basis or loan

from banks or lending institutions on terms generally available to members of the public.

A Judge should always reflect on how his attendance of an event or acceptance of a gift would appear in the eyes of the public.

A Judge shall not practice law nor act as an arbitrator while still serving as a Judicial Officer. He should not engage in drafting conveyance, giving legal advice etc. He must, as much as possible, desist from personal litigation and may do so only as a last resort.

A Judge must discipline himself and staff on resumption and closing times. He must ensure prompt disposal of cases in his court. This, he can achieve by sitting in court promptly at 9.00 a.m. and if he will not be able to do so, either due to ill health or for some other good reasons, he must notify parties or their counsel and prosecutors on time through his registrar or clerk.

At this point, i will like to specifically refer to Rule 11 (ii) of the Code, on the supervisory role placed on the Judicial Officer over his staff, which provides that,

“A Judicial officer should require his staff and other court officials under his direction and control to observe the standards of integrity and diligence that apply to him.”

Because of the complimentary and supportive role played by Judiciary staff members in the day to day administration of justice, the Code of Conduct for Court Employees which demand a minimum standard of conduct, was adopted and prescribed with effect from 1st March, 2004.

In summary, the Code of Conduct for Court Employees provides that Court Employees:

1. Shall use the resources, properties and funds entrusted to their care judiciously, transparently and solely in accordance with prescribed financial regulations.
2. Shall not grant media interviews in their personal capacity or disclose confidential information or give out official documents without authorization.
3. Shall not associate with lawyers, litigants and members of the public in a manner that will create reasonable suspicion or appearance of partiality or favoritism.
4. Shall not belong to any club or society which membership is incompatible with their work.
5. Shall be diligent in the discharge of their duties and avoid discrimination on account of tribe, religion or gender.
6. Shall not use their offices or positions for corrupt purposes e.g taking money from litigants or other members of the public to prepare affidavits or other documents; touting themselves as capable of influencing the course of justice; embezzling Court fees and fines; accepting gifts or benefits as a condition for performing their official duties etc.
7. Shall extend courtesy to members of the public who come to their offices to transact official business.
8. Shall conduct themselves in a manner that promotes public confidence in the integrity, impartiality and independence of the judiciary.

9. Shall be punctual to work and dress formally while on duty.

A Judge must give full right of hearing to every person legally interested in a proceeding or his legal representative and except as authorized by law must not encourage or undertake communications in a pending or impending proceedings with one party in the absence of the other.

A Judge must not receive litigants or their counsel in his chambers and if it becomes necessary to do so, it must be done in the presence of both parties and their counsel and with his registrar, clerk and orderly in attendance.

Although the Rules of the Federal and various States High Courts and the High Court of the Federal Capital Territory empower the High Courts to grant *ex parte* orders under certain conditions, the code enjoins a Judicial Officer to avoid the abuse of the power of issuing interim injunctions, *ex parte*.

The justification for the grant of *ex parte* Order of injunction is stated clearly in the Supreme Court case of **KOTOYE VS. C.B.N. (1989) 1 NWLR (PT.419) AT 449 PARAS B – C** per Nnaemeka – Agu JSC as follows:

".....the basis of granting any ex parte order of injunction, particularly in view of section 33(1) of the constitution of 1979, is the existence of special circumstances, invariably, all – pervading real urgency, which requires that the order must be made, otherwise an irretrievable harm or injury would be occasioned to the prejudice of the applicant.

Put in another way, if the matter is not shown to be urgent, there is no reason why ex parte order should be made at all: the existence of real urgency, and not self imposed urgency, is a sine qua non for a proper ex parte order of injunction”.

An exparte order of injunction serves very useful purpose in an emergency situation where it is impossible to serve the other party or where the delay which will be caused by proceeding in the ordinary way of giving notice might entail irreparable or serious mischief.

In exercising its extra ordinary jurisdiction of granting an injunction without hearing the person to be adversely affected thereby, it is necessary for the court to examine the time when the applicant first become aware or gets notice of the act or conduct sought to be restrained and the time the application is brought so that the court is not misled into making an order based on self induced urgency.

Because it is a one party proceeding which may adversely affect another party who is not heard or given the opportunity of being heard, exparte orders of injunction are liable or prone to abuse.

Instances of abuse of power to grant interim orders exparte were highlighted by the Supreme Court in the case of **KOTOYE VS. CENTRAL BANK OF NIERIA (Supra)** at page 450 Paragraphs F – H as follows:

“Above all, this court ought to take notice of the numerous cases of abuse of ex parte injunctions that have come up in recent times.

The operation of a bank has been halted on an ex parte order of injunction granted to a person who had been removed as a director of the bank. Installation ceremonies of chiefs have been halted in the same way even though the dispute had been dragging on for years.

The convocation ceremony of a University has been halted on an ex parte application by two students who failed their examinations. As the courts cannot prevent such applicants from exercising their constitutional rights by stopping such applications, they can, and ought, at least see that Justice is done to the victims of such exparte applications and orders by ensuring that the applicant fully undertakes to pay any damages that may be occasioned by any such order which may turn out to be frivolous or improper in the end."

The Revised Code of Conduct For Judicial Officers of the Federal Republic of Nigeria admonishes Judicial Officers to, *".....avoid the abuse of the power of issuing interim injunctions, exparte."*

An abuse of the power to grant interim orders, exparte amounts to a misconduct which shall attract disciplinary action, including dismissal from service, as has been done in some cases in the past.

My advice is that when a Judge is confronted with a motion exparte for the grant of an interim injunction, except in cases of real and extreme urgency, instead of granting the motion exparte, it is safer to grant an order in favour of the applicant for the other party to show cause why the order sought by the applicant should not be made, or direct the motion to be made on notice to the parties to be affected thereby.

The Judge must keep and maintain an up to date diary for his court which will show clearly the date and stage of hearing in each case. He must set a time frame for his cases. This will enable him to undertake self assessment.

A Judge must cultivate the habit of reading law reports and other law books, even when there are no pending judgments or rulings, in order to enrich his knowledge, intellect, understanding and capacity to present lucid and compelling decisions. This is because, as Justinian, the great Roman jurist said, *"ignorance of the Judge is the calamity of the innocent."* I must not forget at this stage to commend the tremendous efforts of the Administrator of the National Judicial Institute, Hon. Justice R. P. I. Bozimo OFR and her able Lieutenants for embarking on continuous training of Judicial Officers and Court Employees which have the effect of enriching our knowledge and intellect.

A Judge must be armed with some important resources like the Penal Code, Criminal Code, Administration of Criminal Justice Act/Law, Criminal Procedure Code, the Nigerian Constitution, Law of Evidence e.t.c and decided cases on issues of procedure and evidence which will become handy in writing bench rulings without having to adjourn to another day. He must keep a personal diary where he can write down the common authorities he comes across in the course of his research which can easily be accessed when the need arises. This will have the effect of shortening the time a Judge requires to prepare and write his judgments thus aiding compliance with the mandatory provision of Section 294 (1) CFRN as amended which requires that the decisions of Courts must be delivered in writing not later than 90 days after conclusion of evidence and final addresses.

In addition to keeping a diary of case law, a Judge should have on the wall of his chambers a chart showing his case flow efforts on a monthly or quarterly basis.

This chart should show the number and type of cases filed in a month or quarter, those pending from previous month or quarter and those that have been disposed. The chart should also include a list of cases pending for rulings and judgments and their dates. All this will help the Judge to adjust according to the result of the chart.

It is suggested that a Judge may take the following steps at ensuring speedy disposal of cases filed in his court.

- (1) He must make sure that no case is left in the registry cooler for any reason whatsoever.
- (2) He must not give long dates to cases to avoid undue delay.

A Judge must have a good working relationship with lawyers and prosecutors in order to secure their cooperation in the speedy hearing and disposal of cases.

He must see to it that his registrar monitors the activities of the bailiff to ensure that processes are served with dispatch and that affidavits of service are filed in the correspondence file. Filing of affidavit of service is very important as evidence of service or non service of court processes which will guide the court on whether or not it should proceed with the business of the day. See: **UMAR & ANOR VS. OKEKE [2016] LPELR – 40258 (CA) PAGES 7-8 PARAS B – A.**

In fixing dates for his cases, the Judge can group together for hearing, cases which raise practically the same or substantially

similar issues so that they can be disposed together. This will in a way shorten the hearing period of cases since the same law principle or decided case can be used for several similar cases that are heard contemporaneously.

Also in fixing dates, priority must be given to criminal cases especially those that involve liberty of citizens and civil cases with affidavit of urgency or those which by their nature require early attention or resolution of issues.

The assignment of dates is not to be left to the court clerk but must be undertaken by the Judge himself, after going through the case file.

A Judge must ensure orderliness in the management of the cause list. He must not fix too many cases for hearing in one day which will likely sap his energy and thus render him unable to take witnesses who have come to give evidence with the result that they become disillusioned about the case. He should fix few cases for hearing together with some others for mention. By so doing, the Judge will be physically and mentally fit to listen with rapt attention, to the evidence of few witnesses called after which he can go back to his chambers to analyze the court proceedings. He may mix simple cases with complex ones or those which require the calling of several witnesses. It is necessary that in fixing dates for cases especially those that have been mentioned in court, the Judge must secure the input of litigants or their counsel and reflect this in his record. This approach will reduce the practice of counsel or litigants writing to court for adjournment of cases on the pretext that the date is not convenient or that they are in another court or for any other flimsy reason and thus give the court the discretion to take

appropriate action when a litigant or his counsel is absent in court.

He must not be in the habit of granting adjournments as a matter of course especially when a date has been taken with the consensus of litigants or their counsel. An adjournment must be granted only for good cause shown. Because experience has shown that application for adjournments is a great hindrance to quick dispensation of justice, a Judge must be strict with the exercise of his discretion to grant requests for adjournments. A case fixed for hearing must as much as possible be adjourned from day to day until it is finally concluded.

In performing his judicial duties, a Judge must maintain order and decorum. He must be patient and courteous to all those who appear before him as parties, counsel and witnesses.

He must possess self control and must never lose his temper or be angry in court.

According to NIKI TOBI JSC, of blessed memory, in his book **The Nigeria Judge** at page 74,

"The word anger is only one letter short of Danger, and yet it is the only one letter different from angel. So much harm will be done to the judicial process if a Judge is regularly angry. Since the Community of any angry people is a danger centre, a Judge should try as much as he can to ensure that his court is not a "danger centre"."

In the case of **OBIARA VS. OSELE (1989) 1NWLR (PT. 97) 279 AT 296 PARA A** OBASEKI JSC of blessed memory admonished as follows:

“Judges should not lose their temper with counsel or litigants no matter how irritable they may be so that the composure required to administer justice may not depart from the temple of justice”

In **SALIM VS. IFENKWE (1996) 5 NWLR (PT.450) 564 AT 586 – 587**, the court commented strongly as follows:

“It is the height of irresponsibility for any Judge to take undue advantage of his judicial immunity to harass, abuse and intimidate (litigants) no language is strong enough to condemn the conduct of the Judge in these proceedings. He had abdicated the known norms of judicial conduct and has, therefore, brought the sacred duty of adjudication into disrepute.”

Although he is the master of his court and as such must be in total control of proceedings, a Judge should avoid constant and unnecessary interventions. He is entitled and in fact required to ask pertinent questions, but he must not descend to the arena of conflict by taking over the prosecution or conduct of a case as this may rob him of the appearance of impartiality and lead an appellate court to order a retrial on the ground that he has not conducted a fair trial with the result that time and resources of parties and the court are wasted.

He should avoid interruptions but may engage in courtroom interactions to afford counsel the opportunity to explain some points in his address or arguments which he finds difficult to follow.

In the case of **OKODUWA VS. THE STATE (1988) 2 NWLR (PT. 76) 333 AT 335** where the Supreme Court ordered a retrial

on the ground that the trial Judge descended to the arena of conflicts, NNAEMEKA-AGU JSC said:

“Another complaint of the learned counsel for the appellants is that the learned Judge substantially took over the prosecution of the case and examined and cross-examined the witnesses as well as the appellants at will. At places his questions were more devastating to the defence than those asked by the D.P.P. himself and often dealt with facts which were not dealt with by either side. By so doing he quit his position of an impartial umpire and descended into the arena of the forensic conflict.”

Also in the case of **CANDIDE - JOHNSON VS. EDIGIN** reported in **(1990)1 NWLR (PT. 129) 659**, an acting Chief Magistrate in Kano ordered the detention for a couple of minutes of counsel who appeared for an accused person before her in the case of **COMM. OF POLICE VS. OBONG ETUKUDEM KA/70CB/87**. The counsel thereafter applied by a motion on notice to the Federal High Court, Kano for the enforcement of his fundamental rights, which application was dismissed.

On appeal to the Court of Appeal by the appellant, it was held per Achike, JCA at pages 671 – 672 as follows:

“In my humble view, it was the respondent that triggered off the vituperative altercation with the appellant when she said, inter alia.

“I do not record nonsense, it’s a bloody waste of time and please keep quiet when I am talking.”

Apparently, when tempers rose rather meteorically, the respondent, exacerbated by the situation, unleashed this incisive question:

“When did you leave the law school?”.

The response, going by the record, was equally unrelenting

“I will refuse to answer that question in the rudest manner.”

It was the refusal to answer this question, according to the record, that broke the camel’s back, and led to the detention of appellant for contempt of court. It was unfortunate, to say the least, for the respondent, according to the records, to have taken leave of her exalted bench, invited counsel to extra-judicial dialogue and thereafter descended into the arena of vituperative conflict with him. Is the situation narrated above reasonably defensible or covered by judicial immunity?”

The Court of Appeal answered the question in the negative, allowed the appeal and quashed the order of committal for contempt and detention of the appellant.

In the case of **ONIBUDO VS. AKIBU (1982) 7SC. 60** Akpata JSC of blessed memory said the following on the power of a Judge to control proceedings in his court:

“There is no doubt that the duty of a Judge to have complete control of the proceedings before him is extremely desirable in the administration of justice. In pursuance of his duty, there is the incidental duty of intervention by way

of questions to make obscurities or ambiguities in the evidence clear and intelligible....."

A Judge must strike a balance between his power to control proceedings in court and ask questions to clear ambiguities and obscurities as stated in the case of **ONIBUDO VS. AKIBU (Supra)** and the caution not to descend into the arena of conflict which the Magistrate in the case of **CANDIDE - JOHNSON VS. EDIGIN** and the Judge in the case of **OKODUWA VS. THE STATE (Supra)** failed to heed.

The comportment of a Judge is reflected in the manner of his dressing in and out of court. It is only when a Judge is properly dressed that he can enforce discipline on dress code among members of the bar that appear before him in court. His dress must be clean and well ironed. Outside the court, he must not be outlandish in his manner of dressing but must dress according to his status in the community to which he belongs.

Because Judges are constantly on the radar of the general public, it is important that we should constantly strive to strike balance between what is convenient for us and what is right in particular circumstances. Judges must always exercise self control and restraint on the type of dresses they wear and and great caution on the places they patronize to eat and drink or exercise, especially given the current security challenges in the country.

A Judge should be mindful of the company which he keeps. Where he is seen in the company of people of dubious and doubtful character, members of the public may view him as one of them, following the adage that birds of the same feather flock together.

In order to avoid the possibility of being compromised by people of doubtful character and influential members of the society with ulterior motive, a Judge must choose where to go and where not to go, bearing in mind the heavy burden of his office and the need to avoid anything that will bring the image of the judiciary into disrepute.

Judges should regard themselves as brothers and interact in a friendly manner. They should not form factions based on ethnic or religious considerations.

Judges should work in harmony with one and another by sharing knowledge and court experience. This will have the salutary effect of harmonizing their views on similar issues arising from the cases in their courts.

Judges must understand that the roles of the Bench and the Bar are complementary. The duty which the Bar owes the Bench is unqualified respect and assistance in the presentation of cases in court, while the Bench on the other hand owes the bar the duty to be an attentive listener and not an investigator.

A Judge should not shout at parties or counsel who represent them in proceedings before him because respect begets respect.

It is important to work in harmony and interact smoothly with the Bar for easy dispensation of justice. Where a counsel conducts himself improperly before him, a Judge should not rush to wield the big stick but rather, he should point out to counsel the errors committed or make a report to the Bar through the office of the Chief Registrar.

The power of the Judge to punish for contempt should not be employed or invoked to stifle or punish criticism of the judiciary or of the individual Judge. It is advised that criticisms outside the courtroom are better ignored.

Contempt in the face of the court which amounts to an attack on the integrity and authority of the court and administration of justice must however be punished for the protection of the court.

In his relation with individual members of the Bar, the Judge must avoid circumstances that will create reasonable impression of favoritism or partiality. He should not allow his office, residence or personal facilities to be used by a member of the Bar for the service of his client. He should be wary of taking gifts or accepting accommodation or attending parties given by lawyers, which may create the reasonable impression of the existence of a special relationship that may likely influence the Judge to favour a lawyer in the course of his judicial duties.

A Judge is entitled to freedom of expression, belief, association and assembly but must exercise such rights in a manner that will preserve the dignity, integrity, impartiality and independence of the judiciary.

The Judge, in the words of the code, must *“adhere strictly to political silence”* which requires him to not ordinarily involve in public discussions that may undermine confidence in his impartiality.

The Judge shall ensure that his family, friends, social and professional colleagues who are personally close to him do not improperly influence the performance of his judicial duties.

Judicial stationeries should not be used by the Judge in his private capacity with the aim of drawing attention to his position as a Judge for the purpose of influencing the recipient of the letter.

Reference letters must not be written for unknown persons but may be written for court employees, staff or family members.

A Judge may participate in non judicial activities so long as they do not diminish the dignity of judicial office or interfere with performance of judicial duties.

A Judge should regulate his travels within and outside Nigeria in a manner that will not adversely affect the performance of his judicial duties or cause delay in the administration of justice.

He shall not travel out of his duty station during working days except for special reasons and after clearance is given by the head of court. Where a Judge wants to spend part of his vacation outside his duty station, he should leave contact address with the Chief Registrar.

There is no need for a Judge to take permission from his Head of Court to travel outside Nigeria on vacation but he should leave his contact address with the Head of Court and the Chief Registrar.

To attend conference outside Nigeria, a Judge must seek permission of the Chief Justice of Nigeria through his Head of Court.

This requirement is however not necessary where the Judge is nominated by his Head of Court to attend such conference with the approval of the Chief Justice of Nigeria.

A serving Judicial Officer shall not publish or cause another person to publish a book on his behalf which may contravene the code of conduct for Judicial Officers. Where however a Judge publishes or causes to be published a book, he must ensure that the publication is not used to raise funds which will go well beyond the normal cover or market price of such books or used as a ploy to solicit gifts for the Judge or those connected with him.

Rule 10.1 (iii) provides that:

“A Judge shall not give or take and shall not encourage or condone the giving or taking of any benefit, advantage, bribe, however disguised for anything done or to be done in the discharge of a judicial duty.”

This rule is aimed at preventing in the judiciary, corruption which has been described as the misuse of public power for private gain and manifests in the form of bribery, graft, nepotism, fraud, embezzlements etc. A Judge should not use his official position for his personal gain or for the gain of his relations or friends. He should also not use his position to influence the outcome of any court case pending before his colleagues.

Corruption is a plague that Judges must all avoid. Once a Judge forms the habit of accepting bribes, words will quickly spread that justice can be bought in his Court. This will make the Judge to lose respect not only of the members of the public but also of the giver of the bribe.

One of the corrosive effects of corruption on the society is that it brings not only the corrupt Judge to public odium and ridicule, but also debases and erodes public confidence in the ability of the

judiciary to administer justice, thus leading the people to engage in self help.

Permit me at this stage to quote from the lecture delivered by the then Acting Chief Justice of Nigeria, Hon. Justice M. L. Uwais GCON, CJN (rtd) on the occasion of the Opening Ceremony of Induction Course for newly appointed Judges and Kadis in September, 1991, as follows:

“The image of the Judiciary is determined by what we all as Judicial Officers do in the performance of our duties and as individuals in the dispensation of justice. The ordinary citizen builds up his image of the Judiciary by what we all do or are going to do in our different courts.

To be authentic in his role the Judicial Officer must be an absolutely honest man, a man of exceptional integrity in financial, political and social matters. A Judge or Magistrate who is susceptible to bribery in any form, or who favours his relatives, friends or political sponsors either in the conduct of litigation or in the decision he finally arrives at, is unworthy of his post and, for that matter, is unworthy of membership of the legal profession. If a doctor or an engineer or a businessman is caught in dishonesty, the disclosure will not put medicine or engineering or business into general disrepute. But Judges and Magistrates are different and more representative. Revelations of Judicial corruption create suspicion and loss of confidence in legal processes and endanger public respect for law.

The image of justice in our courts very largely depends on the intellectual, moral and personal qualities of the men and

women who are called to preside over the courts. The magnitude and responsibility of doing justice according to law calls for a great deal of confidence to be reposed in the Judiciary. The Independence of the Judiciary which we constantly advocate cannot mean independence of the particular Judge or Magistrate to follow his own line in isolation. It does not mean freedom for Judges and Magistrates to sit in court when they please and rise to go home when they please. The eyes of the public are on us and we have to behave properly.

The profile of a Judicial Officer and his comportment in and out of court go a long way in the assurance which the members of the public must have that our system for the administration of justice guarantees that Justice is in fact done. All Judicial officers, whether as Judges or Magistrates, have individual and collective duty to give that guarantee, not only by the way we are seen to dispense justice in our courts but also in the way in which we live our lives.

In the strains and demands upon us in our role as Judges or Kadis or Magistrates we ought to keep our heads amidst a fast declining standard of advocacy and an astonishing fall in morality. Whenever we fail in probity or in energy or in patience or in fidelity our failure is at once seen and it damages our capacity to do justice. It reflects not only on the court over which we sit. It reflects on the entire Judicial institution which we represent.

It, therefore, becomes essential for any Judicial Officer, newly appointed, to acquaint himself with the heavy responsibility that his new office reposes upon him. Some of

the dos and don'ts of the office cannot be easily acquired on the job without the tutorship of old and experienced Judicial Officers”.

As stated in the preamble to the Code of Conduct for Judicial Officers, it is the duty of every Judicial Officer to maintain, enforce and observe a high standard of conduct in order to preserve public confidence in the independence and integrity of the judiciary.

Since the National Judicial Council established by Section 153(1)(i) of the Constitution has fashioned out the Codes of Conduct for Judicial Officers and Court Employees in order to ensure a very high standard of behavior, what is left to be done is to increase public awareness about the Codes and encourage court users and members of the public to report any breaches to the Council which in my view is constituted in a manner that guarantees fairness and transparency.

I will like to conclude my paper by making reference to an address delivered by the late President J. F. Kennedy, of the United States of America to a joint convention of the General Courts of the Commonwealth of Massachusetts on Monday January 9, 1961 reported in the back page of THE PUNCH NEWSPAPER OF WEDNESDAY OCTOBER 9, 2013 where he said:

“When at some future date the high court of history sits in judgment over each one of us – recording whether in our brief span of service we fulfilled our responsibilities to the state – our success or failure in whatever office we hold, will be measured by the answers to four questions - were we truly men of courage? were we truly men of

judgment?...were we truly men of integrity? were we truly men of dedication?"

As Judges or Kadis each one of us must endeavor to exude character, courage, dedication, integrity and learning in all our activities in and out of Court so that Justice is not only done in the cases submitted to us for adjudication and resolution but is also manifestly seen to be done, transparently and impartially.

My Lords and dear participants, let us all strive to keep to the judicial oath which we willingly subscribed to on our appointments and the judicial ethics, both written and unwritten which apply to our vocation. We should not, in the discharge of our judicial duties, entertain the fear of any individual or institution or be swayed by the sentiments of tribe, religion or family relationship. We should not allow ourselves to be cowed into any unethical conduct by threat or intimidation from any quarters whatsoever. We should fear only God, our creator, who is the Judge of all Judges, the possessor of power over all things and to whom we shall give account of our stewardship here on earth, on the day of judgment.

I thank you all for this wonderful opportunity given to me to share my thoughts with you on this very important topic and wish you all God's guidance and protection.

S. D. Kawu
Chief Judge
Kwara State

22ND March, 2021.