

**CURBING DELAYS IN THE ADMINISTRATION OF
JUSTICE IN THE LOWER COURTS**
**BEING THE TEXT OF A PAPER DELIVERED AT THE
2022 ALL NIGERIA JUDGES' CONFERENCE OF THE
LOWER COURTS; BY A.O.OMOTESHO ESQ.; HELD
ON 14TH – 18TH NOVEMBER, 2022.**

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1.0 **INTRODUCTION:** I feel highly honoured and privileged to contribute to a discourse in honour of our revered but often overlooked category of courts, the Lower Courts. The theme of this Conference: *Enhancing the Role of the Judiciary in Nation Building*; could not have come at a better time considering the general state of our country, Nigeria, as it relates to our Judicial system to which the Lower Courts belong. For the purpose of this discourse, the courts highlighted are the

¹ A.O.Omotesho Esq., being text of a paper delivered at the 2022 ALL Nigeria Judges' Conference of the Lower Courts; 14th – 18th November, 2022.

Magistrates' Courts, the Customary Courts and the Area Courts.

2.0 HISTORICAL BACKGROUND

The Nigerian Magistrate is a creation of law dating back to the early colonial days. The foundations of the legal, and indeed, the Judicial systems of Nigeria and Ghana may be said to have been laid by the Supreme Court Ordinance of 1876 which established the Supreme Court of the Colony of Lagos with effect from March 31, 1876. This Court, the only court then in existence had jurisdiction not only over the Colony of Lagos but also over some future colonies or areas to be administered by the colonial government, having been established as:

“... the Supreme Court of the Judicature for the Colony of and for the territories thereto near and adjacent wherein Her Majesty may at any time before or after the commencement of this Ordinance have acquired power and jurisdiction”².

As can be seen from the foregoing, the earliest record of the Magistracy was in the establishment of the Supreme Court of Her Majesty's Settlement of Lagos presided

² Elias T.O.; The British Commonwealth: *The Development of its Laws and Constitutions*; Vol. 14, Nigeria, 1967. Stevens.

over by a Chief Magistrate. This Court according to records would appear to have been first established in Olowogbowo area of Lagos in January 1862. In September 1863, it was reconstituted and the title of Chief Magistrate Court was substituted for the Supreme Court. Its jurisdiction in both civil and criminal equivalent fashioned after Her Majesty's Court of Queen's Bench, Common Pleas and Exchequer in England remained the same.

3.0 CUSTOMARY/AREA COURTS: Customary/Area Courts are in the category of courts established or deemed to have been established by State Houses of Assembly pursuant to Section 6 (4) and (5) (k) of the Constitution of the Federal Republic of Nigeria, 1999, as amended. These courts had been in existence long before the advent of the British colonial administration in Nigeria. Formerly called native courts, they were indigenous courts which were set up as each community found it expedient to establish, and these courts administered customary laws in their areas of jurisdiction. It is these hitherto native courts that are

today known as Customary/Area Courts in the Southern and Northern parts of Nigeria respectively.

4.0 *Role of the Judiciary in the administration of justice:*

Courts play a significant role in the administration of justice as evidenced in the legal and political stability of the country. The Judiciary has over time in principle been labelled as the last hope of the common man in the society having regards to the colossal expectations and responsibility of dispensation of justice assigned to them. One of the prime objectives of the Judiciary is the defence and upholding of the objectives of the constitution as well as providing assurance on the Rule of law. Thus, the Judiciary is that Arm of Government within which the society seeks redress and settlement of conflicts and disputes that cannot be effectively addressed elsewhere. The efficiencies portrayed by courts are not only shown in their abilities to be fair and neutral, but also in quick dispensation of justice. However, there have been breaches in meeting up with these profound qualities and consequently a resultant effect is the loss of confidence by some members of the public due to delay or slow administration in the court system or in the Judiciary as a whole.

4.1 Inferior Courts: Inferior courts are courts established by laws other than the Constitution and are inferior because its proceedings are described as summary as well as its jurisdictions.³ This paper therefore seeks to appraise the need for quick and efficient disposal of cases, the causes of delay in the administration of justice in the lower courts as well as an examination of the jurisdiction of courts that fall under the class known as inferior or lower courts in Nigeria. In addition, the paper proffers solutions to the issues identified as the bane of administration of justice in this category of courts.

4.2 Jurisdiction: Jurisdiction is essentially the authority which a court of law has to determine matters or issues which are litigated before it or to take cognizance of issues presented in a formal way for its resolution. The limits of jurisdiction are prescribed by the constitution or by the enabling statute under which the court is constituted. Jurisdiction may be extended or restricted by statutory enactments.⁴

The basis of jurisdiction of Nigerian courts is the Constitution of the Federal Republic of Nigeria. By virtue of the 1999 Constitution of the Federal Republic of Nigeria (as amended),

³ <http://projecttopicsforcomputerscience.blogspot.com/2015/08/inferior-courts-in-nigeria.html>. Accessed 21st July, 2022

⁴ International Journal of Business and Applied Social Science Vol.2, No.3, March, 2016, page 4.

all courts in the Nigerian federation derive their jurisdiction or competence from the constitution.⁵

Nigerian courts are distinct creations of statute embedded in the constitution and there is no court empowered with jurisdiction without the backing of an enabling statute. When a court has no jurisdiction, it is a futile exercise for that court to embark on the hearing of a matter.⁶

4.2.1 **Jurisdiction as a fundamental condition precedent to entertain action**: Jurisdiction is so fundamental that it is a condition precedent to any action which calls for determination before the court. Jurisdiction is usually an important issue in matters before the court and therefore goes to the root of the whole action. Once the issue of jurisdiction is raised during a proceeding before the court, it should be decided at the earliest stage of the proceedings in order to save the time and before the merits of the case are considered and determined.⁷

While superior courts of Record are courts established under the Nigerian constitution and they have unlimited jurisdiction

⁵ Osadebay v. A.G. Bendel (1991) 1 N.W.L.R. Pt. 169, 525 at pp. 557 – 558; Din v. A.G. Federation (1986) 4 N.W.L.R (Pt. 87) 147 at 171

⁶ Osadebay v. A.G. Bendel (1991) 1 N.W.L.R PT. 169 at p.57; A.G. Federation v. Sode (1990) 1 N.W.L.R. (Pt. 128) 500 at 503, 504, and 505.

⁷ International Journal of Business and Applied Social Science Vol.2, No.3, March, 2016, page 5.

in terms of awards they also have the power to commit anybody for contempt committed either in the face of the court or out of the court. Inferior courts on the other hand are limited in terms of awards and types of matters they can handle. They are very important in our judicial system as they handle a substantial portion of disputes locally, and about 75% of the matters both civil and criminal matters are settled at this level.⁸

Concisely, it is important to examine and analyze the various courts and their respective jurisdictions.

a) Native (Area) and Customary Courts –

The Native and Customary Courts in respective states are established under the Customary Courts Law for the respective States and each Court is established not by an enabling Statute but by Warrants issued by the enabling authority for example, in the Eastern States, the Commissioner for Justice and in Lagos State the Attorney-General/Commissioner for Justice; and in the Northern States by Warrant by the Chief Judge of the State. The warrant defines the jurisdiction,

⁸ <http://projecttopicsforcomputerscience.blogspot.com/2015/08/inferior-courts-in-nigeria.html>. Accessed 21st July, 2022

powers, and quorum of the court established. Area and Customary Courts are the responsibility of the Local Government Council. Customary courts members including the Presidents are appointed by the Customary Courts Judicial Service Committee for the State.⁹

A Customary Court has both civil and criminal jurisdiction. In certain civil matters the Customary court has unlimited jurisdiction such as Matrimonial cases and other matters between persons married under Customary law, that is matrimonial causes and related matters under customary law. In addition to the foregoing customary courts also have the jurisdiction to entertain suits relating to the guardianship and custody of children under customary law. Therefore it is sacrosanct to note that the customary courts have jurisdiction over the following:

- 1) causes and matters relating to inheritance upon intestacy and the administration of intestate estates under customary law,

⁹ Ibid

- 2) other cases under customary law – provided it would be in an exercise of criminal jurisdiction in any offence against the provisions of an enactment, which expressly confers jurisdiction on the court;
- 3) Offences against rules and bye-laws made by Local Government Councils or having effect as if so made under the provisions of any enactment and in force in the area of jurisdiction of the court and lastly;
- 4) Contempt of court committed in the face of the court.

With regard to the issue of service of processes, the Federal Legislature has enacted uniform regulations on service of processes. The Sheriffs and Civil Process Act allows the Order of judgment of High Court of a state to be registered in the High Court of another State and so executed by the bailiffs of that state. Though the Customary Courts judgments are exempted from the Sheriffs and Civil Process Act, yet there is a reciprocal enforcement of Customary Courts judgment in each State. From the foregoing

it is clear that though there are State High Courts in Nigeria, they are merely for easy administrative purpose, as State Courts still exists within a united hierarchy of courts in Nigeria.¹⁰

b) Magistrate Court-

Magistrate Courts are established and governed by the laws of the various States and a creation of the State Houses of Assembly as a court of summary trials. There are various laws which provide for the establishment, constitution, jurisdiction, practice and procedure for all grades of magistrates.¹¹ These diverse grades of Magistrate courts adjudicate on majority of criminal cases with the exception of capital offences. Magistrate Courts also try several offences such as theft, stealing, house breaking or burglary as well as road traffic offences. In addition to the criminal jurisdiction exercised by the Magistrate Courts, in the south, this cadre of courts possess limited jurisdiction over civil claims and recovery of premises.

¹⁰ *ibid*

¹¹ See Section 6 of the Criminal Procedure Code of Northern Nigeria (applicable in most of the Northern States of Nigeria), Cap.30, LNN,1963.

5.0 CAUSES OF DELAY IN ADMINISTRATION OF JUSTICE -

There are several factors responsible for the delay in the smooth and quick dispensation of cases. It is evident that some of these factors include: poor or absence of basic infrastructure, convenient and comfortable courtrooms, lack of adequate funding, poor welfare and working conditions, lack of training and retraining of personnel and corruption. A concise discussion on the aforementioned is reproduced as follows:

1. Poor Welfare of Lower Court Judges/Magistrates –

The welfare of Magistrates or Judges no doubt in some states if not all leaves much to be desired. The remuneration is appallingly low and barely enough to cater for themselves or basic needs of their families. This poor Welfare places Judges/Magistrates under duress, hence frequent temptations for money outside their legitimate source of income thereby giving room to corruption.

2. Inadequate Court funding- The courts lack basic amenities such as proper furniture, internet and ICT facilities as well as proper storage for exhibits in the

instance of some magistrates courts. The resultant effect of this is a delay in administration of justice, whereby due to paucity of funds, many court facilities are dilapidated and not conducive as a working environment. It is also for this reason that the non – availability of working materials such as stationeries, record books etc remain prevalent in lower courts.

3. Obsolete court practices and Procedures- This is an instance which is prevalent, wherein lower courts still use long hand in jotting down proceedings. In addition, long adjournment of cases on the average for two to three months delays the justice of a matter. Moreover, the poor record keeping on the part of support staff working in the lower courts usually stifles the administration of justice in the lower courts.

4. Poor funding of other organs of Government- other organs of criminal justice system such as the Police, Correctional Services and even the Ministry of Justice play a role in delay of administration of justice. The lack of adequate facilities such as efficient vehicles by Correctional Services to convey defendants to and from court, also impede the smooth functioning of the criminal

justice delivery system. Suspects are not brought to court due to non-availability of motor vehicles and investigations are not thoroughly carried out due to paucity of funds. Incessant transfers of Police investigators to distant locations and lack of representation of defendants in court by officials of the Legal Aid Council are serious causes of delay.

5. Legal practitioners – Legal Practitioners have also figured out delay tactics to frustrate cases. They also cause delays in the administration of justice. The delay on the part of counsel sometimes is due to poor preparedness by counsel resulting in frivolous applications for adjournments. Furthermore, Counsel in criminal matters sometimes deliberately request adjournments for the purpose of ensuring the full payment of their fees or to beef up the fees in cases where they are paid on the basis of the number of appearances made.

6. Corrupt support staff- Supporting staff often times misplace or mal-handle case files or even Affidavits of service. Case files are at other times missing at critical stages of the case. Taking of bribe in exchange for giving

out confidential informations is also a common trend among the staff of the lower courts.

7. Obsolete or archaic laws and rules of court – This can be a clog in the wheel of speedy justice delivery. Sometimes, the procedural rules applicable in some area Courts, have not been updated since colonial times, thus causing delays.

6.0 RECOMMENDATION

The discussions above have shown the various bottlenecks in the administration of justice in the Lower Courts. In order to nip these bottlenecks in the bud, the following suggestions are hereby proposed, to wit:

1. Modernization of the court facilities and equipment including libraries, Court room furniture as well as the provision of Information and Communication Technology (ICT) tools such as computers and internet for research purpose by the lower court judges. Computers will also aid in typing judgments.
2. **Regular Training:** Continuous training of Magistrates, Customary Court and District Court Judges as well as all other

categories of judicial staff. Specialized training in ICT must be given priority.

3. **Increase in Manpower:** More Magistrates and District Judges should be appointed by the various Judicial Service Commissions of the States, this is necessary to enable faster dispensation of justice.

4. **Provision of Basic Infrastructure** such as new court rooms and the renovation of old and dilapidated buildings. In addition, befitting residential accommodation for Magistrates and District Judges must also be provided.

5. Improved conditions of service for all categories of staff. Official vehicles should be provided for Magistrates and District Judges, also the salaries and allowances of Lower Court Judges must be reviewed upwards.

6. Financial Autonomy and Accountability.

7. The rules/procedures of court must be reviewed and updated to reflect present day realities.

7.0 CONCLUSION

As aforementioned, the judiciary is the last hope of the common man, as such individuals in need of justice expects to be given same. Assurances of citizens' rights secured and

protected is an essential ingredient of democratic society. Consequently, the inferior courts have proved to be essential in the Nigerian legal system as they handle the workload of cases at the grassroots. The importance of the lower court in the Nigerian Judicial structure cannot be overemphasized. Its importance can be seen especially in its decongestion of the superior courts of record.

Consequently, the need to keep the sail of the lower courts flying keeps the competence and efficiency of the justice system in continuous improvement.

Undoubtedly, the congestion of the Lower Courts is a man made problem which is a global phenomenon. Its seriousness varies from country to country and we can borrow from other jurisdictions to remedy the Nigerian situation. Even if it cannot be completely eradicated, it can be alleviated.

Roscoe Pound opined as follows:

“A balance between rules of law and magisterial discretion, which will, give effect both to the general security and the individual life, with the least impairment

of, either, is perhaps the most difficult problem of the science of law.”¹²

The need for consideration of urgent reform initiatives at this time cannot be overemphasized. One could not have put it better than Justice Gummi (OFR), former Chief Judge of the High Court of the FCT, Abuja when he said:

“No matter from what angle or perspective one views the impact (or lack of impact) of [Criminal] justice administration in Nigeria, there is a general consensus that it is in dire need of a systematic and comprehensive reform. By this reform, public confidence in the justice system will be restored. This will in turn strengthen our democratic process thereby enhancing a conducive environment necessary for the growth of our society.”¹³

Most of these causes of delay in our courts arise from the administrative machinery of justice. In my humble view, the security and justice sector is poorly funded, same goes for the Lower Courts across the country. There is urgent need for drastic change in the approach of policy makers in order to effect reforms in the judicial system.

It is hoped that discussions and suggestions at this conference will in no small measure help to ameliorate the current state of

¹² *Criminal Justice in America*, New York, Capo Press, (1972), p. 38.

¹³ A Diagnostic Analysis of Criminal Justice Administration in the FCT and Beyond, (2009)

affairs in our Lower Courts; I thank you all for your kind attention.