

**Preventing Corruption and Breaches of Integrity in the Justice Sector:
The Role of the Executive**

Being a Paper Presented

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ABSTRACT

It is not in doubt that the Nigerian judiciary is confronted with growing concerns bordering on integrity and transparency in the adjudication of cases, settlement of disputes and the management of the affairs and resources of the courts. In recognition of this development, the National Judicial Council, has rolled out ethical codes to guide the conduct of judicial officers, in addition to extant codes of conduct and laws applicable to all public officers. Being a separate and independent arm of Government, the judiciary is largely self-regulated, thus, the involvement of the executive in the running of its internal affairs and its disciplinary process is consequentially limited. Integrity, consistency, and transparency remain sustaining pillars of a vibrant judiciary. The executive is also expected to be at the forefront of the battle against corruption across all arms and tiers of government. This paper examines the roles of the executive in preventing corruption and breaches of integrity in the judiciary.

Keywords: Executive, Judiciary, Corruption, Integrity, Ethics, Code of Conduct, Independence of the Judiciary.

1.0 INTRODUCTION

The judiciary is a sacred institution that thrives on public trust, confidence, transparency and integrity, these ingredients are key in driving the application of the rule of law within the context of the services provided by the judiciary. Indeed, an arbiter that will adjudicate over a dispute between contending parties must be fair, unbiased, non-conflicted, knowledgeable, and judicious. Hence, trials and dispute resolutions are generally required to be conducted in public, except under very limited and specific circumstances.

Based on the principles of *audi alterem partem*¹ and *nemo judex in causa sua*, it is trite that a court of law cannot make a case for any party, nor descend into the arena of litigation or dispute. Furthermore, a Court must also confine or limit itself only to issues raised or submitted for its consideration². A Trial must be conducted in a manner that a reasonable man can state without equivocation, that justice was not only done, but is seen to have been manifestly done and undoubtedly³.

It is important to restate that the court's power and discretion must also be exercised with absolute discretion. This is important because of public perception of the judiciary. It is quite worrisome that the judiciary is being insinuated in some quarters to be amongst the corrupt public institutions in Nigeria and this ugly trend must be reversed for the good of our country.

2.0 DUTIES OF A JUDGE

The duties of a judge are matters of public knowledge of which this paper would not dwell on repetition of the details. Indeed *Section 6(1)(6) of the 1999 Constitution (as altered)* confers judicial powers of the Federation on courts created either for the States or the Federation⁴. The basic duties are to interpret, apply and enforce the law in the determination of cases coming before the judex. This is in consonance with the primary duty of a judge or

¹ Enechukwu V. Nnamani (2008) LPELR-4111(CA) Per Olukayode Ariwoola, JCA (AHTW) at (Pp. 43-45, para. F-F).

² See UNILAG & Anor V. Aigoro (1985) LPELR-3418(SC) Per Oputa, JSC (P. 21, paras. E-F) at (P. 21, paras. E-F).

³ See Newswatch Communications Ltd V. Atta (2006) LPELR-1986(SC) Per Umaru Atu Kalgo, JSC at (P. 32, paras. A-D).

⁴ *Section 6(6)(b) of the 1999 Constitution (as altered)* provides that the judicial powers conferred on the courts shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.

court which is to avoid technicalities and ensure that justice (substantial justice) is done between contending parties. It is also pertinent to make reference to *Sections 6, 230 - 284 of the 1999 Constitution (as altered)* which establishes and provides for the composition, as well as powers and duties (jurisdiction) of our superior courts of records.

In the course of exercising the foregoing powers and duties, it is not impossible that infractions or breaches will occur. While the integrity or character of a judge is not usually the subject or ground of an appeal, errors of fact and law can be remedied on appeal⁵. In our jurisprudence, the determination of the honesty and integrity of a judge is within the purview of the National Judicial Council⁶. Although there have been contentions as to the extent, or timing of intervention by executive agencies in the investigation and prosecution of issues bordering on the conduct, character and integrity of serving judicial officers⁷, that is however not the preoccupation of this paper.

3.0 PREVENTION OF CORRUPTION AND BREACH OF INTEGRITY

The malaise of corruption if allowed to manifest or permeate the judiciary will not only spell doom for the high office of a judge but will totally obliterate public trust and confidence in the judiciary. Indeed, it is the abiding duty of every arm of government to fight all forms of corruption in Nigeria in furtherance of the provisions of *Section 15(5) of the 1999 Constitution (as altered)* which states categorically thus: “*The State shall abolish all corrupt practices and abuse of power.*”⁸ The Constitution also provides for a Code of Conduct for Public Officers⁹. This is in addition to the various Codes and

⁵ See A.R.C OF NIG. (NO.2) IN RE O.C. MAJOROH V. FASSASSI (1987) LPELR-539(SC) Per KAYODE ESO, JSC at (P. 6, para. D) on the meaning of the Maxim “*De fide Et officio non recipitur quaestio, sed de scientiative error juris sive facti*” - the honesty and integrity of a Judge cannot be questioned, but his decision may be impugned for error, either of law or of fact.

⁶ The disciplinary powers of the National Judicial Council are encapsulated under *Para. 21(b)(d)(g), 3rd Schedule to the 1999 Constitution (as altered)*. See also: *section 292(1)(b) of the 1999 Constitution (as altered)* and the decision of the Court of Appeal in OLOTU V. PRESIDENT, FRN & ORS (2022) LPELR-57091(CA) Per D. Z. SENCHI, JCA at (Pp. 57-58, paras. F-B).

⁷ FRN V. NGANJIWA (2022) LPELR-58066(SC) Per CHIMA CENTUS NWEZE, JSC at (Pp. 20-39, paras. B-A), (Pp. 46-50, paras. B-E) and OPENE V. NJC & ORS (2023) LPELR-60656(CA) Per UGOCHUKWU ANTHONY OGAKWU, JCA at (Pp. 44-46, paras. B-C).

⁸ See AG ONDO STATE V. AG OF FED & ORS (2002) LPELR-623(SC) Per MUHAMMADU LAWAL UWAIS, JSC at (Pp. 54-56, paras. D-C) for the interpretation of Section 15 subsection (5) of the Constitution.

⁹ See Part I of the Fifth Schedule to the 1999 Constitution (as altered), Part II (Para. 5) thereof makes the Code applicable to the Chief Justice of Nigeria, Justices of the Supreme Court, President and Justices of the Court of Appeal, all other judicial officers and all staff of courts of law.

Guidelines¹⁰ issued by the National Judicial Council to regulate the appointment, conduct, and discipline, of judicial officers.

The current administration of President Bola Ahmed Tinubu (GCFR), in recognition of the antithetical impact of corruption on the nation, and the need to sustain and improve on existing anti-corruption framework, included the fight against Corruption, Inefficiency and Waste in Government as cardinal parts of the Renewed Hope Agenda of this administration¹¹.

The need to combat corruption and abuse of office had birthed the establishment of the following additional executive agencies: Economic and Financial Crimes Commission, Independent Corrupt Practices and Other Related Offences Commission, Code of Conduct Bureau and Code of Conduct Tribunal, among others already existing. These agencies are imbued with the powers to investigate and prevent corruption. It is important to note the National Judicial Council and the Federal Judicial Service Commission, who also play critical roles in the appointment and discipline of judicial officers, and are listed as Federal Executive Bodies under *Section 153(1)(e) & (i)* and the *3rd Schedule to the 1999 Constitution (as amended)*.

In the case of *ELELU-HABEEB & ANOR V. AG FEDERATION & ORS*¹², the Supreme Court Per OLUFUNLOLA OYELOLA ADEKEYE, JSC described the National Judicial Council, as a federal government agency. The necessary deduction to be made from the foregoing is that the actions of the National Judicial Council and the Federal Judicial Service Commission, though under the leadership or management of the judiciary, in preventing corruption or integrity breaches, can be somewhat deemed as actions of the executive as well.

In the light of recent judicial decisions on the proper procedure for removal of judicial officers, as laid out in *OPENE V. NJC & ORS*¹³, it has become pertinent for the judiciary to adhere to extant constitutional and statutory

¹⁰ These includes: *National Judicial Policy, NJC Guidelines and Procedural Rules, Revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria, and Judicial Discipline Regulations.*

¹¹ https://thenationonlineng.net/tinubu-shettima-an-agenda-for-renewed-hope-and-brighter-future/#google_vignette, and <https://bat-ksm.com/wp-content/uploads/2022/10/APC-Presidential-Campaign-FAQ.pdf>

¹² (2012) LPELR-15515(SC) at (Pp. 110-113, paras. F-A), (Pp. 104-105, paras. B-A)

¹³ (2023) LPELR-60656(CA) Per UGOCHUKWU ANTHONY OGAKWU, JCA at (Pp. 24-25, paras. E-A). see also *LOTU V. PRESIDENT, FRN & ORS* (2022) LPELR-57091(CA) Per D. Z. SENCHI, JCA (Pp. 65-67, paras. B-D).

provisions and see disciplinary processes/procedures to their logical conclusion, in order to avoid any suspicion of collusion or condonation.

4.0. THE ROLE OF THE EXECUTIVE

In what possible ways can the Executive intervene to prevent corruption and integrity issues in the Judiciary? I now proceed to examine some available avenues as follows:

- a) Judicial Appointments :- Appointments of judicial officers are made by the President and Governors based on the recommendation of the National Judicial Council¹⁴. The Executive can then deploy the instrumentality of law enforcement agencies and the Nigerian Bar Association to conduct appropriate security, educational and professional background checks on the nominees so as to ensure that only fit and proper persons are recommended for appointment into the high office of a judge.

- b) Asset Declaration :- The Executive needs to strengthen the capacity of the agencies responsible for asset declaration and the processes involved therein. This is critical to preventing illicit acquisition of wealth by judicial officers since *Section 290 (1) of the 1999 Constitution (as altered) requires that “a person appointed to any judicial office shall not begin to perform the functions of that office until he has declared his assets and liabilities as prescribed under this Constitution and has subsequently taken and subscribed the Oath of Allegiance and the Judicial Oath prescribed in the Seventh Schedule to this Constitution.”*

- c) Government Accounting/Transparency Policies:- The Federal Government has put in place mechanisms for promoting accountability and transparency in the management of public funds. The National Judicial Council has identified transparency and accountability in the judicial process and of administration of justice as part of the issues and problems militating against a credible justice delivery system¹⁵. There are also growing concerns about the perceived opacity and inadequate transparency in the management of funds allocated to the judiciary. The judiciary should therefore key into and take benefit of policies such as

¹⁴ See Para. 21(a)(c)(g) of the 3rd Schedule to the 1999 Constitution (as altered).

¹⁵ <https://njc.gov.ng/national-judicial-policy>

Treasury Single Account, Government Integrated Financial Management Information System (GIFMIS), Freedom of Information, Open Government Initiative and Financial Transparency Policy that requires the publication of Public Financial Information through the Open Treasury Portal (www.opentreasury.gov.ng)¹⁶. The Whistle Blower Policy is another avenue for judicial officers to alert anti-corruption agencies on corrupt overtures made to them by legal practitioners and litigants alike. A very important statutory and administrative tool that exists to check abuse or misuse of the public funds, is the **Public Procurement Act 2007 (as amended)**. This law provides robust processes for conducting any form of procurement with public funds. Strict compliance with the required procurement procedures will prevent corruption, perceived, real or imagined in the utilization of funds appropriated to the benefit of the Judiciary.

- d) Funding Constraints/Financial Autonomy :- In view of the onerous responsibilities of the judiciary and enormous task assigned to judicial officers as exemplified by congested dockets, there is need for improved and constant funding and provision of adequate resources for the judiciary, particularly at the State level to guarantee the effectiveness and independence of the judiciary, and to mitigate, disincentives or better still eliminate the predisposition of judicial officers to inducement. State Governors must take deliberate steps to comply with the provisions of Section 121(3) on financial autonomy for State Judiciaries as introduced by the Constitution of the Federal Republic of Nigeria, 1999 (Fifth Alteration) (No.6) Act, 2023.
- e) Investigation and Prosecution :- The position of the law in Nigeria is to the effect that no public officer enjoys immunity from investigation. Thus, our law enforcement agencies can investigate judicial officers, without undue interference with their judicial duties, and pass the outcome of such investigations to the National Judicial Council. The searchlight of investigation and prosecution should also be beamed deeper on those who offer or convey inducements to judicial officers.

16

<https://www.opentreasury.gov.ng/images/DocumentGuidelines/TRANSPARENCYPOLICYIMPLEMENTATIONGUIDELINES.pdf>

- f) Prevention and Sensitization Initiatives :- There is the need for better engagements between the judiciary and executive agencies (law enforcement/anti-corruption agencies) for the purposes of sensitization and prevention of corruption. Both the EFCC and ICPC have had such engagements on capacity building in the interpretation and application of anti-corruption laws, but the judiciary also need to be assisted to build capacity for accountability within its own structure¹⁷. The ICPC can be invited to conduct a system study and review exercise in the accounting process of the judiciary, as well as deployment of Ethics and Integrity Compliance Scorecard in the judiciary¹⁸.
- g) Self-Audit - I know the judiciary already has its own self - checks, assessments and appraisal to ensure optimal performance by judicial officers. I wish to also suggest that there may be the need to for the judiciary to introduce some form of self - audit in addition to the measures already highlighted. Where, it will within specific routines conduct an assessment of itself, utilizing various standard matrix and key performance indicators. The audit could cut across the administration of justice, public procurement, accounting, efficiency, etc.

5.0 CONCLUSION:

It is not in doubt that the Executive is at the heart of the anti-corruption drive in Nigeria, it must therefore take more proactive steps and demonstrate the will to put the preventive measures identified above into operation. However, the judiciary itself must be willing, able and ready to uphold the ideals of integrity, transparency and accountability. The judiciary must be the knight in shining armour not only in adjudication of cases brought before it, but also in the prudent management of public resources and avoidance of inducement. The foregoing will grant the judiciary the *locus standi* and conscience to

¹⁷ <https://icpc.gov.ng/2023/10/05/icpc-boss-tasks-judicial-institutions-to-make-conscious-decisions-in-fight-against-corruption/>

¹⁸ "Section 6 (b-d) of the Corrupt Practices and Other Related Offences Act, 2000 vests in the Commission the power to "instruct" and "advise" any Ministry, Department, Agency or any other public body on its corruption-prone processes and to supervise a review of such processes. This function is referred to by the Commission as System Study" - <https://icpc.gov.ng/system-study-review-mdas/>

handle corruption cases involving the other arms of government and private entities. The roles assigned to the Executive in the prevention and combating of corruption in the Judiciary must also not be seen as an avenue for manipulation or witch-hunting. The synergy of the three arms of government will guarantee transparency, good governance and development for our nation.

I thank you all for the privilege of sharing my thoughts with this very distinguished audience.