

JUDICIAL COMMUNICATION

By: Hon. Justice Nelson Ogbuanya*

Protocols

Learning Outcome:

At the end of the Workshop, the Participants would be able to identify and clarify:

- i. *The Concept and Aspects of Judicial Communication– Meaning, Nature and Relevance of Judicial Communication; Various Layers and Interfaces of Judicial Communication*
- ii. *Ethical Issues In Judicial Communication and Implications –*
 - *Codes of Conduct for Judicial Officers on Judicial Communication; Permitted and Non-Permitted Communication*
 - *Digital Era and Impact of Social Media on Judicial Communication*
- iii. *Judicial Communication and Corporate Branding of the Judiciary*

1. Introduction

It gives me immense pleasure to be found suitable to stand before this highly cerebral and influential audience consisting of highly revered jurists, many of whom are 'My Ogas at the Top'. I am being called upon to lead a discussion on the topic of *Judicial Communication*, which forms part of theme of this robust Workshop on *Judicial Independence and Judge Craft*.

Judicial Communication, which is often regarded as a mundane topic and not worth devoting scarce judicial time to learn appears to be at the nerve centre of challenges and benchmarking of judicial performance in modern society, which thrives on openness and quest for transparency. As society embraces innovative advancement in communication technology and new way of doing things, the judicial system is under constant pressure to open up its conservativeness, but which requires careful embrace, so as not to fall a victim of adverse communication impacts.

It is therefore the object of this discourse to highlight the concept of judicial communication, and various aspects and interface of judicial communication, as well as ethical issues in judicial communication and implications. A cursory review of the relevant provisions of the *Code of Conduct for Judicial Officers on Judicial Communication* which indicates permitted and non-permitted communication for judicial officers, underscores the challenges of the digital era and the impact of social media on judicial communication. Understanding and entrenching appropriate judicial communication mechanism becomes imperative for positive corporate branding of the judiciary, for a repositioned pride of place and vigour, guaranteeing independence of the Judiciary in playing its noble but onerous role as custodian of rule of law in democratic governance.

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2. The Concept and Aspects of Judicial Communication

Any attempt at conceptualization of 'Judicial Communication', would entail highlight of the meaning of 'communication', which in itself, is not susceptible to universal definition. The authors of *USlegal.com*¹ simply put 'Communication' to mean: "Expression or exchange of information by speech, writing, gestures, conduct or electronic medium. It is the process by which an idea is brought to another's perception. The information that is so expressed or exchanged is also referred to as communication". In other words, 'Communication' is not only written expression. It connotes 'verbal and non-verbal' communication. And verbal does not mean only written but also oral expression, while non-verbal constitutes not only gestures (body language) but also other signs and visual expressions in electronic medium, such as *emoji*. Communication creates perception which is passed to the recipient party. Thus, any Communication which involves the Judiciary as an Institution or Judicial Officers in the judicial system constitutes 'Judicial Communication'.

Judicial Communication occurs in various aspects and layers of judicial duties and interactions, as judges are the embodiments of judicial communication. The Judge's in and out-of-courtroom communication is also captured as judicial communication, as the Judge is seen as the court². For instance, judicial communication which involves Judicial Officer solely discharging his/her judicial duties in courtroom include: Managing Courtroom atmosphere and composure, docket management and adjournments, judgment writing and judicial pronouncements, including timely release of copies and accuracy of the oral pronouncement in relation to the certified true copy of judgments/orders obtained after oral pronouncement in open court. Also, abuse of power of issuance of interim injunctions *ex-parte* is an aspect of judicial communication. Judges speak through judgements and orders, which should be clear in its terms and decision made devoid of clumsy expressions with attendant confusion³. Distinguishing of precedents and clarifying conflicting Judgments should also be done with dignifying tone and accurate presentation, for effective judicial communication on the issue. Hear the communication style of Lord Bridge of Harwich in *Leech v. Deputy Governor of Parkhurst Prison*⁴:

My Lords, these two appeals raise the important question whether the court has jurisdiction to entertain an application for judicial review of adjudication by a prison governor on a charge against a prisoner of a disciplinary offence and an award of punishment for the offence under the Prison Rules 1964. The Court of Appeal in R v, Deputy Governor of Camphill Prison, ex parte King [1985]QB735 held that there was no such jurisdiction. But the Court of Appeal in Northern Ireland took the opposite view in accepting jurisdiction to review a governor's adjudication and award under the corresponding rules applicable in Northern Ireland: R v Governor of the Maze Prison, ex parte McKiernan (1985)6NIJB 6, This is the conflict which must be resolved...

¹ See: <https://definitions.uslegal.com>

² See: B, McLachlin (Justice of the Supreme Court of Canada), "The Role of Judges in Modern Commonwealth Society", *Law Quarterly Review* (1994), vol.110, pp.260-269

³ See: Marie Fox & Christine Bell, *Learning Legal Skill*, (Glasgow: Blackstone Press, 3rd ed. 1999). P.49

⁴ [1988]1AC533,HL

Judicial communication which involves Judicial Officer and Peers, include: exchange of ideas on legal issues involving live cases in court, conference review of cases at appellate court or at courts with panel sitting. This aspect is encouraged for the purposes of sharing ideas and honing adjudication skills and improved output.

Other layers of judicial communication involving Judicial Officer and Court staff include: secretarial services by court staff, service of process and Hearing Notices, diary management and casefile handling. Efficiency and confidentiality are key components of this aspect of judicial communication. Another aspect of judicial communication involves Judicial Officer with Third parties such as: communication with litigants or counsel or proxy persons, or other interested persons on the pending matter. This is most dangerous as such persons usually harbour mischief and do prepare to get incriminating information from the judicial officer. Another aspect of judicial communication is collective posturing perceived as position of the judiciary on certain national issue, which can be deciphered from various judgments /pronouncements on such subject matter, which drops the hint that judiciary as an Institution has taken a position. Care should be taken to forestall or correct such impression if it is negative, as it may impact on the corporate brand of the Judiciary, either portraying it as not independent or not predisposed to upholding rule of law.

Corporate brand of the judiciary is also perceived and labelled by acts and attitude of just few Judicial Officers, which are attributed to the Judiciary as an Institution. This attitude may be reflective of weak corporate culture⁵ of the judiciary in entrenching best practice for positive outlook. Also of note is the unwittingly indulgence of use of adulterated version of complimentary greeting of Judicial Officers. Without tracing origin of the creeping adulteration of 'My Lord' to 'Milord', 'Mee Lord', and other demeaning versions, such remark constitutes adverse judicial communication, as it tends to lower the judiciary brand in the sight of the public, who are also quick to emulate the anomaly. There are alternative dignifying modes, such as: 'His Lordship', 'Your Lordship', etc.

3. Ethical Issues In Judicial Communication and Implications

Judicial communication is basically regarded as ethical issue and regulated under the Code of Conduct for Judicial Officers. The *Rules 3-6 of the National Judicial Council Revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria (Feb, 2016)* (CCJO) contain elaborate rules covering various aspects of Judicial Communication, specifying prohibited and extent of permitted judicial communication. For instance, *Rule 3.3 of the CCJO* states:

A judicial Officer should accord to every person who is legally interested in a proceeding, or his legal representative full right to be heard according to law, and except as authorized by law, neither initiate, encourage, nor consider ex-parte or other communications concerning a pending or impending proceeding.

For the purpose of this sub-rule an "ex parte communication is any communication involving less than all the parties who have a legal interest in the

⁵ Fisse, B: "Recent Developments in Corporate Criminal Law and Corporate Liability to Monetary Penalties" (1990)UNSWLJ 1 @ Pp.15-16

case, whether oral or written, about a pending or impending case, made to or initiated or entertained by the Judicial Officer presiding over the case.

The Rule 4 of the CCJO imposes on Judicial Officer, the duty to abstain from comments about pending or impending proceedings in any court in the country and also to maintain professional confidentiality. In Rule 4.1, it states:

A judicial Officer should abstain from comments about a pending or impending proceeding in any court in this country, and should require similar abstention on the part of the court personnel under his direction and control, provided that this provision does not prohibit a Judicial Officer from making statements in the course of his official duties or from explaining for the public or private information, the procedure of the court so long as such statements are not prejudicial to his integrity, of the judiciary and the administration of justice.

And the Rule 4.2 states:

A Judicial Officer shall be bound by professional secrecy with regard to his deliberations and to confidential information acquired in the course of his duties. Accordingly, confidential information acquired in the judge's judicial capacity shall not be used or disclosed by the Judge for any other purpose not related to the Judge's judicial duties.

Although the Rule 5 preserves Judge's right to freedom of expression like any other citizen, it however, cautioned that *"in exercising such rights, a Judge shall always conduct himself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary"*. It went on to prescribe such restraint as to: *"a. maintain public confidence in the impartiality and independence of the judiciary; b. avoid involvement in public discussion or discourse if his or her involvement could reasonably undermine confidence in his or her impartiality; c. avoid such occasions and circumstances where such involvement may unnecessarily expose the Judge to political attacks or be inconsistent with the dignity of a Judicial Officer; and or d. adhere strictly to political silence"*.

Digital Era and Impact of Social Media on Judicial Communication-

Given the gagged prescriptions of the Code of Conduct for Judicial Officers in respect of judicial communication, the judiciary has been exposed to often undue severe scrutiny and open abusive criticism in modern time of the evolving digital era, with multiple facets of social media channels deployed to achieve the sinister attack on the institution of judiciary, to ridicule the noble institution and lower its esteemed reputation and public confidence in the judicial system, thereby weakening the very foundation upon which it was established and thrives. In the spate of all that, the Code of Conduct still prescribes restraint , and in Rule 6 imposes a duty on the Judicial Officer to abstain from involvement in public controversies by adopting the 'convention of political silence' .

By Rule 6 (c), *"the convention of political silence requires the Judge concerned not to ordinarily reply to public statement"*. The Rule 6(c) further states thus:

Although, the right to criticize a Judge is subject to the rules relating to contempt, these are not to be invoked today to suppress or punish criticism of the judiciary or of a particular Judge. The better and wiser course is to

ignore any scandalous attack or criticism outside the court room rather than to exacerbate the publicity by initiating proceedings.

The approach is well noted on the genuine intendment to prevent exacerbation of the issue in controversy, and so as not to be seen as using contempt proceedings to hack down and suppress judicial criticism. Nonetheless, a balance needs to be maintained in cases of deliberate malicious and unjustified attack on personality of a judicial officer or the judiciary, given that in the digital world of today, it is said that 'internet does not forget'. So, without adopting the legally acclaimed contempt proceedings approach, such un-debunked attack remains permanently engraved in the internet and accessible the world over, and can be believed and relied on, to the detriment of the judicial officer and or his/her family, or even those merely associated with his/her name. Even as Judges appear to be 'lawyers without right', the Information and Communication Unit of the relevant Court could be handy to do a rebuttal publication, which would tag the already posted malicious attack, and clarify the trending malicious information communicated in the internet. Thus, if there would be no contempt proceedings, let there be an official debunk of such malicious publication to create a parallel tag on the initial defamatory publication, so as to make it unreliable by internet users.

Judicial Officers should also be very careful with inappropriate use of social media with its attendant implication, and also guard against open communication with GSM gadgets, which can be compromised, and impact on their privacy and confidential communication. Also, digital literacy is recommended for Judicial Officers to obviate the often compromise of sensitive judicial works in the possession of the court staff, particularly the Secretary and Research Assistants.

Judicial communication also entails regular digital interface. Courts should maintain prominence in digital platforms/websites and regularly update vital judicial information, to create enough transparency in the operation of the court's activities, and provide authentic information and resources online. Happily, the National Industrial Court, under the able leadership of the Court's President, *Hon, Justice B.B Kanyip PhD, OFR, FNIALS, FNJI*, is pioneering Court digital drive by not only maintaining digital presence with social media handles and interactive website, but also owns a *Mobile App*, where cause list, news flash and judgments are regularly posted and updated, and CTC of Judgments processed online. There lies the future of judicial communication.

4. Judicial Communication and Corporate Branding of the Judiciary

As noted earlier, judicial posturing, a form of non-verbal communication (body language) constitutes an aspect of judicial communication, in that, the inference of pointed judicial attitude would invariably brand the entire judiciary as an institution. From the perspective of jurisprudence of governance structure in the Nigerian democracy, unlike the other arms of the government, which are subject to periodic elections, and of course, material change of membership, the judiciary has the

singular advantage of maintaining long consistency of membership (primarily altering by retirement and new appointment).

Again, the judicial authority does not lie on individuals as in legislature and executives, where legislative powers lie on the National Assembly or State House of Assembly respectively, and the executive powers lie on the President and Governor at federal and state levels, respectively. The Judicial powers lies on the Institution called Courts operating in hierarchical order from trial through appellate to apex court system, ending with the Supreme Court. Because, Judiciary operates as an Institution, its corporate image and branding readily come to foe at every noticeable nuances of the Judges. It is that of collective glory and collective shame! Every one readily points to the Judiciary not necessarily the Court or Judge involved in the issue, which is judicial communication of brand.

Nigerian judiciary gained notoriety for adjournments and delays not because every court or every Judge is involved, but that is the posturing that has been communicated and perceived by the people. If one court is inefficient, it rubs off on the entire judiciary, as it is has also been rhetorically echoed: *'Go to Court'*!

The corporate culture of the Nigerian Judiciary should be passionately positive in its vision and mission. Deliberate and constant monitoring and benchmarking of judicial performance in efficiency and integrity would be recipe for rebranding the perceived communication of inefficiency and corrupt tendencies, with which the judicial system in Nigeria has been branded and labelled.

5. Conclusion

Undoubtedly, communication plays pivotal role in shaping human activities and perceptions, as exchange of expressions are inevitable, whether written, oral or by conduct or even by visual displays and signs, ideas and information are made and exchanged, even on electronic medium. The various aspects and layers of judicial communication expose the dimensions of judicial communication, which ought to be taken seriously and put it in rightful place in judicial administration.

The impact of social media on judicial communication in the emerging digital era has underscored the imperative of effective judicial communication, to reposition the judiciary with transparent outlook. As the judiciary's pre-eminent role in the society is rooted in confidence, it is imperative that effective judicial communication is entrenched at various aspects and layers of judicial communication. Concerted efforts should therefore, be geared towards re-branding the perceived negative public branding of the Judiciary as communicated through conducts which invariably condensed as what the Judiciary represents, albeit erroneously .

THANK YOU, MY LORDS!