

All Nigerian Judges Conference for Lower Court Judges
Theme: Enhancing the Role of the Judiciary in Nation Building
Topic: Disobedience to Judgments and Orders of the Lower Court:
Implications for the Rule of Law in Nigeria
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THE LAW:

Section 133 of the Criminal Code Act in Nigeria. Contempt of court

Any person who-

(1) within the premises in which any judicial proceeding is being had or taken, or within the precincts of the same, shows disrespect, in speech, or manner, to or with reference to such proceeding, or any person before whom such proceeding is being had or taken; or

(2) having been called upon to give evidence in a judicial proceeding, fails to attend or, having attended, refuses to be sworn or to make an affirmation, or, having been sworn or affirmed, refuses without lawful excuse to answer a question, or to produce a document, or prevaricates, or remains in the room in which such proceeding is being had or taken, after the witnesses have been ordered to leave such room; or

(3) causes an obstruction or disturbance in the course of a judicial proceeding; or

(4) while a judicial proceeding is pending, makes use of any speech or writing, misrepresenting such proceeding, or capable of prejudicing any person in favour of or against any party to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or

(5) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or

(6) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connection with such evidence; or

(7) dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding; or

(8) re-takes possession of land from any person who has recently obtained possession by a writ of court; or

(9) commits any other act of intentional disrespect to any judicial proceeding, or to any person before whom such proceeding is being had or taken, is guilty of a simple offence and liable to imprisonment for three months.

JUDICIAL PRONOUNCEMENT:

In **FCDA & ANOR v. KORIPAMO-AGARY** (2010) LPELR-4148(CA) **MARY UKAEGO PETER-ODILI**, JCA stated that:

"The Court frowns at disobedience of its orders; particularly by the executive branch of government, and has used rather harsh language such as 'executive lawlessness', in describing such acts of disobedience. On the application of an aggrieved party, the Court has in appropriate cases, not hesitated to exercise its coercive power to set aside such acts done in disobedience of its order and restore the parties to the position they were before such disobedience. The rationale for this course of action by the Court is to ensure the enthronement of the rule of law rather than acquiesce in resort to self-help by a party. The Court also has the power of sequestration and committal against persons disobeying its orders. It is an over generalization and therefore wrong to say that an act done in disobedience of Court order is an illegality. Attorney General, Ekiti State v. Daramola (2003) 10 NWLR (pt. 827) 104 at 161-162 per Ogundare J.S.C Governor of Lagos State v. Ojukwu (1986) 1 NWLR (pt. 18) 621." (Pp 17 - 18 Paras D - C)

INTRODUCTION

No degree of substantive law improvement can bring the rule of law to a country without effective enforcement, and a sound judiciary is the key to enforcement. Judicial independence and the strength and efficiency of judiciaries are associated with economic growth. Some research finds legal formalism (that is, procedural complexity) undesirable. Though procedural complexity may be a barrier to judicial efficiency, it is also true that some

procedural rules are designed to avoid legal error, also surely an aspect of efficiency. In any event, many of the measured differences in formalism between the common law and civil law are related to the far different role of counsel and judge in the two legal systems.

Judicial efficiency measured in terms of duration of cases shows an extraordinarily wide variance among countries within individual legal families, suggesting that something at least as significant as legal origin may be involved. The related concepts of separation of powers and of checks and balances are not well-defined, and their meaning varies depending on the country and the objective of the constitutional founders. For economic development the constitutional provisions on review of administrative acts take on special importance.

Judicial independence is not just a question of the structural independence of the judiciary within the governmental system, but also of the behavioral independence of individual judges. The latter is based both on law (for example, lifetime tenure) and on the method of appointment of the judiciary, but also on the education, economic security, and place in society of individual judges.

(https://www.researchgate.net/publication/228231389_The_Judiciary_and_Economic_Development)

It is trite that unless and until a valid order of a court of competent jurisdiction is either set aside or stayed by another court, it is liable to be obeyed to the letter. A valid court order not yet stayed is absolutely binding on everyone and authorities.

The law has been laid down as long ago as **1846** by Lord Cottenham LC IN *Chuk v Cremer*, Cooper temp. Cott. 338 at 342; 47 ER 884 as follows: “a party, who knows of an order, whether null or valid, regular, Irregular cannot be permitted to disobey it. It did not even signify whether the order was drawn up. That there were many cases in which a party had been held to have committed a contempt for disobeying an order, which had not only not been served, but have not even been drawn up. It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid – whether It was regular or Irregular. That they should come to the court and not take upon themselves to determine such a question. That

the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed.”

If anyone feels a particular court order is unacceptable to it, what the person ought to do is to apply to court to get the order stayed or set aside. Until then, all affected by a subsisting Court order must promptly obey.

It was stated in *Balonwu v. Obi* (2007) 5 NWLR (Pt. 1028) 488 at 538 Paras.C-E,564-565 Paras.B – G (CA)

“An order of court whether valid or not must be obeyed until it is set aside. An order of court must be obeyed as long as it is subsisting by all no matter how lowly or highly placed in society. An act of disobedience towards an order of a court can render any further act by those who have acted disobediently to sanctions from other court because no court would want its orders flouted. This is what the rule of law is all about hence the courts have always stressed the need for obedience of court orders”

WAMBAI, J.C.A., decried in APC V KARFI (2015) LPELR-41857, *“Disobedience to Court orders is a very serious matter which should not be condoned, glossed over or treated with kids glove but must be seriously frowned at and appropriately handled before it erodes the very foundation of adjudication and stultify the administration of justice. When we allow the very foundation of adjudication to be eroded with disdain then we should be ready to say "good bye" to Rule of Law, peace and Orderliness and welcome to "anarchy", and "chaos", and the whole society suffers for it.”* (pp.45-46,paras D-B).

The lower courts are integral to our justice system because more than 80% of our national activities, businesses and interactions fall within its jurisdiction to adjudicate upon.

For instance; all criminal matters except for major felonies can be tried in Magistrate Courts. Notwithstanding, the Magistrate courts is the court to go to for warrants of arrests and is the courts most law enforcements agencies go to remand a suspect (although we are now seeing these powers gradually being reduced). On the Civil side, it is the Court that adjudicates on most tenancy issues, depending on the rent value and it handles most simple contracts and disputes within its monetary jurisdiction.

Sharia Courts, Area Courts and Customary Courts in general are as vital and the most important at the grassroots levels. I presume there is a Customary Court in every local government premises in the Nation which represents the notion that the Judiciary is the last hope of the common man.

The Lower Courts have a wide range of powers and responsibilities but one may argue that the lack of respect for these courts by the citizens is because the Nigerian Constitution itself has undermined its importance by categorizing them as **lower Courts** and under the authority of State governments.

It is however questionable to assume that the way a court is described or the limit of its jurisdiction has any impact on its powers, impact or its relevance because if we were a nation whose principles was based on the rule of law then such constitutional descriptions wouldn't really matter...but are we a nation where the rule of law is practiced or the rule of men is the norm?

So the question is: Why do citizens and government disobey Court orders and Judgments of the lower courts? Several reasons are responsible for this and we will interrogate some of the salient ones in this paper.

1. Lack of Enforcement Powers:

The Lower Courts lacks neither the powers nor the capability to enforce its own orders. This is because it depends on other agencies to do so on its behalf and herein lies the big problem as those who flout Court orders the most are the government itself.

Kayode Eso, JSC, noted in **GOVERNOR OF LAGOS STATE V. ODUMEGWU-OJUKWU (1986) 1 NWLR (Pt. 18) 621 at 633,**

"I think it is a very serious matter for anyone to flout a positive order of Court It is more serious when the act of flouting the order of Court, the contempt of Court, is by the Executive. ... I think... for the Executive, which holds the physical powers, to put up itself in sabotage or deliberate contempt of the other is to stage an executive subversion of the Constitution it is to uphold"

When an order is given to the police or to the executive or Legislative arms of government; they often don't obey these orders because unfortunately, they are also the same institutions responsible for enforcement of orders and judgments of courts.

So if the government is not obeying orders how do we expect the citizens to obey these orders?.

2. Public ignorance and perception of the lower Courts

Many Citizens are unaware of the travesty of disobeying court orders. They will sooner obey the police or a council enforcer than a magistrate or a customary court judge.

Denton-West, J.C.A. noted *“Obeying court orders is both legal and moral obligation but you find that court orders are toyed with both by lawyers and the litigating public. Indeed for the politicians, the rule of law is non-existing until it suits their purpose, and it is only then it is observed to the letter. Without a strict adherence to the rule of law, our nascent democracy and indeed our Constitution will only be worth the paper on which it is written. What makes a great country is adherence to the rule of law. Even in hell, there is order and discipline. Judicial notice is taken of the fact that the rule of law is greatly bastardized and in this appeal, it is clear inter alia, that the various orders made so far by the law courts in this appeal have been flagrantly disobeyed by the appellants and all other arms of government that are involved in the execution of court orders.”* See also *Onwudu v. Mokwe* (1999) 1 NWLR (Pt. 585) 146, *NGERE & ANOR v. OKURUKET & ORS* (2014) LPELR-22883(SC)

3. All judgments and orders of lower court are appealable

A serious challenge to the obedience of orders of lower courts is that all its judgments and orders are appealable and contestable. It is not a final court to determine any issue of Law, even though most cases begin and end there.

4. Inadequate/ Weak Consequences

Even though the Law prescribes for contempt proceedings and other penalties for disobeying court orders, the procedure for activating these proceedings also take time and still subject to the wimps of enforcement agencies as the courts do not have its own internal enforcement mechanisms.

In *Odu v. Jolaoso Ors.* (2002) LPELR-6008(CA), AKINTAN, J.C.A. advised:

*"Disobedience of court order is a very serious offence which every court should not allow to go unpunished. This is because treating such act with levity could lead to total destruction of the entire judicial system and all that administration of justice stands for. The law will by that be rendered incapable of commanding any respect. Such a situation will no doubt portend a very bad omen for not only the administration of justice, but could constitute a great danger to the existence of the nation. **This is the main reason why the onus is on every judicial officer, including counsel,** to ensure that instances of contempt of order of court should never be treated with levity"* see also *Odogwu v. Odogwu* (1992) 2 NWLR (Pt.225) 539; and *Mobil Oil (Nig.) Ltd. v. Assan* (1995) 8 NWLR (Pt.412) 129. (Pp. 17-18, Paras. F-C)

The Higher Courts have also frowned at disobedience of Court orders by not granting the disobedient party audience however, there are some exceptions

RHODES-VIVOUR, J.S.C. noted that

*"Parties are thus bound to obey court orders that are clear and unambiguous, notwithstanding the fact that the order may be wrong. So long as a party refuses to implement or obey a court order he would not be given a hearing in any subsequent application.
There are exceptions to the above. A party in disobedience of a court order may be heard in subsequent application if - (a) the party seeks to appeal against the order of which he is in contempt, (b) he challenges the order on the ground of lack of jurisdiction; (c) the order ought not to be sustained because there were procedural irregularities in the process of making the order."* (Pp. 20-21, paras. D-A)

What is the way forward: How do we change the narrative?

1. The station of lower court judges must be respected: They are Judges and not civil servants
2. Constitutional Amendments and Reforms in subsidiary legislations are necessary to ensure that the Judiciary has its own enforcement mechanisms
3. Judges of Higher Courts and Lawyers should be reminded constantly that lower court judges are lawyers and just as qualified. They represent the 3rd arm of government.
4. Reform in Judicial appointment to ensure that 90% appointments to the higher bench are from lower courts

SOME OPINIONS FROM CIVIL SOCIETY

Ripples Nigeria: ANALYSIS: How disobedience of court orders weaken rule of law, human rights in Nigeria Published 1 year ago on August 30, 2021 by Olanrewaju Oyedeki

.....takes a look at how disobedience of court orders by government authorities has weakened the rule of law and also threatens human rights in the country.

Chief among the agencies often found wanting in the disobedience of court orders is the Department of State Security (DSS) established on June 5, 1986. Before becoming the state security service, it was known as National Security Organization.

One of the popular cases of such abuse is that of the leader of the Shiite Islamic Movement of Nigeria. The incident started after an altercation between members of the Islamic Movement of Nigeria and soldiers escorting the then Nigerian Chief of Army Staff, Tukur Buratai. The incident led to a reported death of over 300 Shiite members .

After the incident, Mr El-Zakzaky and his wife Zeenah were detained on charges of murder. The Kaduna state government stated that during the incident that led to the massacre, a soldier, Corporal Yakuku Dankaduna, was killed.

However, in 2016, a federal high court ordered the release of El-Zakzaky and his wife while ordering payment of N50m to the Shiite leader and his wife for ‘violating their rights by being held in unlawful custody’. This pronouncement was made by Justice Gabriel Kolawole. The SSS however failed to obey this court order; the basis for such was that keeping El-Zakzaky was for his own safety.

It was not until after about five years of illegal detention that El-Zakzaky and his wife were acquitted and discharged by the Kaduna state high court on 28th of July, 2021.

Another instance of disobedience of court orders was when Omoyele Sowore, a former presidential candidate and democracy activist, was held in detention despite a November 6, 2019 bail order by an Abuja Federal High Court that the DSS should promptly release him.

The detention led to public outcry and condemnations. The state security service had charged Sowore for treason after planning a protest tagged “#RevolutionNow”. The police said it already deemed the planned protest an act of terrorism.

Mr Sowore and other organisers of ‘RevolutionNow’ movement also condemned the federal authorities for allegedly lying against them that the protest would be violent. In Sowore’s case, the court had threatened to imprison the DSS Director General. In a “notice of disobedience to order of court” issued by the court and addressed to the DSS DG, the Federal High Court directed the boss of the secret police to comply with its directive or face grave consequences, which includes “commitment to prison”.

Amnesty International also reported that the Nigerian Attorney General defied an Abuja Federal High Court order to hand over the soldiers who were allegedly responsible for killing three policemen in Taraba state in August 2019.

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Another prominent case of such disobedience had to do with the former National Security Adviser, Sambo Dasuki who was accused of diversion of \$2.1 billion and illegal possession of fire arms. Although Mr. Dasuki was granted bail on at least six different occasions by various courts,

the Nigerian government persistently refused to comply with the court orders.

After over four years in detention, Dasuki was eventually released by the Buhari's administration. The court of appeal in Abuja, noted that the DSS and its Director-General acted outside their constitutional powers on the long period of the detention of a Nigerian citizen and imposed a fine of N5 million on them to be paid to Dasuki as compensation for breach of his fundamental right.

The Nigerian government has also disobeyed other courts, in the case of a human rights lawyer, Charles Ogbonna, a human rights lawyer held by the State Security Service. Ogbonna, a lawyer was arrested for posting articles criticizing the Okezie Ikpeazu-led government in Abia State, via his social media page. Shortly after the arrest, he was arraigned alongside another person at a magistrate court in Umuahia for alleged cybercrimes and for allegedly publishing false and threatening messages through the internet against Mr Ikpeazu.

Five 'Buhari-Must-Go' activists commenced a contempt suit against the director-general of the State Security Service (SSS), Yusuf Bichi, for disobeying the court order for their release from custody. The activists commenced the contempt suit with the filing of a 'Notice of Consequences of Order of Court, also known as Form 48, on July 30, to push for the jailing of the SSS boss. On August 4, 2021, two days after filing the contempt case, the protesters were released by the SSS after the earlier disobedience of court orders by the secret service.

The spate of disobedience of court orders has continued unabated leading to tensions over the respect for democracy in the country. The Chief Justice of Nigeria (CJN) Tanko Mohammed in 2019, had vowed to resist disobedience of court orders, although, the situation continues without any sign of dwindling.

A report by Amnesty international noted that the Buhari administration has disobeyed 40 court orders as at November, 2019. Kolawole Olaniyan, legal adviser to Amnesty International, opined that President Muhammadu Buhari has shown "stunning disregard for the rule of law and human rights, ignoring Nigerian judges on at least 40 occasions". The London-based lawyer also accused the President of treating judges with disdain.

The Human Rights Measurement Initiative noted that Nigeria's score for economic and social rights falls within a 'very bad' range.

Judicial Activism, the Only Way Out – Lawyer

A lawyer and public affairs analyst, Awosusi Kehinde while weighing in on the issue noted that the country is drifting towards dictatorship and the only way out was for those who are responsible for such decisions to be held responsible. He opined that there is a need for **judicial activism** if the menace will be curbed.

“There is a need for judicial activism such as punishing heads of agencies that flout court orders. The disrespect for courts does not naturally portray the country well, and does not also portray them as a respecter of human rights, we are fast drifting to the era of authoritarianism, should things continue like that” he noted.

Disobedience of court orders not in interest of Nigerians -SERAP

The deputy director of Socio-Economic Rights and Accountability Project (SERAP) Kolawole Oluwadare, while weighing on the issue noted that disobeying court orders is not in the interest of Nigerians. He urged judges to be decisive in holding the sanctity of the judiciary.

“Disobedience of court orders is not in the interest of Nigerians, whether as regards human rights, socio-economic rights or other rights as it were, you would understand that the 1999 constitution has concept of separation of powers and checks and balances. When government decides to disobey the court, they are not only disobeying the constitution but also disrupting the balance of a constitutional democracy.”

Kolawole posited that the judiciary must rise up to the occasion by ensuring that there are punishments for disobeying court orders. According to him, this will help in serving as a deterrent to others.

“Judgment of the court must be obeyed, if the law is continually disobeyed, it means that the essence of the law has been lost”, he stated.

Despite the concerns on abuse of court decisions, the President Buhari-led administration has continued to restate commitment to rule of law and respect for human rights. But this is yet to be seen.

See: <https://www.ripplesnigeria.com/analysis-how-disobedience-jsakcv-of-court-orders-weaken-rule-of-law-human-rights-in-nigeria/>

See also: https://jurist.ng/criminal_code_act/sec-133

Thank you!