

JUDICIAL INDEPENDENCE: THE ROLE OF HEADS OF COURTS

A PAPER

PREPARED AND PRESENTED ON THE 24TH DAY OF SEPTEMBER 2024

BY

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AT

THE ROUNDTABLE FOR HEADS OF COURTS

UNDER THE AUSPICES OF

THE NATIONAL JUDICIAL INSTITUTE ABUJA

ON THE THEME:

STRENGTHENING THE LEGAL AND JUDICIAL SYSTEMS IN NIGERIA

HOLDEN AT

**HON JUSTICE ALOYSIOUS KATSINA - ALU SEMINAR HALL
STUDIES DEPARTMENT, NATIONAL JUDICIAL INSTITUTE ABUJA**

ON

MONDAY, 23RD - 25TH SEPTEMBER 2024

Opening Statement:

"I have been assured of a free hand and independence in the due discharge of my duties in this Commission of Inquiry by His Excellency, President Julius Maada Bio at the public launching of the Commissions of Inquiry on Tuesday, 29th day of January 2019, and I intend to be fiercely independent in the due discharge of my duties in this Commission of Inquiry"¹

A few months ago, precisely in July 2024, on Monday 8th thereof, I was privileged to present a paper with same title, 'Judicial Independence' at a 'Two Day Workshop on Judicial Independence and Judge Craft' organized by the National Judicial Institute Abuja under the progressive leadership of its indefatigable Administrator, the Hon Justice Salisu Garba Abdullahi, CJ (Rtd) of the Federal Capital Territory High Court, Abuja, under the support and guidance of the Hon Chief Justice of Nigeria and Chairman of the Board of Governors of the National Judicial Instituted Abuja.

I am therefore, very privileged to be requested, this time, to prepare and present this paper on "Judicial Independence", a burning issue in the Nigerian Legal and Judicial System, to no less an audience that the primary custodians and most critical stakeholders in the Nigerian Judiciary, the Heads of Courts. The topic 'Judicial Independence' is germane. It is one, whose time for full realization, has come upon us as the critical stakeholders in the Nigerian Judiciary. I am glad to be part of this conversation with the Heads of Courts to fashion the way forward in the securing and attainment of judicial independence in Nigeria.

In all democracies of the world, judicial independence is key to the enthronement of the rule of law and for the growth of democracy. Happily, in Nigeria, the

¹ Opening Statement by Sir Biobele Abraham Georgewill JCA DSSRS Ksc Chairman & Commissioner at the Commencement of Sittings of the Sierra Leone Presidential Commission of Inquiry into allegations of Corruption against the former President of Sierra Leone on January 19, 2019 at the Special Court for Sierra Leone Freetown Sierra Leone

independence of the Judiciary is constitutionally guaranteed.² Judicial independence is a fundamental concept in all democratic societies.

So many years ago, precisely in 2021, on November 23rd, I had the rare privilege of participating in a conversation with East African Chief Justices at the 26th Annual General Conference of East Africa Law Society, held at the Sea Port City of Zanzibar, Tanzania from 23rd - 27th November, 2021 on the topic: ‘Access to Justice, Good Governance and Economic Development in the East African Community: A Conversation with East African Chief Justices: The Nigerian Perspective!’

It was good conversing with the East African Chief Justices, and I have no doubt this Roundtable with my lords, Heads of Courts in Nigeria, would no doubt be even more interesting, engaging and rewarding!

Welcome to my paper!

Judicial independence is a cornerstone principle of every democratic system of Governance. It is very crucial and of utmost important in any democratic setting as it allows judges to make decisions ensuring the maintenance of law and order by the Government, maintenance of discipline amongst citizens, and also to avoid any unwarranted interference from the Judiciary in political affairs.

Conversely, it protects individual rights, upholds the rule of law, maintains checks and balances, and thereby fosters public confidence in the impartial and unbiased decision - making ability of the Judiciary. Thus, it ensures that the Judiciary is autonomous, independent and not swayed by external pressures.

It ensures impartiality and thereby enable judges to make decisions based on the facts and the law without any regards to personal biases, political affiliation and or external

² See Section 17 (2) (e) of the Constitution of Nigeria 1999 (as Amended), which provides thus: *‘The independence, impartiality and integrity of Courts of law and easy accessibility thereto shall be secured and maintained.’*

pressures. This usually results in a fair and unbiased legal system, which in turn ensured equal treatment for all the parties involved. It clearly fosters trust and confidence in the legal system, which is a sine qua none for acceptability and legitimacy of decisions of the Judiciary. This is usually a result of perception by the citizens of the independence of the judges as operating free from external influences. It ensures stability and consistency which are the hallmarks of a sustainable legal system, in which the citizen and businesses gain confidence to navigate the legal system due to the predictable outcomes of legal disputations leading to legal certainty.

Judicial independence plays a crucial role in maintaining the balance of power between the Legislative, Executive and Judiciary branches of Government while safeguarding the rights and liberties of the citizens. It is commonly referred to as the ‘last hope of the common man’. In all the importance of the concept and the need for attainment of Judicial independence cannot be overstated. Specifically, in the protection of the rights of the individual, Judicial independence ensures that judges can safeguard the rights and liberties of the citizens even when it might be politically unpopular to do so. As regards the rule of law, independent judges serve as impartial interpreters of the law, and thereby upholding the rule of law and contributing their fair share to a stable polity, and a predictable and fair legal system.

Judicial independence may be of institutional independence or independence of individual judges. Thus, while on the one hand, institutional independence may in some cases, and very regrettably, result into the withholding and starvation of funds legitimately due to the Judiciary, on the other hand, independence of individual judges may be seen as insubordination.

Here, is where the Heads of Courts come in as critical stakeholders in the Nigerian Judiciary to pay very crucial roles in securing and ensuring the independence of the Judiciary. The Heads of Courts are the primary custodians of judicial independence, while the Judicial Service Commissions, which they superintend in their various States,

are the secondary custodians of judicial independence, since it is they who give leadership and direction to the Judicial Service Commissions under them.

Thus, there can be no real time institutional judicial independence without the proactive actions of the Heads of Courts. It therefore, follows that a strong Head of Court is sine quo non for a vibrant independent judiciary. Let me illustrate! A Head of Court who insist on his rights to carry out his judicial and administrative duties without any interference from either the Executive or Legislative branches of Government is more likely to be a strong Head of Court and will enable judicial independence in his sphere of jurisdiction, his State Judiciary. He would likely not be a Head of Court that would be at the beck and call of neither the Executive nor the Legislature. I am aware of the potential consequences on such stance by a Head of Court. This would include, regrettably, the withholding and starvation of funds legitimately due to the Judiciary under such a strong character Head of Court.

So, is it better for the society, which we are under oath to administer justice without fear or favor, for Heads of Courts, for reasons bothering on release of funds, to capitulate and pander to the whims and caprices of either the Executive and or the Legislative Branches of Government? I think not! Heads of Courts must not only be strong but must continue to remain strong even in the face of financial challenges their judiciary is likely to face due to the absence of financial autonomy for the Judiciary. Thus, once judicial independence is achieved, financial autonomy, which is a key and critical component thereof, must be attained, and Heads of Courts can face squarely their constitutional responsibilities without any fear of deprivation of due funds to the judiciary.

In the 1980s, there was a Head of Court who it was reported does not answer to any summons by even Military Governors if it is they who had any reason to see him. Thus, he only goes to see the Military Governor if there is need as allowed by law. He ended up as a very strong Head of Court and was given his space to carry out his judicial and administrative duties without or at most with very minimal interference

from the Executive Branch in a Military Regime. He was a very distinguished Justice of the Court of Appeal, who answered the call to service and returned to his State Judiciary as the Head of Court.

Now, compare this with another Head of Court who, in a democratic, and presumably more liberal governance, was said to have gone to visit the Governor of his state with a request for a paltry sum of N1, 000, 000. 00, and had to wait for over three hours without seeing the Governor until he was rescued by a professional minded Hon Attorney General of the State who, saw his lordship, the Chief Judge of the State, seated and waiting for hours on end to see the Governor, and asked him to return to his office with the assurance that he would process the request and get the money over to the Chief Judge.³

In the above two scenarios, which of the two Heads of Courts was a strong one and who between them was one capable of ensuring and maintaining the independence of the Judiciary in his sphere of jurisdiction, his State Judiciary? I leave this to my lords, the Heads of Courts to ponder on collectively. In all honesty therefore, between these two extreme examples of Heads of Courts, which best reflects you as Head of Court? Again, I leave this to my lords, the Heads of Courts to ponder on individually.

‘Judicial Independence’ is encompassed in the notion that the Judiciary should be able to make decisions free from external pressures or interference. It helps to uphold the rule of law and ensures that the Judiciary remains impartial and neutral in the due discharge of its sacred duties to the people. However, there is also the need for a balance in the relationship between Judicial independence, we so much desire and deserve, and accountability to maintain a stable, effective and efficient legal system in Nigeria. We do not want to see judges who will begin to see themselves as ‘demi gods’

³ See ‘Nigerian Judge Waits for Hours to Request Funds from Governor’ (2018) BBC News.

Judicial independence plays a crucial role in promoting justice and maintaining public confidence in governance. It usually refers to the separation of the Judicial branch from the Executive and Legislative branches of Government. It means judges have no authority to review and or challenge any lawful actions taken by any of other two branches of Government in their respective spheres of competence. It also refers to a fair process of appointment of judges on their ability to make fair and impartial decisions and not on any mundane consideration that does not enhance their delivery of justice to the people.

How can Judicial independence be guaranteed? Judicial independence is a multifaceted concept. Therefore, there is no one model that is the only and most ideal model of ensuring and implementing Judicial independence. Thus, it is a combination of different conditions, measures, checks and balances that come together to make judicial independence a reality. These conditions may vary from one country to another, and therefore, every country must and do have to find its own balance to bring into reality the concept of Judicial independence.

In some Countries, such as Nigeria, France, Italy, Mongolia, Poland, Romania, Spain and Ukraine, judicial independence is secured through a Self - Governing Body or Council which is in charge of all the decisions and day to day running of the affairs of the Judiciary. In Nigeria, it is the National Judicial Council that plays this crucial role for the Nigerian Judiciary. However, in some other Countries, such as Kenya, South Africa, the United States, India, Germany, Austria and the Czech Republic, there is no equivalent Judicial Body or Council. In these latter countries, Judicial independence is secured through various other mechanisms.⁴

Judicial independence may be external or internal. On the one hand, external judicial independence refers to independence of the judiciary from the political branches, that is the Executive and Legislative powers, as well as any other non - judicial actor. There

⁴ See the UK Constitutional Reform Act 2005. Shetreet and Turenne 2013.

is no doubt some form of relation between the judiciary and the other two branches of Government, but such relations must not interfere with the liberty of the Judiciary in adjudicating individual disputes and in upholding the laws and values of the Constitution and the society.⁵ This is judging without fear or favor, ill will or affection.

On the other hand, internal judicial independence focuses on guarantees aimed at protecting aimed at protecting individual judges from undue pressure from within the judiciary. That is from other judges, especially high - ranking judges, who are in position to exert supervisory power over such judges. However, such supervisory powers must not be allowed in any way or manner to influence the substance of a judge's decision - making.

There is also institutional independence of the Judiciary. This pertains to institutional and legal arrangements designed by the State to shield judges from undue pressure and influence. These are secured by merit- based appointment, security of tenure, and fair disciplinary mechanism. Individual independence is also key to Judicial independence. It pertains to the state of mind and conduct of individual judges, which depends, amongst other things, largely on their professional socialization and internalization of professional values.

For true judicial independence to be attained, both institutional and individual independence must co - exist. This is so because while an individual judge may possess the right state of mind and internalized professional value, if the judiciary under which such a judge operates is not independent, as it so often happens, of the other branches of Government, as regards the essential requirements of the judge's performance of his duty, then it would be clear that such a judge cannot be said to be independent and or truly act and decide matters before him independently as he may face some unofficial, but truly official nonetheless, reprimand.⁶ It follows that, though institutional

⁵ See Law UK (1); Judicial Independence (UK Legal System) (Law UK, 2023) (link unavailable) accessed 2 July 2024

⁶ Ibid

independence is a necessary condition for individual independence yet, they are distinct both in meaning and practice as illustrated above.

It also refers to judges not making decisions based on any political affiliations, personal opinions and or external influences to avoid politically motivated decisions and sheer naked support for the government in power. Thus, it is all about the ability of judges to make impartial and authoritative decisions based on the rule of law, free from external influences, political pressures, and or personal interests.

It is for this reason, and more, I had always advocated that judges, though it is their constitutional right to vote, should refrain from voting for political parties and their candidates at any elections, of which they may in due course be called upon to determine, in an Election Petition or Appeal, the winner as expressed by the votes of the electorate. Judicial independence, or simply Judicial autonomy if you like, safeguards the Judges' ability to uphold fundamental rights of the citizen, check abuse of power, and most importantly, guarantee fair trials.

Judicial independence must not to be mistaken neither for judicial rascality nor for mere boastfulness of the powers of our judgments and Orders nor of financial autonomy only but in the pure unhindered and unadulterated dispensation of justice to the peoples of Nigeria without fear or favor, ill - will or affection. This is what to me true Judicial independence entails!

Thus, a financially poor but courageously sound judge can still be independent in his thought and delivery of justice to the peoples of Nigeria. Indeed, no Country, going by the near deity work of a judge, as representative, as it were, of the God of justice on earth, can fully and adequately remunerate judges. This is so because due dispensation of 'real' justice is not quantifiable in terms of naira and kobo!

The advantages of secured and enhanced Judicial independence would include, but is not limited to, the following: protection of the rights of individuals; checks and

balances between the three arms of Government; impartiality in the dispensation of justice; confidence, and consistency in judicial pronouncements to secure and enhance stability in the polity. On the flip side, it may engender lack of accountability; resistance to change; difficulty in addressing inefficiency and achieving judicial diversity.

It is not to encourage judges, being independent and autonomous, to take activist role in policy making, initiate legislative changes, and directly influence the Executive in its day to day running of the affairs of governance. The Executive does not require the permission of the Judiciary to carry out its constitutional functions. It is not to prevent judges from being held accountable for their decisions.

It is also neither for Government to, on its own without recourse to the appeal process, easily override unpopular decisions of the Judiciary, nor to allow for direct public influence on legal decisions of the Judiciary. It does not negatively impact on the rule of law, but rather upholds the rule of law.

An independent judiciary does not imply a right to defy established legal framework and undermine the rule of law. Thus, no amount of strict adherence to or enforcement of the rule of law can hinder the autonomy of judges in making impartial decisions. The concept of rule of law is ultimately intertwined with the concept of Judicial independence and they mutually reinforce each other principally to preserve democratic values and principles. The rule of law establishes a framework for the Judiciary to fairly and consistency apply the law.

In ensuring checks and balances, an independent judiciary ensures that the Executive and Legislature do not overstep their boundaries and or violate the sacred and sacrosanct provisions of the Constitution. In terms of public confidence. Judicial independence ensures that by its just interpretation of the laws of the law, citizens see the judiciary as independent and unbiased decision makers. This would bolster the

confidence of the citizens, and they are more likely to accept the decisions of the judiciary.

Thus, in a well - functioning legal system, judicial independence ensures that judges are free as well as able to uphold the rule of law without any fear or being subjected to pressure and any fear of victimization by any of the other two branches of Government or from powerful individual, or even the public. Judicial autonomy prevents any potential interference and or manipulation of the Judiciary and the legal system so as to serve any vested or particular interest.

What then, are the advantages of the attainment of judicial independence in a democratic society? It ensures the protection of individual rights. Independent judges can easily and safely protect and enforce the rights and liberties of individual even against the other branches of Government and even in situations where political pressure or public opinion might conflict with these rights. This goes a long way to secure a just society under the rule of law. It ensures a vital counterbalance to the other branches of Government by holding them accountable and that no single branch of Government, no matter how powerful, oversteps its constitutional authority and or violates the Constitution of the land.

So, are there any disadvantages of Judicial independence? Of course, there are as liberty can easily be turned into license. Being free, autonomous and independent, can lead to a lack of accountability and or responsibility on the part of the Judiciary. Judges may be shielded from public scrutiny or oversight, and they may be more prone to judicial misconduct, corruption etc. Autonomy brings with it some inefficiencies in the legal system and it might be more challenging to identify and resolve.

Thus, it may be difficult for outside stakeholders, who may be accused of interference, to bring about much needed reforms or desired improvements in the Judiciary. The Judiciary jealously guards its ancient ancestry, dating back to medieval times. With Judicial independence and autonomy, it may likely result into resistance by the

Judiciary to changes and or modernization with the legal system. For example, we have stuck to the ‘Wig and Gown’ notwithstanding the excruciating unfavorable weather conditions in Nigeria.

The Judiciary may, in exercise of its autonomy, and operating independently of and from the other branches of Government, resist adapting to evolving social norms and or expectations. An independent and unrelenting Judiciary may even resist and or limit the scope for outside actors and or stakeholders to promote and ensure diversity amongst the judges, which may be seen as eroding its independence. It may become more challenging to ensure, from the outside, that the Judiciary reflects adequately the demographic composition of the society in which it operates.

Judges may, and do face, external pressures from the Legislative and Executive branches of Government, and also from powerful individuals, interest groups and or public opinion to decide matters in desired way and thus, impacting their decision - making process. This sort of pressures judges face daily in the discharge of their duties can, and do, threaten judicial independence and ultimately undermines the integrity of the legal system.⁷

Judicial independence is important because it guarantees that judges are free to decide honestly and impartiality, in accordance with the law, facts and evidence without any concern or fear of interference, control or improper influence from anyone. In Ghana for example, neither the President nor the Parliament nor any person acting under the authority of the President or Parliament nor any other person exercising judicial power in the exercise of their judicial functions, and all organs and agencies of Government.

Based therefore, on all that have been stated above, the main factors necessary for the securing, attaining and promoting Judicial independence are namely: A fair appointment process; and security of tenure of service; financial autonomy; Fair

⁷ See Law UK (1); Judicial Independence (UK Legal System) (Law UK, 2023) (link unavailable) accessed 2 July 2024

disciplinary mechanism, autonomous Judicial Council, and fair terms and conditions of service of judges and staff of the Judiciary.⁸

It is a fundamental principle of judicial independence that judges' tenure, security, remuneration, which must be adequate, conditions of service, pension and retirement age should, and must, be adequately secured by law, leaving nothing to the whims and caprices of any institution, whether internal to the Judiciary or external by any of the other branches of Government.⁹

Financial autonomy is one of the key components and basis indices of Judicial independence. The funding of the Judiciary determines to a large extent the conditions in which the judiciary perform its functions and also determine the level of independence exercisable by the Judiciary. Thus, sufficient and or adequate resources are essential to ensure judicial independence from the other branches of Government, especially the Executive branch, and private parties, especially powerful individuals.

The above would invariably enable the Judiciary to perform its duties with independence and thereby engender integrity and effectiveness and efficiency.¹⁰ Indeed, adequate and sufficient resources would guarantee the appointment of sufficient number of judges, which would reduce the workload of the judges. It would also make adequate provisions for necessary number of support Staff.

It would also provide adequate facilities for the smooth running and functioning of the Judiciary. However, it is evident that the ability of a State to fully meet the budgetary needs of the judiciary is dependent largely on the economic and financial position of the State. Thus, lack of adequate provisions of funds is a great inhibition and hindrance to the attainment of Judicial independence.¹¹

⁸ See Law UK (1); Judicial Independence (UK Legal System) (Law UK, 2023) (link unavailable) accessed 2 July 2024

⁹ Ibid

¹⁰ Ibid. See also 'Achieving Judicial Independence In Nigeria' by Leke Kehinde Partner at Kehinde & Partners LP Published Mar 11, 2021

¹¹ See Law UK (1); Judicial Independence (UK Legal System) (Law UK, 2023) (link unavailable) accessed 2 July 2024

I think it is time, with the advent of Local Government full financial autonomy by reason of the recent judgment of the Supreme Court coupled with the already attained increase in salaries of judges, for relevant stakeholders, taking cognizance of the imperatives of judicial independence, to approach the Apex Court for interpretation of all relevant provisions of the Constitution of Nigeria 1999 (as altered) to once and for all consider and pronounce of the need for full financial autonomy, and not just partial financial autonomy in relation to recurrent expenditures only, for the Nigerian Judiciary. The ripple effects of such judicial financial autonomy is, and I say this assuredly and without any fear of contradiction, a guaranteed independent judiciary in Nigeria.

Now, when it comes to the right to freedom of expression as constitutionally guaranteed, is there a correlation between freedom of expression and Judicial independence? Can the use of Social media impair the independence of the judiciary? It is the law that in Nigeria there is freedom of expression. It is a fact that the freedom of expression is a delicate one when it comes to the Judiciary. It is truism that judges are to be seen but not to be heard. They must not only be independent and impartial but they must also appear as such. They must therefore, refrain from making inappropriate declarations and decisions that can easily impair the image of judicial independence in the view of the general public.

Thus, it is important that judges must be extremely careful and exercise self - restrain in their relationship with the Media. It follows therefore, that though judges, like other citizens, are entitled to freedom of expression but in exercising such right, judges must conduct themselves in such manner as to preserve the dignity of the Office of the Judge, and more importantly, the impartiality and independence of the Judiciary.¹²

It follows therefore, while judges are bound by professional and official secrecy imposed by law in respect of their deliberations and to confidential information, and

¹² See Law UK (1); Judicial Independence (UK Legal System) (Law UK, 2023) (link unavailable) accessed 2 July 2024

must avoid direct engagement with the Media, there is need to cultivate the permissible approach of establishing, as has been done in many of both Federal and State Judiciaries in Nigeria, Press and Communication Offices to provide for Press Officer or Spoke - persons under the direct supervision of the Judiciary to facilitate media coverage of the activities of the Judiciary as would obviate the need for any direct media engagement by Judges.

Thus, such Press Officers would liaise with Media Representatives, to respond to and manage requests and issues with the Media with a view to providing accurate and official information about judicial decisions and other legal issues or matters that affect the Judiciary.¹³

On the face of the rise in the use of Social media, the Judiciary faces serious challenges from the Social media in various forms. Ongoing and pending proceedings are reported inaccurately on the Social media. Many trials are held contemporaneously with trials in the Media, especially on the Social media. On the face of the complexities of judicial practice in this age of Social media, it has been opined thus:

"If we are moving forward, it is obvious that guidance and training are required in order to avoid the pitfalls. The Bangalore Principles may have been developed before social media, but whatever is seen to be unbecoming conduct can still be interpreted in the world of social media. We are not going to invent new standards; they are the same standards, now digitized,"¹⁴

It has also been opined that:

"Citizens want to see more professional aspects when they look for a judge online. They are not interested in my family, but in me as an expert on law. It's good to

¹³ Ibid

¹⁴ By Hon Justice Kashim Zannah, Chief Judge of the Borno State, Nigeria, and Member of the Advisory Board of the Global Judicial Integrity Network, referred to in Law UK (1); Judicial Independence (UK Legal System) (Law UK, 2023) (link unavailable) accessed 2 July 2024

have a code of conduct, but at the same time we should respect all the rules we already have offline." ¹⁵

It has further been opined that:

"It is not intuitive, and you need to train judges on their own code of conduct. The insidious nature of social media includes that it stays forever." ¹⁶

There is no gainsaying it therefore, that for the judiciary to perform to its optimal, it must, not just ought to or should, have some modicum of independence. However, the Constitution of Nigeria 1999 (as Amended), which had in one breadth provided for the independence of the Judiciary, rather than provide for its enforcement, had in another breadth taken away the benefit of the provision for the independence of the Judiciary by making it a part of the Fundamental Objectives and Directive Principles of Policy, and thereby not only rendered it inefficacious but also non - justiciable.¹⁷

Thus, it is the failure of the Constitution to provide in unmistakable terms for the enforceability of the independence of the Judiciary has left the Judiciary in Nigeria in its perennial strangled state, and thereby relying on either the benevolence of the Executive branch or the proactiveness of the Legislative branch to make laws securing and enforcing the independence of the Judiciary.

It is not so ironic that the Judiciary would rely on the same Executive and Legislative branches of Government, those it is empowered by the doctrine of separation of power to check any violation of the Constitution and or abuse of powers, for the securing and or attainment of the independence of the Judiciary. How so sad! This is why the independence of the Judiciary has been a mirage and had been reduced to mere wishes and sermonizing at several fora as the opportunity presents itself.

¹⁵ By Judge Cristi Danilet, Judge of the Appeals Court in Romania, referred to in Law UK (1); **Judicial Independence (UK Legal System) (Law UK, 2023) (link unavailable) accessed 2 July 2024**

¹⁶ By Judge Virginia Kendall, Judge of the United States District Court, referred to in Law UK (1); **Judicial Independence (UK Legal System) (Law UK, 2023) (link unavailable) accessed 2 July 2024**

¹⁷ See Section 6 (6) (c) of the Constitution of Nigeria 1999 (as Amended)

Thus, independence of the Judiciary is a fundamental objective of Government in Nigeria,¹⁸ yet it is not efficacious as it is clearly non - justiciable.¹⁹ This ugly situation has consistently posed a challenge to the Judiciary in Nigeria as to whether it is truly independent and also whether it can even assert its independence in view of the reality staring it at its face that its supposed independence provided for by the Constitution is both an unenforceable and non - justiciable one. No wonder then despite the avalanche of public interest litigations going on in his country none has succeeded, if any has ever been filed, on securing and attaining Judicial independence for the Nigerian Judiciary. How so sad!

It is therefore, safe to opine that by the very way the Nigerian Judiciary was established, with its independence not a justiciable matter, the Nigeria Judiciary was never set up to be truly, institutionally, individually, financial, externally and internally be independent of the other two branches of Government, hence its perpetual dependence on the other two branches of Government, especially the Executive branch for its sustenance and performance of its legitimate duties.²⁰

Curiously, the head of the Nigerian Judiciary, the Chief Justice of Nigeria, is constitutionally recommended by a Federal Executive Body, the National Judicial Council, ratified by the Legislature, the National Assembly, and appointed and sworn into office by the Executive, the President of the Federal Republic of Nigeria. Quite interesting, isn't it! Yet, the Nigerian Judiciary is 'supposed' to be truly independent.

Now, notwithstanding, and despite, all of these, the Nigerian Judiciary still plays a pivotal role in the stability of the Nigerian State through its decisions on the diverse

¹⁹ See Section 6 (6) (c) of the Constitution of Nigeria 1999 (as Amended). See also 'An independent judicial system in Nigeria: The Challenges' by Oladotun Gbolagunte, Contract Solutions Lead, Corporate Finance/Corporate Law Specialist

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matters that are brought before, be it economic, political, social, traditional, criminal and what have you!

An independent and impartial Judiciary holds a central place in the quest for and attainment of a good, transparent and accountable Government in every democratic Nations of the world. This it ensures by discharging its principal function and constitutional responsibility to determine all matters between persons and or between Government or Authority and any person in Nigeria, and in all actions and proceedings relating to the determination to any question as to the civil rights and obligations of any person.²¹

These are no doubt very enormous responsibilities, which only the Judiciary is empowered and authorized to shoulder in the Nigerian nation to the exclusion of the other two branches of Government for the sustenance of the rule of law and upholding the ideals of democracy. Yet, and regrettably too, the Judiciary, due to no fault of its but its state of poverty, is unarguably the weakest and most vulnerable of the three branches of Government.²²

Thus, as vital and crucial as the Nigerian Judiciary to the sustenance of the rule of law and the growth of democracy in Nigeria, it has always, and still is, dependent on the two other branches of Government, especially the Executive branch, for the performance of its constitutionally vested functions. This is because first it has no absolute control over who becomes a Judicial Officer, as so much vested interests, within and without, come into play in the appointment and elevation of Judicial Officers in Nigeria. Secondly, and also of equal importance, it lacks adequate resources, by way of powers of the purse, and thus, still relies heavily on the

²¹ See Section 6 (1), 6 (6)(b) of the Constitution of Nigeria 1999 (as Amended). See also Section 46 (1) of the Constitution of Nigeria 1999 (as Amended)

²² See 'An independent judicial system in Nigeria: The Challenges' by Oladotun Gbolagunte, Contract Solutions Lead, Corporate Finance/Corporate Law Specialist

Executive branch for its sustenance. All these clearly, but regrettably, inhibits and militates against Judicial independence.²³

The unique position of the Judiciary, which is easily lost in the psyche of many, is underscored by the truism that while the other two branches of Government, the Executive and Legislatures, as almighty as they are or claim or acts to be, they are each accountable to the people, but the Judiciary alone, the supposedly weakest of the three branches of Government, is accountable to a higher value and to standards of judicial rectitude.²⁴ Thus, the Judiciary is generally regarded as carrying out the duties only the supreme and almighty God does, by its judging and passing judgments on fellow human beings and institutions of State.

To facilitate the attainment of a truly independent Judiciary in Nigeria therefore, the Constitution of Nigeria should be amended to delist the independence of the judiciary from amongst the provision of Chapter 2 and Section 6 (6) (c) of the Constitution of Nigeria 1999 (as Amended),²⁵ and be placed under Section 6 (6) (b) of Part II of Chapter 1 of the Constitution of Nigeria 1999 as amended.

The above would, in very and unmistakable terms, constitutionally secure the independence of the Judiciary in Nigeria. By the suggested further alteration of the Constitution of Nigeria 1999 (as Amended) all the required needs of the Judiciary for the attainment of Judicial independence would become justiciable. It is of utmost importance that all Government and other institutions of State must accord respect to and diligently observe the independence of the Judiciary. This would be very possible and be enforcement if as suggested above the independence of judiciary is made justiciable.

²³ **Ibid**

²⁴ See 'An independent judicial system in Nigeria: The Challenges' by Oladotun Gbolagunte, Contract Solutions Lead, Corporate Finance/Corporate Law Specialist. See also 'An Independent Judicial System' by Felix Frankfurter

²⁵ See Section 17 (2) (e) of the Constitution of Nigeria 1999 (as Amended)

The rule of law is the bedrock of Judicial independence. Thus, its diligent observance by all institutions of State and Government is sine qua non for the securing and attainment of judicial independence. Interestingly, the Judiciary is the branch, out of the three branches of Government, most suited and imbued with the sacred role of ensuring the upholding of the rule of law by both the other two branches of Government, and all institutions of Government and the citizenry.

The above, the judiciary is able to do by acting as check on violation of the Constitution and abuse of power by any of the two other branches of Government. The respect for the rule of law must therefore, be absolute for judicial independence to gain traction and be attained. In any society where the rule of law is not given its pride of place, there can hardly be an independent judiciary. The Executive branch would almost likely swallow up the Judiciary and make it an appendage to Executive branch.²⁶

A lot has been said and written about financial autonomy as being a constituent or component part of Judicial independence, notwithstanding the very succinct provisions of the Constitution,²⁷ which ostensibly grants financial autonomy to the Judiciary by providing that the recurrent expenditure of Judicial Officers of the Federation and the States shall be a charge upon the Consolidated Revenue Fund of the Federation or State. So, how about capital expenditures? Does the Judiciary operate only on recurrent expenditures? There is no specific provision relating to the provision of capital expenditures for the Judiciary.

Herein lies, as already earlier posited in this paper, the dilemma of the Judiciary in its quest for judicial independence. There can indeed, be no judicial independence without financial autonomy in the real sense of the word 'autonomy'. Thus, where

²⁶ See 'An independent judicial system in Nigeria: The Challenges' by Oladotun Gbolagunte, Contract Solutions Lead, Corporate Finance/Corporate Law Specialist. See also 'Controlling Corruption: A Parliamentarian's Handbook' Prepared by the Parliamentary Centre, Canada in conjunction with the EDI of the World Bank and CIDA, @ p. 44

²⁷ See Section 84 (2), (4) and (7) and Section 121 (3) of the Constitution of Nigeria 1999 (as Amended). See also Universal Charter of the Judge (Central Council of the International Association of Judges) (1999)

the Judiciary still relies and looks up to the benevolence of the Executive branch of Government for not only the provisions of funds for capital expenditures but also for provisions of official vehicles, official residences, and such like other capital expenditures, it is doubtful that any meaningful independence can be attained by the Judiciary.

Regrettably, for even the amount allocated by budgetary allocations to the Judiciary, in practice seems difficult to be accessed by the Judiciary. It is the law in Nigeria that no moneys, even when already allocated in the budget, shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the Federation except in the manner prescribed by the National Assembly.²⁸

It is also a fact that in Nigeria it is not enough that money has been allocated in the budget and that the National Assembly had also prescribed the manner for its release, yet the law stipulates that a warrant issued by the Minister of Finance is required for the release of such funds.²⁹

In all these scenarios where does the financial needs of the Judiciary stands? It leaves the Nigerian Judiciary always going cap in hand, and on bended knees, to the almighty Executive branch to request for, and sometimes wait endlessly, for whatever funds it needs to meet its financial responsibilities.

How can independence, in the real sense of the word, thrive in the Nigerian Judiciary? I leave it to each participant to make a guess and I am sure your guess would be as good as mine, and to which I will, unhesitant, concur, and I would have ‘nothing more useful to add’ to it.

²⁸ See Section 80 (4) of the Constitution of Nigeria 1999 (as Amended) See also ‘An independent judicial system in Nigeria: The Challenges’ by Oladotun Gbolagunte, Contract Solutions Lead, Corporate Finance/Corporate Law Specialist. See also Universal Charter of the Judge (Central Council of the International Association of Judges) (1999)

²⁹ See Section 2 (2) of the Public Funds of the Federation (Disbursement) Rules made pursuant to Section 23 of the Finance (Control and Management) Act 2004

Regrettably, the Judiciary still relies on the Executive for its funding. Thus, creating a power imbalance.

There is, seemingly, a continuous but subtle political interference with the performance of the sacred duties of the Judiciary. In the Nigerian society of politics of do or die and winner takes it all, a lot is always at stake. The political forces exert their influence and power, even if subtly on the Judiciary.³⁰

How about the process of appointment of judges from top to bottom? The Chief Justice of Nigeria, and the Justices of the Supreme Court are appointed by the President of Nigeria on the recommendation of the National Judicial Council and confirmation by the National Assembly. It may be argued that this rather serves as a tool for check and balance and has no negative effective on Judicial independence. More so, in turn it is the Chief Justice of Nigeria that administers the Oath of Office on a newly elected President of Nigeria.

In Nigeria, we have the National Judicial Council at the Federal level, but which also plays crucial role in the appointment process for Judges of the State High Court by recommending suitable candidate to the Governor of State for appointment. We also have the State Judicial Service Commission, which kick starts the process of appointment of a State Chief Judge and Judges of the High Court of a State. Interestingly, even the National Judicial Council, though headed by the Chief Justice of Nigeria, is constitutionally a Federal Executive Body.³¹ What an irony!

The above illustrate in practical terms the near impossibility of complete separation of power between the three arms of Government, the Legislature, the Executive and the Judiciary. There are some levels of acceptable cooperation, not necessarily

³⁰ See 'Political Interference in Judicial Appointments' (2019) Premium Times.

³¹ See Sections 153 (1) (i) of the Constitution of Nigeria 1999 (as Amended). See also Sections 231 (2), 238 (1) and (2), 250 (1), 254B (1) (2), 256 (1), 261 (1), 266 (1), 271 (1), 276 (1), 281 (1) of the Constitution of Nigeria 1999 (as Amended)

collaboration or collusion, between the three arms of Government for the smooth running of the business of governance.

It is true that the Judiciary is not and was not intended, by the framers of the Constitution, to be an island of its own in the smooth running of governance in Nigeria. It is doubtful if complete separation of power between the three arms of Government exists anywhere in the world, including even the United States, known as the world's bastion of Democracy.

The President of the Court of Appeal is also appointed by the President of Nigeria on the recommendation of the National Judicial Council and confirmation by the National Assembly. However, Justices of the Court of Appeal are appointed by the President of Nigeria on the recommendation of the National Judicial Council. The Chief Judge of a State is appointed by the Governor of the State on the consecutive recommendation of the National Judicial Council and the State Judicial Service Commission and confirmation by the State Assembly. However, Judges of the High Court of a State are appointed by the Governor of the State on the consecutive recommendation of the National Judicial Council and the State Judicial Service Commission.

However, to secure and enhance Judicial independence, it is recommended that relevant legislations granting financial autonomy should be enacted at both the Federal and State levels. It is suggested that such a law should establish an independent budgetary process for the Judiciary at all levels free from any incumbrance, especially Executive control.

There should be conscious effort to evolve a transparent appointment process to strengthen judicial appointments to ensure fair appointments into the Nigerian Bench at whatever level, without breaching the Constitutional requirements of Federal Character in appointments in Nigeria. There should be formulation and

implementation of robust accountability mechanisms at all levels of the Judiciary to prevent corruption in the management of the affairs of the Judiciary.

There must be continuous, enhanced and effective training, retraining and capacity building for judges at all levels on judicial ethics and craftsmanship. In this vein, the National Judicial Institute, which stands at the forefront of training for all cadre of judicial Officers and Staff of the Judiciary should be sufficiently funded and empowered to continue to discharge these very crucial responsibilities to the Nigerian Judiciary. Judicial independence is crucial and sine qua non for the democratic growth, observance of the rule of law and even economic development of Nigeria

The supremacy of a Court of law in any democratic setting lies more in the soundness of its judgment, its unimpeachable application of the law, the profundity of its reasoning, the strength of its jurisprudence, and the justice of its pronouncement, and not merely in boastfulness of the finality of its judicial dictates and orders³²

CONCLUSION: I make bold to say that Heads of Courts are the power houses of the judiciary in Nigeria and therefore, carry with them the enormous responsibilities of ensuring and securing institutional judicial independence, which will cascade down to individual judicial independence and ultimately to Judicial Independence in Nigeria to berth an ‘independent Judiciary’ in Nigeria. Thus, so long as and as far as the Heads of Courts do not rise up to the occasion so long would independence of the Judiciary elude the Nigerian Judiciary.

However, looking at the arrays of great judges and justices, all Heads of Courts, here seated, I am confident that not only would they up their games in ensuring and securing institutional judicial independence of their various judiciaries but they would also, by virtue of their power to superintend over the judiciaries under their able care, ensure individual judicial independence of the judges and justices in the various judiciaries under them.

³² ‘Anonymous’

This, is my most sincere hope and it is a hope I pray would materialize for the continuous administration of even - handed justice and fairness to the vast peoples of so great a Nation, Nigeria, yearning for an independent judiciary and justice to all manner of persons without fear or favor, ill will or affection and without interferences!

Indeed, Judicial independence is a sine qua non, and is the barest minimum requirement for the enthronement and sustenance of rule of law in any democratic state, including Nigeria. Thus, constitutional democracy and all the great benefits it makes available to the citizenry of a State are concomitant to the level to which the rule of law is respected, observed and upheld both by the leaders and the led, and none whomsoever is exempted from the application of the rule of law.

In a society where the rule of law reigns supreme, the attainment of judicial independence can, actually and truly, be taken for granted. The United State and Britain are examples of countries where the rule of law is a directive of state principles and the Judiciary enjoy a high dose of independence in the performance of their duties.

Finally, like Oliver Twist, it is suggested, and hoped, that the Nigerian Judiciary would be given or accorded its pride of place amongst the three branches of Government in Nigeria, and a good percentage of the income of this great country, is not only allocated but also timeously, as and when needed, is released to the Judiciary to enable it attain and secure its independence and carry out more vigorously its onerous task for the sustenance of the rule of law and the growth of our nascent democracy into a matured democracy. So, help us God!

Appreciation: I consider it an honour, which I can never take for granted, to be requested to prepare and present this paper by the Administrator of the National Judicial Institute Abuja under the authority and directive of the Hon Chief Justice of Nigeria, as indicated in the letter of invitation, on this very topical issue ‘Judicial Independence’, which is very germane to the sustenance of the rule of law and growth of democratic governance in Nigeria, and also very dear to my heart as a judicial

officer in this Country. I hereby appreciate the Hon Chief Justice of Nigeria, the Hon. President of the Court of Appeal of Nigeria, the Hon Administrator of the National Judicial Institute, and the Management and Staff of the NJI for the privilege to be here today having conversations with, and being amongst, the greats of the Nigerian Judiciary, the distinguished Heads of Courts.

To my lords, the Heads of Courts and all other participants, do kindly accept my deepest gratitude for your attention throughout my presentation of this paper. On the whole, to God alone be all the glory, honour and adoration.³³



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Court of Appeal, Makurdi Division

³³ Amen