OVERCOMING CHALLENGES OF JUDICIAL INDEPENDENCE IN NIGERIA: THE JOURNEY SO FAR

I would like to start by thanking the Administrator of the National Judicial Institute, my Lord, Hon Justice Salisu Garba Abdullahi and his diligent team of organisers for inviting me to address this Conference of All Nigeria Judges of the Lower Courts on this all important topic: *Overcoming the Challenges of Judicial Independence in Nigeria: the Journey So Far.* Thank you very much my Lord.

The subject of judicial independence in Nigeria has been a topical one which is on the lips of nearly every person within the judiciary community. This is obviously because of the critical place it occupies in our collective aspiration and quest for the attainment of the judiciary we all desire. A judicial system that will stand the test of time in justice administration must be one founded on a truly free and independent judiciary. No matter the height of brilliance, the degree of training and industry of acquired and exhibited by judicial officers, there will still be a limit to the extent they can go in proffering enduring justice delivery in a situation where the judiciary is not free from the control of other arms of government. As the custodian of the conscience of the society, the judiciary ought to and must at all times be looked upon as the last hope of the common man. Whenever and in any society where the hope of getting justice becomes evasive or perhaps lost, such is an obvious indicator of a society headed for anarchy and lawlessness. It therefore implies that social development, rule of law, good governance, peace and prosperity are birthed in an environment where effective and efficient administration of justice thrives. For this reason, the quest for judicial independence has been and will certainly remain a burning issue in every community of well meaning people. The Nigerian judiciary plays a vital role in upholding the constitution and the

rule of law in sustaining democratic values, protecting human rights and ensuring accountability by government agents. However, over time the executive arm of government has manipulated the powers of checks and balances to desecrate the sacredness and independence of the judiciary.

This paper will be assessing the implication and extent of judicial independence; the efforts made over the years to secure judicial independence; identify unmitigated challenges and proffer suggestions on the way forward.

In discussing this paper, I would like to highlight the concept of judicial independence, the indices or aspects of ideal judicial independence, the various challenges bedevilling judicial independence in Nigeria and the journey so far in ameliorating these challenges and thereafter I will conclude with what I suppose should be the way forward.

1. The Concept of Judicial Independence

The concept of judicial independence is an all encompassing one. Independence of the judiciary is an intrinsic element of constitutional democracy, anchored on the doctrine of separation of powers and rule of law. It is therefore a corner stone principle in every democratic system of governance. Simply put judicial independence is the concept that the judiciary should be kept away from the interference of other arms of government or interest groups. It portends that the courts should not be subjected to undue influence by the executive or legislative branches of government or by other private or partisan interests. Judges should be free to make informed and impartial decisions founded on the facts before them and the law, and not according to some whim, prejudice or fear, executive pressure or influence of latest opinion poll. Judicial independence is an all compassing concept with no

straight jacket or ideal model for its implementation. Usually to attain judicial autonomy, some factors (some of which may be historical, political, legal or social in context including the model adopted by any country) come into play depending on certain conditions, measures and checks and balances available in each country. Constitutional democracy can only be sustained in an atmosphere where rule of law thrives and there can be no rule of law in the absence of judicial independence. The underpinning effect is that the effectiveness and full realisation of the tenets and principles of constitutional democracy practiced in Nigeria will remain a nightmarish mirage as long as the full autonomy and independence of the judiciary continues to be toyed with by the political class.

Judicial independence or autonomy is rooted on the theory of separation of powers which implies that the various functions of government should not be concentrated in one hand but be assigned to distinct and separate elements. A concentration of power in same hands will naturally lead to the rule of man rather than the rule of law; a situation that merely breeds dictatorship and a governance of absolutism or totalitarianism. In the views of Aristotle[1], the dichotomy between each of these elements must be so arranged in the Constitution as to show explicitly that the dichotomy exists in fact. According to Prof Nwabueze,[2] the independence of the judiciary implies three things and that is to say that the judicial powers defined as power which every sovereign state must possess to decide justifiably between its subjects or between it and the subject must exist as a power separate from and independent of executive and legislative powers. It must also repose in the judicature as a separate organ of government, manned by persons other than and separate from those

[1] Cited by Gwunireama Ishmael, in a Paper titled: The Executive and Independence of the Judiciary in Nigeria. Pinisi Journal of Art, Humanity & Social Studies, Volume 2 No. 1, 2022 p 60

[2] Nwabueze, B. O. (1982) *The Presidential Constitution of Nigeria*. London C. Hurst; Enugu [Nigeria] Nwamife Publishers

manning the executive and the legislature and whose procedure is different from the execution and law making procedures.[3]The independence of the judiciary is the foundation upon which the other two factors will stand. As in the Nigerian case, the constitution vests judicial powers on the judicature either expressly or impliedly and the procedure for the alteration of the provisions is made cumbersome so as to secure its sustainability. A follow up to this is that the constitution, in a democracy, is declared and made supreme and any other law or part thereof which is inconsistent with the provision of the constitution will to the extent of its inconsistency be void.

The reasoning behind the concept of judicial independence is that since the statutory objective of the court is to do justice in any matter either between two individuals *inte se* or between individuals and the State, brought before it, the court must not just be independent but rightly and properly so seen to be. This is because any shades of dependence on any other organ of government or individual interests will erode the confidence of the people in the capacity of the court to carry out its statutory duty of justice delivery. A veritable attribute of an independent judiciary is the confidence reposed in it by the members of the public. In the exact words of Chief Justice Warren Burger[4]

> A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society; that people come to believe that inefficiency and delay will drain even a just judgment of its value; that people who have for long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud

[3] Ibid

[4] Cited by Prof. Oye Chukwura, Administration of Justice in Africa - Problems and Prospects. Published in Federal Ministry of Justice Review series volume 7

> and over-reaching; that people come to believe the law in a larger sense cannot fulfil its primary function to protect them and their families in their houses, at their work, and on the public stress...

Any judiciary worth the name must therefore root for its independence and the power to act unimpeded, unmitigated and uncontrolled by any external influences. An independent and fearless judiciary is a *sine qua non* of a democratic government anywhere in the world.

In the bid to guarantee the independence of the judiciary and strengthen democracy and the rule of law, the Constitution of the Federal Republic of Nigeria 1999 (as altered), as the *grund nom,* the *fons et origo* of all laws of the land made several provisions to establish the fundamentality and supremacy of the constitution. To that effect, all three arms of government must submit to the supremacy of the Constitution and be committed to the defence of it. In *A.G. Abia State v A.G. Federation*[5], the Supreme Court per Niki Tobi JSC said inter alia thus:

> The Constitution is the *fons et origo*, not only of jurisprudence but also of the legal system of a nation. It is the beginning and the end of the legal system. In Greek language it is the Alpha and Omega; it is the barometer with which all statutes are measured. In line with this kingly position of the constitution, all the three arms of government are slaves of the constitution, not in the sense of undergoing servitude or bondage but in the sense of legal obeisance and loyalty

This super status of the constitution in our jurisprudence is aimed at enhancing the vehemence and imperative of rule of law and sustenance of the

[5] [2006] 16 NWLR(Pt.1005) 265 at 381. (See also S.E.C. v. Kasunmi [2009] 10 NWLR (Pt 1150) 509 at 533)

doctrine of separation of powers enshrined in the constitution; and by extension the promotion of the independence of the courts. Specifically Section 6(1) and (2) of the Constitution[6] provides that the federation and state judicial powers shall be vested in courts created for the federation and those created for the states. In enhancing the supremacy of the constitution, Section 1 (3) of the same, states emphatically that where any law is inconsistent with the provisions of the constitution, the constitution shall prevail and that other law shall to the extent of its inconsistency be void. As I said earlier, this legal framework is all encompassing in upholding and enhancing unmitigated freedom for the courts i.e. the judiciary to exert itself unhindered.

Despite the argument founded on the issue of non-justiciability, it is nevertheless apt to point out that the Constitution made a definite provision that guarantees the autonomy of the judiciary in Section 17(1) and (2)(e)[7] under its Fundamental Objectives and Directive Principles. The social order of the State is founded on the ideals of freedom, equality and justice and in furtherance of same, the independence, impartiality and integrity of the courts of law and easy access to it shall be secured and maintained.

It has been argued that the independence of the judiciary guaranteed under the constitution falls under chapter II of the constitution which by virtue of section 6 (6) (c) of the said constitution is non-justiciable and unenforceable.[8] There have been calls to remove the provision for the independence of the judiciary from chapter II of the constitution. It is also worth the while to note that the Supreme Court in tending to tone down agitations over this issue, had

[6] Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[7] Ibid
[8] Gwunireama Ishmael, The Executive and Independence of the Judiciary in Nigeria. Pinisi Journal of Art, Humanity & Social Studies, Volume 2 No. 1, 2022 p 60

in the case of *A.G. Ondo State v A.G. Federation*[9] stated that notwithstanding the non-justiability of the Fundamental Objectives and Directive Principles of State Policy enshrined in Section 6(6) (c) which makes the said provisions of chapter II mere declaratory, it will amount to irresponsibility and a failure of duty of state organ where they act in clear neglect and disregard of these provisions. Besides, there are financial aspects of judiciary independence spelt out in Sections 84 and 121 which I shall return to shortly.

It is obvious from the foregoing that judicial independence is critical in the maintenance of the needed equilibrium between the executive, the legislative and judicial arms of government in the safeguards of rights and liberties of citizens. An independent judiciary provides the template for the Judge or Magistrates and other judges of lower courts to uphold rule of law thereby playing their part in stabilizing the polity.

2. Aspects and Indices of Judicial Independence

So far it is settled that the implication of judicial independence is that the judiciary should not just be said to be independent and free from external influence; it must be perceived as such by the ordinary citizen. That perception of its independence is a crucial test or proof of the independence. There is actually no one particular model of enhancing the existence of judicial independence. As noted earlier, evolving and enhancing judicial autonomy entails a combination of assorted conditions, measures, checks and balances that blend to make the concept a practical reality. The differing conditions may depend on what works for individual countries but each country must figure out the balances suitable to them in bringing to existence the autonomy of their judiciary. In some countries which include Nigeria, Ukraine, Poland

[9] [2002]FWLR (PT.111) 1972

Romania, Spain, Italy, France and Mongolia judiciary independence is secured by the instrumentality of a self-governing Commission or Council substantially composed of judges. Such a body is charged with making decisions affecting the process of nomination and appointment of Judges, their transfer and discipline. Whereas in other countries like the United States, India, Germany, Austria, Kenya Czech Republic, South Africa etc., judicial independence is secured through other mechanism without such judicial body. It therefore depends on what works for each country. Specifically in Nigeria, it is the National Judicial Council headed by the Chief Justice of Nigeria as Chairman at the centre while in the States it is the various State Judicial Service Commissions, chaired by the State Chief Judges that are so saddled with this onerous task of striving to secure levels of judicial direction, control and autonomy at the federal and state levels respectively.

There are different indicators or aspects of judicial autonomy. It could be viewed from the stand point of either external or internal. It also exists in terms of institutional and individual independence.[10] I will take them in turns.

External independence relates to the issue of the judiciary being free to operate without the interference or influence of the political class wielding the executive and legislative powers and all other non-judicial actors. It is trite that there can never in practice be a total clear-cut separation of powers between the three arms of government. Even Locke who amplified and refined the doctrine of separation of powers in his work[11] noted that clear separation of powers that will engender absolute judiciary independence was not practicable but the focus is that the powers of the separate organs must be

[10] Curled from Crime Prevention & Criminal Justice Module 14 key issues: the Main Factors Aimed at Securing Judicial Independence <https://www.unodc.org/e4j/zh/crime-preventio-criminal-justice/module=14/key-issues/1--the-main-factors-aimed-at-securing-judicial-independence.html, Assessed 25/09/2024

[11] Locke, J. Locke: Two Treatises of Government. (1967) Cambridge University Press

vested in separate persons. This is where the doctrine of checks and balances comes in for there should and must be interplay among the arms of government in the process of which each organ "interferes" with the powers of the other. It is this *lacuna* created by the principles of checks and balances that the other arms of government, especially the executive manipulates, to desecrate the sacredness and the autonomy of the judiciary in Nigeria; interfering with its power to adjudicate disputes and uphold the values of the constitution. Unfortunately in Nigeria there are many instances where this has been demonstrated in the aspects of appointment and removal from office of judicial officers, control and withholding of judiciary funding to mention but a few. I will deliberately spare you the agony of mentioning particular instances of this executive imperiousness in desecrating time honoured sanctity of our hallowed judicial institutions and offices because we are all living witnesses of all of them.

Under *Internal independence* we are beaming the light inside the judiciary as a system. Internal independence has to do with those internal mechanisms set up to protect judicial officers, judges and magistrates within the judiciary from influence of members of the higher bench or senior colleagues along the hierarchy or from those holding administrative authorities. Much as those empowered to do so, may exert supervisory authority over judges of lower courts, it must not extend to mounting pressures on them in any way as to unduly influence their freedom to make independent decisions on matters before them. By internal independence it is thus implied that judges and magistrates and indeed all who have been saddled with the duty to make judicial pronouncements over disputes should be free to do so without fears or favour, ill will or affection generated within the confines of the judiciary.

The other aspect is *institutional independence* which relates to institutional and legal arrangement designed to protect judges and magistrates from undue influence. Such frameworks will address methods of appointment, monitoring and evaluation, discipline and the general administration of the courts. Institutional independence is vital to ensure that relevant steps that needed to be taken to create the necessary template for the securing and sustenance of independence are put in place. Institutional independence is one thing and the behaviour of judges and magistrates (and other judges of lower courts) is another. There are two different issues because institutional independence is no guarantee that judges are bound to behave in the required independent manner. This is the more reason it has become necessary that with institutional independence, the behaviour of judges, including those at the lower courts, should also be put in focus.

The issue of the behaviour of judges, magistrates and other judges of lower courts brings to mind the other level of independence namely: the aspect of *individual independence.* This has to do with the state of mind and actual conduct of judges at all levels. The individual independence of a judge will depend on a variety of issues including their professional instincts (the level with which they have imbibed professional values) and social exposures. Although individual independence differs from institutional independence, the later provides enabling environment for the former to exist. The fact is that the two dimensions of independence in the judiciary are both intricately and mutually connected. The Judiciary as an institution must be independent and the judges, magistrates and other judges of the Area/Sharia/Customary courts and indeed all cadres of court employees must equally be individually independent and free from any external influences. Where an individual possesses the required frame of mind but the court over which he presides is

not independent of external influence wherewithal and to what extent can the independent of the judge as an individual be situated or impactful? In the same vein, a judge, magistrate or other judge of the lower court who belongs to and identifies with social activities of every club, social or cultural organisations in town is obviously going to have issues with his independence as an individual. The judge or magistrate who hobnobs with politicians, his money bag friends and celebrities who probably sponsor his lavish life style, will certainly find it difficult to be an independent arbiter?

Institutional independence of the judiciary goes far beyond merely proclaiming or inscribing judicial independence in the statute books and churning out some codes of ethics on paper. The judiciary must be intentional in mapping out practical and proactive programmes of action to pursue, secure and protect its institution from external trepidation. Individual independence also relates to a judge's or magistrate's ability to decisively maintain the balance or restraint from the two extremities of neither being pro-government of the day nor a judicial activist in opposition. His decisions must not be tainted with political sympathy, personal opinion or politically motivated sheer support for the government of the day. At the same time judges and magistrates need not take judicial independence to mean judicial rascality and excessive or abusive use of judicial powers to dish out avoidable orders. This is not intended to promote cowardice and timidity at the bench and make a judge or magistrate cringe or shy away from dispensing justice within the confines of his jurisdiction. Personal independence is a safeguard for the judge's ability to uphold the fundamental rights of citizens check abuse of power and guarantee fair trials devoid of fear, favour, ill will or affection to Nigerian people. It enables the judge to be personally prepared to be held accountable for whatever actions he takes at any given time. There lies the full import of

judicial independence. An independent judge or magistrate will strive to uphold the rule of law for it is in so doing that the independence of the judiciary can both be guaranteed and sustained. As I mentioned earlier at the beginning of this paper, the concepts of separation of powers and rule of law are meant as the bedrock for judicial independence and at the same time, it takes an independent judiciary for rule of law to be upheld in the polity.

3. Challenges to Judiciary Independence in Nigeria

Over the years the judiciary in Nigeria has been riddled by challenges to its independence in various forms and magnitude. We can only point out some specifics which may not be exhaustive of the many challenges.

(i) *Executive interference and control*. The greatest culprit with respect to external interference in the affairs and statutory relevance of the judiciary is the executive arm of government which has time and again both at the federal and state levels exerted one form of influence or the other over the judiciary. The impact of such influences has always raised concerns over the impartiality of judicial decisions made in view of the prevailing circumstances of any particular instance. I had noted earlier that the executive takes advantage of the process of checks and balances in the system to impose its overbearing influence on the judiciary. With regards to the appointment and elevation of judges, it is public knowledge that (without prejudice to the established roles of the National Judicial Council (NJC) and the various State Judicial Service Commissions in the judicial appointment procedures) the appointment of judges substantially begins and ends with the executive. In the States for example, the Chairman of the Judicial Service Commission (JSC) cannot initiate the process without the consent of the State Governor. Even when the Revised Procedural Rules required mere notice to be served on the Governor, every

reasonable Chairman of State JSC understands the risk involved in proceeding with judicial appointment process without the consent of the Governor duly sought and received. So it is the Governor who sets the ball rolling for a judge of the State High Court, Sharia and Customary Courts of Appeal to be appointed. The appointment of Heads of Court are not exempted, the same situation is applicable. At the end of the day, it is the Governor who appoints, as it were, and swears in the judges including Heads of court. All that the JSC and the NJC do are merely recommendation of suitable candidates to the Governor for appointment. If the Governor withholds his consent *ab initio* the appointment process cannot be commenced and therefore no appointment can be made because even if you carry on with the process without the blessing of His Excellency, it will only lead you to a blind alley. Furthermore, where the consent is obtained, the appointment and swearing-in of the recommended candidates lies at the mercy of the Governor. If he doesn't like the recommended candidates he might decide not to appoint them. We may remember what happened sometime ago where a particular Governor of a State refused to appoint the Chief Judge who was recommended by the NJC just because the Hon Judge was not his preference. So then, the question is who in fact appoints judges? Is it the executive or the judiciary? Does the process as it is really allow for candidates with competence, integrity and ability to emerge? By the resolution of the United Nations General Assembly,[12] it is generally agreed that judicial appointments should be made on merit based on objective criteria pre-established by law or by competent authorities and that political considerations should be inadmissible. It is required that persons who emerge from the selection process for judicial office should be

[12] United Nations Human Rights Instrument: Basic Principles on the Independence of the Judiciary. Adopted 06 September, 1985 by the 7th UN Congress on Prevention of Crime and the Treatment of Offenders held at Milan 26 August to 6 September 1985 and endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

men and women of integrity and ability with appropriate training or qualifications. The same standard is set out for promotion or elevation of judges to higher bench. It is further required that in the composition of members of the judiciary, diversity should be promoted including taking into account a gender perspective to ensure adequate representation of women.[13] Can we thus say that in the case of Nigeria there is judicial independence playing out in the appointment and promotion of judges in view of the manner of our judicial appointments? In his paper presented at the 2005 All Nigerian Judges' Conference, His Lordship, Hon Justice Umar Faruk Abdullahi, CFR, former President of the Court of Appeal now retired, noted that the old process of appointment of judges which was criticised as being faulty and promoting incompetence has given way for a more credible process which His Lordship described as "very exerting and thorough to create any room for suspicion."[14]That is the view of His Lordship in comparing what the process was before the establishment of the NJC and probably speaking from the perspective of the federal judiciary. There are however persons who seem to think differently to the effect that the current appointment process appear to be politicized. For example, His Lordship Hon Justice Olajide Olatawura JSC (Rtd), of blessed memory, in his paper titled: *The Judiciary, the Legislature, the Nigeria Police and Justice Delivery*,[15] delivered at the All Nigeria Judges' Conference 2003 expressed the following opinion:

> I now come to judicial appointments. This is an area we must look into critically. In the past, up to about 1980, appointments to the Bench at all levels were secret. The appointments were not politicised. I can still remember the content of the letter sent round

[13] Ibid
[14] 2005 All Nigerian Judges' Conference 2005 Ibadan Spectrum Books Limited, p. 67
[15] All Nigeria Judges' Conference 2003 Ibadan, Spectrum Books Limited, p. 75

> in those days by the Chief Justice or the Chief Judge addressed to the Judges in each state... . I think it is an honour to have been requested to take part in such an exercise. I believe it is a grave responsibility. There is no doubt that appointment to the Bench has been highly politicised.

The former procedure for appointment involved a great deal of confidentiality and for that reason some people considered it not transparent enough. I recall when we were appointed. I did not consult anyone and there was no lobbying of any form. In fact when the appointment came out, it was from my learned colleagues who came to congratulate me that I got to know what had happened. How the times have changed! With different reforms aimed at increasing and ensuring effectiveness and efficiency in the judiciary, new procedure considered better was adopted, which procedure was some time ago, precisely in 2014, reviewed to admit for more openness and transparency. However in view of the experiences so far especially with the overreaching attitude of the executive it would appear that we are yet to arrive at our desired destination.

Still on the States, the appointment of Magistrates and judges of the lower courts created by the State House of Assembly, how is it done? Magistrates for instance are appointed by their State JSC. However the Chief Judge who is the Chairman of JSC still cannot take any steps until approval is given by the Governor even when the appointment has been approved in the budget for the year. The harrowing experiences of Heads of Courts in the hands of the executive arm, while contending against undue political influence in the process of appointing judges of lower courts, is simply unimaginable.

(ii) *Absence of True Judicial Bodies*. Nigeria happens to be one of those countries where judicial bodies or Councils are said to have been introduced as part of reforms to manage the system, oversee judicial appointments and discipline. At the federal, the National Judicial Council was instituted to coordinate the appointment, promotion, funding and maintenance of standards in the judiciary throughout the country. It was actually proposed and designed to enhance the independence of the judiciary in Nigeria. The composition of these supposedly "judicial bodies": the National Judicial Council, the Federal Judicial Service Commission, the Judicial Service Committee of the Federal Capital Territory and the various State Judicial Service Commissions (JSC) set up at the federal and state levels respectively, for the smooth running of the judiciary as well as securing and upholding its independence are inundated with different challenges. It is even worse at the States with the JSC. From the way the JSC is constituted, it makes it extremely and obviously an executive body than a judicial body it ought to be. In any case, it is created as an executive body in the 1999 Constitution (as altered). In the JSC, apart from the ex-officio Members, the Chief Judge who is Chairman and the Grand Kadi of Sharia Court of Appeal and or President of the Customary Court (as the case may be), all others are appointees of the Governor, meaning of course that they are politicians. The Attorney General and Commissioner for Justice and the rest of the Members are appointees of the Governor with no impute from the judiciary. How independent can we say the JSC as a body is? And being so constituted, to what extent can it go in enabling the independence of the judiciary?

Judicial bodies (Councils or Commissions) according to the United Nations Human Right instrument adopted by the General Assembly resolution,[16]are

[16] Op. Cit.

supposed to be self governing bodies of the judiciary, composed mainly of judges and independent from the executive and legislature even though they still maintain some connections with them. The main essence of these bodies is to enhance the implementation of the independence of the judiciary from the executive arm. These bodies are also expected to play crucial roles in promoting internal independence since the judges and other employees are expected to be shielded, by the judicial body, from the overriding influence of their hierarchical superiors. The unfortunate thing is that what we have in Nigeria are not judicial bodies but executive bodies. The 1999 Constitution of the Federal Republic of Nigeria (as altered) in section 153(1) thereof listed the National Judicial Council and Federal Judicial Service Commission as federal executive bodies.[17] Paragraph 5 of Part II of the 3rd schedule to the said 1999 Constitution supra also created the State Judicial Service Commission as State executive body. Paragraph 1 of Part III of the third schedule to the 1999 Constitution (as altered) created the Judicial Service Committee of the Federal capital Territory as an executive body. It is therefore not surprising that they are constituted the way we have them. These are part of the challenges.

(iii) *Corruption.* A rather more endemic monster that has far more impeded the realisation of judicial independence in Nigeria is the cankerworm of corruption. Judicial corruption involves all such unethical practices including but not limited to bribery, extortion, favouritism and nepotism in appointments and assignment of responsibilities among judicial officers as well as staff of the judiciary. Corruption undermines the internal independence of the judiciary, undermines the rule of law, erodes public confidence in the judicial process and its outcomes and ultimately hampers the administration of justice in

[17] See also Part 1 of the Third Schedule to the 1999 Constitution (as amended)

general. Failure in justice administration is failure in upholding rule of law and ultimately is the failure in good governance.

Corruption has unfortunately become endemic in our entire social community and has eaten deep into the fabrics of our national life. This is a tale of shame but it is the unfortunate reality we can only wish away. When I say this, it does not however mean that everyone in our country is corrupt but that the corrupt people are in the majority. They are self exerting, domineering, daring, audacious and loud about their craft. This is why whoever and howsoever disciplined you may be; you will still find Nigerians coming to you to try to sway or influence your action or opinion on a given issue. Sometimes, they are our relations, friends, neighbours, old school or classmates etc., and in Nigeria, it is all about who do you know? Unfortunately some of us in the judiciary fall for them and this is one challenge; too many.

(iv) *Funding of Judiciary.* The most harmful and frustrating challenge to the independence of the judiciary is the near denial of financial autonomy and difficulty in running the courts. I will quickly add here that this also affects the challenges of managing the remuneration and pensions of Judges, Magistrates and all court employees. While it may be felt that some level of financial autonomy have been attained at the federal level with the NJC handling the funds of the federal judiciary and the remuneration of judges of superior courts nationwide, the story is not the same with the judges of lower courts and other court employees remunerated by their state governments. The effect is that there is no uniform treatment of these categories of judicial personnel across the nation. Luckily in our country, the issue of salaries and pensions of judges of both superior and lower courts inclusive of other court officials has been made subject to legislation at the various levels. However, the question of whether what is paid is adequate and commensurate with their

respective statuses and responsibilities still remains a burning issue up to date without prejudice to the recent attention being given to the salaries of judges of superior courts. It is obvious that adequate remuneration will go a long way in shielding judicial personnel from potential corruptive practices and pressures aimed at interfering with their individual independence. Thus it has been recommended that legislative or executive powers that may affect judges (of both superior and lower courts) in their office, their remuneration, conditions of service or their resources shall not be applied for the object, purpose or with the consequence of threatening or bringing pressure upon a particular judge or judges.[18] It might be needful to remark that the present arrangement whereby the NJC handles the remunerations of judges of all superior courts of records in the country still faces stiff objection and criticism from political and other interest groups. Those who do so feel that as a federation, the NJC has no business handling the personnel and overhead costs of judges and Kadis of state High Courts, Sharia Courts of Appeals and Customary Courts of Appeal created by the state legislature. Some of us may remember what was obtainable with respect to the funding of the judiciary nationwide before the resource control judgment[19] that collapsed that arrangement. Before then the NJC handled the payment of salaries of all judges and personnel of the nation's judiciary. Thereafter the states resumed the handling of the funding of capital and recurrent expenditures of the state judiciaries with exception of the personnel costs and overheads (recurrent expenditure) of judges of superior courts in the states. This is still the practice to date and it is still being criticized for the reason that Nigeria being a federation, the handling of the funds of state judges by the NJC derogates the principle of true federalism. Those who feel that way see the practice as another mechanism for federal

[18] See UNODC, 2015, para.91

[19] A.G. Federation v A.G. Abia State & Ors (2001) 11 NWLR (Pt.725) 689

control of its federating units. Some pundits have postulated that Nigeria as a federation should adopt a dual court structure as is practised in places like the US. The dual court structure will entail that each level of government should fully fund its own judiciary with respect to both their capital and recurrent expenditure.[20]It is however doubtful if Nigeria is matured for such a court system.

There can be no judicial independence without financial autonomy. The funding of the courts determines to a large extent the capacity and the condition under which the courts perform their duties. When sufficient resources are available, the courts are enabled to operate independently of state institutions, actors and other private interests with integrity and effectiveness. The aspect of financial autonomy is a serious challenge to the independence of Nigerian judiciary. Financial autonomy is a critical component and indeed a basic criterion for assessing judicial independence. How free and unmitigated the judiciary can be in the performance of its statutory functions will by and large be determined by the level of funding it receives. Adequate funding no doubt will properly situate the judiciary to adequately administer justice and engender integrity, credibility and efficiency in the system. If sufficient funds are made available, adequate facilities, needed infrastructure and man power will be accessed thereby enhancing the smooth running and functioning of the judiciary. Despite the legal framework set out to secure the financial autonomy of the judiciary, all has not been well and the Nigerian judiciary has never been silent over the issue of paucity of funds to run its courts.

[20] Ajakaiye J. A. Hon Justice, *The Constitutional Role of the National Judicial Council with Regards to Collection and Disbursement of Funds to the Judiciaries: Problems and Prospects*, a paper delivered at the All Nigerian Judges' Conference 2001; p.155

Under the 1999 Constitution of the Federal Republic of Nigeria (as altered), provisions are made to avail the judiciary the much needed financial autonomy but its practicality is still in issue. Sections 81 (3), 84 (7) and 162 (9) of the 1999 Constitution (as altered) provides for the release to the NJC of the funds meant for the judiciary for disbursement to the relevant Heads of court stipulated in Section 6 (5) of the Constitution supra. The payment of salaries, remunerations and allowances of judicial officers captured by the said 1999 Constitution is made a charge on Consolidated Revenue Fund of the Federation. By the provision of Section 80 of the Constitution supra, the Consolidated Revenue Fund of the Federation is not a part of the Appropriation Bill sent to the National Assembly by the President but it is from this Fund that the Appropriation Act will be charged. The judiciary fund is thus a first line charge. Unfortunately, this covers only the federal courts and the personnel and overhead costs of judges of state High Courts, Sharia Court of Appeal and Customary Court of Appeals as earlier mentioned in this paper. The arrangement does not capture Magistrate Courts, Area Courts, Sharia Courts and Customary Courts and any other lower courts of the States. Section 121 (3) of the Constitution (as altered) provides for the capital expenditure of the State Courts created under the Constitution. By implication all other courts created by the House of Assembly of State are to be funded directly by their State Governments. That is to say that the overhead and personnel costs of the Magistrates, other judges of lower courts and entire judiciary staff in the states still depend on their respective state governments for funding of both capital and recurrent budgets. In a few states the remuneration of judges of lower courts and judiciary employees has been adequately and consistently handled but the story is far from joyful in many other states of the federation. In some states, the capital releases to the Judiciary have been consistent

according to the whims and caprices of the executive but in many others, it is still the same sad story. The problem begins with the budget preparation. The executive will always give the judiciary a ceiling thereby limiting the expectations of the judiciary even before the budget is made and passed into law. In a majority of cases, in the states, the budget is only an annual ritual which is hardly performed or even given a consideration as a thing in existence. Whatever the state judiciary receives as either capital or recurrent depends on the disposition of the State chief Executive. This is the same story we all are conversant with.

It is for this reason that I will always hold the opinion that even though Nigeria is a federation; the laws need to be given a second look so as to carry along all funding of judiciary both at the federal and the states. In view of the Nigerian factor, the National Judicial Council should be in charge of collecting and collating all moneys accruable to the state judiciaries and disbursed to the heads of courts as presently done with the salaries of judges of superior courts in the states. This is the only way the judiciary can truly secure financial autonomy.

Recently, in the 2024 Round Table organised by the NJI for Heads of Courts held the 23 - 25 September, 2024, His Lordship Hon Justice Sir Biobele Abraham Georgewill, JCA, DSSRS, KSC proposed in his paper that:

> ...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 cognisance of the imperative 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 on the need for full financial autonomy, and not just partial financial autonomy in relation to recurrent expenditures only for the Nigerian Judiciary. The ripple effect of such judicial financial autonomy is, and I say this assuredly and without any fear of contradiction, a guaranteed independent judiciary in Nigeria.[21]

With the above statement, His Lordship the Justice of the Court of Appeal has in my opinion nailed the point and I couldn't have agreed more with him.

(v) *Personnel and Court Administration.* With the funding of Courts follows the management or administration of the court. There are two categories of personnel in the judiciary. One involves the legal professionals involved in adjudication, who preside in courts that is the judges, magistrates, judges of Area Courts, Customary Courts and so on. The others are all other personnel some of whom are professionals in other fields of endeavour like Accountants, ICT experts, Engineers, etc., and scaling down to drivers, security men, Cleaners etc., who are employed to offer vital services to the judiciary. Another frustrating challenge that has hampered the judiciary sorely especially at the States is the shortage of man power. What makes it more painful is that in many states, the judiciary via the JSC cannot employ any worker without executive direction. This is the unfortunate plight of the judiciary in many states and it is a huge challenge to the independence of the judiciary.

The management of the day to day activities of the Court other than adjudication or litigation lies in the hands of The Chief Registrars and his team of Court Administrators under the direct supervision of the Heads of Court. Matters that have to do with performance of judicial functions including things

[21] Georgewill, Biobele Abraham, JCA, *Judicial Independence: The Role of Heads of Court*. A Paper presented at the Roundtable for Heads of Courts organised by the National Judicial Institute Abuja, 24/09/2024, p14

like assignment of case files to courts do not fall within the roles assigned to Court Administrators. External authorities should not interfere with any aspect of any of these duties that are relevant to the adjudication of cases. In recent times different jurisdictions have evolved different case management practices aimed at achieving improved case processing and increased productivity. Much of all these involve funds that are not always readily available.

Court Administrators would have to focus on finding the most appropriate manners to handle the non-judicial management and court administrative functions of budgeting and Planning, finance, procurement, Human Resources, Training and capacity building, facilities management, security of courts and employee discipline among others in line with international best practices.

One major challenge that emerges in all of these is that of maintaining the balance between the usual conservative postures of the courts and the current emphasis on transparency of court management and court procedures which as is popularly believed should promote legal culture, access to justice and public trust in the judiciary. This is not an easy task when you are at the same time overwhelmed with the consciousness to jealously guard and distance your judiciary from unknown predators prying and targeting its little independence.

(vi) *Conduct and Discipline in the Judiciary.* The issue of conduct and discipline among judiciary personnel is a critical issue to the real essence of judicial independence. The Nigerian judiciary has not hidden its concern for this and had through the National Judicial Council taken measures and set standards of conduct for judicial officers and other personnel. Observance of these rules and codes of conduct and instilling discipline are expectedly positive steps towards the actualisation of independence for the judiciary. Conduct and

discipline in the judiciary to a large extent affects the degree of confidence of the general public in the courts. People do not expect to have judicial powers (which can dramatically upturn their lives and fortunes) left in the hands of persons with dishonest and questionable characters. Such conduct and discipline will obviously determine how efficiently or poorly the internal administration of the judiciary is run and the quality of justice administered to the public. As judges of lower courts, every participant in this workshop must take the challenge of his or her conduct very personal. We have had situations in the past where very insignificant numbers of judicial personnel have through their unethical conducts dragged the judiciary into the mud. There is a saying in the part of the country where I come from, that when one finger touches oil; it spreads to the rest of the fingers. A misconduct of one Area Court Judge, Magistrate, Khadi, Chairman or Member of Customary Court can scandalize the entire system because people do not merely see the individual; they tend to see the judiciary. There is already in existence a documented set of Code of Conduct for Judicial Officers and for all personnel of the judiciary that should guide our conduct and instil discipline in the system. I recommend that those who have not read this priceless piece of document should endeavour to obtain a copy and arm themselves with it.

Furthermore, it needs to be stressed here that a judiciary that aspires to be independent must of its own accord stay off politics. This means that both as an institution and at personal or individual levels we must all become apolitical. We are not expected to hold political opinions publically, political affiliations or be seen to be partisan as a judiciary. Once our judgments and decisions are tainted or overtly smacks of political interplay or interests, not

only our judgment but our judiciary will lose its authority, legitimacy and public acceptance.[22]

4. The Journey so Far

The Nigerian judiciary has come a long way in the struggle to secure and sustain the independence of the judiciary over the years. The Nigerian government has equally demonstrated keen interest in instilling an independent judicial organ in the polity through legislation. The 1999 Constitution (as altered) in comparison with its predecessors made tremendous impact in addressing the challenges to attainment of judicial independence. One of such breakthroughs is the establishment of the National Judicial Council. As noted earlier, the principles of checks and balance enables the three arms of government to interface in what should naturally work for the overall interest of governance; but through their overbearing influence, the executive arm usually exploit this window to interfere and sometimes bully the judiciary. With the National Judicial Council, there is a shared role between the judiciary and executive in the appointment and removal from office of Judicial Officers. In either case of appointment and removal from office of a Judicial Officer, the executive only acts on the recommendation of the NJC which though is an executive body is headed and predominantly constituted of members and stakeholders in the judiciary. This has gone a long way in sanitising the appointment process at the centre. With the NJC saddled with the responsibility of recommending to the President or Governor the appointment or removal from office of a Judicial Officer and also the exercise

[22] See Gadi v Male [2010] 7 NWLR (Pt 1193) 225; Also A.-G Federation v Abubakar [2007] 10 NWLR (Pt 1041) 1

of disciplinary control, a level of protection is provided for Judges' tenure of office. A Head of Court or Judge cannot be removed from office without impute from the NJC. Thus no member or chief executive can wake up one morning and pretend to dismiss a judicial officer in Nigeria. In the case of *Elelu-Habeeb v A.-G. Federation*[23]the Supreme Court in considering the propriety of the purported removal from office of the then Chief Judge of Kwara State, held that the fact that the NJC has a vital role to play in the appointment, removal and exercising control over a Chief Judge of a State under Section 271 (1) of the Constitution and also under paragraph 21 of Part 1 of the Third Schedule to the same Constitution is not at all in doubt. The revered Apex Court did hold that the Constitution does not give a Governor acting in conjunction with the House of Assembly the absolute power to remove a Chief Judge of a State from office without the recommendation of the National Judicial Council.

The National Judicial Council as highlighted earlier is also responsible for the collection, control and disbursement of all moneys, capital and recurrent, for the judiciary,[24] (at the federal level but for State Judiciaries it is only recurrent expenditures of Judges of Superior Courts of records that is affected). It is the NJC that now handles the budget preparation for each year's appropriation (in conjunction with the various State judiciaries for the purpose of salaries of Judges of Superior Courts of records in the States), access the funds and disburse accordingly. To that extent the judiciary at the federal level is saved the trauma of going cap in hand every now and then to beg for funds from the executive as is still the case in the states. The 1999 Constitution (as altered) also established the tenure of office of judges which by the recent alteration of

[23] [2012] 13 NWLR (Pt. 1318) 495

[24] Paragraph 21 (e) of Part 1 of the Third Schedule to the 1999 Constitution (as altered)

the Constitution[25] signed into law by His Excellency the President on 8th June, 2024 has been pegged at 70 years. This is intended to unify the retirement age and pension rights of judicial officers across the country. This new Act also reduced the period of service required for a judicial officer to receive a full pension from 15 to 10 years as a way of creating incentive for Judges to continue in service, bringing their experience and wealth of knowledge to bear for longer periods. No judge may be removed from office before the statutory retirement age except in the manner discussed above.

Another milestone in the journey to judiciary independence is the recent increase in the salaries of judicial officers across the nation[26]. All these are meant to bolster and enable judges enjoy guaranteed tenure of office until the mandatory retirement age.

The judges of lower courts and the bulk of judiciary employees at the state levels are not captured in this arrangement. The question then is what similar measures are contemplated for magistrates, Kadis and other judges of lower courts in terms of security of tenure, enhanced remuneration and improved welfare? This is where we are today. The pursuit of judiciary independence is therefore still work in progress. In some States, the body of judiciary staff under the aegis of Judiciary Staff Union of Nigeria (JUSUN) has been at the forefront of the battle for the full financial autonomy of the Judiciary and for the actualisation of enhanced salary for all cadres of judiciary employees across the country. I have always applauded the lofty efforts of the JUSUN and will continue to do so. Many if not all Heads of Court gave them their full support to ensure that they succeed and we shall continue to do so. At a particular time it appeared that at last there was going to be light at the end

[25] See Fifth Alteration, No. 37, Act, 2023

[26] See the Judicial Office Holders' (Salaries and Allowances, etc.) Act 2024. Accented to by the President on 9th August, 2024.

of the tunnel with the approval of a special salary structure for the judiciary workers. Unfortunately, because we are a federation, it has become difficult to implement this uniform salary in every state. This still comes to the issue of executive interference and it remains part of the lingering challenges to the actualisation of the independence of the judiciary in Nigeria.

Efforts have also been made both by the government and the judiciary to address corruption in Nigeria. The federal government established the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) as two major institutions to fight corruption and handle financial crimes and criminality across the country. A lot of success stories have been told by these Commissions over the years. One only imagines what our country would have been without institutions like these. The issue of how positively impactful their activities have been in relation to dealing with corruption as it affect the judiciary is a different cup of tea. However the judiciary have internally, through the NJC developed and enforced codes of conduct for judicial officers as well as for other judiciary employees. The Council has left no stone unturned, since inception, in her efforts to root out bad eggs in the system including those who had mistakenly found their way to the bench. The results of the fight against judicial corruption by the NJC have been extremely resounding. Disciplinary measures have been taken where necessary against erring Judicial Officers. The periodic evaluation of judges' performance embarked upon over the years has yielded tremendous outcomes. The various Judicial Service Commissions and Committees at the federal and state levels have not been left behind in their strivings against the crippling monster of corruption in their various jurisdictions. The battle against judicial corruptions

still rages on and we must all ensure that all hands are on deck to fight on until victory is won.

A lot of other efforts have been made over time in different sectors connected to the judiciary. The Nigerian law Reform Commission has been strengthened to update relevant laws and promote judicial independence.

These days some courts have shown resilience in resisting executive interference and setting precedents (through very remarkable judicial pronouncements) for judicial independence. Many Judges of lower courts have exerted themselves excellently, shown impressive brilliance and courage in their decisions and pronouncements. We cannot but commend such excellent performances and at the same time enjoin all of you to join hands as we continue to push for a better and more independent judiciary that cuts across the country both at federal and state levels.

5. CONCLUSION: THE WAY FORWARD

So far we have taken a look on the import of judicial independence and the numerous challenges bedevilling the Nigerian Judiciary at the national and state levels. The federal and state governments including the judiciary itself have not folded their arms. A lot of efforts have been made to reposition the judiciary especially since the coming into force of the Constitution of the Federal Republic of Nigeria, 1999. The place of the judiciary in promoting rule of law, good governance and sustenance of our democracy cannot be overemphasised. For the judiciary to occupy its place effectively in the polity, it must not only be said to be independent but must be independent in the perception of the ordinary Nigerian. The needed effective and efficient justice delivery can only emerge from a judiciary that has the capacity to make judicial pronouncements devoid of fear, favour or ill will. It must be a judiciary

that is not controlled by other arms of government or by private, political, personal or selfish economic interests. The Nigerian judicial independence is still work in progress.

To this end it is important that we further strengthen our laws particularly a further alteration of the 1999 Constitution to enlarge the scope of functions of the NJC. In the first place the National Judicial Council, the Federal Judicial Service Commission, the Judicial Service Committee of the FCT and the various State Judicial Service Commissions should not remain executive bodies; they should be made judicial bodies. Without prejudice to the issue of federalism, the NJC should also be authorised and empowered to collect all monies, both capital and recurrent standing to the credit of the state judiciaries and disburse to the Heads of court the same way it is done for Judges' salaries and overhead. If it is done for judges' salaries, I do not see why it cannot be done whole and entire. The time has come for the Judiciary, as an institution and indeed an arm of the government, both at the centre and the states, to rise to the occasion. It is for this reason that I associate myself with the call made by His Lordship, Sir Biobele Abraham Georgewill, JCA quoted above to urge that proper interpretation of the constitution on provisions relating to the independence of the judiciary be sought for the purpose of determining and actualising full financial autonomy for all spheres of the Nigerian judiciary. There is no Head of court in this nation who is incapable of administering the capital and recurrent funds of his court.

Furthermore, somebody has asked the question:[27] what is wrong with the Chief Judges swearing-in newly appointed Judges of the Superior Courts of Record in their states, the same way and manner the Hon Chief Justice of Nigeria swears in judicial officers of the federal Courts? Why must it be the

[27] Georgewill, B. A. *Op. Cit.*

Governors that will swear in the judges? It suffices that the Governor will swear-in the Chief Judge just as the Chief Judge will swear-in the Governor, in the spirit of checks and balances. When it comes to the Judges, the Chief Judge should perform the oath taking, the same way the Governor swears in his Commissioners and political appointees. This is part of those seemingly innocuous practices that actually speaks to the issue of executive overbearing and over-superintendence of the judiciary and her activities.

Another area of interest is that if the issue of judicial independence is truly to be taken seriously, it is suggested that moves should be made to remove the provision for judicial independence from the non-justiciable[28] Part II of the 1999 Constitution (as altered) and be placed appropriately. It is rather unfortunate that an issue as important as the independence of the judiciary is rendered non-justiciable under the Constitution, the same Constitution it is meant to interpret and defend. The effect of this is and has been that no action can be taken against or in furtherance of the push for the independence of the judiciary. Such that even in the face of brazen distortion and desecration of the sanctity of its institutional independence as the third arm of government no such question can be raised in any court of law. How odd! I think it is high time we, the members of this third arm of government, started analysing this scenario more constructively. I will not blame those who hold the view that by rendering the issue of judicial independence non-justiciable, it was probably never the intention of the framers of the Constitution that the judiciary should be truly free from the strangleholds of the executive and the legislature. It is suggested that all the clumsy provisions of the Constitution be amended to reflect a more clear and unambiguous provisions for the institutional and financial independence of the judiciary. It is my earnest

[28] See Section 6 (6) (c) of the 1999 Constitution (as altered)

prayer that those of us at the headship of the nation's judiciary will see reasons to align ourselves with this opinion and take steps towards actualising it. No other organ of government can help the judiciary more than the judiciary itself. The judiciary must assert its independence through bold and courageous decisions and actions. The moment the financial independence is settled, a whole lot of other aspects of judicial independence will easily be sorted out. Appointment of judges and employees of the judiciary especially at the states will no more depend or be left at the pleasure and whims of members of the executive arms. Not all Heads of Court will be as lucky as some of us whose demonstrate the political will to promote and support the independence of the Judiciary.

This is why I find it apposite at this auspicious time in the history of our judiciary, that everyone and I mean everyone in the Judiciary, all stakeholders in the justice sector and indeed all well meaning Nigerians should rise and stand against the current bid orchestrated through a Bill presently debated at the National Assembly, to alter the Constitution in a manner that will be extremely detrimental to the true import and ideals of the judicial independence we have so harped on and laboured to attain all these years. If we keep quite or fold our arms and allow this Bill to see the light of day, then the Nigerian Judiciary would have been finally captured by the political class. The Bill under reference is a "Bill for an Act to Alter the Constitution of the Federal Republic of Nigeria, 1999 to Amongst other Provisions Transfer the Powers of the National Judicial Council to Appoint or Remove Judges of State Courts to the Governor of a State and Amend the Third Schedule of the Constitution of the Federal Republic of Nigeria, 1999 and for Related

Matters"[29] This pernicious Bill seeks to divest the NJC of the powers to make recommendations for appointments of Chief Judges and other Judicial Officers of State Courts of superior records and its disciplinary control over such courts. The said Bill by implication seeks to have them domiciled, all the powers of appointment, control and removal from office of state Judicial Officers in the office of the Governor. The Bill provides that the appointment of a Chief Judge of the State High Court, Grand kadi of Sharia Court of Appeal of a State and President of Customary Court of Appeal of a State shall be made by the Governor on the recommendation of the State Judicial Service Commission subject to the approval of such appointment by the State House of Assembly. The appointment of all other Judges of State Courts under them shall be made by the Governor acting on the recommendation of the State Judicial Service Commission and no more. How dangerous this can be! I say this because, we already know that the Membership of the JSC with the exception of the ex-officio Members are all appointees of the Governor who themselves are also politicians and political allies of the Governor including the State Attorney General. It is true that the Chief Judge is the Chairman of JSC, but what do we expect where the Governor becomes the one with the sole power to appoint a Chief Judge without the impute of the NJC. Would such a Chief Judge who is Governor's appointee not also be the Governor's man or even errand boy? We are also not unaware of the "rub my back and I rob your back" relationship that exists these days between the Executive and the Legislature in most States across the country. So at the end of the day, the obvious truth is that if such Bill sails through, the Governor becomes the one who appoints, exercises disciplinary control and ultimately can remove a Judge from office. It can be

[29] Constitution of the Federal Republic of Nigeria, 1999 (Alteration) Bill, 2023, (reproduced in a document of Retreat of the Joint Committee on the Review of the 1999 Constitution, captioned Constitution Alteration Bills (Judiciary) held Thursday 11th - Sunday 14th July, 2024)

argued in favour of the proponents and sponsors of the said Bill, that Nigeria being a federation, the Federal Government by interfacing with state courts through its agency, the NJC, is merely bringing federal control to bear on its federating units. However, we all know what the Nigerian factor is and can do. Drawing that clear and express distinction between the federal and state judiciaries will only pave way to multiple abuses to the peril of the judiciary. Imagine the scenario now that the NJC plays some contributory role in the appointment and removal from office of a Judge, one can only imagine what the situation will look like when the entire power to "hire and fire" Judges of all Courts in the State lies in the hands of the executive arm of each State. The Governor will then appoint and dismiss Judges the same way he appoints and removes his Commissioners and political aids. Tell me, what will become of the Nigerian Judiciary should this ever happen? What has happened to the doctrine of separation of powers? Obviously, constitutional democracy will then give way to absolutism and totalitarianism in most, if not, all the States. Here is a wakeup call for the Judiciary Community in Nigeria to rise up with one voice to send this monster of a Bill to its grave; otherwise there will hardly be anything left for Nigerians to refer to as the last hope of the common man. The judiciary would have been taken many decades back and even far into a more deplorable experience than it ever had in terms of absence of independence.

Still on the way forward, there is need to give more attention to improved judicial accountability by evolving stronger mechanisms for holding judges at all levels more accountable in order to curb corruption and heighten integrity and impartiality in the outcomes of judicial processes.

It is also imperative to mobilise public support for judicial independence, especially in this age of social media. The actualization of this objective will

receive more boosts with the involvement of the media albeit a judiciary made or "home grown" media that can be controlled or closely supervised. As has been suggested,[30] the judiciary including all states needs the services of the media and should create Press units that will sensitize the public. This will be the tool to win support of interest and pressure groups that may galvanize the needed attention for the reforms to engender independence.

In this quest for the actualisation of judicial independence we must all continue in our concerted efforts to push for the autonomy until it is fully actualised. There should be no retreat and no surrender. I admonish all judges of the lower courts not to lose hope. The fact that certain remarkable progress has been made so far affecting the federal Judiciary and Judges of Superior Court of Records is enough green lights indicating that time will soon come when the Nigerian Judiciary will eventually attain full and an all encompassing independence. By the grace of God we shall all be alive to witness it.

Thank you for your kind attention and audience.

Hon Justice Elvis Anagu Ngene
Chief Judge of Ebonyi State

[30] See Biobele A. G., *Op.Cit*.