# THE RELATIONSHIP BETWEEN JUDGES OF THE LOWER COURT, LITIGANTS AND COUNSEL

**Arome M. Okwori***

## ABSTRACT

*The lower courts constitute the major hub of legal activities that have the closest connection with the common man. The lower courts are courts of summary jurisdiction and they handle a wide range of causes and matters, both civil and criminal. As a result of the nature of the cases they entertain and the practice and procedure at the lower courts, the lower courts attract a vast range of litigants and counsel that approach them to get justice. These courts are established as institutions for the due administration of justice and play a critical role in nation building. Ordinarily, it is expected that the relationship between judges of the lower courts, litigants and counsel should be cordial and based on mutual respect, dignity and decorum. However, the weak court system bedeviled by allegations of corruption, inefficiency and indiscipline on the one hand and a set of litigants and counsel operating within the context of general societal decline in social, ethical and moral values on the other hand, has left a lot to be desired in the relationship between judges at the lower courts, litigants and counsel. This paper used the doctrinal approach and opined that the relationship between judges of the lower courts, litigants and counsel is meant to be cordial and decorous. The paper finds that this is not necessarily so despite the existing and enabling legal framework. The paper identified some red flags in the relationships between judges of the lower courts, litigants and counsel, which if not well managed, negatively hampers the administration of the justice and made recommendations toward strengthening the relationship to enhance the due administration of justice in Nigeria.*

**Keywords:** Counsel, Judges, Litigants, Lower Courts, Relationship

## 1. INTRODUCTION

The ugly scenario reported in one of the national dailies as it relates to the topic under consideration is very apt, to wit:

> It is a fate that has befallen many litigants, but on March 24, 2021 a member of the Nigerian Bar Association (NBA) Abuja Brach, Mr. Eburu Ekwe Barth, was at the receiving end of an angry court. Barth was hauled into prison following his alleged conviction for contempt by His Worship, Ibrahim Mohammed of a Magistrate



**Arome M. Okwori, Ph.D,** Senior Lecturer, Faculty of Law, University of Jos, aromeokm@yahoo.com

> Court, Wuse Zone 6, Abuja … According to several online reports, Mr. Mohammed ordered Barth's arrest for his manner of challenging the Magistrate on the summary of a case before the court. The lawyer interjected while the Magistrate was delivering a ruling on an application by the opposing lawyer.[1]

The above ugly scenario may in the extreme, typify the relationship between judges of the lower courts, litigants and counsel. This ought not to be. For the wheel of justice to run smoothly at the lower courts, the formidable triumvirate consisting of the judges, litigants and counsel ought to have a good working relationship. The absence of a smooth working relationship between these three key actors will invariably spell doom for the litigants and by implication will undermine the administration of justice.

Judges that preside over the lower courts are mere mortals and are also products of the Nigerian society. As such, they are not immune to the pressures, challenges, temptations and inadequacies of the work environment. The litigants and their counsel throng the lower courts daily with varied expectations and when these expectations are not met or well managed, it puts a lot of pressure on all the stakeholders due to strained relationships. Judges and counsel are trained professionals who are regulated by law in the way and manner they perform their duties and carry out their functions. Ethical boundaries have been outlined for them and they are not expected to cross those lines.

The lower courts judges can hardly succeed in the performance of their duties without the cooperation of counsel and litigants. In the same way, the absence of a harmonious working relationship between the judges of the lower courts, litigants and counsel will also spell doom for the litigants and counsel. This tension will not augur for the administration of justice at that level and in the end, the litigant bears the brunt.

This paper examines the relationship between judges of the lower courts, litigants and counsel. The work is divided into 6 parts. Part 1 is the introduction while part 2 is a clarification of the concepts which includes judges, counsel, litigants and lower courts. The paper in part 3 discussed the expected ethical standards in the relationship between judges, counsel and litigants for the smooth administration of justice. The work in part 4 examined some of the red flags in the relationship between judges of the lower courts, litigants and counsel and highlights pitfalls that

[1] Robert Egbe, 'Can a Magistrate deal with Contempt in Facie Curiae?' *Nation Newspaper* (Lagos, 24th April 2021) <http://thenationonling.net> accessed 29 September 2022.

ought to be avoided. In part 5, the work discussed practical challenges and made some recommendations towards a better working relationship between judges of the lower courts, litigants and counsel. Part 6 is the conclusion.

## 2. CONCEPTUAL CLARIFICATIONS

### 2.1 Judges

According to the Black's Law Dictionary, a judge is a public official appointed or elected to hear and decide legal matters in court. The term is sometimes held to include all officers appointed to decide litigated questions, including a justice of the peace and even jurors (who are judges of the facts).[2] The definition is apt as it speaks to the primary role of a judge which is to hear and determine cases which are legal matters brought before the court. It is also not in doubt that judges are public officials. There are various grades of courts within the Nigerian judicial system which is organized around the hierarchy of courts. Most of the judges that preside over the lower courts in Nigeria are persons licensed to practice law as legal practitioners before their appointment to serve on the Bench as judges. Judges are categorized into two main categories, namely judges of the lower courts and judges of the superior courts. This paper is concerned with the former and we shall then examine the category of judges that man the lower courts in the next segment.

### 2.2 Lower Courts

For a meaning of the term 'lower courts', recourse ought to be had to s6 Constitution of the Federal Republic of Nigeria,1999, as amended, (CFRN) that established the judicature for the federation and vested judicial powers of the federation and of the states in the courts to which the section relates. The courts were accordingly listed in Section 6(5) (a) to (i) of the Constitution and expressly referred to as the only superior courts of record in Nigeria.[3] At the federal level, these include among others, the Federal High Court, the National Industrial Court and the High Court of the Federal Capital Territory and at the level of the States, the High Court of the 36 States of the Federation, the Customary Courts of Appeal of a State and Sharia Courts of Appeal of a State. Then there is the Court of Appeal and the Supreme Court which are primarily appellate courts.

However, in addition to the above superior courts of record, s6(4) of the Constitution empowered the National Assembly or any House of Assembly to establish courts with "subordinate jurisdiction

[2] Bryan A. Garner, (Ed.) *Black's Law Dictionary*, (8th ed, Thomson West, 2004) 857.
[3] See s6(1), (2) and (3) CFRN.

to that of a High Court".[4] It is the courts with subordinate jurisdiction to the High Court whether of the Federation or of a State that are referred to as "lower courts. For the avoidance of doubt, these courts include the following-

a. Magistrate/District Courts
b. Area Courts
c. Sharia Courts and
d. Customary Courts

The lower courts are created by State laws of the various States including those in the Federal Capital Territory established by the National Assembly. The Magistrate Courts in the Southern part of Nigeria exercise both civil and criminal jurisdiction within their magisterial district while Magistrate Courts in the old Northern Nigeria exercise criminal jurisdiction exclusively but they preside over civil causes and matters when they sit as District Courts. In the South, Customary Courts exist to exercise jurisdiction on dispute relating to customary laws. On the other hand, the equivalent of Customary Courts in the North is referred to as Area Courts. The Area Courts in the North exercise both civil and criminal jurisdiction including jurisdiction over all questions of customary law, including Islamic personal law in some States. Also, in some States in Northern Nigeria, Sharia Courts were established to co-exist with Area Courts and they exercise jurisdiction over Muslims in accordance with Islamic law.[5]

The lower courts are very visible within the hierarchy of courts in Nigeria. This is a very compelling reality in view of the fact that these courts exercise a wide range of jurisdiction covering landlord and tenant disputes, disputes relating to all personal actions arising from simple contracts or torts or indebtedness; recovery of debts and claim for damages not exceeding the limits set by the various Laws that established the courts; matrimonial causes not governed by the provisions of the Marriage Act,[6] disputes relating to land and a vast array of jurisdiction over criminal matters ranging from minor offences/crimes to very serious offences or crimes. Their jurisdiction also extends to dispute relating to guardianship and custody of children under customary law; succession and administration of estates under customary law, among others.

[4] Ibid.
[5] See Sharia Court Law No. 5 of Zamfara State, 1999.
[6] Marriage Act, Cap M6, LFN 2004.

### 2.3 Litigants

A litigant is simply defined as a person who is making or defending a claim in court.[7] A litigant is a party to a law suit and could either be a plaintiff or defendant. A litigant is therefore primarily involved in court litigation which is a legal contest, dispute or controversy for the enforcement or determination of a party's legal rights. To be a litigant in court is to submit to the adjudicatory processes and procedures for the ascertainment of legal rights, duties, obligations and interests. This would cover civil controversies and disputes that relates to individuals or organizations as well as criminal proceedings for the determination of criminal responsibility and guilt of a suspect or defendant accused of the commission of a crime against the State. Due to the fact that the lower courts are courts of summary jurisdiction and the less technical nature of the proceeding of lower courts, it is common to find litigants initiate and conduct their causes or matters personally without the services of counsel for the purpose of legal representation.

### 2.4 Counsel

The word 'counsel' generally means advice or assistance given by a person, it also means a 'lawyer' and therefore a barrister, solicitor, advocate, counsellor, and legal practitioner.[8] The word counsel is a generic word used generally to refer to a person trained to practice law. A counsel is therefore a legal practitioner who has been called to Bar and entitled to practice law in Nigeria.[9] For the avoidance of doubt, a person is entitled to practice as a Barrister and Solicitor if and only if, his name is on the Roll of Legal Practitioners in Nigeria.[10] The word 'counsel' is synonymous with the word 'lawyer' which has been defined in the following terms-

> A person learned in the law; as an attorney, counsel, or solicitor; a person licensed to practice law. Any person who prosecutes or defends causes in courts of record or other judicial tribunals of the United States, or of any of the states, or whose business it is to give legal advice or assistance in relation to any cause or matter whatever.[11]

The point to be underscored is that counsel must be learned in the law and must be licensed to practice law and in the context of this discourse, must be involved in either prosecuting or defending causes and matters before the lower courts. Ordinarily, the issue of eligibility to practice

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[7] A. S. Hornby, (Ed.) *Oxford Advanced Learners Dictionary*, (7th ed, Oxford University Press, 2005) 863.
[8] Niki Tobi, *The Christian Lawyer*, (CLASFON, 2000) 7.
[9] Section 7(1) and 24 Legal Practitioners Act, CAP L11 Vol. 8, LFN, 2004.
[10] Section 2(1) LPA.
[11] Black H. C., *Black's Law Dictionary*, (West Publishing Co. 1979) 219.

law ought to have been a moot point, but it has become necessary to emphasize it since a number of unqualified persons have made it a way of life to be parading themselves before the lower courts claiming to be counsel representing litigants before the courts but really are not legal counsel but impostors. These impostors have to be exposed and dealt with accordingly. With the conceptional clarification undertaken, it is now expedient to turn to a consideration of the way and manner in which lower court judges, litigants and their counsel ought to interact.

## 3. BENCHMARKS IN THE RELATIONSHIP BETWEEN LOWER COURT JUDGES, LITIGANTS AND COUNSEL

The legal profession is a well regulated profession and there are benchmarks that set the standards on how judges, litigants and counsel should ordinarily relate. Given that most judges who preside over cases at the lower courts are qualified to practice as Legal Practitioners in Nigeria, it is expected that the judges and lawyers are familiar with the ethics of the profession as regards how a lawyer should relate with the court and vice versa. It is opined that the relationship between lower court judges, litigants and counsel should be anchored on the established rules or code guiding ethical conduct in the legal profession. Nobility should define the relationship between the Bar and the Bench. Any lawyer who appears before a judge is inevitably bound by the Rules of Professional Conduct in the Legal Profession (RPC) 2007. The Rules spelt out the code of ethics for lawyers and it is a useful guide for judges of the lower courts as litigants and their counsel appear before them to litigate cases. To a consideration of this point attention would now be focused.

The first point is that a counsel ought to consider himself as an officer of the court and accordingly, he shall not do any act or conduct himself in such a manner that may obstruct, delay, or adversely affect the administration of justice.[12] This means that in the pursuit of the interest of the litigant, a lawyer is not expected to do anything to compromise the interest of justice. Such conduct may include making frivolous applications for adjournment, tardiness in conducting his client's case thereby leading to under delay in the disposal of the case, lying to the court and generally pursuing a case that the lawyer knows or ought to know does not promotes the interest of justice. This is also the standard expected to be observed by a judge of the lower court.

[12] Rule 30 RPC.

Also, there is a compelling requirement on a lawyer to always treat the court with respect, dignity and honour.[13] It is also the corresponding duty of lower court judges to extend the same courtesy to lawyers and litigants. The relationship between lower court judges, litigants and counsel should be guided by mutual respect, dignity and honour. To do otherwise will be unprofessional. A lawyer should not play "hide and seek" with the court. Therefore, it would amount to professional misconduct for a counsel to give any undertaking either personally or on behalf of his client and to later renege.[14] That is disrespectful and dishonourable.

Furthermore, where a litigant is represented by counsel in a case before the court, the counsel is not expected to discuss a pending case with a judge trying the case unless the opposing counsel is present. The judge has a duty to ensure that such a meeting or conversation does not take place without the knowledge of the opposing counsel. However, where the opposing counsel refuses to honour the invitation and the judge is advised as to the circumstances, it will not amount to professional misconduct.[15]

Also, subject to the rules of court, a counsel shall not deliver any letter, memorandum, brief or other written communication without concurrently delivering a copy to the opposing counsel.[16] The judge also has a duty to reject any letter, memorandum, brief or written communication in breach of the ethics except as permitted by the rules of court.

Rule 34 RPC deals specifically with relations with judges and provides as follows: -

> A lawyer shall not do anything or conduct himself in such a way as to give the impression or allow the impression to be created, that his act or conduct is calculated to gain, or has the appearance of gaining, special personal consideration of favour, from a Judge.[17]

The fact that a judge presides over a court in the lower courts does not diminish the authority and status of the court as a court of justice with the obligation to be fair, impartial and independent in the conduct of cases. The judge must therefore desist from showing favouritism to any litigant or counsel over and above the opposing counsel or litigant. The judge has a responsibility to ensure

[13] Rule 31(1) RPC.
[14] Rule 31(3).
[15] Rule 31(4).
[16] Rule 31(5).
[17] Ibid

a 'level playing field' such that no special personal consideration is given to favour a lawyer or litigant in a case above the opponent.

Also, when a counsel appears before the court in his professional capacity, he is expected to deal with the court candidly and fairly and not otherwise.[18] There is no room for insincerity in dealings with the judge by litigants and counsel and this also applies to the judge. It is expected that counsel acts professionally in the conduct of his case by leading his witness to adduce credible evidence before the court, cite legal authorities accurately, notwithstanding that it is adverse to his client's case, disclose the identities of his client except where such is privileged, comply with known local customs of courtesy of a particular tribunal or court, desist from knowingly misquoting the content of a paper, the testimony of a witness, the language of the argument of the opposing counsel, or the language of a decision or a textbook.[19] It is the duty of the judge to ensure that such sharp practices by counsel is not condoned. This will also earn the judge the deserved respect of counsel and litigants that appear before the court.

The rules are very explicit with respect to court room decorum and for ease of reference, r36 is reproduced *in extenso* below:

> When in the court room, a lawyer shall-
>
> a. Be attired in a proper and dignified manner and shall not wear any apparel or ornament calculated to attract attention to himself;
>
> b. Conduct himself with decency and decorum, and observe the customs, conduct and code of behaviour of the court and custom of practice at the Bar with respect to appearance, dress, manners and courtesy;
>
> c. Rise when addressing or being addressed by the Judge;
>
> d. Address his objections, requests, arguments, and observations to the Judge and shall not engage in the exchange of banter, personality display, arguments or controversy with the opposing lawyer;
>
> e. Not to engage in undignified or discourteous conduct which is degrading to a court or tribunal; and
>
> f. Not to remain within the Bar or wear the lawyer's robes when conducting a case in which he is a party or giving evidence.

[18] Rule 32(1).
[19] Rule 32(3) (a) – (k) RPC.

As regards court room interaction between the lower court, counsel and to some extent litigants, it is expected that proper dress code is observed and maintained so that the dignity of the profession is not compromised. A minimum level of decorum and decency is therefore expected to be exhibited as judges of the lower courts, counsel and litigants relate in line with the highest standard of behaviour and conduct expected from members of a very noble profession. No matter the level of provocation and the nature of the controversy, engaging in verbal altercations, quarreling, threats and verbal abuse or insults should never be allowed to rear its ugly heads in the relationship between the judge and counsel. The case of a Chief Magistrate in Kebbi State who allegedly slapped a State Counsel within the premises of the Chief Magistrate Court I, Birnin Kebbi made the headlines recently. An Administrative Committee is investigating allegations of gross judicial misconduct against the Magistrate.[20] Such undignified, degrading and reprehensible conduct is completely unacceptable.

At this juncture, it is pertinent to underscore the point that it is the primary responsibility of the counsel to uphold and observe the rule of law, promote and foster the cause of justice, maintain a high standard of professional conduct and ensure that he does not engage in any conduct which is unbecoming of a legal practitioner.[21]

The common denominator that should bind a judge of the lower court, litigants and counsel should be the interest of justice and preservation of the rule of law while ensuring that the highest standard of professionalism is maintained and any conduct that will jeopardize the integrity of the legal profession, is avoided.

## 5. RED FLAGS

There are pitfalls in the relationship between judges of the lower courts, litigants and counsel that ought to be avoided. Red flags indicate unhealthy relationship between the Bench and the Bar which may expose them to vulnerabilities and temptations with the potentials to become problematic over time, if left unchecked.

### 5.1 Contempt of Court

Contempt simply has to do with disregard for something or being disrespectful of a court of law or being disobedient to a court. Contempt is a red flag that can easily destroy the relationship

[20] Ahmadu Baba Idris, "Kebbi Court Suspends Magistrate for Slapping Lawyer, Others", *The Guardian* (16th October 2022), <https://guardian.ng> accessed 18 October 2022.
[21] Rule 1, RPC

between the judge and counsel. Undignified or discourteous conduct which is degrading to a court on the part of counsel may give rise to contempt of court. However, it is not every act of discourtesy or disrespect to a judge that will give rise to contempt. In *Izuora v The Queen*,[22] the Privy Council per Lord Tucker held as follows: -

> It is not every act of discourtesy to the court by counsel that amounts to contempt, nor is conduct which involves a breach by counsel of his duty to his client necessarily in this category. In the present case, the appellant's conduct was clearly discourteous, it may have been a breach of Rule II of Order XVI and it may perhaps have been in dereliction of his duty to his client but in their Lordship's opinion it cannot properly be placed over the line that divides mere discourtesy from contempt.

In view of the above, a judge must not regard every act of rudeness or discourtesy on the part of a litigant or counsel as contempt of court. Contempt of court has been divided into two broad categories, namely, contempt *in facie curiae* (in the face of the court) and contempt *ex facie curiae* (contempt committed outside the court).[23]

A contempt committed in the face of the court may be broadly described as any word spoken or act done in, or in the precincts of the court which obstructs or interferes with the due administration of justice or is calculated so to do. Forms of conduct which have been held to constitute such contempt are: assaults committed in court; insults to the court; and refusal on the part of a witness to be sworn or, having been sworn, refusal to answer.[24]

On the other hand, contempt *ex facie curiae* has been defined as conduct which amounts to contempt outside the court and may be described in general terms as words spoken or otherwise published, or acts done, outside court which are intended or likely to interfere with or obstruct the fair administration of justice. Common examples of such contempt are: publications which are intended or likely to prejudice the fair trial or conduct of criminal or civil proceedings; publications which scandalize or otherwise lower authority of court; and acts which interferes with or obstruct persons having duties to discharge in a court of justice.[25]

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[22] (1953) 13 WACA 313 at 316.
[23] *INEC v Oguebego* (2018) 8 NWLR (Pt. 1620) 88 at 101.
[24] Duhaime's Law Dictionary, <https://www.duhaime.org> accessed 10 October 2022.
[25] Ibid.

The essence of the law of contempt is to ensure that the authority or dignity of court or the due administration of justice is not compromised. It is not ordained for the personal pride or ego of the judge and ought to be invoked sparingly and in deserving cases to promote the cause of justice. On this, Justice Oputa, of blessed memory, has the following words for the presiding judge thus:

> When a judge does not agree with learned counsel's method of advocacy, which in itself, is not contempt of his court. Counsel has a constitutional right of audience. How he chooses to present his case is his own affair. It will be unconstitutional for a judge to abridge counsel's right of audience by dangling the sword of contempt over his head.[26]

Admittedly, counsel owes to the court the duty of assistance and of utmost respect, but he owes to his client an equally important duty to present his case with all the skill he possesses so that the judge may compare his presentation with that of counsel on the other side. It is therefore not contempt where counsel refuses to be dictated to, by the court as to how he would present or argue his case. Judicial interruption can be irritating to counsel. And his reaction to interruption is not necessarily contempt.[27]

Femi Falana recalled an experience involving Lord Denning, which was published in the June 1964 edition of New York Times as follows:

> Tempers may have been slightly ruffled, but decorum prevailed nonetheless in the Court of Appeal today as a protesting woman litigant flung law books at the Judges. Vera Beth Stone was conducting her own case. She was refused leave to appeal a judgment on the levying of costs in an unsuccessful action she had brought against the Association of Official Shorthand Writers in which she had charged falsification of transcripts. So, she picked up a book in front of her and said, "this is not a personal matter, but I have to bring this before the court." The book flew past the ear of Lord Denning, Master of the Rolls, and struck the paneling behind him. Neither he nor any of the two other judges on the dais, Lord Justices Harman and Diplock, showed agitation.
>
> "It does not have to be potatoes," Miss Stone continued, and let fly a second book, a bit wider of the mark. "Will you please leave the court?" Lord Denning said politely but firmly. "I shall only come back and throw more books," Miss Stone replied. "Will you

[26] Hon Justice C. A. Oputa, *Our Temple of Justice*, (Abuja, Justice Watch, 2014) 201.
[27] Ibid at 201- 202

> leave?" Lord Denning persisted. Miss Stone surveyed her dwindling library. "I am running out of ammunition," she said. As she was led from the court room, she said to Lord Denning, "May I congratulate your Lordship upon your coolness under fire".[28]

The above approach speaks volume and is the best in sustaining cordial relationship between the Bar and the Bench.

**5.2 Corruption**

Corruption and corrupt practices are terrible maladies that should not be associated with judges of the lower court, litigants and counsel. Justice Oputa, alluded to the 'power of money' which he described as more powerful than several kinds of powers and is the root of corruption when he stated as follows:

> Corruption is therefore the greatest malady that can ever afflict any court system. Corruption unfortunately is now the cancer, the cankerworm that has eaten very deep into every facet of our national life, into every gateway and alley of our body polity. Unfortunately, again, the Judiciary and the legal profession had not been spared.[29]

Some of the corrupt practices aptly chronicled by Justice Oputa includes the following: -

1. No one gets anything done in any office including the Registries of the courts without paying some bribe, euphemistically called tips;
2. Some dishonest lawyers, after charging their normal fees, charge extra for the judge. Whether that extra reaches the judge or not, is irrelevant for in such abominable practice the guilty lawyer has scandalized the unsuspecting client into believing that 'justice' can only be done if the judge is paid a fee, that is, justice is a commodity for sale;
3. A 'judicial culture' has grown around this nefarious corrupt practice and some corrupt judges even employ agents (including complicit lawyers) to collect bribes for them;
4. Some greedy judges deal directly with the litigants and some to the extreme of accepting bribes from both parties to the contest and deciding for none;
5. It has become a practice to hire and retain magistrates and judges instead of lawyers. Some judges encourage this practice by emphasizing 'you may brief any counsel you like, but I am the one to write the judgment.' The message is clear.

[28] Robert Egbe, n.1.
[29] Hon Justice C.A. Oputa, n.26 at 2.

6. In some states, judges and magistrates are housed in private premises. This facilitates very easy access to the judge and provides the landlord a wonderful opportunity for exploiting for gain, the fact that a judge lives in his premises.
7. It is a fact that some litigants have an accurate foreknowledge of the outcome of a case in court. They do not only know that they will win, but they know the amount of damages and costs the court will award.[30]
8. At the close of the case, the clients' boast is not that their counsel performed creditably well, but that their useful contact has paid off.[31]

Unfortunately, it has to be pointed out that in some instances, judges of the lower courts are "hired" and "retained" instead of counsel to "handle" a case for the litigant. Corrupt practices in the system for administration of justice at the lower courts is a harmful practice that is injurious to the relationship between the judge, litigants and counsel because it erodes public confidence in the judiciary. On this, Justice Sandra Day O'Connor, former Associate Justice of the US Supreme Court aptly observed-

> A perception of corruption, bias, or other unethical traits can be almost as harmful to society's confidence in its legal system and its respect for the rule of law as the reality of those trials. Judges must not only avoid impropriety, but also the appearance of impropriety, if public confidence in the judiciary is to be maintained.[32]

Unethical and corrupt practices is a red flag that can easily mar the relationship between the lower courts, litigants and counsel if not deliberately and carefully avoided.

### 5.3 Conflict of Interest

This simply refers to a situation where a person is in a position to derive personal benefit from actions or decisions made in his official capacity.[33] There should be no inordinate interest in the subject matter of litigation on the part of the judge as this will potentially compromise the interest of justice. The Constitution sets the benchmark for any judge involved in adjudication in s36 (1) as follows: -

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[30] Ibid.
[31] Ibid at 3.
[32] Epiphany Azinge and Judith F. Rapu, *Roadmap to Judicial Transformation: Through the Lenses of Retired and Serving Jurists of the Supreme Court in Judicial Reform and Transformation in Nigeria: A Tribute Hon. Justice Dahiru Musdapher*, Epiphany Azinge & Dakas CJ Dakas, (Eds.), NIALS, 2012) 100.
[33] Oxford Languages, <https://www.languages.oup.com> accessed 5 October 2022.

> In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or tribunal established in such a manner as to secure its independence and impartiality.

In the case of *Ndukwe v UBN PLC*,[34] the Supreme Court explained the effect of the s36(1) as follows: -

> Fair hearing embodies the two- pronged principles of *audi alteram partem* meaning "hear the other side" and *nemo judex in causa sua*, meaning "no one can be judge in his own cause". It was held in: Otapo v. Sunmonu (1987) LPELR-2822 CSC) at 31-32-C, (1987) 2 NWLR (Pt.58) 587: "A hearing can only be fair when all parties to the dispute are given a hearing or an opportunity of a hearing. If one of the parties is refused a hearing, that cannot qualify as fair hearing … Without fair hearing, the principles of natural justice, the concept of the Rule of Law cannot be established and grow in the society". The true test of fair hearing is the impression of a reasonable person who was present at the trial whether from his observation, justice has been done in the case.

Without doubt, bias or partiality will grossly erode public confidence in the judicial system. The relationship between the judge, litigant and counsel should be such that will inspire confidence in the judicial process. The relationship as far as the conduct of cases is concerned should be such that accords with Lord Hewart's evergreen dictum that "justice should not only be done, but seen to be done.[35] The judge has a duty to recuse himself or to disclose to the litigants and their counsel any circumstance that may give rise to justifiable doubts as to his impartiality and independence. Importantly, as far as the trio relates, justice should be done and it should be obvious that justice has been done. Justice should be meted to all according to the law without fear or favour, affection or ill - will. The lower court judge should not show bias towards any party and should not be seen to be pre-disposed to any of the parties or their counsel, be it on grounds of personal, social or financial interest. Oputa JSC once held as follows-

> It is the general principle of our law that Magistrates and Judges, and in fact all those exercising be it but a *quasi*-judicial authority, ought to be quite clear of any interest in the case brought before them. Pecuniary interest is the commonest and most offensive type of

[34] (2021) 4 NWLR (Pt 1765) 165 at 195
[35] *R v Sussex Justices, Ex Parte McCarthy* (1924) 1 KB 256 at 259.

disqualifying interests. But it is not the only one. It has been held that *a fore-knowledge, a previous knowledge* of the facts of the pending case is something reasonably likely to bias or influence the mind of a judicial officer - a Judge or Magistrate – in a particular case.[36]

The Rules of Professional Conduct in the Legal Profession has made adequate provisions relating to the issue of conflict of interests that should guide the counsel and a judge of the lower court to avoid pitfalls. Rules 17 provides as follows:

(1) A lawyer shall at the time of retainer, disclose to the client all the circumstances of his relations with the parties, and any interest in, or connection with the controversy which might influence the client in the selection of the lawyer.

(2) Except with the consent of his client after full disclosure, a lawyer shall not accept a retainer if the exercise of his professional judgement on behalf of his client will be or may reasonably be affected by his own financial, business, property, or personal interest.

(3) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation which he is conducting for a client, except that he may-

(a) acquire a lien granted by law to secure his fees and expenses; or

(b) contract with a client for a reasonable contingent fee in a civil case.

(4) A lawyer shall not accept a proffered employment if the exercise of his independent professional judgement on behalf of a client will be, or is likely to be adversely affected by the acceptance of the proffered employment, or if it is likely to involve him in representing differing interests, unless it is obvious that the lawyer can adequately represent the interest of each, and each consents to the representation after full disclosure of the possible effect of such representation in the exercise of his independent professional judgement on behalf of each.[37]

A counsel is expected to relate with his client within the limits of the boundaries captured by the Rules failing which some red lines will be crossed. A judge is likewise expected to note the red flags. It is pertinent that fairness is upheld in the conduct of cases before the lower courts. A judge should disclose to the parties all the circumstances of his relations with the parties, and any interest in, or connection with the controversy which might influence the litigant's choice to have his case determined by the court. A judge should not preside over a case except with the consent of the

[36] *Akoh v Abuh* (1988) 3 NWLR (Pt. 85) 696 at 719.
[37] RPC, 2017.

parties if his judgement in the case will be, or may reasonably be affected by his own financial, business, propriety, or personal interest.

In the end, the judge is duty bound to ensure that his independence and impartiality is not compromised in any way by reason of a conflict of interest. The absence of conflict of interest will promote the relationship between the lower court, litigants and counsel.

**5.4 Criminal Cases**

The conduct of criminal proceedings is an area in which the relationship between the lower courts, litigants (defendant and accused persons) and counsel has gained a lot of prominence for the wrong reasons. There is a lot at stake in criminal cases than in civil causes and matters. This not far-fetched. In a criminal case, the liberty of the citizen is at stake. This much was attested to by Agaba when he stated thus: -

> Criminal trial is a very important business. This is because it constitutes a threat to liberty of the person alleged to have committed an offence. In other words, once a person is arrested in connection with a crime, the right to liberty conferred by the Constitution comes under threat whether the suspect is in custody or not. The fact remains that until the charge against him is either dismissed or withdrawn, the suspect's liberty is limited. Because of the fundamental nature of the right to liberty, anything that puts that right under threat is viewed seriously. It is in that light that criminal proceedings are viewed seriously.[38]

The bulk of criminal cases are actually tried at the lower courts against alleged offenders and this covers a wide range of criminal cases ranging from simple offences to more serious crimes and felonies.

At the point of arraignment of the suspect in a criminal case, the issue of bail comes into play. A number of untoward practices occur in a criminal case because aside the court and its staff, other personnel, for example, the Police, Correctional Centre Officers etc. also come into play. Professional sureties and "charge and bail" counsel representing different and deferring interests also come into play. This is what makes the relationship between lower court judges, litigants and counsel a red flag.

[38] Agaba J. A., *Practical Approach to Criminal Litigation in Nigeria* (3rd ed. Renaissance Law Publishers Ltd 2017) 23-24.

It is germane to posit that a judge should not allow the court over which he presides to be used as a forum for persecuting the defendant(s). The State or the Police should not be allowed to unduly violate the guaranteed rights of citizens to their personal liberty and freedoms using the instrumentality of the lower court system. As earlier adumbrated, it is particularly important that there is a semblance of fairness in a criminal trial. The purpose of a criminal trial is not secure a conviction of the suspect/defendant at all cost. In the Canadian case of *Boucher v R* [39] the role of prosecuting counsel was amplified as follows: -

> It cannot be over emphasized that the purpose of a criminal prosecution is not to obtain a conviction. It is to lay before the court what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel has a duty to see that all available legal proof of the facts is presented, it should be done firmly and fairly. The role of prosecutor excludes any notion of winning or losing, his function is a matter public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.

The admonition above should sit well with Police prosecutors and agents of State who prosecute cases before the lower courts. Any unethical conduct should be jettisoned in the interest of justice. Some of the noticeable corrupt practices takes place in the process of granting bail. The temptation to involve court officials to be conduit for collecting bribes all in the name of "perfecting" bail conditions is unethical and abominable. The legal profession is a noble and honourable profession and it ought not to be polluted by sharp practices that takes place in the process of criminal trials. The relationship between lower court judges and counsel is easily strained when insurmountable bail conditions are imposed on defendants in a criminal trial.

Also, judges at the lower courts must be minded of their duties to the litigant and counsel in criminal matters which includes some of the following: -

1. Duty to grant the parties right of audience
2. Duty of neutrality
3. Duty not to descend into the arena of conflict

[39] (1955) SCR 6 at 63.

4. Duty to maintain high standard of conduct

5. Duty to be a neutral participator in the proceedings but not to interfere unnecessarily.[40]

The robust appreciation of the role, duties and ethical standards required of the prosecuting and defence counsel and the judge and the constitutional rights of the defendant in a criminal trial will go a long way to promote a cordial relationship between judges of the lower courts, litigants and counsel.

**5.5. Complaints/Petitions**

As it happens sometimes, the relationship between judges of the lower court, litigants and counsel may become so strained that complaints and petitions are initiated to invoke disciplinary actions against the alleged infractions. Professional misconduct by a counsel such as fighting in the court room[41] or within the court premises, use of rude or abusive language or quarrelling in the court, and other forms of dishonourable conduct, such as falsification of court documents, forgery, dishonesty etc., is not uncommon. A report can be made to the Nigerian Bar Association within the jurisdiction where such misconduct occurred so that appropriate disciplinary measures can be initiated for the erring counsel to be held accountable.

For complaints against judges of the lower courts, this is usually initiated through the office of the Director responsible for judicial administration and overseeing activities of the respective courts. If the Director with supervisory administrative authority is unable to handle the complaint, it is then referred to the State Judicial Service Commission with power to appoint, dismiss and exercise disciplinary control over Magistrates, Area Courts and Customary Court judges respectively.[42] Complaints against judges of the lower courts usually border on allegations of corrupt practices, conflict of interests, bias etc.

Judges of the lower courts and counsel in particular must ensure that they each avoid a situation that warrants the issuance of frivolous and baseless complaints against each other. Sometimes though, a litigant may have a genuine complaint against a judge and the judge might also have a valid complaint against a counsel. Genuine complaints should be made formally, initiated only and

[40] Agaba J.A. n38 at 35-37.
[41] Bridget Edokwe, 'Hot Drama as Lawyer is Hospitalized after Exchanging blows in Open Court in with Colleague while Moving a Motion- Police, NBA Intervene' BarristerNG.com (Lagos, 24th September 2021) <https://barristerng.com> accessed 21 October 2022.
[42] See Paragraph 6 (c), Third Schedule, Part II, CFRN, 1999.

only if other avenues for resolving same has been exhausted without any fruitful outcome. This approach will help to promote cordial working relationship between lower court judges, litigants and counsel.

## 6. PRACTICAL CHALLENGES AND RECOMMENDATIONS

The relationship between judges of the lower courts, litigants and counsel is a continuous real-life experience. Ordinarily, it is expected that there should be a cordial working relationship between the trio for the smooth and effective administration of justice. A former Chief Justice of Nigeria, Dahiru Musdapher had stated that the degeneration of the healthy working relationship between the Bar and the Bench has severed a necessary link in the symbiotic efforts to bridge the gap between law and society.[43] The Rules of Professional Conduct in the legal profession, the Rules of Court and the professional training of lawyers is expected to have adequately prepared them for the challenges associated with the work as they interact as judges, litigants and counsel in court. However, this is not always the case and the reasons are not far to fetch.

Practical challenges may emanate from both internal and external factors. The first challenge to be noted is that which can be associated to the nature of litigation itself. In our clime, once a party sues another, it is taken for granted that a "fight" has begun and the battle lines are quickly drawn. The belligerent parties would not even see "eye to eye". It is also expected that the animosity between the disputing litigants in a civil suit is transferred unwittingly to their counsel. In the Common Law legal system to which Nigeria belongs, litigation is adversarial in nature. The judge sits as a neutral arbiter to settle and/or adjudicate fairly on the dispute between the parties. The judge must never be seen to descend into the arena of conflict as he maintains a delicate balance between the parties to the dispute on the one hand, that is, the litigants and/or their counsel *inter se*, and between the court and the parties on the other hand. This is always a difficult task and it puts a lot of pressure on the relationship between the lower court judge, the litigant and counsel.

Also, litigation is technical by its nature and rigid procedures are often deployed and followed in an attempt by the parties/counsel to make out a case for determination. This means that litigation is not simply about "right" or "wrong" determinations simpliciter. This very fact breeds tension between the litigants, their counsel and even the court as the non-realization of certain expectations breeds remarkable tension due to disappointments occasioned by perceived injustice. Litigation is

[43] Epiphany Azinge and Judith F. Rapu, n.32, 93.

complex, costly, unpredictable, time consuming, psychologically and emotionally tasking. This scenario is further compounded by poor public perception of the nature of litigation as a result of ignorance of how the system for administration of justice works.

Furthermore, litigation is a contest that thrives on a 'win or lose' philosophy. There is no middle course. This reality is a catalyst for breeding desperation to win at all cost which in turn breeds strive in the litigation process. The losing party is at the receiving end of the coercive powers of the court. This atmosphere does not allow for cordiality in the relationship between the trio at the lower court.

Aside the above, the working environment, in terms of court infrastructure and the reward system both for both judges and counsel at the lower courts may not be very attractive. This has the potentials to escalate the red flags earlier identified in this paper.

In view of the challenges highlighted in this paper, training for lower court judges is a necessity. This will equip them to build capacity to respond to the different challenges thrown at them in the course of doing their work. In addition, there is need to inject substantial amount of money to upgrade the facilities of the various lower courts by building modern and conducive court rooms with adequate facilities for smooth administration of justice.

Measures must be put in place to tackle the menace of corruption at the lower courts by ensuring that "bad eggs" within the system are shown the way out. The system for addressing complaints and petitions against judges must be strengthened to boost public confidence in the process by ensuring that the integrity of the system is preserved.

On the part of counsel, strict adherence to the rules of ethical conduct in the legal profession ought to be adhered to and errant lawyers have to be reported to the appropriate disciplinary committee of the Bar to face sanctions, if found to be culpable.

The place of continuing legal education and capacity building as it affects the ethics of the profession is very vital. This will also boost the capacity of the counsel to know what is required in every given situation.

Finally, ignorance about the workings of the system is a serious vice on the part of the litigant which hurts the relationship between the trio. In this wise, since the judge and the counsel are mostly learned in the law, both should be deliberate about educating the litigants about the workings of the law.

## 7. CONCLUSION

The relationship between judges of the lower courts, litigants and counsel is very vital to the smooth administration of justice at the grass root level. The crisis of confidence between judges of the lower courts, litigants and counsel will not augur well for the smooth administration of justice and in the long run, to nation building.

Judges of the lower courts preside over the vast majority of cases that affect the ordinary citizen, be they civil or criminal cases. Public perception about the entire judicial system is shaped by the way and manner lower court judges, litigants and counsel relate because those courts are closer to the vast majority of the people.

Meanwhile, the legal profession has set standards to be followed to ensure that ethically and professionally, the right things are done by those concerned. The red flags identified calls for vigilance in avoiding corrupt practices and conflict of interest and strict adherence to best practices in the conduct of criminal cases. The various challenges identified as well as recommendations, if applied, will go a long way to promote and preserve cordial relationship between lower court judges, litigants and counsel in the overall interest of justice.