

## INDEPENDENCE OF THE JUDICIARY IN NIGERIA: A MYTH OR REALITY?

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Manuscript ID: RCMSS/IJPAMR/AUGUST/1408006

### Abstract

The increasing reliance by Nigeria polity on the court to decide major issues and public interest has also brought it into sharp focus. Informed opinions on the Judiciary in Nigeria varies between those who believe that the “Judiciary is dead” or that it is “on trial” and the more compassionate view that it is a “beast of burden” or a “sacrificial lamb”. These remarks derive from observations of the alleged or actual behaviours of the judges and their independence, impartiality and integrity. While the above metaphors may be subject to various interpretations, they do raise consideration, curiosity and interest as to why any Judiciary should attract such comments and perhaps to what extent the concepts are justified. This paper examines whether the independence of the Judiciary in Nigeria is a myth or reality and concludes that the high sounding constitutional provision relating to judicial independence has no bite and what could have been constitutional guarantees of judicial independence is no more than a slogan in Nigeria thence calling for reforms.

**Key words:** Independence, Judiciary, Judicial Independence and Judicial Powers

### Introduction

The central trust and objective of this paper is to look at the independence of the Judiciary in Nigeria whether it is a myth or reality and to conclude with recommendations. Of the three arms of government, the Judiciary is the branch of government that enables our decisions to be translated into law, the justice of which must be apparent.<sup>1</sup> The Judiciary has the duty of directing society to the attainment of justice. Institutionally therefore, the Judicial process is in a sense the heart of any political system even in the most organized societies, the role of the leader in settling disputes was perhaps, the most important and most frequently performed.<sup>2</sup> That the nations Judiciary is currently passing through a difficult and traumatic phase in its annals is quite obvious and certainly not in doubt. It is a phase which is evidently marked by deep loss of faith in the judicial process and the courts. Claims of ethnic lopsidedness in the composition of the Federal Judiciary, serious allegation of corruption, ineptitude, laziness, incompetence against judicial officers, charges of abuse of office even against the Supreme Court judges in the discharge of its judicial functions and stemming out from want of judicial independence are bound.<sup>3</sup> The above has prevented the Nigerian Judiciary over the years from acting as a check on the excesses of other arm of government within its constitutional boundaries.

This paper posits that the lack of independence of the Judiciary in Nigeria has paved the way to the myriads of problems bedeviling the Judiciary ranging from lack of courage and temptation to corruption in deciding political cases especially the determination of election petition, appointment of judges, security of tenure and remuneration, institutional autonomy, judicial accountability, adequacy of resources for the courts, media and societal pressure and scope of judicial power and justifiability greatly affects the Judiciary. It is now apt to look at some conceptual clarifications.



### MEANING OF INDEPENDENCE, JUDICIARY AND JUDICIAL INDEPENDENCE

“**Independence**” has been defined by Black’s Law Dictionary<sup>4</sup> as the state or quality of being independent especially a country’s freedom to manage all its affairs, whether external or internal, without control by other countries. The word “**Judiciary**” has been defined<sup>5</sup> as the system of court of justice in a country. The department of Government charged or concerned with the administration of justice, the judges, taken collectively, as, the liberties of the people are secured by a wise and independent Judiciary. The term in its current use, is used in describing the method of selecting judges in a state or country; as an adjective, of appertaining to the administration of justice or the court”. Judiciary has equally been defined<sup>6</sup> as: “The judges of a state collectively”. Therefore, Judiciary is a collection of all judges be it first instance of trial judges or appellate judges. From these definitions, the Judiciary can be summarized up to mean *that branch of government in a democratic system of government of the people, by the people and for the people*<sup>7</sup>

### JUDICIAL INDEPENDENCE

There appears not to be a précised definition of what judicial independence means. However, in simple terminology, judicial independence can be defined as the ability of a judge to decide a matter free from pressures or inducements. The Judiciary as an institution, judicial independence means the ability of the Judiciary to be independent by being separate from government and other concentrations of power.<sup>8</sup> The principal role of an independent Judiciary is to uphold the rule of law and to ensure the supremacy of the law.

### RESPONSIBILITY ALLOCATED TO THE JUDICIARY BY THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 OF ITS ROLE TO THE SOCIETY

The vesting of judicial powers<sup>9</sup> in the courts established by the 1999 Constitution imposes onerous responsibilities on judicial officers whose primary function is to administer justice according to law and the constitution. The nature of the office and functions of judicial officer’s call for a high sense of duty, responsibility, commitment, discipline, great intellect, integrity, probity and transparency.<sup>10</sup> So important is the place of Judiciary in the scheme of things that the constitution forbids the legislature from enacting any law that:

*“Oust or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law”<sup>11</sup>*

The Judiciary been the third arm of government has the onerous function of interpreting the laws. Its functions may be expressed in the latin words *jus-dicere non jus dare* which is to declare the law and not make one. It is for the judge to declare the existing law and not make one (*Judicis est jus dicere non dare*). This principle was confirmed by the Supreme Court per Bairamin F. J. in **OKUMAGBA VS EGBE**<sup>12</sup> thus:

*“Feeling that the appellant deserve to be punished, the chief magistrate replaced the word “another candidate” by the words “any candidate” and thus enable himself to punish the appellant. In effect, he amended the regulation, but amendment is the function of the legislature and the courts cannot fill the gap which comes to light by altering the words of a regulation to make it read in the way he think it should have been enacted. As Lord Bacon said in his essay on judicature, the office of a judge is jus dicere non jus dare to state the law not to give law, and the court below should not have gone in for judicial legislation”<sup>13</sup>*

Also in the case of **READ Vs J. LYONS & CO LTD**<sup>14</sup> Lord Macmillan observed as follows:

*“Your lordship task in this House is to decide particular cases between litigants and your lordships are not called upon to rationalize the law of England. That attractive perilous field may be left to other hands to cultivate”*<sup>15</sup>

It must however be stated that the law still grows by process of judicial law making. In this regard, HOLMES J. in **SOUTHERN PACIFIC CO. VS JENSE**<sup>16</sup> said:

*“I recognized without hesitation that judges did not and must not legislate but they do so only interstitially”*<sup>17</sup>

In the execution of its mandate of interpretation of law and administering justice, the Judiciary is not tied to the apron strings of any political party, pressure group, religious, racial or ethnic group, sex, geo-political entity, etc and this explain why the symbol of justice is depicted as a blindfolded person (Lady) holding two even scales, meaning that the Judiciary is to dispense justice to all manner of people without fear or favour, affection or ill-will.<sup>18</sup>

Lord Atkins in no mincing words put the above position clear when in the case of **LIVESIDGE VS ANDERSON**<sup>19</sup> said:

*“...It has been one of the pillars of freedom, one of the principle of liberty... that the judges are no respecter of persons and stand between the subject and any attempted encroachment on his liberty... alert to see that any coercive action is justified in law”*<sup>20</sup>

So fortified is the pronouncement made by the judges that their decision and or pronouncements remains valid until set aside by a more superior court of record.<sup>21</sup>

The above however does not mean that the judges are not fallible. Judges are human beings with mortal frailties but with specialized skills to dispense justice in accordance with the dictates of justice by virtue of their training and professional calling. The judges may therefore err but the revision of its decision can only be done by an orderly process of an appeal and not by disregarding the decision of the courts with impunity.

The Supreme Court in portraying the above within the context of the Supreme Court has this to say per Oputa JSC;

*“We are final not because we are infallible; rather we are infallible because we are final. Justices of this court are human beings capable of erring. It will certainly be shortsighted arrogance not to accept this obvious truth”*<sup>22</sup>

Thence in the determination of cases, cases are to be determined not on the basis of technicalities but on the basis of substantial justice<sup>23</sup> especially in election petition cases. The cases of **HDP VS INEC**<sup>24</sup>, **RESIDENT ELECTORAL COMMISSIONER VS NWOCHA**,<sup>25</sup> **OBASANJO VS BABAFEMI**<sup>26</sup> AND **NWOBODO VS ONOH**<sup>27</sup> all show the need for substantial justice in the determination of cases.

In **NWOBODO VS ONOH** Supra, the Court held:

*“To my mind, there could be no greater injustice than to vitiate an election petition and refuse to hear it on its merit. Besides, nowhere else in my view is the need to do substantial justice greater than in an election petition case for the court is not only concerned with rights of the parties but the interest and the right of the constituents who have exercised their franchised at the polls”*<sup>28</sup>

Similarly in **HDP Vs INEC**, the Supreme Court held:

*“It should be noted that though election petition are said to be sui-generis, they are concerned with the political rights and obligations of the people particularly those who consider their rights injured by the electoral process and need to ventilate their grievances. Such people ought to be encouraged to do so with some latitude knowing that in the process of initiating proceedings to ventilate their grievances, mistakes, such as those in the instant case may occur since the intention of the Electoral Act and the laws employed in litigation are geared towards ensuring that substantial justice is done to the parties at the expense of technicalities, any conclusion that tends to shut out an aggrieved part from the temple of justice by not hearing him on the merit ought not to be encouraged in the interest of peace and democracy”<sup>29</sup>*

### **LIMITATIONS ON THE EXERCISE OF JUDICIAL POWERS**

The exercise of judicial powers is not absolute. It has certain limitations summarized as follows:

1. *The general principle under the common law as applied in our court is that the court in the course of adjudication ought not to answer hypothetical questions.*
2. *Nigerian judges cannot commonly apply their powers until someone brings a case before them.<sup>30</sup> They lack the power of self starter.<sup>31</sup> Thence, the court cannot initiate the power of reviewing legislative and executive acts. They must be moved and or initiated by someone.*

### **ELEMENTS OF JUDICIAL INDEPENDENCE**

The concept of judicial independence has many elements which can broadly fall under the headings of:

- (i) *Appointment and Removal of judicial officers and judicial staff*
- (ii) *Security of tenure and remuneration of judges and supporting staff*
- (iii) *Budgetary provisions (process)*
- (iv) *Individual and institutional freedom from unwarranted interference with the judicial process by the executive arm of government and politicians.*

The road is now clear to expatiate on these basic elements and draw examples as to their applicability in contemporary Nigeria.

#### **1. Appointment and Removal of Judicial Officers and Judicial Staff**

To have a vibrant Judiciary, care must be taken from the onset in the selection or appointment process. Care must be taken that only highly trained, competent, ethical and intelligent men and women are recruited. They must be creative because their creative role in the society is important in carrying out their responsibilities to ensure a balanced society. More so as their decision becomes prudent which will and in the development of the law.

Underscoring the importance of appointing competent judicial officers to the bench, Charles Evans Hughes states:

*“A poor judge is perhaps, the most wasteful indulgence of the community. You can refuse to patronize a merchant who does not carry good stock, but you have no recourse if you are haled before a judge whose mental or moral goods are inferior. An honest, high*

*mindful, able and fearless judge is the most valuable servant of democracy, for he illuminates justice as reinterprets and applies the law, as he makes clear the benefits and the shortcomings of the standards of individual and community rights among a free people”<sup>32</sup>*

In capturing the harm that a corrupt judge will inflict in the society UWAIS JSC said:

*“A corrupt judge is more harmful to the society than a man who runs amok with a dagger in a crowded street. The latter can be restrained physically. But a corrupt judge deliberately destroys the moral foundation of society and causes incalculable distress to individuals through abusing his office while still being referred to as honourable”<sup>33</sup>*

Putting it more succinctly, Oputa JSC<sup>34</sup> said:

*“... No one should go to the bench to amass wealth, for money corrupts and pollutes not only the channels of justice but also the very stream itself. It is a calamity to have a corrupt judge. The passing away of a great advocate does not pose such public danger as the appearance of a corrupt judge on the bench, for in the latter instance, the public interest is bound to suffer and elegant justice is mocked, debased, depreciated and auctioned. When justice is bought and sold, there is no more hope for society. What our society need is an honest, trusted and trustworthy Judiciary”.*

Dr. Akinola Aguda<sup>35</sup> seemed to be thinking along these lines when he said:

*“It is beyond dispute that to sustain a democracy in the modern world, an independent, impartial and upright Judiciary is a necessity”<sup>36</sup>*

Two methods of appointments can be discerned from the Constitution of the Federal Republic of Nigeria 1999 namely:

- (i) *The first method is appointment by the President or Governor acting on the advice of the National Judicial Council and subject to confirmation by either the Senate or the House of Assembly of a State as the case may be. The judicial officers affected by this method of appointment are Chief Justice of Nigeria,<sup>37</sup> President of the Court of Appeal,<sup>38</sup> Chief Judge of the Federal High Court,<sup>39</sup> Chief Judge of The High Court of Justice FCT Abuja,<sup>40</sup> Chief Judge of State High Court,<sup>41</sup> Grand Khadi of the Sharia Court of Appeal FCT Abuja<sup>42</sup>, Grand Khadi Sharia Court of Appeal of States,<sup>43</sup> President of the Customary Court of Appeal FCT Abuja,<sup>44</sup> President of the Customary Court of Appeal of a State<sup>45</sup> and President of the National Industrial Court. The real makers of the appointment appear to be the National Judicial Council.<sup>46</sup>*
- (ii) *The second method of appointment is by the President or Governor acting on the recommendation of the National Judicial Council. No confirmation by either the Senate or House of Assembly is required. Judicial officers in this category are: Justices of the Supreme Court of Nigeria,<sup>47</sup> Justices of the Court of Appeal,<sup>48</sup> Judges of the Federal High Court,<sup>49</sup> Judges of the High Court of Justice FTC Abuja,<sup>50</sup> Judges of the High Court of Justice of States,<sup>51</sup> Khadis of the Sharia Court of Appeal FCT Abuja,<sup>52</sup> Khadis of the Sharia Court of Appeal of States,<sup>53</sup> Judges of the Customary Court of Appeal FCT Abuja,<sup>54</sup> Judges of the Customary Court of Appeal of States,<sup>55</sup> and Judges of the National Industrial Court.*

Discretion is vested on the President or Governor even in relation to the above. While they cannot appoint a person who has not been recommended by the Council, they are not bound to appoint a person on whom a favourable recommendation has been made. Where the President or the Governor turns down a person recommended by the Council or the Commission, a non recommended person cannot be appointed. The Council or Commission must be requested to recommend other persons. This is where the politicking comes in. Appointments with Judicial Service Commission at the State level are often made based on political affiliation and political accounts are taken into consideration on the case of recommendation. For example in the composition of the State Judicial Service Commission, it is to be comprised of the following members:

- (a) *The Chief judge of the State who shall be the Chairman;*
- (b) *The Attorney General of the State;*
- (c) *The Grand Khadi of the Shariah Court of Appeal of the State if any;*
- (d) *2 Members who are legal practitioners and who have been qualified to practice as legal practitioners in Nigeria for a period of not less than 10 years; and*
- (e) *2 other persons not being legal practitioners who in the opinion of the Governor are of unquestionable integrity.*<sup>56</sup>

The appointment of the Attorney General of a state and 2 members from the private bar and 2 other persons who are non legal practitioners to the Judicial Service Commission are often abused in practice. They are appointed contrary to the constitution based on political considerations and more often than not are used to veto important decisions of the Chief Judge of the state especially where the decisions does not go down well with the interest of the state. Appointment is based on undue emphasis on geopolitical or ethnic considerations and in the process utterly incompetent people are appointed based on these considerations.

Removal of judicial officers under our present dispensation is done by the President or Governor upon an address presented by at least two third majority of the appropriate legislative house calling for such removal on the ground of misconduct or inability to discharge the functions of the office (in the case of the Chief Justice of Nigeria/State Chief Judge) or on the recommendation of the appropriate judicial service commission (in the case of other judicial officers). It is clear from the above that appointment and removal of judges in Nigeria have been mainly in the hands of politicians, civilians or military as the case may be.

A lot of judges have faced and some are still facing harassment at the hands of politicians. During the 2<sup>nd</sup> Republic, the nation witnessed spate of harassment of some judicial officers by politicians.<sup>57</sup> For instance, sometime in 1982, a frantic attempt was made to remove the then Chief Judge of Bauchi State, Hon. Justice Piper. He was later forced to retire at the end of 1982. At about the same time the then Chief Judge of Benue State Hon. Justice J. M. Adesiyan was having a rough time with the State legislature. The then Chief Judge of Cross Rivers State Hon. Justice Ileofreh was not having it easy with the executive. In July/August 1982, a determined effort was made by both the executive and the legislature of Borno State to remove the then Chief Judge, Hon. Justice Kalu Anyah. He was eventually removed in early 1983.<sup>58</sup>

The Chief Judge of Plateau State, Hon. Justice A. O. Obi was also under press attack by a political party in the state. His appointment was even challenged although unsuccessful in the court. Back home in Sokoto State, the Chief Judge of Sokoto State also had it rough with the



legislature on grounds that were strictly political but she challenged the action of the legislature and successfully too at the Federal High Court sitting at Abuja<sup>59</sup>.

History will not forgive me, if I fail to point out the mellow drama between the out gone Chief Justice of Nigeria, Justice Aloysius Katsina Alu and the suspended President of the Court of Appeal, Justice Ayo Isa Salami.

In brief the suspension of the President of the Court of Appeal (PCA) Justice Ayo Isa Salami by the National Judicial Council (NJC) over his refusal to apologize to the NJC and the then Chief Justice of Nigeria (CJN), Justice Aloysius Katsina Alu, and his compulsory retirement by President Good luck Jonathan who acted under his constitutional authority and the subsequent recall of Isa Ayo Salami from Suspension by the NJC which suspended him and the refusal of President Good Luck Jonathan to approve the acts of the NJC raises questions regarding the partisan nature and level of Independence within the Nigeria Judiciary.

## 2. Security of Tenure and Remuneration of Judges and Supporting Staff

It is said that Magistrates, Area and Customary Court Judges and Shariah Court Judges are under the Constitution of the Federal Republic of Nigeria not covered by the term “Judicial Officers”. They are appointed, promoted and subjected to disciplinary control by the various states Judicial Service Commission,<sup>60</sup> even though they perform the bulk of judicial work and closer to the grassroots, their usefulness is undermined. One wonders why they can be referred to as non judicial officers.

Remuneration at the Superior Courts of records level has been greatly improved upon in recent years even though there can still be room for improvement, compared with their colleagues in other developing and transition states particularly having regard to the volume of work and the environment in which they operate.

The major problem has to do with judges of the lower courts. They are not covered. They take home peanuts. Their salaries, allowances, environment and social facilities both in their places of work and family matters are pathetic. This paves way for manifest corruption and ineptitude and generally lack of seriousness to work.

Notwithstanding the improved salaries of the Superior Courts of records, allegations of corruption, continuously rears its ugly head in the cause of public discourse and judges of superior courts have been dismissed on proven allegation thereby casting a huge question mark on the independence of the Nigerian Judiciary. Only recently, some justices of the Court of Appeal were dismissed by the National Judicial Council for receiving bribes on the course of hearing of election petition cases. We also witnessed the probing of judges of the High Courts, a Customary Court of Appeal judge, and a Shariah Court of Appeal Judge who were investigated and arrested by security operatives for allegedly carting away large sums of money in Akwa Ibom State in an election petition tribunal.

Two factors propel judicial officers to engage in corruption namely:

- (1) **Greed.** This simply mean that some judges want to style themselves after the ostentations lifestyles of politicians. They want to own duplex or skyscrapers in Dubai; they want to go to France and USA for long term holidays and invest in practically all the known business of the world and most importantly even take chieftaincy titles.
- (2) **Habit** – There seems justification to conclude that some judicial officers appeared to carry over this habit from the lower bench to the higher bench.

### 3. Budgetary Provisions (Process)

The involvement of the Federal Government of Nigeria and State Government as the case may be in the budget process of Courts in Nigeria is an indication of the extent of judicial independence in Nigeria. Unchecked domination of one branch over the other can produce dysfunctional budgetary allocation process. In Nigeria, this plays down especially at the state level. Clear out constitutional provisions are recklessly ignored by the Governors of the States particularly with regards to capital expenditure for state judiciaries. The constitution provides:<sup>61</sup>

*“Any amount standing to the credit of the Judiciary in the consolidated Revenue Fund of the State shall be paid directly to the heads of the Courts concerned”.*

This provision rather than be complied with by the State Government is often breached especially where the head of Court within the state is not in the good books of the Governor of the State. This dysfunctional budgetary allocation has given rise to disastrous situation for the Judiciary. Absence of funds can lead to non-availability of physical structures or grossly inadequate structures like Court halls, chambers, Registries and offices for supporting staff which will in turn affect the flow of cases and other essential services thus leading the system not been able to face the demand and deliver the requisite justice demanded. Sometimes salaries and allowance of supporting staff can be too low and in arrears for months thereby creating an atmosphere of frustration and discontentment, which normally breeds indiscipline corruption and eventually breakdown of the system.

### 4. Individual and Institutional Freedom from Unwarranted Interference with the Judicial Process by the Executive arm of Government and Politicians.

The history of the Judiciary around the world demonstrates that the greatest danger of interference counsel from other government institutions or political parties. An independent Judiciary must not only be independent in unwarranted interference with the judicial process by the executive arm of government and politicians but it must appear to be independent. This brings into operation the popular adage “Justice must not only be done, but also must seen to be done”.

To remain just, the courts must not be influenced by any outside sources or appear to be capable of such influence. To aid such a perception, they must have no real or apparent contact with a political party. If such contact exists, they would appear to be bias in favour of the policies of that party or if the party controls the state, to be biased in favour of the state, succumbing to pressures from the executive arms to inappropriate interference with judicial independence.

Access to judges outside official channels has been one of the greatest problems that further threaten the independence of the Judiciary in Nigeria. Governors of states have direct access to judges within the state even as it relates to matters in court and lawyers and clients often boast of their accessibility to judges or even to panel of an election petition hearing particular cases. The unresolved saga between the out gone Chief Justice of Nigeria and the embattled President of the Court of Appeal is an example. Thence the unbridled access to judges and justices amount to self erosion by the Judiciary of the principle of independence of the Judiciary. What is more, judges, drivers, stewards, gardeners, salesmen, orderlies, registrars and other staff reveal information as to who visits their boss to the outside world.



Intimidation and lawlessness by members of the executive especially Governors abound. Governors show contempt to court order when it does not please them and even the legislators. One wonders the justification where legislators had the impudence to summon a Chief Judge to come and answer question in connection with appointment in a Court of Appeal, a Court when the Chief Judge had no influence whatsoever,<sup>62</sup> or a situation when a state police commissioner refuses to comply with a High Court order on seven successive occasions.<sup>63</sup>

### Court Pronouncements

This is however not to say the Judiciary have not at all performed creditably in some spheres of human endeavours. The courts have made notable pronouncements in the judgments delivered during this democratic dispensation, testing the supremacy of the constitution are the interpretation of the laws used by the government in the pursuit of its economic policies like Revenue Allocation to states and local governments.<sup>64</sup> The Courts also made pronouncement on funding of newly local government in Lagos State,<sup>65</sup> this decision must have paved the way for the promulgation of the “Monitoring of Revenue Allocation to Local Government Act 2005”. The Courts have also decried recklessness in the registration of political parties by its decision in **INEC Vs MUSA**<sup>66</sup> and more recently, the tenure of the five Governors on tenure elongation.

### RECOMMENDATIONS

To revive the seemingly lost confidence in the Judiciary and boost the independence of the Judiciary, the following recommendations are proffered:

1. *States governments should be made to uphold and comply religiously with the provisions of section 121(3) of the Constitution of the Federal Republic of Nigeria 1999 which provides that “any amount standing to the credit of the Judiciary in the consolidated revenue fund of the state shall be paid directly to the heads of court concerned” and default in doing so should be criminalized.*
2. *There is the need to diversify the pool from which judicial appointments are made in view of the declining intellectual depth and overall quality of the judgments of some judges in Nigeria which are often conflicting. Review of criteria for appointment of judicial officers to include qualified candidates from the bar, academia and industry is advocated.*
3. *There is the need to experiment inter- state transfer of judges.*
4. *Every obstacle to justice must be removed in the discharged of duties of judicial officers. In a developing community such as Nigeria, there is the need to devise the vision and objective of justice and the rule of law. Government should in their economic reform programmes also take the Judiciary into consideration as failure might lead the economic reform programmes becoming unsuccessful.*
5. *Magistrates, Area Courts, Sharia Courts and Customary Court judges as well as Chairmen of the Rent Tribunal of the various states should be treated as judicial officers especially as far as salaries and tenure of office are concerned.*
6. *Corrupt judges should be further wiped out by applying an experimental practice of “detection by deception” which hopefully will be very effective in detecting corrupt judges and lawyers alike.*
7. *Chapter II of the 1999 Constitution should be justiciable by judicial activism.*

### CONCLUSION

The Judiciary is the mighty fortress against tyrannous and oppressive laws. The importance of the Judiciary cannot therefore be over emphasized. It is not an overstatement to assert that an

independent Judiciary is the greatest asset of a free people. The Judiciary by the nature of its functions and role is the citizen last line of defence in a free society that is the line separating constitutionalism from totalitarianism.<sup>67</sup>

I however need to appreciate that the position of the Judiciary in a democratic setting is a delicate one. More often than not, the Judiciary has been the sacrificial lambs on the altar of societal imperfection and contradictions. When politicians rig election, it is the Judiciary that is called upon to decide who actually won the election. Again, when politicians loot the nation's treasury in their unconscionable quest to become millionaires and billionaires, it is in the judges that are called upon to hold the tribunals to inquire into their activities or to try them, and so on and so forth. In other circumstances, the Judiciary finds itself in a no win situation and whichever party loses readily cast aspersion on the integrity of the presiding justices.<sup>68</sup> This is the unfortunate lot the Nigerian Judiciary finds itself today.

Interestingly, the constitution itself as interpreted by the courts lied against itself in section 17(2) (e) of the 1999 Constitution. The section provides:

*"The independence, impartiality and integrity of the courts of law  
and easy accessibility thereto shall be secured and maintained"*

Impressive as this provision may appear to be, it is however placed under Chapter II of the 'Fundamental Objectives and Directive Principles of State Policy' whose provisions are non-justiciable by virtue of section 6(6) (c) of the Constitution. Thus the high sounding declaration of section 17(2) (e) of the Constitution has no bite and what could have been a constitutional guarantee of judicial independence is no more than a slogan in Nigeria.

#### END NOTES

1. The Guardian of Thursday, December 30, 1993, p. 2.
2. See Justice A. Fatayeh Williams (Rtd) former Chief Justice of Nigeria in a presentation at the All Nigeria Judges Conference Ilorin, Kwara State 8<sup>th</sup> – 11<sup>th</sup> March, 1992.
3. See the Guardian of Monday 4<sup>th</sup> April 1994, p. 24 with a story captioned "NBA set to prove Corruption Charges against Judges" See also Weekend Concord of Saturday, December 11, 1993 with the lead story "Chief Justice Muhammad Bello Kick him out that, Lawyers Demand" and Tell Newsmagazine of February 7<sup>th</sup>, 1994 with the lead story "The Supreme Court Scandals and Official Gratifications; Abuja Construction Deals and Shady Oil Contracts"
4. See Garner A. B, Black's Law Dictionary, 8<sup>th</sup> Edition, West Publishing Co. 2004, p. 785.
5. See Bouvier's Law Dictionary 3<sup>rd</sup> Edition at p. 1756.
6. See Shorter Oxford English Dictionary at p. 294.
7. Hon. Justice Umar F. A, "The Role of the Bar and Bench in the sustenance of Democracy" In Contemporary issues in Nigerian Law, Legal Essays in Honour of Hon. Justice Umaru Faruk Abdullahi, CON, Browntel Books, 2006, pp. 85 & 89.
8. Daudu J. B. "The Independence of the Nigeria Judiciary in the light of Emerging Socio-Political and Security Challenges". A key note speech available at <http://www.nba.org.ng/web/theindependenceofthenigerianjudiciary> retrieved on 5/7/2014, p. 1.
9. See Section 6(6) (a) of the Constitution of the Federal Republic of Nigeria 1999.

10. See Address by the Honourable President of the Court of Appeal, Hon. Justice Umaru Abdullahi on the Occasion of the Maiden Special Session of the Court of Appeal held in Maiduguri, Borno State on Monday 29<sup>th</sup> January, 2011.
11. Section 4(8) of the Constitution of the Federal Republic of Nigeria 1999. Although Court of law have powers to intervene in the exercise of powers of the legislature, nevertheless the legislature is deliberately and expressly forbidden from making law that would oust the jurisdiction of the court of law.
12. (1965) 1 ALL NLR 62.
13. *Ibid* at p. 65.
14. (1947) AC 165.
15. *Ibid* at P. 175.
16. (1917) 244 US 205.
17. *Ibid* at p. 221.
18. Dahiru Musdapher (CJN) The Nigerian Judiciary: Towards Reform of the Bastion of Constitutional Democracy, Nigeria Institute of Advance Legal Studies 2011, p. 4.
19. (1942) A.C 206.
20. *Ibid* at p. 244.
21. See the cases of Smith Vs East Elloe Rural District Council (1956) AC 736 at 769-770; Josiah Cornelius Ltd & Ors Vs Chief C. K. Ezenwa (1996) 1 NWLR (PT 2) p. 42 at 71.
22. Oputa C, "The law and the Twin Pillars of Justices", (Owerri; Government Privates) 1981, at 108.
23. See the cases of (2009) 8 NWLR (PT 1143) 293 at 319 Para D.
24. (2009) 8 NWLR (PT 1143) 29 at 319, Para D.
25. (1991) 2 NWLR (PT 776) 732 at 749-750.
26. (2000) 23 WRN 30 at 46
27. (1984) 11 SCNLR 1.
28. *Ibid* at p. 77.
29. See FN 24 *Ibid* at p. 319.
30. An important characteristic of judicial powers is lack of initiative. See B. O. Nwabuze, "Judicialism in Commonwealth Africa" (1977) p. 49.
31. See Walter F (et al), Court Judges and Policies: an introduction to the judicial process, (London House, New York) 1979 p. 216.
32. Charles Evans Hughes in 1925 as part of a Presidential address to the American Bar Association.
33. Uwaifo JSC valedictory speech, reproduced in (2005) 1 SCNJ at 20.
34. Oputa C, "Judicial Ethics, Law, Justice and the Judiciary", A Journal of Contemporary Legal Problems Vol. 1 No. 8.
35. Aguda A, The judiciary in the government of Nigeria, New Horn Press, Usadem, 1983.
36. *Ibid* at p. 34.
37. Section 231(1) CFRN 1999.
38. Section 238(1) *Ibid*.
39. Section 250(1) *Ibid*.
40. Section 256(1) *Ibid*.
41. Section 271(1) *Ibid*.
42. Section 261(1) *Ibid*.
43. Section 276(1) *Ibid*.
44. Section 266(1) *Ibid*.
45. Section 281(1) *Ibid*.

46. The argument has seen that when a power is made exercisable by someone on the advice of another, no discretion is imported; the power has to be exercised only as advised. The role of the repository of the power being the purely formal and normal one of merely executing advice.
47. Section 231(2) CFRN 1999.
48. Section 238(2) *Ibid.*
49. Section 250(2) *Ibid.*
50. Section 256(2) *Ibid.*
51. Section 271(2) *Ibid.*
52. Section 261(2) *Ibid.*
53. Section 276(2) *Ibid.*
54. Section 266(2) *Ibid.*
55. Section 281(2) *Ibid.*
56. See Part II of the Third Schedule to the CFRN 1999.
57. "Epilogue" To Agudu T. A. "The Judiciary in the Government of Nigeria" op cit, Pp. 175 – 182.
58. He subsequently challenged his removal in court. See Hon. Kalu Anya Vs Attorney General of Borno State & Ors (1983) FCA/K/141/81 of 12/4/83 (1984) 5 NCLR 401.
59. See the Judgment of the Federal High Court of Nigeria Abuja in Hon. Justice Aisha Sani Dahiru Vs National Judicial Council & 3 ors Suit No. FHC/ABJ/CS/426/2008 (Unreported) delivered on the 6<sup>th</sup> of November 2008.
60. Paragraph 5 Part II of the Third Schedule to the CFRN 1999.
61. Section 121(3) CFRN 1999.
62. Aguda A.T, op cit, p. 178.
63. Nwabueze B. O, op cit, p. 319.
64. See Buhari Vs Obasanjo (2005) 2 NWLR (PT 910) 245; Buhari Vs Obasanjo (2005) 13 NWLR (PT 941) p. 1. (SC); Ojukwu Vs Obasanjo (2004) 12 NWLR (PT 886), p. 169.
65. See AGF Vs AG Abia State (No 2) (2006) 6 NWLR (PT 764) 542. (Resource Control Case), AG Abia State VS AGF (2003) 4 NWLR (PT 809), p. 124.
66. (2003) 3 NWLR (PT 806) p. 72.
67. See Umaru, E. "The Role of the Judiciary in sustaining Democracy in Nigeria", in Oyeyepo, Gummi, Umezulike (Eds), Judicial Integrity, Independence and Reform: Essays in Honour of Hon. Justice M. L. Uwais (GCON), Enugu: Snapp Press Ltd, 2006 at 178.
68. See TELL News Magazine of February 7, 1994, Weekend Concord of Saturday December 1, 1993.