

APPRAISAL OF THE LEGAL REGIME FOR CONTROL AND DISCIPLINE OF JUDICIAL OFFICERS IN NIGERIA*

Abstract

In Nigeria, as in other countries of the world, judges occupy a real privileged position which springs from public recognition that governance and society can only function fairly and properly within a framework of laws administered justly and fairly by men and women who owe obligation to nothing other than the law and justice itself. Their social roles demand that judges must not be and should not be subjected to disciplinary sanctions or premature retirement on account of reaching decisions that do not find favour with the powers that be or with powerful vested interests, or even with prevailing public opinion. Recently, there has been concern among scholars as to the existence of sufficient legal framework which regulates judicial control and discipline, given the despicable manner some judges and justices were been molested, humiliated and embarrassed by the government and security agencies. It is with a view to appraising the legal framework and to address possible lapses, if any, that this research was undertaken. The doctrinal method of legal research was employed and materials were collected from primary, secondary and internet sources. We found that the extant legal framework for the control and discipline of Judicial Officers in Nigeria is not sufficient enough to address issues of judicial intimidation, harassment and wanton attack by the executive. We recommend among other things for the enactment of a law to be known as 'Judicial Immunity and Discipline Regulations Act' to protect judges from wanton attack and intimidation and to upgrade the 2017 Revised Judicial Discipline Regulations Guideline of the National Judicial Council to an Act of the National Assembly with the requisite force of law. These among others, will in no small measure enhance the legal framework for judicial control and discipline in Nigeria.

Keywords: Judicial Control and Discipline, Legal Framework, Judiciary, Judicial Intimidation, Rule of Law

1. Introduction

The judiciary as an arm of government has the solemn duty to protect citizens' rights and liberties. It also acts as a bulwark, against any form of injustice or violation of the rule of law.¹ It is argued that, the society generally put faith in the courts' ability to perform its functions.² On the other part, the main responsibilities requiring exercise of judicial powers are: to judge court cases fairly; to enforce the law when there are certain constitutional principles being put to question; to interpret the laws properly to solve disputes and to improve the protection of constitutional rights.³ Recently, Agencies of government seems to have launched an onslaught against the Nigerian judiciary. This is as a result of agitation from various quarters, as to the need for government and its agencies to enforce and effect disciplinary measures against judicial officers. For instance, on the 7th and 8th October, 2016 respectively, the Department of the State Security Services (DSS), the Nigerian Police Force (NPF) and the Economic and Financial Crimes Commission (EFCC), on the instruction or order of the then President of the Federal Republic of Nigeria, laid siege and invaded the official residences of the judges of several states and Federal Courts in Nigeria⁴ (Including Hon. Justice Adeniyi Ademola, Hon. Justice Nnamdi Dimgba, Hon. Justice Muazu Pindiga of the Federal High Court, Hon. Justice Sylvester Nwali Ngwuta and Hon. Justice John Inyang Okoro) searched their residences, manhandled them, as well as members of their household and finally arresting and further detaining them in the Department of State security Services detention facilities in Abuja, and elsewhere in Nigeria, for several hours until General Buhari (Rtd.), then President of Nigeria ordered their release.⁵

The orders for the act of siege and invasion of the residences of the said judges and justices were discovered to have been made by the former President of the Federal Republic of Nigeria and the immediate past Attorney-General of the Federation and the Minister for Justice, when they issued official statement owning and accepting responsibility for giving the orders and directive, authorizing the Department of State Security (DSS) to carry out the said acts of siege, invasion and searches of the residences, arrests and subsequent detention of the aforesaid judges and justices for several hours in the DSS detention cells until the said judge's and justices were eventually released.⁶ In response to the incidences above, the then Chief Justice of Nigeria (Hon. Justice Mahmud Mohamed) through the National Judicial Council, stated that there was no complaint to the National Judicial Council against any of the said judges and justices for investigation and necessary action as required by law.⁷

*By Chidiebere Collins NWEZE, LLB (Hons), LLM, BL, PhD, Practicing Partner, Igboeze Chambers (Onu John Onwe and Co.) 4 C Ogoja Road, Abakaliki, Ebonyi State, Nigeria, Email: nwezechidieberecollins125@gmail.com.

¹ E Edosa, The Judiciary as an Organ of Government, *African Research Review* Vol. 8 (3) 2014. 93- 98.

² A S Chilton, 'Courts Limited Ability to Protect Constitutional Rights' available at <<https://lawreview.uchicago.edu>> accessed 19th March, 2024.

³ *Ibid.*

⁴ S Daniel, 'Alleged Corruption; 7 Judges Arrested, Two Supreme Court Judges inclusive' Saturday *Vanguard* 8th October, 2016, 3.

⁵ S Daniel et al, 'DSS Recovers #360m in Three Judges Houses' *Sunday Vanguard* October 9, 2016, 4-5; Y Ali, 'DSS finds Rolls Royce in Judges 15 Car Fleet' *The Nation* Wednesday, October 12, 2016, 3 and 6; R Oludare 'CJN Condemns Judges' Arrest' *The Guardian*, Tuesday October 11, 2016, 1,6; and I Uwugharen, et al 'How NJC Rejected DSS request to probe Judges' *This Day*, Tuesday October 11, 2016, 1,6.

⁶ T Obalaonye, 'Corruption not Judiciary Under Attack; Presidency' *Daily Sun*, Monday October 10, 2016, 6; The Nation, 'Attorney-General Justifies arrest of Judge' *The Nation*, Wednesday October 12, 2016, 6; Elkhilae et al, 'Presidency Ordered DSS Raid on Judges; AGF' *Daily Sun*, Wednesday, November 30, 2016.

⁷ S Daniel et al, 'No Formal Petition from DSS to NJC-CJN' *Sunday Vanguard*, October 23, 2016, 1,5; S Oye, the Position of the National Judicial Council on the Recent Invasion of the Residences and Arrest of Judicial Officers' Saturday *Vanguard*, October 22, 2016, 51-54.

After the incidents of the siege and invasion of the official residences of the said judges and justices, as well as their subsequent arrests and detentions, the President, the Attorney General, the Department of State Security Services and the Economic and Financial Crimes Commission and their agents made a number of allegations of wrong-doings bordering on heinous crimes and acts of grafts, bribery and corruption against the said judges and justices and indeed against the entire judiciary in Nigeria.⁸

By virtue of the ethics and decorum of the official positions of the said judges and justices, they refrained from joining issues with their accusers, despite unceasing campaign of calumny mounted against the individual judges and justices and the entire judiciary of Nigeria in newspapers. Rather, the judges and justices, made written complaints to the National Judicial Council protesting their ill-treatment and explaining their positions on the allegations leveled against them.⁹ The said victims, Hon. Justice John Inyang Okoro and Hon. Justice Adeniyi Ademola explained that they were victims of blackmail and gross intimidation for rebuffing and rejecting the monetary inducement of the Presidency through their agent Hon. Rotimi Amaechi (former Minister of the Federal Republic) to coerce them to pervert the course of justice.¹⁰ Late Hon. Justice Sylvester Nwali Ngwuta had also in a letter of complaint made to the National Judicial Council, claimed that he was a victim of blackmail and gross intimidation for rebuffing the monetary inducement of the Presidency through their agent Hon. Rotimi Amaechi and Dr. Ogbonnaya Onu of the blessed memory (former Ministers of the Federal Republic of Nigeria) to corruptly induce or coerce him to pervert the course of justice.¹¹ Hon. Justice Adeniyi Ademola of the Federal High Court had also petitioned the National Judicial Council and complained that he was a victim of high wired intrigues blackmail and intimidation from the Presidency and his agents because he granted bail in high profile political cases pending before him such as Col. Sambo Dasuki and others.¹²

The National Judicial Council subsequently suspended some of the affected judicial officers from the performance of their judicial functions.¹³ The Attorney-General of the Federation thereafter charged and arraigned Hon. Justice Adeniyi Ademola of the Federal High Court and late Hon. Justice Nwali Ngwuta of the Supreme Court before the Federal High Court Abuja for various offences.¹⁴ Scholars are of the view that disciplinary proceedings against judges, must be based on the rule of law and carried out in accordance with certain basic principles, aimed at safeguarding judicial independence¹⁵ and same must meet international standards.¹⁶ The incessant and seemingly unlawful interference from government, in the affairs of the judiciary under the camouflage of judicial discipline, have put to question the existence, effectiveness or otherwise of judicial internal mechanism for ensuring judicial discipline in Nigeria. To this end, this work sets out to appraise the legal framework for judicial control and discipline in Nigeria, with a view to finding out the lapses with it and to recommend ways of remedying same.

2. The Legal Regime

Constitution of the Federal Republic of Nigeria 1999 (as amended)

With regard to removal or dismissal of a judicial officer, section 292 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), provided that a judicial officer cannot be removed from his office or appointment before the age of retirement except by virtue of the two methods laid down in the section, depending on the level of the judicial officer. The two methods are as follows: In relation to the heads of the various level of Federal Courts and Courts of the Federal Capital Territory, Abuja, by the President, acting on an address supported by two thirds majority of the members of the Senate asking for removal for inability to discharge the functions of his office (by reason of infirmity of body or mind), or for misconduct or for contravention of the code of conduct. In other cases, the President acting on the recommendation of the National Judicial Council, that the judicial officer be removed, for same reasons can remove the judicial officer. Note that the requirement of two-thirds majority here is of the whole house and not of a quorum or section of it.¹⁷ Also, in relation to the exercise of the power of the legislature in such matters, the address of the legislature must contain proved facts of inability to discharge his functions, or established misconduct or contravention of the code of conduct.¹⁸ Section 292 of the 1999 Constitution also provided for removal by the Governor, acting on an address, supported by two-thirds majority of the

⁸A F Koyi, 'Federal Government goes after Election Tribunal Judges, Others; Trails alleged #7Bn, Judgment Bribery Cash' *Daily Sun*, Tuesday October 11, 2016, 8; The Sun, 'How NJC Cleared Judge Before Arrest' *Daily Sun*, Tuesday, October 11, 2016, 9; The Nation, 'DSS finds Rolls Royce in Judge's 15 Cars fleet' *The Nation* Wednesday, October 12, 2016, 1,2,3 and 40; *Daily Sun*, 'Nigeria Fallen Justices' Sunday *Daily Sun*, October 16, 2016, 27, 29; *Daily Sun*, '50 NGO's Storm's Court, NASS; Call on Arrested Judges to Step Down' *Daily Sun* Thursday October 27, 2016, 2; *Vanguard*, 'DSS Recovers ₦360m in Three Judges House' *Vanguard*, October 9, 2016, 4-5.

⁹J Onyekwere *et al*, 'Judge Links Travail to Alleged Bribery Attempt by Amaechi' *Guardian*, Wednesday, October 19, 2016, 1,6.

¹⁰*Ibid*.

¹¹*Ibid*.

¹²*Ibid*.

¹³*Ibid*.

¹⁴I Nnochiri, 'As Trial of Judges is Set to Begin' Sunday *Vanguard*, November 20, 2016; A Ade, 'More Trouble for Supreme Court Justice, Sylvester Ngwuta' *The Punch*, Thursday, November 17, 2016, 7.

¹⁵M Satterthwaite, 'Disciplinary Measures Against Judges and the Use of 'Disguised Sanctions' A Report by the United Nations Special Rapporteur on the Independence of Judges and Lawyers Delivered To: General Assembly at its 75th Session; available at <<https://www.ohchr.org/en/documents/thematic-reports/a75172>> accessed 31st March, 2024.

¹⁶ *Ibid*.

¹⁷*Uttah v House of Assembly* (1985) 6 NCLR 761 at 768.

¹⁸*Anya v Attorney General Bornu State* (1984) 5 NCLR 225.

members of the State House of Assembly, praying for removal for inability to discharge the functions of his office, or for misconduct or contravention of the code of conduct. The Chief Judge of the State, Grand Kadi of the Sharia Court of Appeal and President of the Customary Court of Appeal of a State are removable via this manner. The next is removal by the Governor acting on the recommendation of the National Judicial Council that the judicial officer be removed for same reasons. This applies to every other judicial officer not covered by the first method. Part I, 5th Schedule to the 1999 Constitution contains a Code of Conduct for Public Officers and the Code regulates all public officers in Nigeria, including judicial officers. Going by the provisions of the Code, a public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities and a public officer shall not ask for or accept property or benefits of any kind for himself or any other person on account of anything done or omitted to be done by him in the discharge of his duties.¹⁹ Admitted, the above novel constitutional provisions are germane to the control and discipline of Judicial Officers in Nigeria. However, a comprehensive reading of the relevant sections of the constitution shows there are lacunas as to how the disciplinary powers would be wielded and exercised. For instance, conditions precedent for arrest, detention or discipline of serving judicial officers, for an offence allegedly committed in the performance of his judicial functions or breach of ethical codes for judicial service is nowhere provided for in the constitution or in any other statutory instrument.

Another visible constitutional oversight is on the powers of the National Judicial Council to recommend erring judicial officers to the President or Governor (as the case may be) for removal. The 1999 Constitution empowers the Council to recommend for removal of judicial officers, without more. This means that while the Council has a duty to recommend, the president or Governor who wields the actual removal powers are not under any legal obligation to accept and act on the recommendation of the Council. Going by these constitutional provisions, it seems that, while the executive cannot remove a judicial officer without the requisite recommendation of the Council, the executive on the other hand is not bound to accept and act on the recommendation of the Council; especially where the legislative arm is not involved. Unfortunately, the executive these days, no longer wait for the recommendation of the National Judicial Council, before proceeding against judicial officers. This is a serious lacuna that the constitution or any other law made there under, ought to address. The Constitution ought to be explicit, whether or not the executive has the power to reject, neglect or otherwise refuse to act on the recommendation of the National Judicial Council; what are the qualifying grounds and how it should be addressed.

Code of Conduct for Judicial Officers in Nigeria

Pursuant to section 153 of the Constitution which established the National Judicial Council and in exercise of the powers/functions vested on the Council under Part 1, third Schedule to the Constitution, the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria was adopted to serve as the minimum standard of conduct to be observed by each and every judicial officer in Nigeria. The Code applies to all categories of judicial officers throughout the federation as defined under the Code. Violations of any of the rules contained in the Code constitute judicial misconduct and or, misbehavior and attract disciplinary action.²⁰ A highlight of the rules provided by the Code is made hereunder:

Rule 1: Propriety and the appearance of propriety, both professional and personal propriety and the appearance of propriety, both professional and personal, is essential elements of a Judge's life. As members of the public expect a high standard of conduct from a Judge, he or she must, when in doubt about attending an event or receiving a gift, however small, ask himself or herself the question, "How might this look in the eyes of the public"

Rule 2: Personal relations with individual members of the legal profession; A judge shall in his or her personal relations with individual members of the legal profession, who practice regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion of or appearance of favoritism or partiality.

Rule 3: Fidelity to the Constitution and the Law; A judicial officer should be true and faithful to the Constitution and the Law, uphold the course of justice by abiding with provisions of Constitution and the Law and should acquire and maintain professional competence.

Rule 4: Duty to abstain from comments about a pending or impending proceeding in any court in this country; A judicial officer should abstain from comments about a pending or impending proceeding in any court in this country, and should require similar abstention on the part of the court personnel under his direction and control, provided that this provision does not prohibit a judicial officer from making statements in the course of his official duties or from explaining for public or private information, the procedure of the court so long as such statements are not prejudicial to his integrity of the judiciary and the administration of justice. A judicial officer shall be bound by professional secrecy with regard to his deliberations and to confidential information acquired in the course of his duties. Accordingly, confidential information acquired in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.

Rule 5: Right to freedom of expression; A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly; but in exercising such rights, a judge shall always conduct himself in such manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

Rule 6: Duty to abstain from involvement in public controversies; the duties of judges are not consistent with any involvement in public controversies: a) A judge should not involve himself or herself inappropriately in public controversies, b) A judge shall not enter the political arena or participate in public debates, either by expressing opinions on controversial subjects, entering into disputes with public figures in the community, or publicly criticizing the government.

¹⁹ *Ibid.*

²⁰ See Rules 1-15 of the Code of Conduct for Judicial Officers in Nigeria.

Rule 7: Duty in regard to the judge's personal and fiduciary financial interest; A judge shall inform himself or herself about his or her personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family in respect of matters for adjudication before him.

Rule 8: Duty in regard to the judge's family, social or political relationship; A judge shall not allow the judge's family, social or other political relationships improperly to influence the judge's judicial conduct and judgment as a judge.

Rule 9: Responsibility of the judge in regard to non-judicial activities; A judge may engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

Rule 10: Prohibition of acceptance of gift, bequest, loan, favour, benefit, advantage, bribe etc; A judge and members of the judge's family shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with performance of judicial duties.

Rule 11: Responsibility in regard to discharge of administrative duties; A judicial officer should diligently discharge his administrative duties, maintain professional competence in judicial administration and facilitate the performance of the administrative duties of other judicial officers and court officials. A judicial officer should require his staff and other court officials under his direction and control to observe the standards of integrity and diligence that apply to him.

Rule 12: Disqualification; A judicial officer should disqualify himself in a proceeding in which his impartiality may genuinely and reasonably be questioned.

Rule 13: Duty of a judicial officer to regulate his extra-judicial activities; A judicial officer should regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties.

Rule 14: Duty of a judicial officer in regard to travels within and outside Nigeria; A judicial officer should regulate his travels within and outside Nigeria so as not to affect his judicial duties or cause delay in the administration of justice or detrimentally affect his performance or the overall performance of the judiciary. Travels outside Nigeria should be with the permission of the Chief Justice of Nigeria, after such application has been made. Except during vacation, a judicial officer should ensure that unless strictly essential, travels out of duty station on working days should not be undertaken except for special reasons.

Rule 15: Publication by a judicial officer while in service; A judicial officer while in service shall not publish any book or cause another person, group of persons, publishing house, whosoever, acting on his behalf to publish any book until he ceases to be a judicial officer where such publication may infringe in any manner the Code of Conduct for judicial officers. Where a judicial officer while in service publishes any book or causes another person, group of persons, publishing house, whosoever, acting on his behalf to publish any book, he shall ensure that such publication is not used or prohibit such publication from being used, in any manner or form as a means of raising funds, beyond the normal cover or market price of such publication; or, as donation or gift to him or to anyone on his behalf; or, to any cause related to or connected with him.

In our view, the Code of Conduct for judicial officers in Nigeria is all encompassing and detailed.

Judicial Discipline Regulations Guideline 2017

Pursuant to the provisions of section 153, 158 (1) and paragraph 21, part 1, third schedule to the 1999 Constitution of the Federal Republic of Nigeria, the National Judicial Council made and presented to the general public the 2017 Revised Judicial Discipline Regulations²¹ to regulate complaints/petitions against judicial officers in Nigeria. The Regulations govern allegations and complaints of misconduct against judicial officers and proceedings initiated in exercise of the power of the National Judicial Council pursuant to part 1 of the third schedule to the 1999 Constitution of the Federal Republic of Nigeria (as amended) to exercise disciplinary control over judicial officers against whom allegation of misconduct has been made.²² Rule II of the 2017 National Judicial Council Judicial-Disciplinary Regulation provides that a complaint must be made within six months of the event or matter complained of; provided that a complaint relating to a continuing state of affairs may be made at any time while that state of affairs continues or within six months from when it ends. However, the National Judicial Council reserves the discretion to extend time wherever necessary.²³ Rule 14 stipulate that a complaint must be in writing, unless the Chief Justice/Chairman of Council or a head of court or the Council considers that in the circumstances it is reasonable to accept a complaint in another form. The complaint must contain detailed information of; what happened; When and where the relevant event happened; Any information that would help the investigator to check the facts; Nature of the misconduct alleged, itemized where several types of misconduct are alleged; and for an allegation of disability, any additional facts that form the basis of the allegation.

Going by Rule 15, a complaint against a judicial officer must be addressed to the Chief Justice/ Chairman of National Judicial Council, and filed at the office of the Secretary to the Council, or submitted to the office of the Chief Justice of Nigeria, or submitted to the head of court of the judicial officer to whom the complaint relates.²⁴ Rule 16 of the Regulation regulates grounds and conditions for withdrawal of complaints. Rule 17 of the Regulation provided for the establishment of Preliminary Complaint Assessment Committee and defines its terms of reference.²⁵ By Rule 19 provides, that where the Council has decided that a complaint be referred to an Investigation Committee, the Council shall immediately appoint an Investigation Committee to investigate the complaint or particular part of the complaint as it may direct and to report and make recommendations to the Council. Rule 20 of the Regulation, provided for the composition of the Investigating

²¹ This came into force on the 29th day of June, 2017.

²² Rules 2 and 5 of the NJC Judicial Discipline Regulations, 2017.

²³ Rule 12, NJC Judicial Discipline Regulations, 2017.

²⁴ Rule 15, NJC Judicial Discipline Regulations, 2017.

²⁵ Rules 1 and 17, NJC Judicial Discipline Regulations, 2017.

Committee. Rules 23 and 24 of the Regulation made provision for the nature and content of report of the Investigation Committee. Under Rule 24, the Council may suspend the subject judge, from performing judicial functions prior to taking financial decision. Rule 25 itemized possible proposed disciplinary actions the National Judicial Council may take as final decision and notification of the subject judicial officer with same. Rule 28 empowers the National Judicial Council to establish a Watch List, to record the names of judicial officers as the Council may determine, for the purpose of monitoring: (a) The conduct in relation to his office and performance of judicial officer whose conduct has been subject of allegation of misconduct or disability and such allegation has been found established but a sanction of removal from judicial office has not been imposed by Council; or (b) The performance of a judicial officer whose performance has consistently fallen below standard of performance, set by the judicial performance and evaluation committee of the National Judicial Council and approved by the Council; or (c) The conduct in relations to a judicial officer, who has a reputation of habitually disregarding the code of conduct for judicial officers. This regulation is a novel one, as it contains practical procedure for laying complaints against judicial officers and the guiding principles for handling complaints. However, it is our view that the provisions of the Code ought to have the force equivalent to an Act of the National Assembly and binding on all Nigerians; whereby negation of the regulation would be made a criminal offence, punishable with defined term of imprisonment.

Public Officers Protection Act Cap P41 LFN 2004

The Public Officers Protection Act²⁶ (POPA) is a law that seeks to protect public officers' actions or inactions in the course of their public duty. Section 2 (a) of the said Act stipulates that 'the action, prosecution or proceedings shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of continuance of damages or injury, within three months next after the ceasing thereof.' This is usually the first line of defense of any public officer when sued for his/her action or inaction without considering whether the Act will avail the public officer. For Section 2 of the POPA²⁷ to avail a public officer that has been sued (which in this sense, include a judicial officer), it must be established that his/her action relates to (i) an act done in pursuance or execution of any Act or Law or (ii) the execution of any public duty or authority; and (iii) an alleged neglect or default in the execution of any such Act, Law, duty or authority. Of course, there are instances where the Act will not avail a public officer.²⁸ The Public Officers Protection Act applies to judicial officers, by virtue of them falling within the definition of public officers in Nigeria.

Bangalore Principles of Judicial Conduct 2002

The Bangalore Principles of Judicial Conduct is the international standard, for ethical conduct of judges globally.²⁹ The Bangalore principles contained a set of values which includes;³⁰

1. Independence; Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.
2. Impartiality; Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.
3. Integrity; Integrity is essential to the proper discharge of the judicial office.
4. Propriety; Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.
5. Equality; Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Competence and Diligence; Competence and diligence are prerequisites to the due performance of judicial office.

3. Challenges to the Legal Framework for Effective Control and Discipline of Judicial Officers in Nigeria

An appraisal of the above legal framework shows that a number of factors, pose threat to effective judicial control and discipline in Nigeria.

Challenge of Executive Lawlessness

Lawless literally means where laws do not exist or are not obeyed.³¹ Executive lawlessness therefore could simply mean a situation where the executive acts without the backing of the law or willful disobedience or disrespect to the law or court orders. It could also mean actions or omissions that are ultra-vires the constitution or any law whatsoever.³² It is an established norm in law that actions of the government shall not be without the backing of the law procedurally, or otherwise, without which such acts or actions are deemed to be lawless and ultra-vires the powers of that body. Unfortunately, the reverse seems to be the case in Nigeria. Even under democracy, there seems to be high neglect, abuse and contempt for the rule of law principle. The executive acts which must be in pursuance of the objective of the state, can only be realized through an instrument of law, and where law is neglected or ignored by the executive in pursuance or achievement of the state's objectives, it becomes a lawless act and same tantamount to nullity, void and of no effect.³³ Judicial control and

²⁶ Cap P 41, Laws of the Federation 2004.

²⁷ *Ibid*

²⁸ *Eboigbe v NNPC* (1994) 5 NWLR (Pt.347) 647 at 659.

²⁹ United Nations Office on Drugs and Crime, 'Commentary on the Bangalore Principles of Judicial Conduct' available at <<https://www.unodc.org/unodc/en/corruption/tools-and-publications>> accessed 26th February, 2024.

³⁰ *Ibid*

³¹ A S Hornby *et al*, *Oxford Advanced Learners Dictionary*, 7th edition (London: Oxford University Press, 2000) 836.

³² *Ibid*.

³³ *Ss 1(1) and (3) of the 1999 Constitution of Nigeria 1999*.

discipline has been riddled with executive lawlessness, usurpation of powers of National Judicial Council, ultra-vires actions and actions founded on might, impunity and illegality. This was the case in *In Hon. Justice Raliat Elelu-Habeeb & Anor v Attorney General of the Federation & 2 Ors.*³⁴ In this case, the Supreme Court of Nigeria in a unanimous ruling reinstated the sacked Chief Judge of Kwara State, Justice Raliat Elelu-Habeeb, following her unceremonious removal from office by former Kwara State Governor, Dr. Bukola Saraki. The apex court in its judgment ruled that the governor did not have the power to sack her from her position without the approval of the National Judicial Council (NJC). Similarly, in the case of *National Judicial Council v Hon. Justice P.N.C. Agumagu and Ors*³⁵ the Court of Appeal in its ruling restated the power of the NJC to discipline judicial officers in Nigeria. The recent case of *Hon. Justice Hyeladzira Ajiya Nganjiwa v Federal Republic of Nigeria*³⁶ is also instructive on the subject matter. In its ruling, the Court of Appeal Per Garba JCA, stated the broad principles of law as follows:

I agree with the reasoning and conclusion that the provisions of the EFCC Act empowering the Respondent to investigate and prosecute the named offences in the Act are subject to the provisions of the Constitution, the grund-norm and the supreme Law of the land³⁷ which empowers the National Judicial Council to discipline serving judicial officers in the country for misconduct which may involve some form of the offences, the Respondent may investigate and prosecute. In the case of *HDP v Obi & Ors*³⁸ the Supreme Court per Adekeye JSC had warned that, the Constitution is the Supreme law of the land, therefore, the provisions are superior to every provision embodied in any Act or law and are binding on all persons and authorities in Nigeria. The failure to follow any of the provisions rendered the steps taken unconstitutional, null and void. Such act must be set aside by the court. In the exercise of the powers vested in it by the EFCC Act, the EFCC has a mandatory legal duty and constitutional obligation to comply with and do so in accordance with the provisions of the Constitution because, as a public institution and authority, it is bound by the Constitution. In the exercise of its powers in respect of serving judicial officers in Nigeria, the specific procedure provided for in the Constitution for the discipline of such officers, cannot be ignored, but should be respected and complied with. Perhaps, I should emphasize that the Constitution does not exempt, by way of immunity, serving judicial officers from investigation and possible prosecution for offences which the EFCC is vested with the requisite authority and power to investigate and prosecute. The Constitution only provides for the procedure to be followed and complied with in the investigation and before possible prosecution of serving judicial officers.

Executive lawlessness is one of the major challenges to effective judicial control and discipline in Nigeria. Governmental powers ought and should be exercised in accordance with the law.

Challenge of Judicial Independence

Judicial independence postulates that no judicial officer should directly or indirectly, however, remote, be put to pressure by any person whatsoever, be it government, corporate body or an individual to decide any case in a particular way. Thus, he should be free to give binding orders which must be respected by the legislature, the executive and the citizens whatever their status may be.³⁹ Judicial independence generally, demands that individual judges be free not only from undue influences outside the judiciary, but also from within⁴⁰ Judicial Independence includes the ability of the judiciary to regulate itself without undue pressure from within and outside influence.⁴¹ Nigeria no longer holds firm to the ideology of that a self-policing independent judiciary is necessary to strengthen administration of justice, promote public confidence in the judiciary manned by unbiased officers who owe allegiance only to the law and justice.⁴² Judges are being persecuted by the federal government and their state counterpart.⁴³ Judges are publicly harassed, intimidated and ridiculed. Public confidence in the administration of justice has been reduced to lowest ebb. Disciplining of judicial officers is no longer driven by the need to maintain public confidence in the integrity, independence and impartiality of the judicial arm of government. The law is today maliciously set in motion in Nigeria against judicial officers with a view to compelling their loyalty to the government in power or as a tool of vengeance for a verdict which did not favour the party under which a chief executive was elected. Judges are denied their entitlements, salaries, official car, allowances etc. to ensure that they are impaired economic wise, giving room for frustration or depression as the case maybe. In worst cases families of a judicial officer are attacked just to set emotional trauma on the officer. There are incessant cases of official misrepresentation and manipulation of facts and persecution of serving judges and justices just to score cheap political points and give room for a compromised judicial system that would in turn metamorphose to a puppet in the hands of the executive arm of government thereby eroding the bench the requisite independence, neutrality, fairness and dignity.⁴⁴

³⁴ (2012) All NWLR (Pt. 629) p. 1011.

³⁵ (2005) LPELR-24502 (CA).

³⁶ (2018) 4 NWLR (pt. 1609) 301, (2017) LPELR-43391 CA.

³⁷ *PDP v CPC* (2011) 10 MJSC 1; *NPA v Eyamba* (2006) ALL.FWLR (320) 1022; *AG Abia State v A.G.F.* (2006) ALL FWLR (338) 604.

³⁸ (2011) 12 MJSC (special edition) p. 6 at 100.

³⁹ A Oyeyipo, Commentary on the Paper Captioned ‘Whether the Establishment of the National Judicial Council and the set up will bring a lasting solution to the Perennial Problem Confronting the Judiciaries in this Nation’ delivered at the 1999 all Nigerian Judges Conference held at International Conference Centre Abuja, between 1st and 5th November, 1999, p 5.

⁴⁰ P S Karlan ‘Concept of Judicial Independence’ available at <<https://heinonline.org>>get> accessed 22nd March, 2024.

⁴¹ *Ibid.*

⁴² G Sayan ‘Judicial Independence under Threat in Nigeria’ available at <<https://www.un.org>>news>judicial> accessed 6th March, 2024.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

Lack of Medium of Enforcement of Recommendations of the NJC

The National Judicial Council is a body established under the 1999 Constitution of Nigeria, with definite powers and functions constitutionally spelt out and empowered to assert its own independence and to exercise the functions therein vested.⁴⁵ The establishment of the National Judicial Council was necessary to provide for autonomy and the independence of the judiciary so that judges can, without fear or favour discharge their constitutional roles as the third arm of government. Recommendation is one of the most potent tools, in the hands of the National Judicial Council. However, the status of the recommendation of the NJC is nowhere defined and there is no established medium of enforcing same. Also, the Constitution did not expressly create a mandatory obligation on the executive to accept and act based on the recommendations of the Council.

Challenge of Inadequate Legislation and Immunity for Judicial Officers

Judges have powers that no other governmental officials have and the exercise of these powers impact on the lives and fortunes of those who come before them.⁴⁶ According to Cowles, judicial service is one of the three main powers of government; along with legislative and executive powers.⁴⁷ Judicial Officers exercise the power given to public officials to make decisions about specific cases that affect people's personal and property rights. This is different from ministerial power, which involves following instructions or laws without using judgment or discretion.⁴⁸ Given their status in the Society, it is important that adequate provisions be made under the Constitution for adequate protection of judicial officers, from wanton attack and intimidation, for doing nothing, other than exercising the discretion which the law allows the jurist. A perusal through the 1999 Constitution shows that no mention is made about judicial immunity or special protection for judicial officers.

4. Conclusion and Recommendations

With a view to strengthening the Legal Framework for effective judicial control and discipline in Nigeria, the following recommendations are respectfully submitted;

1. We recommend for the enactment of a law to be known as 'Judicial Immunity and Discipline Regulations Act' to protect judges from wanton attack and intimidation. This has become necessary to guaranty a self-regulating independent judiciary, for the Nigerian people.
2. We Recommend that the 2017 Revised Judicial Discipline Regulations Guideline of the National Judicial Council be upgraded to an Act of the National Assembly, with the requisite force of law. Further, we opine that criminal sanctions should be specified for defaulters that would go contrary to the stipulations of the proposed Act. This would ensure strict adherence to the disciplinary procedure for judicial officers and protect the reputation of judiciary.
3. The law being proposed should specify in clear terms, whether the executive arm of government have discretion on any disciplinary recommendations of the National Judicial Council and conditions for the exercise of such discretion defined.

In conclusion, we submit that the existence of a virile democracy in any given polity is largely dependent on a well-organized governmental structure, anchored on the spirit of constitutionalism and rule of law. Suffice to say, there are existing legal framework which regulates judicial control and discipline in Nigeria, though not without lacunas. These laws define the powers and authority of the various arms of government, individuals in authority and their relationship thereof. It is hoped that the implementation of our few recommendations, will in no small measure strengthen the legal framework for judicial service and discipline in Nigeria

⁴⁵ Section 158 1999 CFRN.

⁴⁶ J B Thomas, *Judicial Ethics in Australia*, (The Law Book Company Limited, 2nd edition, 1996).

⁴⁷W H Cowles 'The Distinction between Legislative and Judicial Power' available at <<https://scholarship.law.upenn.edu>> accessed 19th March, 2024.

⁴⁸*Ibid.*