

ACCESS TO JUSTICE AND RIGHT TO FAIR HEARING
A LECTURE DELIVERED BY
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INTRODUCTION

I wish to express my gratitude to the Director - General of the Nigerian Institute of Advanced Legal Studies (hereinafter referred to as 'NIALS') for inviting me as one of the Resource Persons to deliver a lecture on the topic "**ACCESS TO JUSTICE AND RIGHTS TO FAIR HEARING**". I must say without mincing words that I am highly delighted for this warm invitation.

There is no gain-saying that Access to Justice and Right to fair hearing are the bedrock for the success of democracy in any nation. This is because access to justice and the right to fair hearing are the variants or correlates of Rule of Law in any democracy whether participatory or liberal democracy a modern form of republican government which stresses political equality and individual liberties.

One useful way to gauge a developing nation's potential to achieve democracy is to focus on democratic correlates¹. Where these correlates exist in the greatest number and measure, the probability of democracy is greatest;

Conversely, where they are largely absent, democracy has the smallest chance of succeeding.

¹ Thomas M. Magstadt - Understanding Politics 8th Edition page 290.

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KEY TERMS

Before going into the meat and marrow of this topic, it is pertinent and/or desirable to make a brief incursion into the definition and exposition of the key words or terms in this discourse, that is 'access', 'justice', 'right' and 'fair hearing'.

ACCESS

According to Blacks Law Dictionary, 9th Edition by Bryan A. Gardner², page 14, 'Access' means "an opportunity or ability to enter, approach, pass to and from, or communicate with, access to the court".

On what constitute 'access' to court, the Court of Appeal in *APUGO vs. NWOKE*³, SAULAWA, JCA, quoting Niki Tobi, JSC in *Global Excellence Comm. Ltd vs. Duke* (2007) 16 NWLR (pt. 1059) 22 at 48 held as follows:

"Access to Court' is Constitutional right which can only be taken away by a clear provision in the Constitution. It cannot be taken away by implication or speculation by the courts"

The definition of justice cannot be put in a water tight compartment or closet. The definition of what constitutes 'justice' is predicated on the views or perception of the person attempting to define the concept.

² Blacks Law Dictionary, 9th Edition by Bryan A. Gardner page 14. (3) (2010) 1 NWLR (PT.1176) page 600.

³ (2010) 1 NWLR (PT. 1176) page 600 at 615.

There are various schools of jurisprudence which have attempted and are still attempting to define the concept of what constitutes justice. However, they end up in most cases to state what justice does or is all about, but not a clear or unambiguous definition of the word 'justice'.

Again, according to Blacks Law Dictionary⁴, 'justice' is defined as **'The fair and proper administration of Laws'**.

According to the positive school, justice is conceived, recognised, and incompletely expressed by the civil law or some other forms of human laws.

'Justice' according to the Natural Law School relates to **'justice defined in a moral as opposed to a legal sense'**.

According to the Chambers Dictionary⁵, the word 'justice' is defined as

"The quality of being just; integrity; impartiality; rightness; the awarding of what is due; the administration of law."

Our superior courts of record have equally attempted to define the concept of justice in a plethora of judicial authorities, thus, Augie, JCA, in **Obajin vs. Adedeji**⁶ stated as follows:

"Justice means fair treatment and the justice in any case demands that the compelling rights of the parties must be taken into consideration and

⁴ 9th Edition, Bryan A. Gardner page 942

⁵ Harrap Publishers Ltd, 1998 at page 873

⁶ (2008) 3 NWLR (PT. 1073) 1 @ 19-20.

balanced in such a way that justice is not only done but must be seen to be done."

From the above definitions, it is crystal clear that justice means fairness and doing right while deciding the competing rights and interest of the parties⁷.

"Rights" according to Blacks Law Dictionary⁸ means:

"That which is proper under law, morality, or ethics, something that is due to a person by just claim, legal guarantee, or moral principle, the right to liberty, A power, privilege, or immunity secured to a person by law, a recognised and protected interest the violation of which is a wrong, a breach of duty that infringes one's right."

In democratic nations of the world, these rights which are classified as 'civil' or 'basic' rights are usually enshrined in the constitution to which rights the citizens are entitled to as of right. These rights are also referred to as inalienable rights which must be enjoyed by the citizens of that country.

The inalienable rights are the rights which cannot be transferred or surrendered; especially a natural right such as the right to own property.

⁷ Courts and Management of Election Petitions: Challenges, Prospects and Solution": True or False, The maxim Justice Delayed is Justice Denied Has no Relevance in the Trial of Election Petition cases by Lateef O. Fagbemi, SAN - A Lecture Delivered at Mustapha Akanbi Foundation on Wednesday, 21st July, 2010 at Abuja.

⁸ 9th Edition page 1436

According to Robert Blackburn⁹ (1994), he said as follows:

"Rights of citizenship today are of a widely diverse nature, and certainly go far beyond the rights of a purely constitutional nature dealt with, for example, by A.V. Dicey in a book of a similar title to this one published back in 1912.

Earlier western theorists had even narrower notions of citizenship, including Aristotle, for whom a citizen was simply one who had a share in 'both the ruling and being ruled'. Today it is fundamental that citizenship and democracy are mutually defined, and among the most basic of our accepted moral rights are those to be found in the international treaties which the UK has played a leading role in formulating this century, in particular the United Nations Declaration of Human Rights and the European Convention on Human Rights. Historically, there may be said to have been three waves in the acquisition and assertion of citizens' rights, broadly corresponding to civil rights in the eighteenth century, political rights in the nineteenth, and social and economic rights in the present century. These three elements of our modern citizenship were described by T. H. Marshall, in his essay 'Citizenship and Social Class' in the following way:

"The civil element is composed of the rights necessary for individual freedom - liberty of

⁹ Rights of Citizenship: Mansell Publishing Ltd - Reprinted in 1994: Citizenship and the Law Series page 2.

the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice. The last is of a different order from the others because it is the right to defend and assert all one's rights on terms of equality with others and by due process of law. This shows us that institutions most directly associated with civil rights are the courts of justice" (Underlining mine for emphasis).

I shall return to the issue of rights hereinafter.

On the otherhand, fair hearing according to the Black Law Dictionary¹⁰ is "a **judicial or administrative hearing conducted in accordance with due process.**"

The adherence to the principles of fair hearing should be the basic lexicon or hall mark in the daily affairs of a judex in the administration of justice.

The principles of fair hearing shall be discussed infra in details in this paper.

TYPES OF JUSTICE

There are many categories of justice like Commutative Justice, Distributive Justice, Jedburgh Justice, Natural Justice, Miscarriage of Justice, 'Personal Justice' Positive Justice, Preventive Justice, Substantial Justice, Social Justice and a host of others.

¹⁰ 9th Edition page 789.

I shall briefly highlight the meaning of the respective types of justice, seriatim.

'Commutative Justice' is "justice concerned with the relations between persons and especially with fairness in the exchange of goods and the fulfillment of contractual obligations".

'Distributive Justice' means 'justice owned by a community to its members, including the fair allocation of common advantages and the sharing of common burdens'.

'Jedburgh Justice' means "a brand of justice involving punishment (especially execution) first and trial afterwards. The term alludes to Jedburgh, a Scottish border town where in the 17th century raiders were said to have been hanged without the formality of a trial.

Jedburgh justice differs from Lynch Law in that the former was administered by an established court (albeit after the fact)".

'Natural Justice' means "justice as defined in a moral, as opposed to a legal, sense".

'Miscarriage of Justice' means "a grossly unfair outcome in a judicial proceeding, as when a defendant is convicted despite a lack of evidence on an essential element of the crime" It is also termed "Failure of Justice".

'Personal Justice' is "justice between parties to a dispute, regardless of any larger principles that might be involved".

'Positive Justice' means "Justice as it is conceived, recognised, and incompletely expressed by the civil law or some other form of human law".

'Preventive Justice' is "justice intended to protect against probable future misbehaviour. Specific types of preventive justice include appointing a receiver or administrator, issuing a restraining order or injunction and binding over to keep the peace".

'Substantial Justice' means "justice fairly administered according to rules of substantive law, regardless of any procedural errors not affecting the litigant's substantive rights; a fair trial on the merits".

'Social Justice' means "justice that conforms to a moral principle, such as that all people are equal. One or more equitable resolutions sought on behalf of individuals and communities who are disenfranchised, underrepresented, or otherwise excluded from meaningful participation in legal, economic, cultural, and social structures with the ultimate goal of removing barriers to participation and effecting social change"¹¹.

It is to be noted that the law reports are replete with decisions of our superior courts with the usage of these terms and their daily application and meanings ascribed to them as will soothe the particular situation. Often times, references are also made to

¹¹ On the Definition and meaning of different types of justice, see Blacks Law Dictionary (Ibid).

what constitutes 'technical justice' in our jurisprudence. 'Technical Justice could be said to be administering justice based on technicalities and which might not afford the court/tribunal the opportunity of looking into the merits of a party's case.

On the other hand, 'miscarriage of justice' occurs when technical justice prevails over Substantive Justice.

Our courts have always been enjoined to shift or move away from technical justice to substantial justice as the path of technicality has now been overgrown by weeds in the administration of justice in Nigeria.

In the case of **Aigbobahi vs. Aifuwa (2006) 6 NWLR (PT. 976) page 270 @ 294**, Onnoghen, JSC puts it trenchantly as follows:

Counsel must always bear in mind that this is the court of last resort in some appeals in this country and the attitude of this court has changed from doing technical justice to doing substantive justice. This attitude envisages the possibility of hearing everyone on any complaint so as to enthrone and sustain the rule of law. Parties are therefore, encouraged to ventilate their grievances before the courts which are enjoined to do substantial justice in relation thereto without recourse to form or technicalities..."

The **raison de'tre** for the various definitions as highlighted above is to bring into fore the meaning of the key words in this topic in order

to have a better understanding of the different types of justice and access to Justice in Nigeria which is incomplete without observing the rights to fair hearing in the administration of justice.

Thus, in *W.R. P.C. Ltd vs. Agbuje* (2005) 5 NWLR (PT. 917) page 63 at pages 90 - 91, the court held as follows:

"Justice has not got two weight and measures. It should be one and the same even handed justice, blind to all social distinction and disparities in wealth and status and no respecter of person"

According to Professor Funso Adaramola, OON¹² the concept of justice connotes the legal equality of human beings. It is a concept conceived and formulated around the dignity of the human person. Its external manifestation is the sense of justice, i.e., equality of all citizens before the law, and, in society generally, for all practical purposes."

Also, according to Aristotle¹³ 'distributive justice is founded on the assumed principle that there is equal distribution of distributable things among equals in a given society. However, whenever distributive justice is distorted or disturbed, for instance, through some wrong doing, the Judge applies corrective or rectificatory justice to restore the status quo ante, i.e, the pre-existing distributive situation.

¹² Jurisprudence: 4th Edition: Lexis Nexis Butterworths.

¹³ Aristotle, Politics, Op. cit, vi and vii. See Lon L. Fuller, The Problems of Jurisprudence (Tempeed) 1949, 49 - 41 and Politics.

As to the question of what is to be distributed, Aristotle mentions two different types of things.

On the one hand, the good things or benefits such as honours, funds, rights, powers, privileges and other positive advantages in society; and on the other hand, the evil things or burdens such as duties, liabilities, disabilities and similar negative or disadvantageous things. Both categories are to be shared equally among citizens.

As to the place or role of equity in law, Aristotle had this to say:

"... the equitable is just, but not the legally just but a correction of legal justice."

On universal justice, the great philosopher has this to say:

"When the law speaks universally, then and a case arises on it which is not covered by the universal statement, then it is right (and proper) where the legislator fails us and has erred by over-simplicity, to correct the omission - to say what the legislator himself would have said had he been present, and would have put into his law if he had known (of this variety of issue). Hence, the equitable is just, and better than one kind of justice (i.e. legal justice) - not better than absolute (i.e., universal) justice, but better than the error that arises from the absoluteness of the statement. And this is the nature of the equitable, (it is) a correction of law where it is defective owing to its universality..."

The fulcrum upon which justice is based or predicated is fairness, equity, good social conscience and balance of competing interests. The administration or access to justice aims at furthering natural unity, patriotism, public security, peace, order and good government. Some of the fundamentals in the administration of justice is underpinned by upholding Fundamental Human Rights. Considerations of Fundamental Human Rights brings into fore the following¹⁴:

- "1. Right to life and its freedom of liberty restrained by the consideration of others Right to the same.*
- 2. Powers of Court over matters for adjudication.*
- 3. Powers of Courts over the parties to a dispute or conflicts of their Rights or Claims of Rights.*
- 4. The law applicable to the parties and matter to be adjudicated upon.*
- 5. The membership of the court such that the Court can do justice which has to be seen and manifestly be done.*
- 6. Absence of the likelihood of impartiality of the Court or absence of likelihood of bias.*
- 7. The Right of parties to be heard i.e. fair hearing*
- 8. Hearing and pronouncement in open Court except where the justice of the case demands otherwise.*

¹⁴ Major - General Ibrahim B.M. Haruna (Rtd) OFR, LLB, FNIM: Administration of Justice IN MILITARY ERN: Towards A Better Administration of Justice System in Nigeria. Papers presented at the First Conference of Attorneys-General of Nigeria Abuja, Nigeria, 11th - 13th October, 1988.

9. *Inordinate delay in dispensation of justice and undue restraints in freedom of movement and the joys of life, worship recreation, culture, etc.*
10. *Presumption of innocence until proven guilty and therefore being entitled to humane treatment when under suspicion.*
11. *Inordinate detention without cause or where there is cause no trial due to failure of investigation, inefficiency, corruption or malice.*
12. *Freedom of conscience, opinion, association and of information or communication, or freedom of the press to publish subject to Laws of-sedition, tort, and secrets Act.*
13. *Equality before the law of parties to a dispute and justice according to law.*
14. *Freedom from Re-troactive legislation.*
15. *Freedom from seizure of property without compensation and for over-riding public good only etc. This list is not exhaustive. Whereas the administration of justice is part procedural, and part derivable from interpretation of the substantive Law applied to the facts by the Judge adjudicating in the matter and his considered judgement."*

Access to justice in the whole world is today becoming a big issue¹⁵

What is meant by access to justice was ably identified or depicted by Professor Jadesola Akande¹⁶

as:

- (a) The existence of a right,
- (b) The knowledge of existence of such right,
- (c) The knowledge of where to go to seek redress in the case of violation of the right,
- (d) The existence of an independent arbiter to consider the matter without fear or favour.
- (e) Timely consideration of the matter and;
- (f) The existence of a reliable and efficient mechanism for the enforcement of the rights."

This is why Daniel Webster depicts justice as:

"The ligament which holds civilized beings and civilized nations together."

From the above, it could be seen that without justice in a society, community, nation or country, there will be no peace, security, good governance, and respect for human dignity and person.

ACCESS TO JUSTICE IN PRE-COLONIAL ERA

Before the advent of colonialism, there was access to justice that was designed by the natives in the administration of justice within the locality. The access to justice at the period was through native

¹⁵ Hodge, N. "Access Denied: More Lawyers = less justice? International Bar News, June 2005 p.4.

¹⁶ Prof. Jadesola Akande "A Search for Decency and Human Dignity" paper presented at the NBA National Conference Abuja, 2004, page 7.

law and customs and any transgression will be met with stiff sanctions. One of which is to ostracise the Law breaker.

It was a system of customary arbitration which was binding on the parties.

This is why in **NDAH vs. CHIANVOKWU**¹⁷, the Court of Appeal held as follows:

"Where two parties to a dispute voluntarily submit the issue in controversy according to customary law and agree expressly or by implication that the decision of such arbitration would be accepted as final and binding, then once the arbitrators reach a decision it would no longer be open to either party to subsequently back out of or resile from the decision so pronounced valid and binding, it would be repugnant to good sense and equity to allow the losing party to reject or resile from the decision of the arbitrators to which he had previously agreed. The binding effect of the decisions of customary arbitrators derives from the fact that parties who have the right to resort to court for adjudication of their disputes have voluntarily, without any prompting, opted for a decision by a non-judicial body, the decision of which they have held themselves to be bound by, neither of them can be allowed, both in law and equity, to resile from the position they have willingly

¹⁷ (2006) 17 NWLR (PT. 1007) page 74.

created. No one must be allowed to approbate and reprobate at the same time. In the instant case, the decision of the arbitral panel operated as an estoppel. [Oparaji v. Ohanu (1999) 9 NWLR (Pt. 618) 290; Ohiari v. Akabeze (1992) 2 NWLR (Pt. 221) 1; Agu v. Ikeweibe (1991) 3 NWLR (Pt. 180) 385 referred to.]

Also, in **NWANKPA vs. NWOGU**¹⁸, the Court of Appeal also held as follows:

"One of the many African customary modes of settling dispute is to refer the dispute to the family head or an elder or elders of the community for a compromise solution based upon the subsequent acceptance by both parties of the suggested award, which becomes binding only after such signification of its acceptance and from which either party is free to resile at any stage of the proceedings up to the point. This is common method of settling disputes in all indigenous Nigerian societies.

See [Agu v. Ikewibe (1990) 3 NWLR (Pt. 181) 385 referred to and distinguished.]

ACCESS TO JUSTICE DURING THE PERIOD OF COLONIALISM AND POST COLONIALISM

It is to be noted or observed that during the period of colonialism and post-colonialism, access to justice in Nigeria was through three

¹⁸ (2007) 2 NWLR (PT. 964) page 251

main systems, to wit; Native Law and Customs, Moslem (Islamic Law) and Common Law. The Native Law and Customs, nowadays referred to simply as customary law, pervaded the entire Nigerian Society, even in areas where Islamic Law exists¹⁹.

Issues or disputes relating to inheritance, family law, succession, contract, etc came before the native and common law courts for adjudication wherein the extant Native Laws and Customs were used for the adjudication of such disputes. The courts are known by various names as provided by laws establishing them.

They are called Customary Courts in the Southern parts of the country and in the North they are called Area Courts.

These Customary or Area Courts handle above 70% of the cases that come before them. They are cheap to access, quick in justice delivery, and in most cases the litigants are satisfied by their decisions.

It is pertinent to note that by 1967, all native/customary Courts were transferred from various native authorities and transferred to State Judiciaries.

It is rather unfortunate that the experience of these Courts before 1967 was their politicisation wherein political opponents of the party in power were brazenly persecuted. So, there was no access to justice as it ought to be. Arrests were made without warrant and political opponents in the party in power were 'imprisoned' in private homes especially the 'prisons' in some palace of some traditional rulers and Emirs.

¹⁹ Hon. Justice S.M.A. Belgore, CON, Justice, Supreme Court, Abuja: A Paper Delivered at the All Nigeria Judges' Conference 9th - 13th December, 2003: Access To Justice and Procedural Reform.

People were being charged for offences and punished for same even though such offences were not contained or provided in any written law.

What was most surprising is that before the enactment of the Constitution of the Federal Republic of Nigeria, 1979, Legal Practitioners were not allowed to appear in these Area and Customary Courts. It was after the decision in Uzodima's case that Legal Practitioners started to appear for parties in Area and Customary Courts. In addition, some Legal Practitioners who were appointed on the bench of an Area or Customary Courts looks at the law as if he is a Magistrate or even a Judge of the High Court²⁰. As a result of this, quick dispensation of justice was hampered as a result of rigorous adherence to laws of evidence and this procedure started the delay in the hearing and determination of cases in these Courts.

In the Magistrate and High Courts, there are usually objections and counter-objections, cross-examination which are features of a common law trial.

Although, some writers and Judges have expressed their dismay that Legal Practitioners are allowed to appear and sit on the bench of Area and Customary Courts, but I think from my experience, that has enhanced access to justice by litigants unlike when this was not possible before the enactment of the 1979 Constitution when in the First Republic and before 1979 political opponents were clapped in gaol by the party in power.

²⁰ Hon. Justice S.M. An Belgore, JSC (as he then was when the paper was delivered (ibid)

On the other hand, the Magistrate and High courts are manned mainly by legally qualified persons. In some places, a Magistrate may not be a Legal Practitioner as such, but is widely trained for some years before he starts to function. Such Magistrates were referred to as 'lay Magistrates'.

A Magistrate can proceed from the Magistrate Court on elevation to the High Court bench and subsequently to the Court of Appeal and Supreme Court.

The bulk of criminal cases are handled at the Magistrate Courts. The Magistrate and High Courts are guided by the Evidence Act and their Rules of Procedure.

All the Courts from Magistrate court to the Supreme Court of Nigeria have their Rules of Procedure which are made by the heads of such Courts.

For instance, Section 236 of the 1999 Constitution provides as follows:

"Subject to the provisions of any Act of the National Assembly, the Chief Justice of Nigeria may make rules for regulating the practice and procedure of the Supreme Court."

Similar provisions also provides for the Court of Appeal in Section 248 (ibid); Federal High Court, Section 254, the High court of the Federal Capital Territory, Section 249; and State High Court Section 274. Heads of Sharia Courts and Customary Courts of Appeal have similar powers. These rules of court provide for

initiation of proceedings in these various courts and how to hear and determine them.

It was suggested by Legal Practitioners and Judges a few years ago that there should be uniform Rules of Court especially for the High Courts in the Federation. Some States adopted the rule, other modified them. The essence of having uniform rules of Court was to fast track access to justice in order to avoid delay of cases. The Rules of Court makes clear provisions for failure to comply with its provisions and where there is no miscarriage of justice, such failure shall be treated as a mere regularity.

Notwithstanding the enactment of these rules of Court, same has compounded the slow pace of Access to Court and Justice Delivery due to delay of cases.

It is pertinent to note that during the regimes of General Ibrahim Babagida and General Sani Abacha, Military dictatorship became the rule, civil rule the exception, serving only as an interregnum to the military regnum²¹.

ACCESS TO JUSTICE AND RIGHT TO FAIR HEARING: ARE THEY INSEPARABLE?

Access to justice and fair hearing has been the heart of social justice both in our native laws and the adopted common law. The two are inseparable in achieving the ends of the justice administration. Access to justice is a specie of fair hearing of which the denial will lead to injustice. The Supreme Court in the case of Federal

²¹ Sonia Akinbiyi: The Jurisprudence of the Effigy of Justice - p.6

Government Civil Service Commission vs. Laoye (1992) 2 NWLR (pt. 106) 652 at pg. 702 observed;

"One aspect of our vaunted equality before the law is that all litigants, be they private persons or government functionaries approach the seat of justice openly and without any inhibitions or handicap in the unequal combat between those who possess power and those on which such power bears, the court primary duty is protection from abuse of power".

According to the Black's Law Dictionary (5th Edition), fair hearing is defined as;

"One in which authority is fairly exercised, that is consistently with the fundamental principles of justice embraced within the conception of due process of law. Contemplated in a fair hearing is the right to present evidence, to cross examine, and to have findings supported by evidence".

Also, Article 2509 of Brett & Mclean on the criminal Procedure of the six Southern States of Nigeria (2nd Edition) says;

"Fair hearing must involve fair trial and a fair trial of a case consists of the whole hearing. The test of fair hearing is the impression of a reasonable man present at the trial, whether, from his observation justice has been done in the case".

Fair hearing is the bedrock of any judicial system as there can be no talk of justice without fair hearing.

There are two widely acclaimed principles of natural justice which have been hailed as **“the twin pillars of the rules of natural justice and indeed the bastion of the rule of law in a civilized and organized society”²²**.

- (a) the Audi Alteram Partem Rule (Hear The Other Side);
and
- (b) the Nemo Judex In Causa Sua (No One Shall Be A Judge In His Own Cause) Rule.

The two principles together entail that a person must be availed a fair hearing. What has become something of a *locus classicus* in Nigeria is the Supreme Court decision in *GARBA & ORS. v. THE UNIVERSITY OF MAIDUGURI*²³ where many cases dealing with fair hearing were highlighted. In that case, the chairman of an Investigating Panel which tried the Appellants was a Deputy Vice Chancellor of the University who was a victim of the rampage the students were alleged to have committed. The Supreme Court held that a likelihood of bias is discernible since the Deputy Vice Chancellor was not only a witness in this panel but a judge at the same time. The Supreme Court established that fair hearing in Nigeria is not only a common law requirement, but also a statutory and a constitutional requirement and that when the Vice Chancellor assumed the disciplinary powers, he became not a court but a tribunal established by law acting in a quasi-judicial capacity. Thus he was bound to act judicially, comply with the constitutional requirements of fair hearing and pass the qualification test to assume judicial functions. The Court went ahead to hold, per Oputa J.S.C:

²² *Op. cit.*

²³ (1986) 1 N.W.L.R. 550

"It is my humble view that fair hearing implies much more than hearing the appellants testifying before the Disciplinary Investigation Panel; it implies much more than summoning the Appellants before the Panel; it implies more than other staff or students testifying before the Panel behind the backs of the appellants; it implies much more than the appellants being given a chance to explain their own side of the story. To constitute a fair hearing whether it be before the regular courts or before Tribunals and Boards of Inquiry the person accused should know what is alleged against him; he should be present when any evidence against him is tendered and he should be given a fair opportunity to correct or contradict such evidence. How else is this done if it be not by cross-examination?"²⁴

The 1999 Constitution by its section 36 (1) has imported the two-fold doctrine of fair hearing providing thus:

"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 other tribunal established by law and constituted in such manner as to secure its independence and impartiality." (Italics supplied)

²⁴ At p. 618

It can be said to have evolved from nature, from the garden of Eden when Adam and Eve violated the first law; as Fortesque²⁵ said in the Old English case of *R .v. Chancellor of University of Cambridge* (1720) 1str 552.

".....even God himself did not pass sentence upon Adam before he called upon Adam to make his defence".

The principle of fair hearing is not alien to the Nigerian Culture. For example, the Yorubas have a saying that 'Agbo ejo enikada, Agba osika ni'; which is freely translated into English means, 'It is the height of wickedness for one to decide a case on hearing only one side to the dispute'. This in my view, is the same thing as the principle of *audi alterem partem* in English law. It can also be equated to section 36(6) (c) of the constitution of the Federal Republic of Nigeria 1999.

The provisions of fair hearing which had been enacted into our successive constitutions can be traced back to Magna Carta Act of 1215 where there were provisions against arbitrary punishment and an assertion to the right to a fair trial and to justice which need not be purchased. This was followed by the petition of Rights 1628, which contained protests against arbitrary imprisonment, and the use of commissions of marital law in time of peace. Then followed the Bill of Rights 1688 and the Act of settlement 1700. The judges were able to dispense justice without fear or favour, affection or ill-will as a result of these laws.

²⁵ Etudaiye, Muhtar Adeiza: The Doctrine of Natural Justice as an Arm of the Rule of Law in Nigeria: Ilorin Bar Journal Vol.2 No.1 Dec. 2006.

In Nigeria, even before independence in 1960, we had various constitutions. Nigeria attaining independence in 1960 had the Nigeria (constitutions) Order-In-Council 1960. Section 21 of that constitution deals with the right to fair hearing. Under the 1963 constitution of the Federal Republic of Nigeria, Provisions for fair hearing were put under the heading of 'Determination of Rights'.

It was not until the 1979 constitution that these rights were put under the significant side note of 'Right to fair hearing'. The provision for fair hearing became more comprehensive than those in previous constitutions. The fair hearing provisions in the 1999 constitution of the Federal Republic of Nigeria are more comprehensive than those in the 1979 constitution.

The propositions that are fundamental to our system of justice is that a person whose rights and interests are likely to be affected by a decision must be heard before a decision is taken. The purport of the section 36(1) of the 1999 constitution is as stated by Uwais JSC in *Abiola .v. FRN (1995) 7 NWLR (pt. 405)1 at 24.*

"It is clear from the foregoing that the 'independence' and 'impartiality' of a court are part of the attributes of fair hearing. The requirement of impartiality is intended to prohibit a person from deciding a matter in which he has either pecuniary or any type of interest. Such other interest may arise from his personal relationship with one of the parties to the case or may be inferred from his conduct or utterances during the hearing of the matter. Hence, the remark per Lord Hewart, CJ in the

King .v. Sussex Justice's Exparte McCarthy (1924)1 KB 256 at pg 259 that it is not merely of some importance but is of fundamental importance that justice should not be done, but should manifestly and undoubtedly be seen to have been done".

Issues raised and joined by parties must be considered by the court before arriving at a decision. Failure of a trial court to consider same will amount to a denial of fair hearing as decided in **Oke .v. Nwaogbuiniya (2001) 1 SC (pt. 1) 22 at 35-36.**

I wish to state further that section 36(1) of the 1999 constitution basically is meant to guarantee a fair hearing within a reasonable time by an impartial judge. For it is often said that justice delayed is justice denied. Hence, the need for adequate provision for quick dispensation of justice to all the parties concerned in a matter. In **Ariori & Ors .v. Elemo & Ors (1983) 1 SCNLR** where Obaseki JSC (as he then was) define reasonable time as follows;

"Reasonable time must mean the oeriod of time which in the search for justice, does not wear out the parties and their witnesses and which is required to ensure that justice is not only done but appears to reasonable person to be done.....".

For the hearing to be fair, it must be within a reasonable time. It must also be by court or tribunal established by law. Thus, if the setting up of the tribunal is not within the legislative competence of the National Assembly or State Assembly, or if the law setting up

the tribunal is unconstitutional or invalid, then, there would have been an infraction of section 36(1) of the constitution as stated in **Doherty .v. Balewa (1961) ALLNLR 604**. It is also a court that is properly set up that can impose a fine for criminal offence and not a tribunal of inquiry as decided in **Amaechi .v. INEC (2007) 18 NWLR (Pt. 1065) 105 SC**.

Under section 36 (1) of the 1999 constitution, it is not enough that a court or other tribunal is established by law, it must be independent and impartial. This is necessary as justice must not only be done, it must be seen to have been done. Thus, a man cannot sit as a judge in his own case- see **LPDC v. Fawehinmi (1985) 2NWLR (PT. 7) 300 SC**.

In an attempt to make sure that the delay occasioned in **Ariori .v. Elemo (supra)** is been arrested, the Lagos State High Court Rules 2004 provides for a new order of frontloading all processes to be used by parties and also make compulsory the pre-trial conference (PTC) which must be concluded within 3months. But it is unfortunate that the pre-trial Conference may last for more than a year instead of the 3 months provided for by the rules, and thus defeated the purpose of the rule.

Also, the Supreme Court in interpreting section 33(1) of the 1979 constitution (now section 36(1) of the 1999 constitution) to include right to legal representation in **Ntukiden .v. Oko (1986) 5 NWLR (pt. 45) 909 at 936** per Oputa JSC;

"The question that now arise is - will this right of defence by counsel of ones own choice apply also in civil case and appeals?"

To answer this question correctly, one has to bear in mind the fact that we in Nigeria operate the adversary system. Now the major feature of that system is the passive role of the judge only gives to emphasis the active role of counsel in the presentation of case and in arguing the appeals. The average layman who is totally ignorant of law and of court procedure cannot be expected to argue grounds of appeal raising issues of law. If he has a right to fair hearing under section 33(1) of 1979 constitution (now section 36(1) of 1999 constitution) that will certainly include the right to have his case properly presented or his appeal effectively argued. The right to fair hearing in civil cases and appeal will certainly be hollow and empty if it did not include the right to be represented by counsel.....".

I now go to section 36(2) of the 1999 constitution which reads;

"Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affect or may affect the civil rights and obligations of any person of such law;

- (a) Provides of an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and
- (b) Contains no provision making the determination of the administering authority final and conclusive.

By virtue of these provisions, any law made by the government which affects the civil rights or obligations of the citizen can only be valid if it provides an opportunity for the person whose rights and obligation may be affected to make representations to the administering authority that makes the decisions affecting that person and contains no provision making the determination of the administering authority final and conclusive.

This provision means that no citizen may now be denied access to the court. All rights and obligations of a citizen of Nigeria shall be determined in the court and no law shall be made to oust the jurisdiction of the court.

The question of having a fair hearing or a fair trial is not limited to what happens in court during the trial. It includes what had happened even before the matter reached the court. If a man is not allowed access to the court, he had been denied the right to fair hearing completely, hence, he cannot be said to have a fair trial when later brought to court.

Section 36 (3) & (4) make it mandatory that hearing of all trial must be in public. However, there are two provisos to these subsections. The first derogates from the right of hearing in the public in the interest of public safety, public order, public morality and welfare of the minor.

The other derogation concerns the power given to the court to arrange for evidence to be given in camera if it is not in the interest of public security to disclose such evidence. It is necessary to state that this provisos did not offend the principle of fair hearing. I hereby submit that fair hearing cannot be separated from fair trial as states by Ademola CJN in *Mohammed .v. Kano N.A (1968) ALL NLR 424 at 426*;

".....we think a fair hearing must involve a fair trial and a fair trial of a case consists of the whole hearing. We therefore see no difference between the two".

One of the provisions embodied in the constitution under the right fair hearing that any person charged with a criminal offence shall be presumed innocent until he is proved guilty as provided in section 36(5) of the 1999 constitution. This presumption is very necessary for the impartial administration of justice, for one cannot have a system that has adjudged the accused guilty even before trial.

The presumption is so sacrosanct to the extent that it is inherent in African traditional criminal jurisprudence. In one of the Ifa Corpus of criminal trial, it states; 'Ori yeye ni imogun, taise lopo' meaning 'various heads at Imogun, but many are innocent? Thus, it is

supported by the popular saying that it is better for hundred of criminals to escape than to suffer an innocent one.

Worthy of note is the numbers of inmates awaiting trial in Nigeria under the disguise of 'holding charge' which have technically sentenced people to jail before their trial even if they are going to be tried at all.

Also, going by Section 36(6) of the 1999 Constitution, every person who is charged with a criminal offence shall be entitled to:

- (a) be informed promptly in the language that he understands and in detail of the nature of the offence;
- (b) be given adequate time and facilities for the preparation of his defence;
- (c) defend himself in person or by legal practitioners of his own choice;
- (d) examine in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carryout the examination of witnesses to testify on his behalf before the court or tribunal in the conditions as those applying to the witnesses called by the prosecution;
and
- (e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

Ademola CJN in **Mohammed v. Kano Nature Authority (1968) 1 All NLR 424 at 426** has said that a fair hearing must involve a fair trial and a fair trial of a case consist of the whole trial. Hence, the provisions of Section 36(6)(a) is to the effect that a person accused of committing an offence must be tried in the language he understands. It is the duty of the court to provide an interpreter to an accused person who does not speak the language of the court.

Section 36(8) of the 1999 Constitution is another important provision due to the peculiarity of it to the sustenance of rule of law. This subsection debars the legislature from passing a law which will create an offence with retrospective effect like was done under the military regime. However, this subsection does not make invalid a provision under which a person may be convicted under an Act which has been repealed if the offence was committed while the Act was still in force. See the case of **Queen v. Bukar (1961) All NLR**.

However, it is imperative to guide jealously the constitutional provision on fair hearing. To achieve the intendment of the legislature depends on the interpretation given to it by the judicial officers. The wordings of Section 36 of the Constitution are clear and unambiguous. The duty of the court is to interpret the words contained in a statute and not to go outside the words in search of an interpretation which is convenient to the court or to the parties or one of the parties.

It is worthy of note that there can never be a fair hearing if the right to access court has been deprived. Thus, it will be necessary to discuss some of the impediments to right to fair hearing in Nigeria.

His contention was that he wished to give political education to his children but if the above mentioned law was enforced his rights would be infringed.

His appeal to the Supreme Court was also dismissed on the question of locus standi. The Supreme Court held that it is only a person who is in imminent danger of coming into conflict with a law, or whose normal business or activities have been directly interfered with by or under the law, that has sufficient interest to sustain a claim for the infringement of his rights.

By virtue of this doctrine, it is therefore, improper in law to file an application in the name of any person other than that of the person whose right was breached as stated in **Asemota v. Yesuf & Anor 1981) 1 NCLR 4 20.**

In giving effect to the purpose of the provision for fundamental rights, the application of the doctrine has been neutralized in the Nigerian Human Rights jurisprudence by virtue of the Section 3(e) of the Preamble to the Fundamental Rights (Enforcement Procedure) Rules 2009. see also **OWODUNNI vs. REGISTERED TRUSTEES OF CELESTIAL CHURCH OF CHRIST** where the issue of locus standi has been whittled down.

IMPEDIMENTS TO ACCESS TO JUSTICE AND RIGHT TO FAIR HEARING IN NIGERIA

There exist multifarious impediments to access to justice and right to fair hearing in Nigeria today. Some of these factors though, not exhaustive are as follows:

1. **Poverty.**
2. **Locus Standi or the standing to sue.**

3. Non-compliance with the Rules of Court.
4. The attitude of the Registrars of Court.
5. Adjournment by Legal Practitioners / Courts.
6. Late sitting of Judges.
7. Corruption in the Judiciary.
8. Enforcement of Court Orders.

POVERTY:

The cost of litigation is expensive; hence, ordinary citizens cannot afford to access the Courts to seek redress. Many of the Courts are in the urban areas and, as a result, cannot be accessed by Litigants as many cannot afford the cost of litigation.

This incapacity by poor litigants to approach the Courts seek redress has hampered their access to justice and a fortiori have no right to fair hearing.

LOCUS STANDI

In legal terminology or context, locus standi means or denotes the 'standing to sue'. This is very crucial to access to justice and the right to fair trial.

Section 46(1) of the 1999 Constitution provides as follows:

"Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress."

The chapter referred to in the above provision is Chapter IV of the 1999 Constitution which deals with Fundamental Human Rights.

In the case of **Olawoyin v. A.G. Northern Nigeria (1961) All NLR 269**, the applicant challenged the provisions of the Children and Young Persons Law, 1958 which prohibited political activities by children of 15 years of age and below, on the ground that these provisions contravened Sections 7 and 8 of the Schedule 6 of the 1954 Constitution.

NON-COMPLIANCE WITH RULES OF COURT

Parties or litigants and their Lawyers in varied situations usually fail to comply with the procedural rules of the Courts. Court processes are filed out of time which slows the pace of administration of justice.

For instance, under the new Rules of some of the High courts in Nigeria, a defendant has 42 days to appear in a civil matter after service on him of the Writ of Summons, whereas, in the old Rules of Court, a defendant has 8 days to file his Memorandum of Appearance after service of the Writ of Summons. This certainly will not help in the speedy dispensation of justice or justice delivery.

ATTITUDE OF COURT REGISTRARS

The Court Registrar is an institution which had its roots in the Common Law. After the various battles fought in the old British Empire, King William who was also known as conqueror, in order to consolidate his civil jurisdiction over all England, appointed justice whose duties were to travel far and wide into the nooks and crannies of England in order to establish the king's peace. The justices

appointed were from the ranks of the knights who relied more on swords for justice than on the rule. These justices were accompanied always by registrars who wrote the reports containing the customs of the area; it was these written reports which form the basis of the success of the king's occupation²⁶.

In Nigeria, the court registrars take care of the case files. Such files could be misplaced in any place. In some situations, the case files could be reported lost as a result of corruption on the part of the court registrars. Some litigants also go to the extent to offer bribes to these court registrars to misplace the case files and in some situation misplace the exhibits tendered in order to prevent the case from being determined. These are daily occurrences in our courts today in Nigeria.

As a result of this trend, same has curtailed the access to justice and a denial of the right to fair hearing.

While training is important and has been a veritable source of delay, it is important that Registrars must like Ceaser's wife be above board. Corruption is a cankerworm which has eaten deep into the fabric of our justice system and has been source of justice delay or outright injustice²⁷.

ADJOURNMENTS

One of the major factors that act as an impediment to access to justice is adjournment of cases by Legal Practitioners and even the Courts.

²⁶ See generally the account given by Onipede M.K. "The Role of Court Registrars in the Administration of Justice in Nigeria" delivered at the National Workshop of Court Registrars, Ibadan 8th - 11th May, 2001.

²⁷ Ali, O. SAN "The anti-Corruption Crusade in Nigeria; Myth or Reality delivered at Equity Chambers, Unilorin 8th September, 2005.

This has constituted a clogg in the wheel of progress in the administration of justice in Nigeria. Cases spans over ten years even in the High Courts and up to twenty years to terminate at the Supreme Court and such cases are mostly land matters and chieftaincy matters.

LATE SITTINGS BY JUDGES

Some Judges sit very late to hear cases. Cases are rampant wherein some Judges do not sit at all for a period of one month and even more. With this type of scenario or situation, there cannot be access to justice in order for an aggrieved person to be heard.

'Public confidence in a legal system and the ability of the Judges to discharge their duties promptly and efficiently is crucial to the effective dispensation of justice. Quick dispensation of justice and the need to discourage frivolous applications remain the tool to restore confidence in the country's judicial system'²⁸.

CORRUPTION IN THE JUDICIARY OR JUDICIAL CORRUPTION

'The effigy of justice in Nigeria is a - blindfolded woman, a timeless jewel, an epitaph of virtuous femininity with a maternal posture of timelessness and serenity. Why was she blindfolded? Could it be to enable her do immortal and unblemished justice to mortal men without been influenced by what she sees? OR blindfolded because of her desire to do injustice with care and conscience?. Whilst trying to unravel her mission it is pertinent to note that she journeyed down to Nigeria and indeed to some

²⁸ Kayode Oladele: Issues in Judicial Efficacy in Nigeria: The Punch of Monday, November 15th 2010.

other countries in Africa within the commonwealth alongside the legal profession from England'²⁹

'Judicial corruption' as the phrase connotes refers to the corruption in the Third Estate of the Realm i.e. the judiciary. It means corruption in the administration of justice.

According to Professor Akin Ibidapo - Obe³⁰, he said as follows:

"Judicial Corruption" was considered as a more serious form of corruption, touching as it does on a core institution of society, namely the judiciary.

Judicial corruption pertains to all levels of the judicial system from the customary courts to the highest courts of record but the penalty varies with the court system.

It could manifest in the acceptance of gratification, the sale of justice, perversion of justice, abuse of judicial discretion such as granting of patently illegal ex-parte or interlocutory orders.

During the dark days of Military Rule in Nigeria, Nigerian Judges had the opportunity at different times to prove their mettle. Many performed their duties in the true spirit of judicial independence and valour.

²⁹ Sonia Akinbiyi (2006): The Jurisprudence of Effigy of Justice.

³⁰ Prof. Akin Ibidapo - Obe: Law, Governance, Ethics and the War Against Corruption in Nigeria. FAWEHINMISM 4th Chief Gani Fawehinmi LLD, SAN, Annual Lecture/Symposium.

Several orders became apologists of military dictatorship. The currency of the quid proquo could be money, office, promotion or other unmerited advantage. Whilst many incidents of judicial corruption have been documented in several official inquires such as the Kayode Eso Panel, hardly has the statutory criminal sanctions being invoked over the time except with respect to the inferior tribunals.

In recent times, election petitions and other political disputes have shown the vulnerability of the judiciary to corruption. The impeachment of several governors and their deputies by various State Houses of Assembly under the presidency of Chief Olusegun Obasanjo exposed rampant corruption leading to the intervention of the National Judicial Council (NJC) to maintain a measure of sanity in that process."

The NJC in the past had shown some Judges the way out of the Bench because of judicial corruption. Two appellate court justices were sacked because of judicial corruption in the Senatorial election Judgment where conflicting Judgments were delivered after the 2003 Senatorial election in Anambra State.

Speaking as an insider, the Honourable Justice Uwaifo, JSC (Rtd) in his Valedictory on 24th January, 2005 on the occasion of his retirement from the apex Court carries great weight from the stand

point of the truth about the erosion of uprightness in our judiciary. He puts it trenchantly thus:

"There are indications either from comments made by the public or from personal experience that there is need to be concerned about the incidence of this vice in the Judiciary of this country. It was once thought to be only in the magistracy because of the disturbing way some of the personnel tended to abuse their office. It gradually crawled to the High Courts. - Now, there is real apprehension that the appellate court may soon be infested if not already contaminated with some of these Vices. Some recent events seem to sound an alarm bell."

As regards the "recent event" referred to by Justice Uwaifo, JSC in his Valedictory speech, he expressed frontally about the dangerous trend "that the Supreme Court could not stand forthright enough but buckled under pressure having regard to the manipulative dimension prevalent in our socio-political environment, but manifesting as an undergrowth, and tending to overshadow with unpredictable consequences our sense of honour and direction as a nation. The Supreme Court must always demonstrate, even more than ever in such atmosphere, that it can neither bend nor break".

Justice Uwaifo, therefore, called for "a leadership that has no skeleton in the wardrobe which may be exploited externally as a bargaining chip in times of difficulty to try to bend the court".

In the Holy Bible, God in an unequivocal terms admonished Judges in 2 Chronicles 19:6-7 thus:

"Take heed to what you are doing for you do not Judge for man but for the Lord, who is with you in the Judgment.

Now therefore, let the fear of the Lord be upon you; take care and do it, for there is no iniquity with the Lord our God, no partiality, nor taking of bribes" (Underlining mine for emphasis).

The role of Judges and Lawyer in the administration of justice is of great significance to the enthronement and sustenance of the Rule of Law which in turn serves as the bed rock for peace, order and development. This role was succinctly captured in an address to the District Bar Association in December 1975 by the Chief Justice of Lahore High Court, Pakistan, Justice S.M. Iqbal³¹ where he said:

"The Bench and the Bar must be regarded as components parts of the foundation rock on which is based the Pragmatic functioning of basic activity of the state, that is, administration of Law and Order. No society, without a harmonious system of administration of law and order can continue to exist as a civilized society. What is of utmost necessity for saving a society from reverting to the law of jungle is a strong integrated Bar and Independent Judiciary.

³¹ Chief Justice of Lahore High Court, Pakistan, Justice S.M. Iqbal: An address to the District Bar Association in December 1975

Upon the proper functioning of the courts depends not only the enforcement of rights and liabilities such as those between individuals, but also the protection and the protection of society against the Lawless individual.

The proper functioning of the courts, however depends a great deal upon the performance of the Bar. If the Bar is capable, conscientious and responsible, the quality of judicial performance is likely to be good if not, the quality of justice is likely to be deficient”.

These comments bring to the fore the importance of the role of both the Judge and the lawyer in the administration of justice.

It is rather disheartening, heart rending or saddening to note that some of our Judges and Justices who took their Oath of Office and Oath of Allegiance to uphold the provisions of the Constitution and to dispense justice without fear or favour, affection, ill - will and without partiality and chorused “**So help me God**” will turn round to murder Justice by taking, accepting bribe and other gratifications in order to subvert justice in the process³².

Some of our Magistrates, Judges, and Justices of our superior courts have what I can describe as ‘itching palms’ wherever they sit on the citadel to administer ‘Justice’.

³² THE ROLE OF THE BAR & BENCH IN ANTI-CORRUPTION CRUSADE IN NIGERIA: A Lecture Delivered by Roland Otaru, Esq., SAN at the 2010 Annual Bar Lecture in Honour of Hon. Justice Emmanuel Olayinka Ayoola, JSC, (CON), Chairman, ICPC on the Invitation of NBA, Ilesha Branch on 13th May, 2010.

The judiciary should brace up in the fight against the monster called corruption.

According to Hon. Justice Oputa, JSC (Rtd)³³ said as follows:

"The human instinct for justice finds ready expression in the administration of law in our courts. The establishment of courts was a very big step forward on the human road to peace and progress. Before courts were established everyman went armed and was law unto himself. Then the mighty suppressed and expropriated the weak with impunity. It was then the age of quest and conquest, of kill or be killed, an age when might was right. But with the establishment of courts men laid down their arms and carried their causes to the courts. This presupposes a tribunal to which any and every citizen when he is in doubt or in anxiety will freely have recourse to, in the firm, sure and guaranteed hope of obtaining justice. It also presupposes a tribunal which is not incapable, for extraneous reasons, of delivering a just verdict.

It is an essential prerequisite of the Rule of Law that Judges and Magistrates and Lawyers too - these sacred ministers in the equally sacred temple of Justice - are honest, upright, responsible and fearless. Justice demands that those who administer her are completely insulated from all pressures from any quarter or from any

³³ Hon. Justice Oputa, JSC (Rtd) in an address delivered on the occasion of the state opening of the Imo State High Court at Oweri in 1976

adverse circumstance. She demands that all judicial officers are absolutely left alone to do their duty, without fear or favour, without interference; without pressure be it political, economic or social, and without the fear of unjust and unmerited removal hanging over their heads like the proverbial sword of Damocles.....

It is the duty of the judiciary to see that there is a fair, equitable and just balance between those who have and exercise power and those subjected to the exercise of such power.

It is not too far fetched to say that the courts are the last lines of defence in any free society.

When this line is overturn by the menacingly advancing avalanche of moral decay, or of interference, or of pressure or of all three, then all hope is lost; then also the warning shots are being audibly fired for the inauguration of the reign of terror, or for an era of disorder and chaos.

The courts stand between order and disorder, between peace and progress on the one hand and strife and stagnation on the other hand. What we want in our young state - nay in the country at large - is peace and progress in fidelity and in justice and the surest and safest instruments to achieve these objectives are the courts used as dynamic agencies of the Rule of Law".

On the level and menace of corruption in Nigeria and the need to tackle same, My Noble Lord, Hon. Justice KATSINA - ALU, JSC³⁴ (as he then was) held as follows:

"These submissions, in my view, overlook the reality of the situation. Corrupt practices and abuse of power spread across and eat into every segment of the society. These vices are not limited to only certain sections of the society. It is lame argument to say that private individuals or person do not corrupt officials or get them to abuse their power.

It is good sense that everyone involved in corrupt practices and abuse power should be made to face the law in our effort to eradicate this cankerworm.

This I believe is the intention of the framers of our Constitution".

According to Akeredolu, O.O. SAN³⁵, he said of the judiciary as follows:

"Infact, the judiciary has the only mission of correcting injustice in a polity, and yet for numerous subjective reasons, it has been ignored in the resolutions of differences."

Some Judges have been blindfolded by corruption like the woman symbolised by the effigy of justice. These corrupt Judges are not

³⁴ My Noble Lord, Hon. Justice KATSINA - ALU, JSC (as he then was)

³⁵ Akeredolu, O.O. SAN "Access to Justice: Problems and Solution" A paper delivered at the 2003 Annual General Conference of the Nigerian Bar Association, Enugu August, 2003 p.31.

afraid of the sword or spear the blindfolded woman is holding. Some day, these corrupt Judges will turn blind like the blindfolded woman and will also be destroyed with the sword of the symbol of justice held by the same blindfolded woman. This has happened to some Judges who have soiled their hands and palms with corruption and more will be shown the way out of the bench.

The judiciary should brace up to its responsibilities, duties and obligations in the dispensation and administration of justice because the judiciary is not only the hope of the 'common man'; it is also the hope of the 'uncommon man'.

ENFORCEMENT OF COURT ORDERS

Access to justice and the right to fair hearing are not only restricted to pre-trial and trial of a case, but also, extends to what happens after the determination of a matter in a court of law. In Nigeria, enforcement of judgment is highly difficult especially when the government or its agency is involved due to its apparent and brazen disobedience to court orders.

In *A/G, Federation vs. Adigun Ogunsutan & Ors*³⁶, Honourable Justice Afolabi Adeyinka observed:

"The government's disobedience of court orders is in fact destroying the basis in which lawyers can defend the rights of Nigerian citizens which the government is now seeking to protect by this action.... It is disruptive of the due

³⁶ Unreported Suit No. LD/1799/92 Delivered on 2/7/92.

administration to refuse to obey the order of court."

See also **Government of Lagos State vs. Ojukwu (1986) 1 NWLR (PT.18) page 621.**

It is to be noted that in the past, no execution can be carried out against the government unless the Attorney-General of the Federation or State gives his consent. This position has been altered by virtue of Sections 6, 252 and 272(1) of the 1999 Constitution and the decision of the Court of Appeal in **Jallo vs. Military Governor of Kano State (1995) 5 NWLR (Pt. 194) 754.**

In this case, the Court of Appeal, Kaduna Judicial Division struck down the Sheriffs and Civil Process (Amendment) Edict of Kano State 1987, which purported to exclude the state government and its agencies from execution of Judgments of Court. Same was declared unconstitutional, null and void and of no effect whatsoever.

In spite of this decision, it is still difficult to execute Judgments against the Government because some Attorneys-General of some States usually rely on Section 105 of the Sheriffs and Civil Process Act to prevent such execution through refusal of FIAT.

This has to a large extent prevented a successful party to reap the fruits of his or her Judgment.

RECOMMENDATIONS / CONCLUSION

Since access to justice and right to fair hearing are both sine qua non for the sustainability of the Rule of Law, it is humbly recommended that the following should be observed; to wit;

- i) The government should through the anti-corruption agencies take proactive steps in fighting corruption in the judiciary.
- ii) The National Judicial Council (NJC) should be more proactive to hear and determine petitions timeously against erring judicial officers in order to serve as a deterrent to others.
- iii) Appointment of judicial officers should be based primarily on merit and not based on geographical spread equation. The issue of appointment based on Federal character has made some half-baked and inexperienced persons to be appointed into judicial offices. Such persons are referred to as 'Judicial Charlatans'.
- iv) There is need be to sanitise the registry of the various courts in order to ensure that those who man the registries are persons of proven and impeccable character and not bribe takers or receivers of gratification to pervert the course of justice.
- v) Alternative Dispute Resolution or Arbitration should be encouraged. Happily, most of the State Governments have established multi-door centres for resolution of various disputes without the necessity of going through the rigours of the law courts.
It has even been advocated that there should be resort to arbitration in the settlement of election petitions. This will also to a large extent lead to settlement of election disputes timeously without rancour, discord and/or disharmony.

- (vi) Cost of litigation should be subsidised by the Government in order to bring justice nearer to the poor people.
- (vii) The Federal and State Governments should fund the Legal Aid Council adequately to ensure efficiency and good service delivery by the officers in the Legal Aid Council.

I therefore, call on all of us that we should be strong in the Lord and in the power of His Almighty to fight corruption in our land.

"Let us put on the whole armor of God, that we may be able to stand against the wiles of the evil called 'corruption'! For we do not wrestle against flesh and blood, but against corruption in high places and against rulers who perpetrate corruption in our land. Let us put on the breast plate of righteousness i.e. both the Bar, the Bench and lovers of justice and transparency in this country in order to quench all the fiery darts of corruption in our land".

In conclusion, justice is rooted in transparency, honesty, probity, rightness, integrity, impartiality, without affection, ill-will, fear or favour of the adjudicator or Judge.

Our Judges and those who are saddled with justice delivery should imbibe these time-honoured virtues, values, ethos and pathos in order to ensure access to justice and rights to fair hearing.

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