

**AN ADDRESS BY THE HONOURABLE JUSTICE E. F. IKPONMWEN
THE CHIEF JUDGE OF EDO STATE DELIVERED ON 24TH OF MARCH
2017 ON THE OCCASION OF THE RETREAT ORGANISED BY THE
STRATEGY PLANNING UNIT OF EDO STATE GOVERNMENT WITH
THE THEME: THE STATE OF THE JUDICIARY AND THE
ADMINISTRATION OF JUSTICE IN EDO STATE.**

It gives me great pleasure and hope for the upliftment of the fortunes of the judiciary to address this august gathering with the objective of fashioning out the way forward for the judiciary and the administration of justice in Edo State.

INTRODUCTION

This retreat with the strategic objectives put together by this progressive Government is a very welcome development. Mr. Governor Godwin Obaseki in particular must be singled out for commendation for this I believe is his brain-child, arising from his often stated appreciation for the need of an independent judiciary. By organizing this retreat the government of Edo State has shown its preference for an understanding of the other arms of government and a need to support the clarion call for the independence of the judiciary. Although the aim of this retreat is to wholistically look at the state of the judiciary, it is my respected view that the financial independence

of the judiciary will to a large extent solve most of the problems facing the judiciary.

A strong and effective judiciary is vital for the sustenance of the rule of law and by extension for the sustenance of economic and human development and the eradication of poverty. Better performing courts have been shown to lead to more development. In a study conducted by the world bank it was found that the overall level of confidence in the institution of government including the judiciary is correlated with the level of investment and measures of economic performance (Per Richard E. Messick

“ Judicial Reform and Economic Development;

A survey of the issues). Where courts are slow in resolving disputes especially commercial disputes it has very adverse effect on the economy. For example a bank will be compelled to lend its funds at astronomical rate of interest because in the event of default by its customers it cannot be assured of recovering the debt within a reasonable time. Infrastructural development which will be of immense benefit to the public at large may not be embarked upon or may be stalled because investors cannot be sure that the judiciary will uphold their right or that it would do so expeditiously.”

Per Kenneth W. Dam in the article The Judiciary and Economic Development.

For Edo State to be competitive economically the role of the judiciary in ensuring fair, speedy and cost effective justice delivery cannot be over emphasized. This no doubt must have weighed heavily on the mind of our well respected Governor in organizing this retreat. We are all aware of his interest in the economic development of the state by exploring alternative avenues for revenue generation and attracting foreign direct investment to boost the state economic growth. No foreign investor or even serious minded local investor will be willingly to invest in an environment where they cannot be assured that when dispute arises they would be resolved quickly, fairly and efficiently.

THE STATE OF THE JUDICIARY

It is no longer news that our courts are seriously congested. Litigation often involves a lengthy, expensive trial process and it is adversarial. It ends with a win lose situation which may destroy existing relationships. No doubt this has given rise to the need for alternative dispute resolution that has birthed the Edo State Multi-door Court House. There is need to get it functioning and well equipped in terms of training and man power

development. When this is done it will help to decongest the courts and encourage investors to invest in the state thereby promoting economic development.

In most courts across Edo State Court infrastructure is either descript or lacking. Our legal and judicial system are still largely frozen in the mould in which they were bequeathed by our colonial masters. Little efforts have been made to localize our judicial system to fit into our cultural orientation. Courts rule of procedure and case flow systems are steeped in slow paced regime, while reforms to expand access to justice and to empower courts to use modern day technology to gather, disseminate or verify information, process cases, reduce inefficiency and waste are still largely not underway. Trial procedure and infrastructure are obselete while the general working environment is unfavourable for the judicial worker.

I have personally visited some Magistrates court and some courts in Benin as well as living quarters of Judges for the few that are available and find that they are deplorable. I am told that there is a video clip showing this decay and if Mr. Governor allows the clip to be played we can all see the state of our courts in Edo State.

Overall our slow pace system of administering and delivering justice and the sad state of physical and operational facilities in the courts reflect what judicial authorities have claimed to be perennial problems of inadequate funding confronting the administration of justice especially with regard to capital expenditure.

FUNDING OF THE JUDICIARY

Infrastructure decay in the judiciary is connected with lack of capital expenditure. At the moment government makes funds although inadequate available for recurrent expenditure, salaries, allowances and overheads. Capital expenditure which will take care of our infrastructure is excluded. The Hon. Justice Babalakin once stated that:-

**“the judiciary cannot fulfill its role efficiently
and expeditiously when judges are poorly
funded and ill-equipped to dispense justice.”**

Taking for example in most jurisdiction court libraries are non-existent and where they do exist they contain outdated and archaic text books and law reports. Books are the major work tool of every judicial officer. The judiciary needs funds to equip the libraries. State governments are expected

to undertake capital development in their state judiciaries, provide official cars, office equipment, office furniture, build new court, rooms, judges magistrates and presidents' residential quarters, effect repairs on old ones e.t.c I pause here to recount that a judge had to buy her own office furniture and when she was posted recently she took them to her new station. So we have a judge's chamber that is not furnished for another judge to use. Some Magistrates courts sit in shifts or sessions because of lack of infrastructure. Some secretarial staff still use manual old typewriters. It is therefore imperative that for any meaningful capacity building and improvement of the state of the judiciary and administration of justice proper funding of the judiciary must be guaranteed. Hon. Justice Sotiminu C.J. retired of Lagos State warned that "...inadequate funding predisposes Chief Judges to lean on their state government (sic) (governors or executives), for funds which makes the judiciary vulnerable." One of the ways nay the only way of solving the issue of funding for the judiciary is by ensuring financial independence or financial autonomy of the judiciary as constitutionally provided for.

INDEPENDENCE OF THE JUDICIARY/(FINANCIAL INDEPENDENCE)

It is not surprising to disclose that the courts depend entirely on the executive arm of the Government for the provision of all the resources they

require to enable it to function; notwithstanding the constitutional provision for independence. This is consistent with the reality that the Executive has the purse. However it must be noted that the constitution enjoins it (Executive) to exercise its powers in such a manner not to impede the exercise of another branch of its powers. When the executive controls the purse, the only value left is that of impartiality which is maintained by the human spirit and the sacred resolve to uphold the judicial oath. To what extent the vagaries of the executive oppression affects impartiality depends upon the pain threshold of the individual Judges and resistance of the perceived injustice inflicted by the executive arm of government. The proper environment for the exercise of the judicial powers of the Constitution is one free from the trammels of executive control. See Section 162(1), (2), (9), 80(1), 84(2), (4) and (7) of the 1999 Constitution.

The concept of the judicial independence is to ensure separation of powers thus enabling the head of court leave a legacy and make a mark and it is also to make the judges discharge their constitutional functions dispassionately in accordance with their judicial oath. The judiciary will then avoid reliance on the executive for the essential requirements in the discharge of its functions.

I will like to quote Hon. Justice A. G. Karibi-Whyte (J.S.C) rtd in his article “the place of the judiciary in the 1999 Constitution delivered at the 1999, All Nigeria Judges Conference”:-

“The dependence of the judiciary on the Executive for the performance of its essential functions is the greatest obstacle in the exercise of the courts of their constitutional functions. The independence does not merely lie in the appointment and tenure of judicial officers, the conditions of the service of the officers is an essential factor in determining the independence of the judges. As long as the judges are beholden to the executive for the important facilities such as health, transport, housing and indeed materials for the performances of their duties, the principle of judicial independence envisaged in the constitution will remain theoretical and a sham.”

From recent happenings the judiciary appears to be the weakest of the three departments of the Constitution. The judiciary, it must be emphasised is deliberately made apolitical as its officers are not elected. It is accordingly assigned the constitutional function of an unbiased umpire in respect of dispute arising from the construction of the provision of the constitution

between the department and individual citizens. The question that will arise is who will be the arbiter in dispute between the judiciary and other departments. In my humble view the issue of the independence of the judiciary is one that has arisen in our constitutional development and at this point the Governor must be commended for this initiative in organizing this retreat to fashion out solution and of ensuring the independence of the judiciary as constitutionally provided.

The Judiciary has the wherewithal to reform itself, to provide for itself these can be seen by the example of the Federal judiciary and Lagos State Judiciary where they have fared very well. All judicial officers know their constraints and wants and the judiciary has the ability to care for itself.

WORK ETHICS

“A country can put up with harsh or unjust laws, so long as they are administered by just judges who can mitigate their unfairness.” Per Lord Denning.

We must remember that the judiciary ought not be accountable either to the electorate, executive or legislative branches of government in the role expected of it by the Constitution, it is only accountable to history. I agree

with the Hon. Justice C. A. Oputa J.S.C. (now of blessed memory) when he said of the judiciary thus:-

“The judiciary is bound to the past through precedence, sensitive to the present and will be judged by the future. It is then to the future that we all (judges) shall look to, for what is so exciting and awesome about our challenge is that we stand on the threshold of an era with the destiny of a great Nation in our hands. How we understand and interpret the provisions of our constitution will lay the foundation of Nigeria’s jurisprudence for many, many years to come and for generation yet unborn.”

A good judge should be a person of maturity and prudence as opposed to recklessness by virtue of his training, his oath of office and his commitment to the rule of law. A judge is bound to decide according to the impact of the law on the facts as found, irrespective of the consequences. There has been a clamour for better modalities in the appointment to the bench. Section 271(2) and (3) of the 1999 Constitution provides for the appointment of judges to the State High Court. By this provision the main burden for determining qualified candidates for judges is on the National Judicial Council (N. J.C).

However, Niki Tobi J.S.C. in a paper presented at the All Nigeria Judges Conference, 1999, is of the view that there are known instances where recommendations made are not on the merits but on grounds of favoritism and nepotism. He observed thus: “ Normally in judicial appointments, candidates should be wooed. They should not beg for the job. In my book on “the Nigerian Judge”. I said: “ The job of a judge is a very honourable one.

There is no application or better still there

should be no application. A learned writer defined

a Judge as a barrister who is invited to sit on

the Bench when he has had a lot of standing at the Bar.

In other words, no application is written or should be written.”

On the 24th of January 2005 at his valedictory session the Hon. Justice S. O. Uwaifo J.S.C. (Rtd) and Chairman of this occasion stated that

“...However at the moment in this country a situation exists where many lawyers who could not cope with the

intricacies and intellectual demands of the profession seek the High Court as a haven and unfortunately arrive there. This is bound to be counter productive.”

The learned jurist is often quoted as stating thus:-

“ a corrupt judge is more harmful to the society than a man who runs amok with a dagger in a crowded street.”

In the appointment of judges Deuteronomy 16:18 – 20 must come to play by the appointing body as it states thus:-

“ Thou shall appoint judges and magistrates in all the towns which the Lord God shall give thee, in all thy tribe: that they may judge the people with just judgement, you shall not prevert justice, you shall not show partiality; you shall not accept a bribe, for a bribe blinds the eyes of the wise and subverts the cause of righteousness. Justice and only justice you shall follow that you may live to inherit the land which the Lord your God gives you”

All those are contained in the various judicial oath subscribed to by every judicial officer. All judicial officers must apply judicial ethics. A code

of conduct for court employees was fashioned out to compliment that for judicial officers, to encourage ethical behavior in the judiciary and this ethical conduct is aimed at the following :

- 1. To generate awareness of the abuse of procedural discretion and impartiality;**
- 2. To indentify how the judicial role places judges in unique positions to respond both to litigants and the Bar in the expeditious disposal of cases**
- 3. To provide a basic understanding of the nature of confidentiality,**
- 4. To discourage Judges from engaging in extra-judicial activities which may be incompatible with the nature of their profession.**
- 5. To impress upon court employees the need to be accountable, honest, impartial, diligent, dependable, polite, selfless and very professional in their official duties; and**
- 6. To provide direction and guidance on the responsibilities of court employees and how such powers and discretion that comes with their official position should be exercised.**

Under my administration as Chief Judge of Edo State in various fora, I have impressed on all staff the need for us to serve with passion and integrity. This is my vision for the judiciary. All judicial officers have a leadership role to play. I believe that those in authority as judicial officers must perform their duties in a righteous manner and as servants in the temple of justice. In this regard there will be no hiding place for any corrupt judicial officer. Ogbuagu J.S.C. quoting Chief Afe Babalola (SAN) in the case of A.G Ondo V. A.G. Fed (2002) 9 NWLR (Pt. 772) page 33,

“It is a notorious fact that one of the ills which have plagued and is still plaguing the Nigeria nation is corruption in all facets of our national life.”

The judiciary likes Caesar’s wife must be above board. Justice should be seen to be done in every case. Therefore I am in agreement with Niki Tobi (JCA) as he then was when he stated in a paper presented at the 1999 All Nigerian Judge Conference that:-

“the concept of judicial independence must be upheld as it also 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. He should be free to give binding orders which must be respected by the executive, legislature and the citizens whatever their status. Direct control or direct interference is primitive and nowadays rare but certain other matters indirectly affect judicial independence in practice, such factors include appointment, tenure, remuneration, discipline and financial independence. Since 1979... every judiciary both at Federal and State level have total control of its staff. Through the instrumentally of the various Judicial Service Commission the total control of each judiciary over each staff is assured.”

The challenge before the Edo State judiciary is to ensure that ethical behaviour is entrenched and becomes second nature to both judicial officers and court employees. This can be done by carrying on with Ethics training, workshops. Also incentives should be given judicial officers and court employees who exhibit high work ethics and appropriate sanctions should be given to officers who do not have good work ethics.

WELFARE

Closely tied to the welfare of all cadre of staff including judicial officers is financial autonomy. For judicial officers to be able to administer justice smoothly their conditions of service must be compatible with the dignity of their office. In this regard, some judges who are due for cars have not been given and Magistrates and Area court presidents do not have cars. This no doubt erodes dignity of those offices. It is evident that the environment under which some judicial officers carry out their tasks also erodes their dignity of that office. Court rooms are un conducive, staff are cramped in small office, most alarming is the sharing of courts by some Magistrates and Presidents sitting in what they term “ morning and afternoon sessions”. Some courts lack the basic technological devices to do their work like computers. It would surprise participants that manual typewriters are still being used in some courts in Benin and other jurisdictions. This control of capital expenditure by the executive makes the administration of justice cumbersome. Staff morale is presently at its lowest ebb arising from the over flogged JUSUN strike resulting in non payment of seven months salary to striking workers . Every judicial officer is affected directly or indirectly, as those who

were not paid feel anger against those who were paid, understandably, as the judiciary is one. It is dangerous to have to work with disgruntled staff.

JUDICIARY AND THE POLICE

The courts cannot function without the assistance and the corporation of the Police Force. The existence of an uncooperative Police Force is undoubtedly a great constraint in the administration of justice. All Courts no matter the cadre is entitled to court duty police men who are to maintain order. Regrettably, all courts are not manned by court duty police men. Most judicial officers go without police orderlies. All judicial officers who sit in judgment over persons are entitled to orderlies but they do not have any. Instead business men have police escorts thus leaving the judges unprotected even in their homes. Judges in Edo State heaved a sigh a relief when the Judges Protection Unit was established in Edo State in 2014 with a van to convey policemen to Judges Quarters but this was not to be. The Judges Protection Unit Van is seen all over town but no where near the judicial officers' residences!! The judicial officers are therefore left at the mercy of Society and unprotected. The attitude also of the police investigators in the prosecution of cases leaves a lot to be desired. It is my view therefore that the

judiciary should have its own court marshals for the protection of its officers and of courts.

In a paper presented by Hon. Justice A. O. Faji of the Federal High Court Ilorin Division at the 2015 All Nigeria Judges Conference titled Law and National Security: Role of the Judiciary at pages 60 – 62, he stated thus:-

In promoting better interface between the judiciary and security agencies and protecting the judges the following should be put in place:

- a. “That the State nay the judiciary well funded should take all necessary measures to ensure that judicial personnel together with their families are physically protected by the appropriate State authorities when their personal security is threatened as a result of the proper discharge of their functions.**
- b. That where security measures are determined to be necessary the State should take all steps to provide the necessary protection including the engagement of plain cloth police or security guards in both offices and houses with appropriate security devices and systems.**
- c. That judicial personnel and their families be provided with information, training and advice concerning personal safety.**

- d. That adequate compensation should be provided by the State authorities for death or injury caused to judicial personnel or their families arising from attack by a person whose motive is related to the proper exercise of their functions.**
- e. That the State and State authorities should take reasonable steps to prevent personal information concerning judicial personnel or their families from becoming known to third parties where this would be inappropriate.**
- f. That where judicial personnel particularly in cases of terrorisms, economic crimes involving politically exposed person. State should take special care to assess any security risks and to take appropriate measure of protection”.**

LAW REFORM

It is high time Edo State has its own laws instead of using the old Bendel State Law. We have put in place the Multi door Court house and the Bill we expect should be before the Governor for his assent. The Multidoor court house is currently occupying a floor in the former Customary Court of Appeal. There is the need to fine tune and get it up and running by appealing

to the government for funds, sensitization and training. I propose the use of A.D.R. in criminal cases especially in the Magistrates Court for minor offences. There is need for victims compensation by the government and counselling for convicts, thereby operating restorative justice.

During my recent visit to the Oba of Benin I encouraged customary arbitration as I believe that if the customary arbitration is well harnessed it will help in the administration of justice in Edo State.

I recommend the establishment of street courts where a magistrate or Area customary court President can preside over matters like environmental, traffic cases and simple disputes and instantly give judgment like Judge Judy in the U.S.A. I also recommend that a reminder should be sent to the Edo State House of Assembly to expedite action on the passage of the Administration of Criminal Justice Law.

CONCLUSION

In view of the importance of the independence of the judiciary this retreat will seek to cultivate the understanding of the legislative and executive arms of government on the need to support the clarion call for the independence of the judiciary in Edo State which no doubt has motivated Mr. Governor to

organize it. May I appreciate the personal interest of Mr. Governor and the Edo House of Assembly for the requirements of the judiciary as provided for in the just passed and signed budget. Before now the judiciary was in a beggarly state, writing unending memo's requesting for funds for the smooth running of the judicial arm of government, for example basic statutory health, travel allowances for judicial officers for 2016 remains unpaid. It is therefore expected that this retreat will fashion out the mode and smooth financial autonomy that will enable the judiciary meet its statutory obligations

Thank You.