

JUDICIAL INDEPENDENCE, DEMOCRACY AND THE RULE OF LAW IN NIGERIA

Being a paper presented by Hon. Justice Daniel Iyobosa Okungbowa, Chief Judge of Edo State, at the 2025 annual Justice Idigbe Memorial Lectures organized by the Faculty of Law, University of Benin, held at Akin Deko Auditorium, Ugbowo, Benin City, Edo State, 2026.

PROTOCOL/COURTESIES

I am greatly honoured to have been asked to deliver this year's annual Hon Justice Idigbe memorial lecture. It is indeed humbling to be counted among the enviable array of erudite speakers comprising the crème de la crème of Society and the legal profession who have graced this stage for this purpose in the past. In doing so, I begin by expressing profound appreciation, felicitation and congratulations to the Vice Chancellor of this great citadel of learning, Prof. Edoba B. Omoregie, SAN, the Dean, Faculty of Law, University of Benin, Prof Bright Bazuaye and all staff and students of the Faculty who have collectively maintained this high tradition/standard of lectures in honour of one of the greats of the Nigerian Judiciary and jurist par excellence in our legal ecosystem. Hon Justice Chukwunweike Idigbe, J.S.C. (of blessed memory) what a privilege for me to add my voice today to the celebration of this great Legal icon.

1.0 INTRODUCTION

Our topic for today's discourse is, "Judicial Independence, Democracy and The Rule of Law in Nigeria" It is gratifying to be offered an august forum like this to speak on this very topical and all-important issue. Undoubtedly, it is one that is pivotal to any genuine desire to institutionalize the rule of law and democratic ethos in the arduous collective task of nation building, in our dear state and country, Nigeria.

It was Baron De Montesquieu that once wrote in his popular book that:

..... When the legislative and Executive powers are united in the same body..... there can be no liberty, because apprehension may arise, less the same monarch or Senate should enact tyrannical laws, to execute them in tyrannical manner. Again, there is no liberty, if the judicial power be not separate from the legislative and executive. Were it joined with the legislative, the life and liberty of the subjects would be exposed to arbitrary control; for the Judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.....¹

The above quote, aptly underlines the imperativeness of independence of the judiciary in democratic nation building. From about the time of Montesquieu, political philosophers have extolled the virtues of separation of powers and its necessary corollary; which is the principle of the Independence of the Judiciary.

They have argued, and rightly so, that three organs of state should be independent of one another so as to provide checks and balances among them and avoid the danger which arises from the concentration of powers in the hands of one man or a group of men. In this way, arbitrary rule is precluded, the rule of law entrenched and democracy with its attendant guarantee of respect for the fundamental rights of the citizen is assured and protected.

In another related instance, the late sage, Chief Obafemi Awolowo in his book, "Thoughts on Nigerian constitution" passionately asserted that the principle of "... Separation of powers is not just an abstract doctrine or an academic legalistic formula: in practical politics, it is a most potent means to the outlawry of tyranny and the enthronement of democracy..."²

What is immediately clear from the above road maps is that judicial independence is the bedrock of any democratic society and the linchpin of the rule of Law. It assures citizens that justice will be dispensed fairly, impartially, and without fear or favour, regardless of the litigants status or Government's interests. In addition, it is also one which the entire Nigerian Judiciary guards jealously in everyday dispensation of justice. According to the National Judicial Policy, issued by the National Judicial Council (NJC) "... ***the independence of a Judge is sacrosanct and very necessary to impartial justice delivery. All***

Institutions must therefore respect protect and defend that independence.³

In this paper, we shall examine the nature and application of this hallowed principle to the Nigerian situation, especially against the backdrop of existing national and international legal framework. In doing so, the interconnectivity between judicial independence and the sanctity of the rule of law in Nigeria will be considered. The paper also briefly highlights, through the prism of some decided cases, some notable areas that our Judiciary has courageously upheld and promoted our democracy while also bringing to the front burner some real and present challenges to the independence of the judiciary in this country.

2.0. CONCEPTUAL DEFINITIONS

2.1 JUDICIAL INDEPENDENCE

According to Black's law dictionary, to be independent means, "..... not subject to the control or influence of another ... not dependent or contingent on something else..."⁴

Judicial independence basically means that Judges are at liberty to adjudicate on cases based on the evidence, facts and circumstances presented before them by disputing litigants and the law, without improper internal or external influence or

interference from other branches of government (executive or legislature), political parties private interests, public opinion or even the media (inclusive of social media) etc. In relation to the latter, unchecked and unregulated social media trials or commentaries that are freely conducted daily in our digital space by content creators and people who have little or no knowledge of the actual facts or legal training. During such social media unfair trials/wanton commentaries, rather than the content of the twin-scale of justice being heavy with evidence, what we often find is a heavy dose of concocted and exaggerated facts and conclusions which in many cases are misconstrued, defamatory and in complete disregard of the provisions of the Cyber Crimes Act, 2015. I shall return to this issue shortly, suffice for now for me to say that the concept of judicial independence encompasses two main aspects: these are institutional independence and Judges' independence. Let us briefly look at these two elements.

(a) INSTITUTIONAL INDEPENDENCE

Institutional Independence entails that the judiciary, as an arm of government must be independent from the executive and legislative branches in its funding, administration and appointment processes. In most known democracies, the Judiciary is always accorded the freedom to conduct its

affairs without fear of interference, intimidation, threat, ill-will from any other Arm of Government. It is in order to ensure that this is done, that the National Judicial Council (NJC) was established under the 1999 constitution to conduct the affairs of the Judiciary within the provision of paragraph 21 (b) part 1 of the 3rd Schedule of the Constitution of the Federal Republic of Nigeria 1999 (as amended).⁵

In the exercise of its constitutional powers therefore, the Nigerian judiciary is entrusted with the constitutional mandate to independently look into and determine:

“... all matters between persons, or between government or authority and to any person in Nigeria and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.”⁶

In the day-to-day exercise of these functions, a strong and independent judiciary may from time to time give judgment for or against all sheds of litigants, inclusive of other arms of government. Unfortunately, what we find nowadays is that whenever judgments are given by the judiciary in favour of government, some people unwittingly accuse the judiciary of corruption and having become an appendage of the government of the day or other arms of government, especially the executive. But whenever, judgments go against the government of the day,

those same people fall meaningfully and ominously silent. Rather at such times, it is the turn of the other side to cast aspersions on the judiciary and accuse it of being, corrupt or "anti-government". Here lies the lot of the Nigerian Judiciary. But the truth is that, as we administer justice to all manner of persons, judges are not moved by these unfortunate sentiments and characterization in our avowed role of acting as a check on other arms of government in order to bring the much-desired balance to the pillars of our democratic system of government in line with the principle of separation of powers/checks and balances. In doing so, we are unapologetic.

(a) INDEPENDENCE OF INDIVIDUAL JUDGE

Under this head, individual judges in the day-to-day adjudication of cases are free from external pressure in their decision-making from external influences of any guise. Generally, a judge must be independent from all forms of improper pressure. This is what is referred to as, "decisional independence" in paragraph 7.4 of the National Judicial Policy of the NJC, 2016. Therefore, in deciding cases, every judge being subject only to the law, must do so in accordance with his judicial oath which dictates that he should, "... Discharge his duties and perform his functions honestly, to the best of his ability and faithfully in accordance with the constitution ... and

the law and Without allowing his personal interest to influence his official conduct or his official decisions.”

It is the independent judge, loyal only to the rule of law, that can protect our constitutional liberties, ensures fairness, and who on sentry duty, stands guard against the excesses of those in power. In doing their jobs, judges must be allowed to adjudicate freely. The principle of judicial independence is gravely damaged if judges were subject to reprimand on the basis of errors made in their judgments by supervisory authorities. Therefore, in ordinary circumstances, unless in cases of obvious proven mischief or bad faith, judges should not have to fear punishment in the event that their rulings are later determined to be mistaken or wrong. This is why our appellate courts are there.

2.2 RULE OF LAW

Since the era of Prof. A. V. Dicey, he and several other scholars have defined, nourished and contributed to the growth of the principle of the rule of law.

In *OMATSEYE V. FRN*,⁷ *GEORGEWILL. JCA* posed the question: what is the concept of the rule of Law in a democratic Society such as Nigeria?

In answering this question, His Lordship stated as follows:

.... Rule of law is a concept that has been with the world for well over twenty-five centuries, when it was first propounded by the great philosopher and thinker Aristotle. However, in modern contemporary jurisprudence, it is described as the condition in which all members of the society including the rulers and the led accept the authority of the law. Under it no man or woman is liable to be punished, except for a breach or infraction of law committed and established before the Courts. It is a concept in which the citizen is entitled to the observance of the principles of natural justice in the determination of any question involving his rights and obligations under the law. See Prof. A. V. Dicey: Introduction to the study of law of the Constitution 10th Edition Macmillan Education Ltd, 1959 @p.202...

The Rule of Law thus denotes absolute supremacy or predominance of law. It is a concept that goes hand in hand with other concepts such as good governance and democracy. Democracy is therefore naturally anchored on the rule of law.

In the words of Samson Odemwingie Uwaifo JSC Retired in THE ATTORNEY-GENERAL OF THE FEDERATION V. GUARDIAN NEWSPAPERS LIMITED & ORS⁸

...In order for the Judiciary to perform its allocated functions under the constitution effectively and satisfactorily, it must be purposive in upholding the rule of law. It is its sacred responsibility to do so. ... It is antithetical to

the idea and practice of the rule of law for anyone to render the judiciary ineffective through any subterfuge, or by sheer exercise of absolute authority or by in terrorem posturing. It is even more so when a glittering façade of judicial independence is presented upon some identified grundnorm only to seek to protect every governmental action by ouster clause. We should be able to say, and I do say, that is not good for a Country such as Nigeria...

3.0. LEGAL FRAMEWORK

The concept of judicial independence and the need to safeguard it, has always attracted and found its way into many international and national legal instruments. Therefore, presently, the imperative of judicial independence has long gained international and national traction. A look at some of these relevant instruments is therefore germane at this point.

3.1 INTERNATIONAL LEGAL INSTRUMENTS

As early as December, 1948, the United Nations adopted the Universal Declaration of Human rights. Article 10 thereof provides that:

... Everyone is entitled to full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and

obligations and of any criminal charge against him... (underlining supplied for emphasis)

In addition to the above, in 1985, the United Nations General Assembly endorsed the basic principles on the independence of the judiciary which was earlier adopted by the seventh United Nations Congress on the prevention of the crime and treatment of offenders on 6th of September, 1985. Similar provisions can be found in the following international legal instruments:

- (a) International Covenant on Civil and Political Rights (ICCPR) also adopted by the United Nations General Assembly Resolution 2200A on the 16 Dec., 1966⁹ and effective from 23 March 1976 in line with Article 49 of the covenant;
- (b) The African Charter on Human and peoples right, 1981.¹⁰

The above declarations have found their way into the constitution of many countries, where similar provisions are enshrined, Nigeria inclusive. Let us take a brief insight into some aspects of judicial independence as contained in the Constitution of the Federal Republic of Nigeria 1999.

3.2 CONSTITUTIONAL SAFEGUARDS AIMED AT ENSURING THE INDEPENDENCE OF THE JUDICIARY

Nigeria's legal framework provides robust foundation for judicial independence, anchored primarily on the 1999 Constitution of the Federal Republic of Nigeria

(as amended). The Constitution contains several provisions aimed at protecting the independence of the Judiciary in Nigeria. Some of these include the following:

(a) SEPARATION OF POWERS

The independence of the Judiciary goes hand in hand with the doctrine of separation of powers. In this regard, sections 4, 5 and 6 of the 1999 Constitution clearly spell out and delineate the powers of the legislature, executive, and Judiciary as separate arms of Government. In so doing, it sought to establish and institutionalize a robust system of checks and balances that is clearly designed to prevent the concentration of power as well as protect judicial autonomy. This principle has long been upheld in a plethora of judicial decisions. One of which is, *A.G. FEDERATION V GUARDIAN NEWSPAPERS LTD*¹¹ where My Lord, KARIBI-WHYTE, JSC (retired) held at page 71, paras A-C, that:

...A notable feature of the amended Constitution ... is the distribution of the exercise of governmental function among the three principal and separate departments of the legislature, the executive and the judiciary. The constitution also prescribed the scope and limits for each department and that within its jurisdiction; the exercise of power is supreme. Accordingly, implicit in the powers so vested, the one was not to interfere in the exercise of the powers of the other, except to the extent to which the Constitution confers such power of interference...

Similarly, in *A.G. ABIA STATE & ORS V. A. G. FEDERATION*,¹² the apex Court also held that:

..The principle behind the concept of separation of powers is that none of the three Arms of Government under the Constitution should encroach into the powers of the other. Each arm – the Executive, Legislative and judicial – is separate, equal and of coordinate department and no arm can constitutionally take over the functions clearly assigned to the other. Thus, the powers and functions constitutionally entrusted to each arm cannot be encroached upon by the other. The doctrine is to promote efficiency in governance by precluding the exercise of arbitrary power by all the arms and thus prevent friction...”

On whether the Executive can usurp the powers of the judiciary and vice versa, *OGUNBIYI, JSC IN GOYANG KAYILI v ESLY YILBUK & ORS*¹³ also stated: “The Constitution is very clear and specific on separation of the powers between the arms of government to wit: the Executive, Legislature and the Judiciary at both Federal and State levels’ thus, the Executive cannot exercise or usurp the powers of the Judiciary and vice versa.”

APPOINTMENT, PROMOTION, DISCIPLINE AND SECURITY OF TENURE OF JUDGES

By the provisions of Sections 256, 271, 276, 291 of the Constitution of the

Federal Republic of Nigeria, 1999 (as amended), judges hold security of tenure until a mandatory retirement age of 70 and can only be removed through a rigorous process upon the recommendation of the National Judicial Council (NJC)¹⁴. These provisions protect them from arbitrary removal by the executive. In relation to the foregoing, as has already been alluded to, the National Judicial Council (NJC), established by Section 153(1) (i) of the constitution and paragraph 21 of the third Schedule to the Constitution, is responsible for the appointment, promotion, discipline, and removal of Judicial Officers. Its composition, primarily of judicial officers, is intended to safeguard judicial independence from political interference in these critical areas. The nature and scope of the powers of the NJC, especially in relation to discipline and removal of judges have often come under judicial consideration and determination. For instance, in **NGANJIWA V FRN**¹⁵ the Court of Appeal held that a serving Judicial Officer cannot be subjected to a criminal prosecution without complying with the condition precedent of subjecting such Judicial Officer to the disciplinary jurisdiction of the National Judicial Council.

According to the Court, the aim of this is not to shield any judicial officer but to ensure that there is a ground to proceed against such person before their prosecution. This is also to ensure that there is no abuse by these agencies of the executive.

Arising from the above decision therefore, whenever a breach of judicial oath occurs, it is a misconduct itself, and the lot is on the National Judicial Council, as the appropriate body, to investigate such breaches by the Judicial Officer and if found to be so, such Judicial Officer shall face disciplinary action. This may take the form of a recommendation by the NJC to the appropriate authority which is either the President in the case of a Federal Judicial Officer or the Governor of the State in the case of a State Judicial Officer for the removal of such a Judicial Officer. It is after this is done and accepted by the appropriate authority in compliance with the provisions of the Constitution, that the relevant Law Enforcement Agent or Agency is at liberty to make the said Judicial Officer face the wrath of the Law. Any act done by the Law Enforcement Agent or Agency in violation of the above is tantamount to denying the NJC its powers to discipline Judges¹⁶

It must however be noted that if a Judicial Officer commits theft, fraud, murder or manslaughter, arson and the likes, which are crimes committed outside the scope of the performance of his official functions, he may be arrested, interrogated and prosecuted accordingly by the State DIRECTLY without recourse to the NJC. These classes of criminal acts are not envisaged and captured by the provisions of paragraph 21, part 1 of the Third Schedule.¹⁷

Section 158 of the Constitution also clearly spells out the independence of the National Judicial Council by providing that in exercising its power to make or to exercise disciplinary control over persons, the National Judicial Council shall not be subject to the direction or control of any other authority or person.

(c) FINANCIAL AUTONOMY

This is another catchment attraction that is pivotal to judicial independence which is provided for under section 81(3), 121(3) of the 1999 Constitution. In this respect, the Constitution provides that all amount standing to the credit of the Judiciary are charged directly on the Consolidated Revenue fund of the Federation and the States and shall be paid directly to the NJC or at the level of the States, to the various Heads of Courts. This is designed to prevent financial leverage from being used against the Judiciary. Under various constitutional provisions, the remuneration, salaries and allowances of State Judicial Officers are charged upon the consolidated revenue fund of the Federation and are paid directly to the NJC for disbursement to the Heads of the Courts established for the States under section 6 of the Constitution. And the condition of service, remuneration and allowances payable to the State Judicial Officers cannot be altered to their disadvantage after their appointment.

(d) APPOINTMENT PROCESS

The appointment process of judges of superior Courts is as provided under Sections 231, 238, 250, 254A, 256,261,266,271,276, 281 of the 1999 Constitution. While at various States, appointments of Judges of Lower Courts are as contained in the respective Laws establishing the other cadre of Courts. In relation to superior Courts, Judicial appointments are made by the President or Governor on the recommendation of the National Judicial Council (NJC). The NJC, headed by the Chief Justice of Nigeria plays a critical role in vetting and recommending candidates, theoretically insulating the process from undue political influence. To guide the NJC in this process, the extant National Judicial Policy 2016 recognizes, “...***that a transparent and carefully designed appointment process is indispensable to an efficient and independent Judiciary that is able to command public confidence in the administration of justice and capable of promoting and protecting the Rule of Law and human rights.***”

(e) IMMUNITY

Judges enjoy a degree of immunity from civil or criminal proceedings for actions taken in the performance of their judicial duties, allowing them to make decisions without fear of personal litigation which goes to foster judicial independence.

4.0. THE ROLE OF THE NIGERIAN JUDICIARY IN THE SUSTENANCE OF DEMOCRACY AND THE RULE OF LAW

In this paper, the point must be immediately underscored that the prime role of an independent judiciary in the sustenance and promotion of the rule of law in Nigeria is, in the words of Shakespeare's Julius Caesar, ".... ***As constant as the Northern stars of whose true-fixed and resting quality, there is no fellow in the firmament...***"¹⁸

In this regard, it is today expedient to reiterate the fundamental axiom, that an independent and courageous judiciary is the greatest asset of a free people anywhere in the world. This is absolutely so, because by the very nature of its constitutional mandate, the Judiciary is the citizens' last bastion or line of defence and hope in a free democratic society. Indeed, that is the line separating constitutionalism from totalitarianism.¹⁹

The role of the judiciary cannot be over emphasized as it is a stabilizer in the political system and has the extra duty of the protection of the constitution and acts as a check on the various political actors on the democratic theatre. The judiciary is an indispensable organ that balances the exercise of powers in the polity of any nation. It resolves conflicts involving individuals, organizations, government and political parties. It is therefore a truism that an independent and impartial Judiciary holds a central place in the democratic scheme of things

thereby strengthening the pillars upon which our democracy rest. In an age where public perception has become skewed against the Judiciary, a Judge through his judgments must exemplify independence of thought, tempered only by the boundaries of justice, the letter and spirit of the law and passionate pursuit of the rule of law at all times.

This point has been aptly reiterated by the Apex Court in a truckload of judicial decisions. One of such cases that readily comes to mind is that of GOVERNOR OF LAGOS STATE V. OJUKWU²⁰ where Obaseki JSC (of blessed memory) famously stated that:

....I think, it was the legendary philosopher, Cicero, who about 2000 years ago echoed: "Amid the clash of arms the law is silent." However, barely 70 years ago, lord Atkin, that quintessential, courageous, erudite common law jurist thought otherwise, and cherishingly echoed the ever immutable dictum: in this country (England), amid the clash of arms, the laws are not silent. They speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecter of persons and stand between the subject and any attempted encroachment on his liberty by the executive, alert to see that any coercive action is justified by law. SEE LIVERSIDGE VS. ANDERSON (1942) AC 206 per Lord Atkin @ 244...

In our present circumstances, I dare say that, as it was in England in the days of Lord Atkin during the 2nd World War, so it must be in Nigeria today; given that wherever it finds itself and whenever, the law speaks the same language.

From the above, two things that are often lost to the undiscerning mind but which I must again emphasize here today are as follows:

Firstly, the above very courageous dictum of Lord Atkin in the House of Lord's decision in *LIVERSIDGE V. ANDERSON* case (Supra) was actually a dissenting opinion of His Lordship, which went on, not just to attain global acclaim, but has

Also firmly planted the feet of the erudite Lord Atkin in the sands of time. Little wonder that not too many people today remember the other eminent justices who gave concurring decisions in favour of the continued denial of the right to personal liberty of Mr. Robert Liversidge and his continued detention by the executive at that time.

Secondly, the Ojukwu case which I have just referred to above, actually arose in a military dispensation when basic rights of Nigerians were usually emasculated by military decrees, pursuant to which the Military Governor and others sought to unlawfully evict Chief Emeka Ojukwu and family from his house at No 29 Queen's Drive, Ikoyi. Yet even in such situations, in the midst of military might and arms, our courageous Judges shown brightly, in once again, underscoring

the point that the law is no respecter of persons by making sure that the Nigerian judiciary stood firmly between the subject and a clear encroachment on citizen's right to property by the military. Also in this regard, Obaseki JSC (of blessed memory) further stated succinctly that:

The Nigerian constitution is founded on the rule of law the primary meaning of which is that everything must be done according to law.... More relevant to the case in hand, the rule of law means that disputes as to the legality of acts of government are to be decided by judges who are wholly independent of the executive... the judiciary cannot shirk its sacred responsibility to the nation to maintain the rule of law. It is both in the interest of the government and all persons in Nigeria. The law should be even handed between the government and citizen..²¹

I can only add that history will be unkind to those who fail in the performance of this sacred duty.

Out of respect for brevity, permit to briefly highlight several other area in which an independent Nigerian judiciary has helped to uphold and strengthen our democracy. They include: (a) Resolution of various and often contentious pre-election and post-election petitions²² (b) Inter-party and intra-party disputes,²³ (c) Local government autonomy,²⁴ (d) Review of the impeachment of Political office holders,²⁵ Resolution of disputes between the Federal Government and

States²⁶ and as between States over resource Control, ²⁷ (f) Resolution of disputes between various Arms of Government ²⁸ etc.

5.0 CHALLENGES TO JUDICIAL INDEPENDENCE

Despite Constitutional safeguards, some of which have already been highlighted above, independence of the Judiciary in Nigeria has continued to face many daunting challenges. Some of these include the following:

(a) FINANCIAL DEPENDENCE OF STATE JUDICIARIES

This stems from the fact that while the Constitution mandates financial autonomy for the Judiciary, its practical implementation, especially at the level of the federating units or States, remains a mirage. As we speak, many State judiciaries still rely on the executive for funds for everything, thereby hindering their ability to carry out basic operations, facilities and even pay staff salaries while it must be conceded that here in Edo State, we have made significant progress in this area for which we commend the Edo State Government, not too many States around the country are this fortunate. What we find is that in many of such States, the Judiciary still go cap in hand virtually on a daily basis to appeal and source for funds. The success or otherwise of these daily pilgrimages to the executive is often determined by the benevolence of the incumbent governor. We may recall that in the ensuing and persistent national

fight to implement and enthrone the constitutionally guaranteed financial autonomy for the judiciary, there has been several industrial and court actions by the judiciary staff Union of Nigeria (JUSUN) which has largely left the union scarred and battle weary due to stiff resistance or pushbacks from some State executives.

(a) BUDGETARY ALLOCATIONS

Akin to the point that has just been made, is the fact that even where funds are directly charged, the adequacy of budgetary allocations and release of funds by the executive remains a concern; adversely impacting infrastructure development, training, and welfare of Judicial Officers and the Judiciary.

(b) SOCIAL MEDIA CHALLENGE

This digital age has come with plenty of benefits, some of which have radically changed the way adjudication was conducted in the past. For instance, we now have virtual hearing of cases, electronic filing of Court processes. Electronic service and even provisions for digital recording of Court proceedings etc. All of these are now contained in various Rules of Court. In the labyrinth of these loads of positives, we however now also have many situations where due to blatant abuse of various Social Media Platforms, the independence of the Judiciary is gradually being threatened or eroded. One

of such encroachments is the existence of an almost parallel Judiciary in the social media space with, "unofficial or extrajudicial Courts". In these largely unregulated Courts, the actors, under the guise of content creation, constitute themselves into Prosecutors, Lawyers, Judges and executioners over matters, some of which are still pending or anticipated in Court. In doing so, they regularly subject potential or pending cases of social media trials and unfair commentaries even when they know little or nothing about the facts and circumstances of the cases or issues devoid of evidence. While it is true that our courts are not courts of public opinions, justice is rooted in public confidence and the perception of the proverbial reasonable man.²⁹ In this sense, therefore, while Judges are obliged to ignore the outlandish views expressed extra judicially on social media, the problem however is that these contents are believed by unsuspecting members of the public without questioning the veracity and motives of such publications. When such cases eventually find their way to Court and the Judges after a careful evaluation of available evidence and the law, holds contrary to the verdict of social media pundits, such situations can only go to feed unsubstantiated negative perception of the judiciary and spurious allegations of corruption or improper conduct. This undoubtedly constitutes very active threat against the independence of the judiciary in Nigeria.

(c) POLITICAL INTERFERENCE

This serious threat to judicial independence may take the form of direct or indirect meddling in the performance of judicial functions, skewed appointment processes, poor funding, or resistance by some state executives to the grant of financial autonomy to the judiciary of those states (not Edo). There have even been recent reports of attempts by some State Governors to unlawfully remove some Heads of Courts in their States from office without recourse to the NJC. All of these only strike at the heart of our collective quest for judicial independence. In respect of this, in the case of **HON. JUSTICE RALIAT ELELU-HABEED & ANOR V. THE HONATTONEY GENERAL OF THE FEDERATION & ORS**³⁰ on the 30th day of April, 2009, the Governor of Kwara State as Head of the Executive forwarded an address to the House of Assembly in which the Governor concluded that the appellant, the head of the Judiciary in Kwara State be removed from the office of the Chief Judge of Kwara State “for inability to discharge the functions of her office and that her act of misconduct stated above also contravened the code of Conduct for Chief Judicial Officer for the State”.

The House of Assembly summoned, ordered and directed the appellant to appear at its plenary as part of the process of its exercise of disciplinary

control over her. The appellant instituted an action at the Federal High Court where she asked the court to interpret the provisions of the constitution particularly sections 6, 153(1) and paragraph 21(d) of the 3rd Schedule to the Constitution of the Federal Republic of Nigeria 1999 and determine whether the Governor and the House of Assembly can exercise or constitutionally exercise disciplinary control; over her without the input of the National Judicial Council, the body exclusively empowered under the Constitution to exercise disciplinary control over Judicial Officers including the Chief Judge. The Federal High Court dismissed all the objections on jurisdiction and granted all the claims of the appellant. The appellants appealed to the Court of Appeal. The learned justices with a majority of four to one came to the conclusion that the Federal High Court lacked the jurisdiction to adjudicate on the matter. Both parties appealed and cross-appealed to the Supreme Court. The Supreme Court held that, having regard to relevant provisions of the 1999 constitution, the Governor of Kwara State and the House of assembly of the state cannot removes the Chief Judge of Kwara State from Office without recourse to and participation of the National Judicial Council in the exercise. Therefore, the Governor of Kwara State and the House of Assembly of Kwara State acted outside their powers since they arrogated onto themselves the powers of the National judicial council which they had no authority to do.

When the Constitution has stated steps that must be taken before an action can proceed then omitting to do so would render such an act one made in futility. The governor of a State must await the recommendation of the NJC before proceeding to act with the State Assembly on the removal of a Judicial Officer including, the Chief Judge.

(d) CORRUPTION

Corruption is a global phenomenon that cuts across all institutions. Like every other body, there are pockets of bad eggs here and there. The Judiciary is not an exception. Recently, former President Obasanjo in his new book, Nigeria: Past and future, publicly alleged that the judicial system has become a court of corruption rather than a Court of justice" he warned that justice in this Country has,"... become commodified, with despair, anarchy and violence replacing justice, order and hope." ³¹ Clearly, alarmist and over-generalised as these remarks might be, the point that must be underscored is that a corrupt judge is a grave source of worry for all lovers of justice and judicial independence.

In the words of Justice Mohammed Uwais (former Chief Justice of Nigeria):

.... A Corrupt Judge is more harmful to society than a man who runs amok with a dagger in a crowded street,.

The latter can be restrained physically. But a corrupt Judge deliberately destroys the moral foundation of society and causes incalculable distress to individuals through abusing his office, while still being referred to as honourable...

The hydra-headed monster of corruption is one that goes beyond illicit exchange of money. As I have said in numerous other fora, this scourge of corruption extends to and also includes a clear semblance of corruption. Therefore, corruption, like bias, may be actual or apparent. It is actual, where the judge has direct pecuniary or other interest in the outcome of the litigation whereas it is apparent where there is a semblance of it. In either case, a Judge cannot reasonably lay any claim to judicial independence. It is a self-inflicted impediment to his liberty to act judicially or judiciously.

The Nigerian Judiciary has not denied the existence of corruption within its ranks. Rather it has continued to fight the scourge within its enclave with all its might. Paragraph 6 of the national judicial Policy of the NJC, earlier referred to, clearly states that, "The National Judicial Policy recognizes that the greatest and most damaging challenge to administration of justice mere exhortation and sentiments." To this end, several Judicial Officers have been dismissed from office on proven cases of corruption by the NJC and the various Judicial Service commissions at the state level.

6.0. CONCLUSION/RECOMMENDATIONS

This paper has dealt with Judicial Independence, Democracy and Rule of Law in Nigeria. In doing so, through the prism of relevant provisions of the 1999 Constitution and the Law, as well as some decided cases, a critical look has been given to this all-important topic, especially in the areas of the legal framework and pathway for the attainment of the much-desired judicial independence, various aspects of this subject matter, the challenges and so on. From this discourse, it is clear that for there to be real independence of the Nigerian Judiciary, it is recommended that the constitutional provision of financial autonomy for the Judiciary must be fully implemented in all states of the Federation.

In doing so, adequate budgetary allocations must be provided by the Executive aimed at ensuring that the Judiciary as an Institution is well funded. The process of appointment and promotion of Judges must also be reformed to ensure that political interference in the process is eliminated. We must be mindful of the fact that the power of the Judiciary lies in the confidence our people have in its activities and decisions, which every Judge must protect. To this end, it is recommended that there has to be more serious concerted efforts to enforce the provisions of the Cyber Crimes Act, 2015 with a view to discouraging unwarranted wanton publications in our digital media space that are clearly aimed at maligning or prejudicing the exercise of Judicial Independence in adjudication.

No matter the personal view held by all of us on this subject matter, one thing that is crystal clear is that if you do not want an Independent Judiciary today because you are in power, a day will certainly come when you will earnestly crave for Judicial Independence; having now found oneself on the other side of power or out of office.

I thank you all for your patience in listening. God bless.

***Hon Justice Daniel Iyobosa Okungbowa,
Chief Judge
Edo State.***

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3. National Judicial Council (NJC), "National Judicial Policy" of April, 2016, paragraph 7(1)
4. Bryan A. Garner, Black's Law Dictionary (9th ed, Thomson Reuters, 2014), p. 838.
5. See: Eze V FRN (1987) NWLR (PT 51) 506
6. Constitution of the Federal Republic of Nigeria 1999, Section 6 (6) (b)
7. (2017) LPELR-42719(CA) Per GEORGEWILL, JCA (Pp. 65-67, paras. B-A) See also: Garba & Ors. V. University of Maidaguri (1986) 1 NWLR (Pt. 18) 550, Obeya Memorial Specialist Hospital Ayi-Onyema Family Limited V. Attorney General of the Federation & Anor (1987) LPELR-2163(SC).
8. (1999) LPELR-3162(SC)
9. Article 14
10. Article 7
11. Supra
12. (2003 LPELR – 610(SC) 23-24, paras E-A, per BELGORE, JSC
- 13 (2015) LPELR 24323(SC) at page 32 para. B. See also: Global Transport Oceanico S. A. & Anor v Free Enterprises Nig. Ltd (2001) LPELR 1324(SC).
- 14 Constitution of the FRN 1999, section 292
- 15 (2017) LPELR-43391(CA).
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18. Shakespear's "Julius Caesar" III, 1, 60 – 62)
19. Se: Sahara Reporter & anor v. Saraki (2018) LPELR-49738 (CA)
20. (1986) NWLR (Pt. 18) 621, (1986) LPELR-3186(SC) See also: Shara Reporter & Anor V. Saraki (Supra)
21. Governor of Lagos State v Emeka Ojukwu (Supra)
22. See: All progressive Congress V. Mohammed Abubakar Buba & Ors (2022) LPELR-57495(CA)
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24. AG of Federation v AG of Abia & Ors (2024) LPELR-62576 (SC), Edo State House of Assembly & Ors v. Igbinedion & Ors (2021) LPELR-55990(CA), Attorney General of Lagos State V. Attorney General of the Federation (2004) LPELR-10(SC)
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28. Governor of Rivers State V. Rivers State House of Assembly & Ors (2024) LPELR-62961(CA)
29. See: The Federal Republic of Nigeria v M.K.O Abiola (1995) 7 NWLR (Pt. 405)1
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