

**ROAD MAP TOWARDS ACHIEVING A KNOWLEDGEABLE,  
EFFICIENT AND INTEGRITY – DRIVEN MAGISTRACY**

**A PAPER PRESENTED BY**

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## ROAD MAP TOWARDS ACHIEVING A KNOWLEDGEABLE, EFFICIENT AND INTEGRITY-DRIVEN MAGISTRACY

### 1. INTRODUCTION

When I received the letter of invitation to make a presentation to this august body, I felt some sense of trepidation. My feeling is predicated on the fact that in the course of my sojourn at the bar, I was privileged to appear before many of the magistrate courts across the state and I am aware that we have a crop of seasoned and erudite jurists in the fold who have distinguished themselves in their judicial calling.

Furthermore, when I juxtaposed the topic of my presentation, with the theme of the conference, I discovered that this paper is pivotal to the entire exercise.

It is indeed my sincere honour and privilege to make this presentation to this distinguished audience of eminent jurists. I hope my presentation will meet your expectations. If there are any lapses on my part we can be rest assured that we have more than enough legal minds in the house to fill up the gaps.

This conference is coming up at a very crucial period of the nation's political history. We are at the threshold of a political transition. In a few months, elections will be conducted into the different tiers of government. The transition period is normally characterised by a spate of activities culminating in an increase in litigation in our courts. The courts have always played crucial roles during transition periods. The jurisdictional powers of the courts will be invoked in both civil and criminal proceedings and judicial officers must brace up to meet the coming challenges.

It is in this vein that we must commend the organisers of this conference for choosing a theme which is quite appropriate to facilitate and sustain a magisterial bench that will adequately secure an effective and efficient justice delivery system that will meet the expectations of the populace.

From the topic of this paper, there are three key words that stand out. They are: **Knowledge, efficiency and integrity**. I will adopt a straight forward approach by discussing the subject under the key words of the topic.

### 2. KNOWLEDGE

In the immortal words of that great English Scholar, **Francis Bacon**, "**Knowledge itself is power**"<sup>1</sup> This statement underscores the importance of knowledge in any endeavour in life.

In the dispensation of justice the importance of knowledge of the law cannot be overemphasised. The Roman jurist, **Justinian**, writing in his *Institutes* made two categorical remarks about knowledge thus:

*9(i) The ignorance of the judge is the misfortune and the undoing of the*

<sup>1</sup> *Religious Meditations Of Heresies*

*innocent; and*

- (ii) *A judge should have two salts – the salt of wisdom lest he becomes insipid and the salt of conscience lest he becomes devilish”*

One of our own living oracles of the law, the **Hon. Justice Chukwudifu Oputa (rtd)**., maintained that *“as an effective captain at the wheel of justice delivery, the judge owes himself and the society the obligation to be up-to-date, to improve his intellectual ability, and to widen his knowledge and experience of the world and of the law and its procedures”*<sup>2</sup>

In the American case of ***Sardino V State Commission on Judicial Conduct***,<sup>3</sup> the court opined that a continuing pattern of legal error that is so extensive that it demonstrates that the judge does not possess adequate competence in law could amount to misconduct or behavior inconsistent with the role of a judge.

Furthermore, in the Nigerian case of ***Anisu v Osayomi***<sup>4</sup> the Court of Appeal maintained that it is the duty of every court of law to *“ascertain the law and to give full effect to it.”*

Now all these will naturally lead us to a critical appraisal of the machinery for the appointment of judicial officials in Nigeria, with particular reference to magistrates. Under the Constitution, the body saddled with the responsibility for the appointment of magistrates is the **Judicial Service Commission**.<sup>5</sup> It is to be observed that unlike the Constitutional provisions on the appointment of judges,<sup>6</sup> the constitution is silent on the qualification of persons to be appointed to the magisterial bench. The matter of qualification is at the absolute discretion of the Judicial Service Commissions of the various states.

It is seriously recommended that apart from the requirement of a certain number of years of post call experience, prospective applicants to the magistracy should show evidence of actual post call experience such as recent judgments obtained in criminal or civil suits conducted by the applicants before some of our superior courts. This will help the commission to ascertain the level of competence of the applicant. Experience they say is the best teacher.

There have been some instances in our state judiciary, where some people, entirely bereft of any form of experience at the bar have found their way to the bench. They are thus constrained to learn the rudiments of practice and procedure while sitting on the bench. A case of *putting the cart before the horse* or the *tail wagging the dog*. This is quite an unfortunate situation for a process as sensitive and strategic as the administration of justice.

2. Oputa: In The Eyes Of The Law 1992, P. 13

3. 448 NE 2d 83 (NY 1983)

4. (2000) FWLR (Pt. 29) 2341 at 2349

5. See Part II, 6(c) of Third Schedule to the 1999 Nigerian Constitution

6. See generally Chpt. VII of the 1999 Constitution

We must however salute the pragmatic judicial tradition in Nigeria whereby newly appointed magistrates and judges are attached to more senior colleagues on pupillage for about a month or two. This arrangement affords the newly appointed judicial officer, the opportunity of understudying the process of adjudication. He is educated on how the cases are listed, the trial procedures, the issues of law and fact arising in each case, the mode of recording of proceedings, how judgments are written and how enrolled orders of judgments and rulings are drawn up or drafted.

After appointment to the bench, the erudition of a judicial officer can be assessed through his judgments and rulings particularly by the verdict of the appellate courts when there are appeals against such judgments.

The question then is how we can ensure that we have a magistracy that is Knowledge driven. The answer must lie in the determination of the judiciary to pursue the ideals of **continuing legal education**. The commitment must be both private and public.

Every magistrate must be disciplined enough to dedicate time for private legal research. He must build a versatile library made up of current statutes, Law reports and practice books. He must read up the authorities cited by counsel in the court and go the extra mile of researching on more recent decisions on the point. He must master the facts of the entire case by meticulously studying the record of proceedings.

In this age of **information technology**, the process of legal research has been simplified. The declining cost of microcomputers and the development of electronic sources of information have introduced a revolution in the field of legal research. The modern trend has enabled low cost digital storage of information, rapid transmission of data across computer networks and sophisticated retrieval and processing of electronic documents and information.

The worrisome aspect however is that in the midst of these pragmatic and progressive trends, a vast population of the legal profession in Nigeria is yet to catch the vision of information technology. Lamenting the current mood, a leading exponent of information technology in legal research in Nigeria, **Oladipo Bali Esq.** declared that *“the internet represents both a threat and an opportunity to members of the legal profession.*

*As expected, most lawyers have simply refused to wake up to the challenges thrown up by information technology as a whole. How else can one explain the fact that most lawyers (and judges) are not computer literate not to talk of internet literacy----- Time is not on the side of the ‘techno phobic’ lawyer or judge”<sup>7</sup>*

In a recent paper which I presented at the 2009 Law Week of the Benin Branch

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7. Bali: INFORMATION TECHNOLOGY AND THE LAW

of the Nigerian Bar Association, I opined that “very soon, the concept of literacy will be redefined in consonance with the dictates of the digital age. The ability to read and write can no longer be the *sine qua non* for classifying a person as either literate or illiterate. Computer literacy will be the determining factor”<sup>8</sup>

### 3. EFFICIENCY

The aspect of efficiency involves the need to develop and organise the magistracy in such a manner that the effective dispensation of justice can be achieved with the minimum use of resources, time and effort. An efficient driven magistracy is one that is effectual, effective, competent and manned by capable professionals.

Before the Courts were established, every man was Law unto himself. He went about armed. Then the mighty suppressed the weak. Man was in the state of nature. In the words of **Thomas Hobbes**, men lived in a condition of war: “*Such a war as is of every man against every man*”<sup>9</sup>

But with the establishment of courts, men laid aside their arms and carried their causes to the courts in the fervent hope of obtaining justice. Our consideration is how we can position our magistracy to meet the fervent aspirations of litigants who daily throng the courts in their quest for justice.

The process of adjudication in our magistrate courts is through the **adversarial method**. Under this system, a litigant is required to prove his case by leading evidence. The other side is also required to do likewise. The magistrate presides as a neutral umpire; he is not expected to descend into the arena. There are multiple rules and procedures to be followed. Most of the time there are incessant adjournments. Invariably, trials are often delayed. This is the bane of the system of administration of justice in Nigeria.

Many of our jurists have bemoaned this unsavoury situation. **Idigbe (JSC)** of blessed memory commented thus:<sup>10</sup>

*“A state exists to do justice – justice to the state and justice to the citizen ----- speedy trial and fair hearing therefore becomes an aspect of public justice which sets a standard fixed by law and society, which a judge must attain in the determination of cases before him and in respect of which no person in society is allowed to compromise.”*

In another case, our own **Obaseki (JSC)** (as he then was) put it this way:<sup>11</sup>

*“Justice delayed is justice denied is the favourite song of today. Any act or conduct of a judge which denies justice to the parties within the time stipulated*

8. AKHIHIERO: LEGAL RESEARCH IN A DIGITAL AGE: published in [www.nigerianlawguru.com](http://www.nigerianlawguru.com) and (2002) UNIBEN LAW JOURNAL pp. 92 – 107

9. Hobbes: Leviathan (1651) pt. 1, Ch. 13

10. Ariori v Eleno (1983) 1 ScNLR 1

11. Ifezua v Mbadugha (1984) 1 SCNLR 427

*by the Constitution amounts to a miscarriage of justice in the determination of a case”*

Ordinarily, proceedings at the magistrate's courts should not suffer any form of delay because the trials are summary trials. There are no trials on Information or exchange of pleadings at that level. Unfortunately, the absence of these complex procedures has not quite expedited trials in these courts.

The reasons for the delay in trials before the magistrate courts are legion. The first problem in this regard is the attitude of some magistrates to their judicial duties. To a very large extent, the attitude of the magistrate will determine his level of efficiency.

The dispensation of justice requires an attitude of discipline and diligence. The starting point is the issue of punctuality. Punctuality they say is the sole of business. Diligence requires that a court should sit at 9.00 a.m. prompt. When the court maintains a strict tradition of sitting early, the litigants and their counsel will be forced to fall in line.

Another cause of delay is the approach of lawyers to litigation. Majority of adjournments are at the instance of counsel for the parties. Some lawyers are just not diligent in the prosecution of their cases. Often times they inundate the courts with letters for adjournment. Sometimes they feign illness and fabricate all kinds of excuses. Some even deliberately delay trials when they sense that they are on the losing side.

In the face of these unwholesome attitudes of some litigants or counsel, a magistrate must be the master of his court. He must be in firm control of the proceedings. Applications for adjournments must be well founded. Frivolous requests should be refused. Furthermore, adjournments should be at short intervals. In civil actions appropriate costs should be awarded to deter indolent parties. This should be the approach of the court.

Another problem is that of inadequate infrastructure and resources. Some magistrates have to travel long distance to get to their courts, without any official means of transport. They are compelled to join public transport, sometimes in the company of litigants who have their matters pending in their courts. There is also the problem of inadequate residential accommodation. Most of these factors affect effective dispensation of justice.

Sometimes, the course of justice is seriously hampered by the use of obsolete court facilities during proceedings. In this digital age, we need up to date recording machines to facilitate the dispensation of justice. Our courts should be equipped with modern electronic recording system or at least verbatim reporters should be employed to record proceedings instead of the present long hand approach. There

should be functional standby electricity generators, photocopiers, enough stationery etc, etc. With all these in place, the quality of justice delivery will be greatly enhanced.

We cannot conclude our consideration on the aspect of efficiency without saying something about the remuneration of magistrates. Taking into consideration, the sensitive and arduous duties of the magistracy in the justice delivery system, we strongly advocate a comprehensive review of the emolument package of magistrates to bring it in line with the present economic realities. The present take home pay of magistrates is not commensurate with the nature of their functions as judicial officers. There is a wide disparity between the emolument package of the members of the lower bench and that of the higher bench. Curiously, they are both involved in the same functions, namely the process of adjudication.

It is urgently recommended that the government should enhance the emoluments of judicial officers on the lower bench by introducing some welfare allowances. This will cushion the effect of their hectic judicial functions and serve as an incentive and motivation for a more efficient system of justice delivery at that level.

#### 4. **INTEGRITY**

The element of integrity involves the possession of firm principles, and the practice of steadfastly adhering to high moral principles or professional standards. There is no doubt that honesty and integrity are the very minimal requirements of the judicial office. A magistrate must be a man of unquestionable integrity.

Way back to biblical times, God gave a solemn charge to judges as follows:

*“And I charged your judges at that time, saying, hear the causes between your brethren and judge righteously, between every man and his brother, and the stranger that is with him.*

*Ye shall not respect persons in judgment; but ye shall hear the small as well as the great , ye shall not be afraid of the face of man; for the judgment is God’s”<sup>12</sup>*

Judicial courage and integrity are two vital qualities a magistrate must possess. A magistrate must not accept gifts from litigants, their friends or relations either before, during or after the trial.

For as **Sir Francis Bacon** warned, *if a judge accepts such a gift once, the word will soon go round that the judge has a price for the justice which he administers.*<sup>13</sup>

12. Deut. 1 16-17 KJV

13. Bacon: Essay of Judicature, Lord Denning: Landmarks in the Law p. 33-34

Furthermore, integrity demands that a magistrate should not adjudicate in a matter in which he has any personal interest or where he is related or connected to any of the parties. When such a matter appears on his cause list, he must disqualify himself and transfer the matter from his court.

Where it is expedient that there should be communication between a litigant and the presiding magistrate, the communication should be done in such a manner that the other party will be put on notice.

A magistrate should be resolute to dispense justice without fear or favour. He must not mutilate or alter the records of proceedings. Neither should he tamper with the exhibits in the case.

Like the proverbial Caesar's wife, a magistrate should be above board, he should be beyond suspicion. He should never conduct himself in any manner to give the impression that he has taken sides with one party against the other. Justice should not only be done, but be seen to have been done.

On a final note on this subject of judicial integrity we must understand that as a free member of the society, a magistrate may engage in honourable social and recreational activities such as weddings, sports, religious engagements and philanthropy, provided such vocational activities do not affect the dignity of his office or interfere with the performance of his judicial duties. So he must avoid social relationships and interactions that are improper or give rise to an appearance of impropriety, or that appears to cast some doubts on his ability to decide a case impartially or that seems to bring the judicial institution to disrepute. He cannot be a member of a secret society or any organization that practices invidious discrimination on the basis of race, religion, gender or political affiliation.

## 5. CONCLUSION

On the whole, we have tried to chart the road map towards achieving a knowledgeable, efficient and integrity driven magistracy. We observed that candidates for such high office must be men of superlative legal erudition. Although they may not have the sagacity of Lord Denning, they must be people who have cut their teeth in legal practice.

A common catch phrase of lawyers when they address the court is that "*the law is written across the breast of the court.*" This is not meant to flatter the court but to remind the judges that they are expected to maintain a level of erudition that is superior to that of the bar.

Furthermore, we emphasized the point, that there is the need to overhaul the machinery of justice in the magistracy, to guarantee maximum efficiency. The justice delivery process needs to be fast tracked. Modern technological developments have introduced us into the age of digital services. The judiciary must



take advantage of these cutting edge technologies. Judicial officers must be trained to become proficient in the use of these modern tools. We also highlighted the need to introduce motivating remuneration packages to enhance judicial productivity in the magistracy.

Finally, we harped on the need to raise a crop of godly and God fearing magistrates. The element of personal integrity is fundamental to any system involved in the administration of justice.

We must draw the curtain at this stage. I sincerely apologise if there are some salient areas which the paper did not address. I am sure that as we discuss further on the subject, those areas will be adequately covered.

Thank you and God bless you!

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