

# The nigerian judiciary in the 21st century and the challenges in justice delivery

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## A. INTRODUCTION

The Judiciary, as it is always said, is the last hope of the common man. This claim is predicated upon its role in protecting the rights of every person, cooperation, organization e.t.c against violation by the strong in the society. The aforementioned role lies at the heart of every judicial institution in the world hence, constitutes the justification for its existence. The Nigerian Judiciary, whether at the federal or state level has, ever since it came into existence, struggled to assert its rights so as to perform this duty. Towards the last decade of the 20<sup>th</sup> century, it suffered emasculation and humiliation in the hands of successive military regimes. This situation was worsened by the fusion of executive and legislative powers. This arrangement gave so much power to the military that the judiciary was overshadowed and the common man whose rights were constantly under threat resorted to God for redress.

The beginning of the 21<sup>st</sup> century coincided with the coming into power of a democratically elected government. Hopes were high that things would change; that the judiciary would be able to assert its rights and adjudicatory powers over every person more so that the constitution had new provisions that would guarantee the independence of the judiciary so as to ensure the efficiency of justice delivery. In this research work, we intend to look at the Nigerian judiciary in the 21<sup>st</sup> century with a view to identifying its challenges in justice delivery. The work is divided into six parts. The first is the introduction, the second is the conceptual clarification of terms, the third discusses the judiciary during the military rule, the fourth discusses the constitutional reforms and safeguards put in place to ensure the independence of the Judiciary and the efficiency of justice delivery, fifth discusses the challenges in Justice delivery, sixth, the is the conclusion and recommendation.

## B. CONCEPTUAL CLARIFICATION OF TERMS

Justice cannot be done to this topic without defining some key words in the topic of research. These words are: Judiciary, 21<sup>st</sup> century, and justice delivery. A good understanding of these terms will help us understand the scope of our work so as to exhaustively discuss the topic.

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## *I. JUDICIARY*

1. **The Judiciary:** the Judiciary is defined as the branch of government that is endowed with the authority to interpret and apply the law, adjudicates legal disputes, and otherwise administers justice.<sup>1</sup>
2. **21<sup>st</sup> Century:** The 21<sup>st</sup> century is the current century of the anno Domini era, in accordance with the Gregorian calendar. It began on the January 1, 2001 and will end on the December 31, 2100.<sup>2</sup>
3. **Justice Delivery:** this can be referred to as the act and process through which the citizens go to court, ventilate their grievances and are granted remedies by the courts and tribunals

The Topic of discuss can be understood to mean the factors undermining or militating against the efforts of the courts in the process and duty of hearing and adjudicating over cases as well as granting remedies to the winning party.

## **C. NIGERIAN JUDICIARY BEFORE THE 21<sup>st</sup> CENTURY: THE MILITARY EXPERIENCE**

The pre 21<sup>st</sup> century judiciary suffered dominance in the hands of the successive military regimes. The military suppressed and muffled the judiciary through:

- I. The enactment of Decrees that suspended and modified the Constitutions
- II. The fusion of the Executive and Legislative Powers
- III. Ousting of the Jurisdiction of Courts to hear and determine some matters
- IV. Creation of Special Military Courts (Tribunals) to hear some matters

### *I. The enactment of Decrees that Suspended and Modified the Constitutions:*

the first thing that a Military Government does when it comes into power is to suspend the Constitution, modify it and re enact the same into law.<sup>3</sup> In modifying the Constitution, the military makes itself and its government, supreme above the constitution hence; all other organs and institution are inferior to its powers. The Government also suspends some of the provisions of the constitution that guarantee human rights, merge executive and legislative powers and vest them in the executive, as well as enact some obnoxious laws, the validity and constitutionality of which were not to be questioned before the courts.<sup>4</sup> This structure

1 The Free Dictionary by Farlex <http://legal-dictionary.thefreedictionary.com/judiciary> accessed on 20/1/2017.

2 Wikipedia: 21<sup>st</sup> century: [https://en.wikipedia.org/wiki/21st\\_century](https://en.wikipedia.org/wiki/21st_century) accessed on the 20/1/2017.

3 The Constitution(suspension and Modification) decree No.34. 1984, The Constitution(Basic provisions) Decree 1976. etc.

4 The Constitution (Repeal and Restoration) Decree No. 13 of 1967; Constitution (Suspension and Modification) Decrees No. 32 of 1966, No. 32 of 1975, No. 17 of 1984, No. 17 of 1985, No. 107 of

infringed on the powers of court to make orders against anybody, organization particularly, the military government and its officials.

## *II. Fusion of executive and legislative powers:*

Separation of powers in constitutionalism and constitutional law is a principle that ensures the independence of the Judiciary within the framework of the checks and balances of other organs. During military regimes, the executive and legislative powers are fused together in the executive arm of government leaving the judiciary to stand alone. This phenomenon has scuttled justice in many ways and instances. Judges were afraid of delivering Judgments and rulings that offended the government. Even when some Judges went radical and did deliver rulings against the government, laws were subsequently enacted by the military to legalize or legitimize what would otherwise be wrong or illegal. For example, in the case of *LAKANMI AND KIKELOMO OLA V ATTORNEY GENERAL (WESTERN STATE) AND OTHERS*,<sup>5</sup> the court declared a military decree as invalid and unconstitutional. The federal military government reacted by promulgating the federal military government (supremacy and enforcement of powers) Decree to legalize what otherwise was illegal. The merger of the executive and legislative powers in one organ was like a conspiracy against the judiciary.

## *III. The Ousting of the Jurisdiction of Courts to hear and determine some matters:*

this occurs in particular instances or areas where the military government feels the need to dictate the direction of justice. The military would oust the Jurisdiction of courts to hear and determine cases relating to particular issues. Because the executive and legislative powers are vested in the military government, the validity or otherwise of ousting the jurisdiction of courts was not questioned.

## *IV. Creation of Special Military Courts (Tribunals) to hear some matters:*

After the jurisdiction of courts would have been ousted, the military would set up special tribunals to hear and determine matters on areas that the jurisdiction of courts has been ousted. These tribunals would be presided over by loyalists of the government who would sway the pendulum of justice in the direction that would suit the government.

**Promulgation of obnoxious laws:** a lot of laws were promulgated to frustrate and stifle the judiciary in its duty of justice delivery. A good example was the enactment of decree

1993; Federal Military Government (Supremacy and Enforcement of Powers) Decrees No. 28 of 1970, No. 13 of 1984; Tribunal and Inquiry Decree No. 41 of 1966.

5 *Elias.T.O.* "The search for a Ground norm in Nigeria" *The Nigerian Contemporary Law Journal*, 1970, Vol 1 No 2.

number 5. of 1972.<sup>6</sup> Other obnoxious laws are: the Constitution (Repeal and Restoration) Decree No. 13 of 1967; Constitution (Suspension and Modification) Decrees No. 32 of 1966, No. 32 of 1975, No. 17 of 1984, No. 17 of 1985, No. 107 of 1993; Federal Military Government (Supremacy and Enforcement of Powers) Decrees No. 28 of 1970, No. 13 of 1984; Tribunal and Inquiry Decree No. 41 of 1966 e.t.c. Decree No 5. Of 1972 in particular provided that the Chief Justice of Nigeria would be appointed and dismissed by the head of the federal military government at his discretion. It was subsequent and consequent upon this enactment that T.O. Elias was removed as CJN<sup>7</sup>

#### **D. NIGERIAN JUDICIARY IN THE 21st CENTURY**

The Nigerian Judiciary in the 21<sup>st</sup> century is a judiciary under a democratic rule whose independence and powers are guaranteed by the Constitution of the Federal Republic of Nigeria, 1999(As Amended). Section 6 of the constitution forms the basis for the independence of the judiciary, creates superior courts of record as well as permitted the creation of other courts with Jurisdiction and powers inferior to those of High Courts. Chapter VII of the Constitution makes provision for the appointment of judicial officers and jurisdiction of Courts,

The provisions of the 1999 Constitution, in as far as they relate to the judiciary, its independence and justice delivery are a significant departure from the provisions of the 1979 constitution and the military constitutions. The events that occur between 1978 and 1999 informed provisions of the 1999 Constitution. These innovations that were incorporated into the 1999 constitution in a bit to ensure the independence and smooth delivery of Justice can be seen in:

- I. The creation of National Judicial Council
- II. Security of Appointment, Tenure and Dismissal of Judges
- III. Remuneration and Condition of service of Judges

##### *I. THE CREATION OF NATIONAL JUDICIAL COUNCIL*

The Creation of National Judicial Council(NJC) by the Constitution of the Federal Republic of Nigeria 1999 (As Amended) is the best and most important step taken towards ensuring efficient justice delivery through the independence of the Judiciary. Judicial independence is critical to justice delivery. The NJC Guarantees some level of independence since it is made up of heads of courts and a few senior lawyers who are not part of the other arms of government.<sup>8</sup> The National Judicial Council recommends the appointment and removal of

6 Sanni. A.M “The Nigerian Judiciary trends since Independence”. <http://.9jalegal.com.ng/.../THE%20NIGERIAN%20JUDICIARY%20TRENDS%20SINCE%20...> Accessed 20/2/2017.

7 Ibid.

8 See section 153 of the constitution and the provisions of the part one of the third schedule of the Constitution.

Justices and Judges from office; exercises disciplinary control over such judges or judicial officers as well as collects, controls and disburses all moneys capital and recurrent for the Judiciary. The National Judicial Council is made up of: the Chief Justice of Nigeria who is Ex Officio Chairman of the Council; The next most senior justice of the Supreme Court who shall be Deputy Chairmen; the President of the Court of Appeal; five retired justices selected by the Chief Justice of Nigeria from the Supreme Court or the Court of Appeal; the Chief Judge of the Federal High Court; five Chief Judges of States to be appointed by Chief Justice of Nigeria from among the Chief Judges of States and of the High Court of the Federal Capital Territory Abuja; one Grand Kadi, one President of the Customary Court of Appeal and five members of the Bar.

The membership of the Judicial Council, like mentioned earlier, is drawn predominantly from amongst the justices that are heads of their various courts. The National Judicial Council sets standards for judges, evaluate their performances and recommends their promotion or elevation to higher courts based on their performances.

## II. SECURITY OF APPOINTMENT, TENURE AND DISMISSAL OF JUDGES

A judicial officer enjoys security of tenure as he/ she may only retire upon the attainment of sixty five years where he is a justice of the Court of Appeal or Supreme Court and shall cease to hold office where he attains the age of seventy.<sup>9</sup> Where the Judicial officer is appointed to any other superior court of record, he may retire at the age of sixty and shall retire at the age of sixty five. Based on the provisions of section 291, a judicial officer cannot be removed from office before his age of retirement except upon compliance with section 292 of the constitution. Section 292 appears to have provided two ways through which a judicial officer can be removed. Where the judicial officer is a Chief Justice of the Federation, President of the Court of Appeal, Chief Judge of the Federal High Court, Chief Judge of the High Court of Federal Capital Territory, Grand Quadi of the Sharia Court of Appeal of the Federal Capital Territory Abuja, President of the Court Of Appeal, he shall only be removed upon an address supported by two-thirds majority of the senate; and in the case of a state judicial officer, two-third majority of the State House of Assembly praying “...*that he be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct*,<sup>10</sup>”. Where the said judicial officer is not the head of the court as provided for above, by the President or Governor, as the case may be, acting on the recommendation of the National Judicial Council that the judicial officer be so removed for his inability to discharge the functions of his office or appointment. This provision of the constitution is radically different from what was obtainable during the military rule.

9 See section 291 of the constitution.

10 See section 292 of the constitution of the Federal Republic Nigeria.

### **III. REMUNERATION AND CONDITION OF SERVICE OF JUDGES**

Sections 88, 81 and 121 provide for the revenues accruable to courts. Section 84(1) requires that the remunerations, salaries and allowances payable to members of offices listed in sub section (4) (which members are judicial officers), be paid to them. Sub section (2) requires that such remunerations and allowances be charged upon the consolidated revenue fund of the federation. Sub section 3 further provides that such remunerations and salaries are payable to the holders of the said offices and their conditions of services, other than allowances shall not be altered to their disadvantage after their appointment. Section 121(3) provides for funds accruable to the judiciary and how they would be received. It provides that any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the State shall be paid directly to the heads of the courts concerned. Section 162(9) of the Constitution provides for funds accruable to the courts established for the constitution under section 6. It provides as follows: Any amount standing to the credit of the judiciary in the Federation Account shall be paid directly to the National Judicial Councils for disbursement to the heads of courts established for the Federation and the States under section 6 of this Constitution.

These constitutional provisions were inserted into the constitution to ensure the efficiency and independence of the Judiciary. They appear apt and sufficient but whether they are satisfactorily followed or have satisfactorily achieved the purpose for which they were incorporated into the constitution is a question, the answer to which would be known in the course of this discuss.

### **E. CHALLENGES IN JUSTICE DELIVERY**

The Nigerian Judiciary, despite the innovations and constitutional safeguards in ensuring justice delivery still experiences some challenges that undermine its efforts to ensure that justice is delivered. These challenges include: Delay in Trials, Executive High Handedness and Lawlessness, Corruption, Insufficient Funding and Financial Dependence on the executive Arm of Government, Ethno religious bias and Justice Compromise, Dependence of the Executive Arm of Government for Justice Enforcement, internal interference, etc.

#### **I. DELAY IN TRIALS**

Delay in court proceedings is a major challenge in justice delivery. This is because rights are measured in relation to time. The Nigerian Judiciary in the 21<sup>st</sup> Century has not gotten it right in the area of quick and timely disposition of cases consequently and the resultant delay has in many cases occasioned a miscarriage of justice. Delay in court proceedings whether at the trial or Appellate stages is principally caused by:

1. Counsel
2. The legal system

- a) **COUNSEL:** lawyers are in the habit of causing delay in court proceedings and trials either for their own selfish interest or in order to please their clients. A lawyer delays court proceedings and trials for his own selfish reasons where his client is a rich client and he feels disposing off his client's case in good time would stop the flow of money into his law firm. The lawyer will then drag his client's case by filing frivolous applications and appeals at the slightest opportunity all at the expense of his client. In some other cases, a lawyer whose client is sued in court and who knows that the rights of the litigants in dispute is measure in relation to time would drag the cases in court so as to enable his own client enjoy the rights (E.g. election petitions are time bound. A respondent would frustrate the case of the plaintiff so that time would lapse and the courts would lose jurisdiction)
- b) **DELAY BY THE LEGAL SYSTEM:** this point is closely related to the forgoing in the sense that counsel can only cause delay where the system permits. More to this point is the delay caused by the Practice of Trial Denovo and Appeals on interlocutory matters. **Trial denovo** literally means "Trial commencing Afresh". It is a principle that applies when a judge begins hearing a case afresh either because the judge previously hearing the matter has been elevated to a higher bench, is dead, retired (voluntarily or compulsorily), or dismissed. The law, as it were, forbids a Judge who has been elevated, retired or dismissed from taking further actions in relation to the cases he is handling once he ceases to be a Judge of that court based on the aforementioned reasons. This principle has caused delay in the disposition of cases hence, occasioned miscarriage of justice. A practical example of this can be seen in the hearing of the case of BENJAMIN EZEKE VS WASH PAM. This is a case that was filed sometimes in 1993 before Justice Oyetunde of the Plateau State High Court. Justice Oyetunde could not hear the matter before he died. The matter was transferred to another Judge then Justice Naron and now to justice Pius Damulak the Chief Judge of the state. The case has spent over 20 years without final determination of it. Justice Damulak before whom the matter is pending will retire this year. It is just hoped that he would conclude the case before he retires. If he doesn't, the case will be further transferred to another judge who would begin hearing of same **Denovo**. Another case that has suffered as a result of trial within trial and the conduct of counsel and litigants is the case of ABDUL GANIYU JIMOH VS ABDULLAHI ADAMU & ORS<sup>11</sup> this case commenced in 2006 and up till date, it is still in court. The subject matter is a landed property of the deceased. It was being heard by Justice Y.B.Nimpar of the state High Court. Parties had closed their cases, had adopted their address when the judge was suddenly elevated to the Court of Appeal. Upon her elevation, she became **Funtus Officio**. The matter had to start

11 SUIT No PLD/J216/2006.

Denovo. Unless the practice of trial Denovo is abolished, delay will keep on occasioning a miscarriage of justice like it does now.<sup>12</sup>

## *II. EXECUTIVE HIGH HANDEDNESS AND LAWLESSNESS*

This is another important problem militating against the smooth delivery of Justice. The executive arm of Government has always been at logger heads with the Judiciary in terms of obeying court orders in some other cases, the executive arm of government uses its power to influence justice where it has interest. While during the military rule, this phenomenon could easily be explained away by the fact that the military government was not a democratically elected government, there are no justifications for the failure of Government in the 21<sup>st</sup> century to obey court orders. Government at the federal and state levels is in the habit of flouting court orders with impunity. Under the law contempt proceedings would be commenced against a Contemnor who is alleged to have flouted Court order and if found guilty would be thrown into the prison. This ought to be the fate of a contemnor but in reality; it is practically difficult to throw into prison. A Government official who is in contempt of court order most especially when he acted with the tacit support of the head of the executive arm of government is always protected. The unfortunate thing is that the constitution does not give any powers to the judges or judiciary to take any action against the executive arm where its orders are flouted. Where orders of court are flouted, the party in whose favour the order was made ordinarily can cause contempt proceedings to be commenced against the Contemnor. The government of general Obasanjo flouted court orders; President Buhari is presently flouting court orders. The court had made orders admitting the former National Security Officer Sambo Dasuku<sup>13</sup> to bail but the executive arm of government did not comply with it. There are a lot of examples just that time will not permit me to list them. If the court cannot be respected, then justice no longer exists.

## *III. CORRUPTION*

The monster called corruption has not spared any arm of the government though it can be said with certainty that it is minimal in the Judiciary compared to other arms of government. Corruption is a big challenge confronting the judiciary in the task of justice delivery. Corruption in the judiciary is principally in the form of bribe given to Judges and court officials to tilt justice in favour of the giving side in litigation. A lot of Judges have fallen to

12 This case was handled by a colleague in office while he was in private practice. Long after his left the private bar, the matter is still in court. He met with the plaintiff who was formally his client and the plaintiff lamented ever filing any case. That the money he spent in litigating the case is more than what prize of the subject matter. This situation has clearly occasioned a miscarriage of justice.

13 Premium Times "Again, Court orders release of ex-NSA Dasuki". <http://www.premiumtimesng.com/news/headlines/221407-court-orders-release-ex-nsa-dasuki.html> accessed 27/2/2017.



these bribes and have sold justice to the highest bidders. The transaction of giving and taking bribe happens behind the scene and in most cases, with evidence of these transactions destroyed. Though there ought not to be any reason to explain away or justify corruption in the judiciary, the working condition of some of these judges, particularly the judges of the inferior courts, is deplorable and pathetic such that it makes them vulnerable to receiving bribes.<sup>14</sup> In Northern Nigeria, the Judges of Inferior Courts, The Magistrates and Area Court judges are not treated differently from civil servants. They are paid about the same amount as salaries like other civil servants are paid and in most occasions, their salaries are delayed for months. Some of their courts particularly in the villages are an eye sore. Simple court facilities and stationary are not made available to them yet, they must function as no court can function without these things. Even the superior courts of record are not spared the trouble of having to work under harsh conditions.<sup>15</sup> The only difference is that their salaries are charged from the consolidated revenue funds of the government. But their salaries are not the only things they need in order to deliver justice to the people. They need their allowances and good working condition to function properly however, these allowances and benefits particularly retirement benefits when retired are not paid as at when due. This too has left them vulnerable to corruption. Other arms of government ought to understand that judges whether of the superior courts or the inferior courts are more prone to being offered bribe than any other arm of government and this is because the schedule of their work as judges involves adjudicating on rights and liabilities of parties which rights are most often monetary and huge in nature but that is not the case. In fact, some of these government officials are culprits as they themselves offer bribes to judges in political cases. Some of the justices of the supreme court who are being tried for corruption have actually alleges strongly that they were offered the bribes they are accused of collecting by some government official yet, these government officials have not been invited by the anti graft agencies for interrogation talk more of charging them to court.<sup>16</sup> That is evident of double standards in the fight against corruption but then, like mentioned earlier, there is no and should never be any reason to justify corruption by a judge. A judge who feels the working conditions are not favorable or who feels he cannot stand the pressure when offered bribes should resign his appointment as a judge. He cannot sit and sentence people to prison and some to death yet commits the same offence with the ones, if not a graver, he convicts and sentences accused persons of. The Chief Justice of the Supreme Court, Justice Lawal Mo-

14 Okechukwu Oko “*SEEKING JUSTICE IN TRANSITIONAL SOCIETIES: AN ANALYSIS OF THE PROBLEMS AND FAILURES OF THE JUDICIARY IN NIGERIA*” [https://www.brooklaw.edu/~media/pdf/lawjournals/bji\\_pdf/bji\\_vol31i.pdf](https://www.brooklaw.edu/~media/pdf/lawjournals/bji_pdf/bji_vol31i.pdf) accessed on the 20/2/2017.

15 Ibid.

16 Sahara reporters “Rotimi Amaechi Dismisses Justice Ngwuta’s Bribe Allegation As Fiction”. <http://saharareporters.com/2016/10/21/rotimi-amaechi-dismisses-justice-ngwuta%E2%80%99s-bribe-allegation-fiction> accessed on the 20/2/2017.

hammadu uwais (CJN as he then was) once described the dangers of having a corrupt Judge as follows:<sup>17</sup>

*“A corrupt judge is more harmful to the 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”*

Though government appears to be stern on the issue of corruption, more can be done in the judiciary to ensure that the monster named corruption does not destroy the moral foundation of the society.

#### *IV. INSUFFICIENT FUNDING AND FINANCIAL DEPENDENCE ON THE EXECUTIVE ARM OF GOVERNMENT*

This is another factor militating against the smooth delivery of justice. There is no institution in the world that can function without finances hence, the judiciary needs finances to sustain itself as well as function efficiently. Sections 81(3), 121(3) and 162(9) of the Constitution of the Federal Republic of Nigeria actually stipulates some level of financial autonomy and funding for the judiciary in order to enhance its efficiency.

Section 81(3) of the Constitution of the Federal Republic of Nigeria provides as follows:

*Any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the Federation shall be paid directly to the National Judicial Council for disbursement to the heads of the courts established for the Federation and the State under section 6 of this Constitution.*

Section 121(3) provides as follows:

*Any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the State shall be paid directly to the heads of the courts concerned.*

Section 162(9) of the Constitution provides as follows:

*Any amount standing to the credit of the judiciary in the Federation Account shall be paid directly to the National Judicial Councils for disbursement to the heads of*

17 IBRAHIM. A. (FRHD), LLB, BL, LLM, “INDEPENDENCE OF THE JUDICIARY IN NIGERIA: A MYTH OR REALITY?”.

International Journal of Public Administration and Management Research (IJPAMR), Vol. 2, No 3, August, 2014 page 55-66 or <http://www.rcmss.com>. ISSN: 2350-2231 (Online) ISSN: 2346-7215 (Print)

Ibrahim Abdullahi 2014, 2(3):55-66 accessed on the 12/2/2017.

*courts established for the Federation and the States under section 6 of this Constitution.*

As beautiful as these provisions appear, they have never been fully implemented. The Judicial Staff Union of Nigeria in a bid to ensure that these provisions of the constitution are fully implemented, sued the National Judicial Council,<sup>18</sup> the Attorney General of the Federation, the Executive Governors of the 36 states alongside their Attorneys General seeking the interpretation of the provisions of sections 81(3), 121(3) and 162(9) of the Constitution and reliefs as follows:

1. A declaration that the defendants' failure, Neglect and or refusal to pay the Funds/ Amount standing to the credit of the states Judiciary in the federation/Consolidated revenue Fund Directly to the heads in the various states' Judiciary is a constitutional Breach which has to be abated forthwith.
2. A court order mandating/compelling the Defendants to comply with the provisions of section 81(3), 121(3) and 162(9) of the 1999 Nigerian Constitution (as Amended) in the disbursement of funds to the heads of courts forthwith.
3. An Order of perpetual Injunction to perpetually restrain the defendants, their agents assigns privies etc. from committing any breach of the aforesaid Constitutional/Statutory provisions.

The above reliefs were granted but up till this moment, they have not been implemented and cannot be enforced as the government is a party and enforcing same against the Government is difficult. Failure to implement this judgment implies continuous dependence on the executive arm of government. It also aids corruption and it is evident of our earlier argument that the executive arm of government does not obey court orders.

#### *V. ETHNO-RELIGIOUS BIAS AND JUSTICE COMPROMISE.*

This is more visible where a judge has to exercise his discretionary powers in the course of court proceedings and in evaluating evidence in cases involving persons with whom he shares the same ethnic group or religious beliefs and the subject matter of litigation has a sectarian or ethnic significance. In Nigerian legal system, discretionary powers constitute a substantial part of the powers of judges' in fact, in can be argued that the discretionary powers of judges constitute over 60 percent of their judicial powers. Judges in this new millennium, particularly those with the memories of ethno religious violence who were directly or indirectly affected by such violence, are prone to exercising their discretionary powers to favour a litigant with whom they share the same religion or ethnic affiliation. It would be impracticable to cite examples because discretionary powers and the powers of the trial court to evaluate evidence can be exercised either way to favour either party and the judge

18 JUDICIAL STAFF UNION OF NIGERIA VS NATIONAL JUDICIAL COUNCIL & 73 ORS. Suit NoFHC/ABJ/CS/667/13.

would be justified whichever way he goes unless and until the decision of the court is overruled on Appeal. Even when it is overruled, it would not be on record that ethnic and religious prejudice influenced a judge's decision but lawyers who are in the theatre as well as clients know the reasons behind some of these decisions. Not in any way indicting any judge but just a rhetoric question: What happened to the people who were alleged and identified by witnesses to have killed an Igbo woman in Northern Nigeria<sup>19</sup>? It is just unfortunate that the post military, era particularly the period between 2000 and till date has witnessed a lot of ethnic and sectarian violence hence, made Nigerians more and unnecessarily conscious of their religious and ethnic affiliations than their national identity as Nigerians. This consciousness has permeated the judiciary and affects justice delivery which is very unfortunate.

#### *VI. DEPENDENCE OF THE EXECUTIVE ARM OF GOVERNMENT IN JUDGMENT ENFORCEMENT*

The over dependence by the judiciary on the executive arm of government on judgment enforcement most times undermines judgment delivery. The courts do not have an armed and security or enforcement agencies hence; rely on the police to enforce their judgments. This makes the enforcement of judgments against the executive arm of government or generally in cases where the government has interest difficult. This phenomenon is worsened by the statutory provisions that forbid enforcement of judgments in garnishee proceedings against the government without the consent of the Attorney General who is an appointee of the government.<sup>20</sup> Section 84 of the Sheriffs and Civil Process Act requires the consent of the Attorney-General of either the state for judgment enforcement against the State Government or Federal against the Federal Government before execution can be levied against government establishments in garnishee proceedings.<sup>21</sup> The effect is that the Attorney-General can withhold his consent and frustrate the process of judgment enforcement and the exercise of judicial powers. Though justice delivery is substantially concerned with the process leading to the delivery of judgment and such process has nothing to do with enforcement, inability to enforce destroys the value of any good judgment.

19 An igbo woman was allegedly killed by some Muslim extremist on allegation that she blasphemed the Koran and Mohammed. The extremist were arraigned before a magistrate court which does not have the jurisdiction to try Homicide. As if that was not enough, the Commissioner of justice wrote a legal advice advising the court to discharge the accuse persons. The court quickly discharged them. see Premium times "Court frees all suspects in Kano blasphemy killing" <http://www.premiumtimesng.com/news/headlines/214435-court-frees-suspects-kano-blasphemy-killing.html> accessed on the 20/2/2017.

20 *Idomigie.P.O* "Towards Addressing Infrastructural Challenges in the Nigerian Judiciary". <http://paulidornigie.org/wp-content/uploads/2016/09/List-of-Publications-May-2015.pdf> accessed 20/2/2017.

21 *ibid*.

## VII. INTERNAL INTERFERENCE

There is a high level of interference internally with the process of adjudication and justice delivery. A lot of times, litigants who are desperate to win their cases in court meet Judges or justices who are senior to the ones hearing their cases to pull ranks on the Judges hearing or sitting over their cases. Some of these senior Judges are most often than not, members of the National Judicial Council.<sup>22</sup> Subjecting the Judiciary to the powers and control of the National Judicial Council, though plausible, this has created a new problem when it vested powers in some judges and lawyers who are members thereof. These Judges and lawyers, for selfish reasons, sometimes use their powers wrongly. There may be no record or reference to illustrate this point but it happens. A practical example of a case that exposed the internal politics and interference with justice delivery in the Nigerian judiciary is the case involving Ayo Salami, President of the Court of Appeal. Justice Salami was by a letter elevated to the Supreme Court of Nigeria.<sup>23</sup> His elevation was claimed to have been based on the recommendation of the National Judicial Council (NJC) a council he was a part of. On the surface of it, it appeared as though it was an elevation. Justice Ayo Salami on the other hand rejected offer. He claimed that the elevation was a calculated machination by the Chief Justice of the Federation to displace him from the office of the President of the Court of Appeal so as to bring in a loyalist who would, in constituting panels to hear and determine election petitions, only bring in justices that would favour the ruling party. He, Justice Salami filed a suit against the National judicial Council. In his affidavit in support of his originating summons, deposed to a lot of facts which included the claim that the Chief Justice of the Federation had summoned him (Justice Salami) to his office requesting that he disband the Sokoto State Governorship Petition Appeal Panel on the ground that if the panel was allowed, it would in the Appeal and remove the governor and that would consequently cause the ripple effects as it would lead to the removal of the Sultan of Sokoto. The Conduct of the President of the Court of Appeal attracted a suspension on the recommendation of the National judicial Council. The suspension of Justice Ayo Salami remained in place until he reached the age of seventy which was the mandatory age of retirement. The most important and relevant aspect of this story to this research is the revelation on what happens behind the scene. Judges, most especially those who are heads of court and mem-

- 22 The National judicial Council is vested with the responsibility of recommending for appointment, promotion and dismissal of judges. When a litigant meets a member of the National Judicial Council to talk to a judge hearing his case, the member of the council may promise the judge promotion to a higher Bench. If the Judge is not principled, he would fall the temptation and compromise justice.
- 23 Section 3(2) of the Court of appeal Act provides that a president of the court of Appeal ranks equal with a justice of the Supreme Court. If the law makes the president to rank at par with a justice of the Supreme Court then how does the elevation of Ayo salami who was the president of the court of Appeal rank become an elevation? This section adds credence to the submission of Ayo salami that there was something fishy.

bers of the National Judicial Council pull ranks on Junior Judges in order to ensure that justice is tilted in favour of their interests.

## **F. RECOMMENDATIONS/CONCLUSION**

There should be a general and comprehensive overhaul of the judiciary and justice system. In fact, the overhaul should be from time to time. The reforms should address problems as follows:

- I. *DELAY: on the issue of delay, it is our argument that the principle be modified to prevent the occurrence of injustice. Our position is supported by views of senior lawyers, judges and scholars in the profession. A Senior Advocate of Nigeria, Mrs. Funke Adekoya (SAN), shared the same opinion with us when she said:*<sup>24</sup>

*“De novo doctrine slows down determination of cases and in many instances, causes excessive delay. I think its application should be modified by allowing the new judge to use his discretion. If upon reading the file he thinks he can continue with the case without having to start all over again, so should it be. This will help to avoid unnecessary waste of time”*

Similarly, the octogenarian lawyer, Pa Tunji Gomez, shared the same view with us when he said:<sup>25</sup>

*“The de novo practice is an age-long practice meant to preserve justice in adjudication by ensuring that the same person who would pronounce judgment hears a case from beginning to the end. But I think it should be modified now to discourage a situation where it would cause injustice. For example where the case is nearly completed, a party who brought a matter to court would have invested time not to talk of costs. If the litigants have to start all over again, it would cause hardship. Thus, I would want the rule to be relaxed such that if the parties agree that a new judge should continue where the old judge leaves the matter, then, this should happen”*

Similarly, a Lagos-based lawyer, Mr. Jiti Ogunye, in support of our position has this to say:<sup>26</sup>

*“That doctrine takes a huge toll on the administration of justice. For trial judges before whom cases are pending who are then suddenly elevated to the Court of Appeal, we recommend that regardless of the elevation those judges should continue with*

24 The National Mirror “Adekoya, Gomez, others seek review of De novo doctrine”. <http://nationalmirroronline.net/new/adekoya-gomez-others-seek-review-of-de-novo-doctrine/> accessed on the 20/2/2017.

25 Ibid.

26 Ibid.

*those cases and finished them. In Ghana, we are told that is the procedure. It will not do any harm to the litigants or disrupt justice delivery system. The only caveat is that if those cases should go on appeal those judges should not sit on those appeals when they come for determination. For cases that had to start de novo because the judge is retiring, I think once a judge is retiring the cases that are assigned to him must be expedited in such a way that the judge finishes everything. In other words, the docket of the judge must be moderated in such a way that more cases are not assigned to him until the last day. What we have is today is that three weeks before retirement judges are being assigned cases. I think this can be achieved administratively via practice direction."*

I recommend that the principle be modified to allow for justice. A case should not linger for over 10 to 20 years. Where a judge is elevated, he should be given a window period within which time he will finish hearing his case. Where he retired, the court should also give them a window period within which time the Judge would have decided his or her cases. Where the judge is dead, another judge should continue and not start the case afresh. Unless there is a reform in this regard, the justice system will always find it difficult to deliver justice.

As regards delay on account of the conduct of lawyers and litigants. It is my opinion that this too can be cured. The Legal Practitioners Privileges Committee should review its guidelines to allow Judges Comment on how quick a lawyer disposes his cases. The rules should also provide that only cases disposed in good time will be used in applications for the rank of Senior Advocate of Nigeria. The Legal Practitioners Privileges Committee is a committee that confers on deserving lawyers the highest honour in the profession which is the rank of Senior Advocate of Nigeria. If lawyers know that cases delayed in court can be a setback in their application for Senior Advocate of Nigeria, they will learn to be serious in their cases.

*II. EXECUTIVE HIGH HANDEDNESS AND LAWLESSNESS: on this point, I recommend that the judiciary should have a weapon with which it can compel the executive arm of government to obey court orders. This can be done by inserting in the constitution a clause that will permit the Judges or Justices of the courts petition the president or the Governor before the law makers (National Assembly or State Houses of Assembly). The Law makers will then set up a panel of retired judges or justices to investigate and submit its report. The said panel will then collect all orders of court flouted. The law makers will, if sure, that orders were not obeyed, impeach the Governor or president as the case may be. This will make the chief executives obey court orders.*

Where the disobedience to court order is from any Agency, Public Servant or Civil Servant, there should be law in place that will direct the civil servant to either lose his job or lose promotion. In cases where the person that disobey the court orders is an ex President or a

recipient of National Honours, he should be made to lose his national Honours. This will assist in ensuring justice.

*III. CORRUPTION: the working conditions of the judicial officers should be improved. Salaries are paid. The judgment of the court where the judiciary state union of Nigeria took the Government to court is fully implemented*

It is hereby recommended that there should be an over haul of the justice system, new innovations be introduced. Thanks.