

UNIVERSITY OF ILORIN



THE ONE HUNDRED AND THIRTY-NINTH (139TH) INAUGURAL LECTURE

**“*JUDEX*: HOPE FOR THE HOPEFUL AND THE
HOPELESS”**

By

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Distinguished Ladies and Gentlemen

Preamble

All praise is due to Allah, the Owner of all the Worlds, the Owner of the Day of Judgment and the last Judge who has decreed that I present the 139th Inaugural Lecture of this great University today. I praise Him, I adore Him and I glorify Him. *Alhamdulillah Rabbil Aalamin* to the Owner of Justice. He alone I worship and to Him alone I seek for help. Which of the favours of Allah will I deny?
None

I appreciate the University Administration for providing this unique opportunity for me to present this second lecture from the Faculty of Law, coming ten years after that of my elder brother, teacher and mentor, Professor Abdulqadri Zubair who delivered the 66th Inaugural Lecture on March 27, 2003 with the title “**Shariah in our Citadels of Learning.**” This lecture is the first from the Common Law Programme and the first from the Department of Jurisprudence and International Law. Like my choice of course of study as Law being fortuitous from the mundane perspective, but divine from the spiritual realm, so is my sojourn in academic. It was designed by the Owner of all plans Himself because it never crossed my mind for one second that I’ll ever be a University lecturer. *Alhamdulillah Rabbil Aalamin.*

The concept of Inaugural Lecture provides newly appointed Professors with the opportunity to inform colleagues, the campus community and general public of their work to date, including current research and future plans. Such lectures are expected to be delivered within 12 months of such appointments.¹ Mine is coming up about 13 months after I was appointed Professor of Jurisprudence and International Law in October, 2012. This lecture is titled “**Judex: Hope for the Hopeful and the Hopeless**” and will give an insight into the central and fundamental position of the *judex* in the political, social and economic balancing of the Nigerian society in particular and that of any society in general.

Introduction: Why *judex* in Jurisprudence

There have been contestations that the *judex* is a study in Public Law and not in Jurisprudence but we need to appreciate that the urge

¹ See www2.ul.ie/web/WWW/Administration/Ceremonies/InauguralLectures assessed on 24th September, 2013. Makidisi and Goddard traced this practice to an Islamic root in Goddard, Hugh *History of Christian-Muslim Relations* Edinburg University Press p.100 available on en.wikipedia.org/wiki/Madrasa assessed on 16th November, 2013

to understand and appraise the relevance of the subject-matter must lead directly from the apparatus of the rules and principles of the law to jurisprudential exploration of their meaning and their effects in society. The study of any arm of government cannot be different.² More so, jurisprudence as a subject is “as big as law and bigger”³ and today the frontiers of knowledge have been expanded with interdisciplinary studies and researches.⁴ This position is further complemented by the central role of jurisprudence in legal studies which is essentially to allow students of law and legal practitioners the opportunity to critically think out of the box and provide answers to questions of theory which constantly come up in the course of legal studies or practice by providing ‘pointers, clues and insights.’ For instance the questions like what is the relationship between law and justice? Is law the end of justice or justice the end of law? Must all laws be just? Should a society be ruled by law or justice? What constitutes good reasoning in the context of courts delivering judgments backed up by good reasoning? This may be easily discerned in the day-to-day cases but there are hard cases or principles that are perceived to be novel, recondite and classical. It is only jurisprudence that the courts will turn to provide the leeway in answering all these questions and more.

My first contact with this field of study was at the then University of Ife in 1983 under the tutelage of late Prof. Iluyomade and late Prof. Okuniga both of blessed memory. They taught me the rudiments of jurisprudence and legal theory exposing me to the field of abstract and critical thinking. My association with Prof. Ademola Popoola, Prof. M.T. Ladan and Prof Adaramola has been very beneficial in my choice of work when I found myself in the classroom and

² Freeman, M.D.A. *Lloyd’s Introduction to Jurisprudence* (Sweet & Maxwell:2001) p.3

³ Llewellyn, K. *Jurisprudence* (1962) first published in 1931 **44 Harvard Law Review Association** p.372 reproduced in Freeman *ibid* p.1, See also Egbewole, W. *Notes in Jurisprudence* (in print)

⁴ Harris, D.H. “Socio-Legal Studies in the United Kingdom” **3 Legal Studies** 315

therefore the need for me to pitch my tent. My background as a court going lawyer seriously affected me in taking the area of jurisprudence I eventually settled for which is a jurisprudential study of the judiciary

The classification and characterisation of jurisprudence as the science of law and philosophy of law is still being contested till date. To pigeon-hole jurisprudence as either science or philosophy is to blur over the role of law in a society. To the natural science, empirical experimentation is the focus dealing with matters, while a social scientist is preoccupied with man (woman inclusive) but law is concerned with both. It investigates how and what effect matter has on man. According to Laing, social science posits that one cannot experience the experience of another.⁵

Law has come to understand the composition and psychology of human beings as against the mechanical computations of science and simplistic over assumption of social science by providing the *mens rea* and *actus reus* platforms. In realisation of the different composition of human beings and their behaviours, law created the *judex* to determine rights and duties as prescribed, defined and provided in the various laws in different jurisdictions.

It is very difficult to say with any form of emphasis that jurisprudence is in any of the depicted pictures because in its “mansion there are many rooms.”⁶ It is concerned with the rulers, the ruled, rule governed actions, activities of the officials, the relationship between the officials, and the population of a given society. For the interchange and struggle for supremacy between science and philosophy in the classification of jurisprudence, Bertrand Russel provided a demarcation to the effect that science is

⁵ Laing, R.D. *The Politics of Experience* (1967) pp.16-17 reproduced in Freeman op. cit. p.8

⁶ Freeman op cit p.10

what we know and philosophy is what we don't know.⁷ There is the need to blend the two extremes as against the position of Ladan,⁸ and today's discourse is a justification as *judex* represents the appropriate analysis and inevitability of legal studies from the two perspectives by striking a golden balance. A judge must not consider the facts in isolation of the laws in that regard.

The new thinking in jurisprudence is actually engineered by the jurists who are increasingly interested in questions of moral and political philosophy thus widening the terrain of jurisprudential discourse. In Nigeria, people like Fatayi-Williams, Niki-Tobi, Adolphous Karibi-Whyte, Nweze, Olagunju, Belgore, Akanbi, have championed the new thinking and using jurisprudence to provide answers to the knotty questions which the separationists find difficult to navigate. Today we now have analytical jurisprudence, sociological jurisprudence, realists' jurisprudence, normative jurisprudence with theoretical and institutional potentialities concerned about relationship between law and socio-economic order, conflict resolution⁹, relationship between law and political theory (doctrine of necessity, law and impeachment proceedings),¹⁰ economic analysis of law (resource control cases),¹¹ Marxist jurisprudence, feminist jurisprudence, psycho-analysis of jurisprudence, post modernist jurisprudence all culminating in the

⁷ Russel, B. *My Philosophical Development* p.276 referred to in Ladan, M.T. *Introduction to Jurisprudence-Classical and Islamic* (Malthouse Law Books, Lagos:2008)

⁸ Ladan, M.T. *Introduction to Jurisprudence-Classical and Islamic* (Malthouse Law Books, Lagos:2008) p.7

⁹ Egbewole, W.O. "The 1999 Constitution and Conflict Management in Nigeria" *Nigerian Bar Journal*, 2005 Vol.1 No.1 p.37

¹⁰ Egbewole, W.O. "Impeachment Trial of William Jefferson Clinton Law or Politics?" *Nigeria Education Law Journal* (NELJ), 1999 Vol.2 No. 1 pp 53-63

¹¹ Egbewole, W.O. "The Resource Control Question and Human Rights Violation in the Niger-Delta" in Albert, I & Olarinde N. *Trends and Tensions in Managing Conflict* (John Archers Publishers, Ibadan:2010) p.272

need for all aspects of our law to be subjected to jurisprudential analysis and examination in all best possible.

Essentially, the emerging trend as students of jurisprudence is to constantly engage in the identification and development of new fields, re-thinking the old ones and providing law reform imperatives. If this is done, our laws will cease to be archaic, anachronistic, backward and retrogressive. The question is how well are we doing this? When will there be a change of attitude? The need to start now can no longer be over emphasised in the light of the changing political landscape in our society which naturally must be backed up with laws to meet the challenges of the dynamics. Mr Vice-Chancellor sir, the need for new thinking in law, the need for inter-disciplinary engagements and the need to think outside of the box have been my focus in the academics by bringing *judex* to jurisprudence and thus my story.

Judex as an arm of government

Mr Vice-Chancellor sir, in conceptual terms, *judex* is used in this lecture to depict the judiciary which is an arm of government saddled with the power to interpret the laws of the land.¹² In the course of our research we have come to the conclusion that this traditional role is gradually giving way to the morse pragmatic role of “law making.”¹³ This new role has been criticized by some scholars as not being in consonance with the constitutional roles of the judiciary and that it is against the principles of separation of

¹² Egbewole, W.O. ***Jurisprudence of Election Petitions by the Nigerian Court of Appeal*** (LAP Lambert Academic Publishing, Germany:2011) p.1

¹³ Egbewole *ibid* and see also Ayoola, O. “Lawlessness and the Rule of Law” delivered to the Nigerian Law Teachers Association on 29th May, 1997, *Awolowo V. Shagari* (1979) 6-9 SC 37, *St Mellons RDC V. Newport Corporation* (1953) AC 189

powers.¹⁴ Indeed, Aguda strenuously argued that the judiciary cannot see itself as general supervisor.¹⁵ Our position is that there cannot be a slavish adherence to separation of powers in the face of daunting challenges in the society. If the law is such that the justice of a case will be affected, the *judex* in the exploration of the purposeful and utilitarian interpretation can decide a matter with a view to achieving justice. If this ends up being making a new law ‘so be it.’ Aderemi was not comfortable with this garb being worn by the judiciary and said so in no unmistakable terms in **OBI V. INEC**¹⁶ Equally, Clarence Thomas¹⁷ and Adekeye¹⁸ shared this view.

With respect to their Lordships, this is begging the issue and against the position we have championed for more than a decade that this approach is allowing the judiciary to shy away from discharging its responsibility of doing justice to all manners of people irrespective of the circumstances. If a law as it is will inflict injustice on the citizenry and the legislator is not willing to change it, do we fold our arms and resign ourselves to fate? I think not. The *judex* is established and empowered to do justice and if a law is constraining it to discharge that obligation, it has a duty to declare such laws inappropriate and if to do that is to determine what the law ought to be, then it is discharging its constitutional duty which provides:

¹⁴Rushaw R. J. “The Presidential Election Disputes: The Political Question Doctrine and the Fourteenth Amendment” (2002) **Florida State University Law Review** pp. 603-623; William P. M. “Conservatism and the Seven Sins of Judicial Activism” (2002) 73 U. **Colo. L. Rev.** 1217

¹⁵ Aguda, T.A. **The Judiciary in the Government of Nigeria** (New Horn Press Ltd, Ibadan:1983) pp.16 and 61

¹⁶ *Ugba V. Suswan*(2007) 11 NWLR (PT.1046) 565 AT 645

¹⁷ Thomas C. Speech to Eagle Forum, 9 November, 1996 and reproduced in Foskett, K. **Judging Thomas: The Life and Times of Clarence Thomas** Harper Collins Publishers, New York:2004 p.279

¹⁸ (2013) 4 NWLR (PT.1345) 427 AT 474

“The judicial powers vested in accordance with the foregoing provisions of this section

(a) **Shall extend, notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a court of law”** (Emphasis mine)

It is clear from the above and our research findings that the *judex* has inherent powers to do what is right under any circumstance. It appears that the constraint of the Judiciary is self-induced and self-inflicted. The primary duty of *judex* is to dispense justice. Therefore, it is rather a matter of how that justice is done. This does not accommodate any form of constraint or hindrance. Our position is that the role of the *judex* is to give succour to all manner of people that are disadvantaged and provide soothing balm to all fractures, it has a bounding responsibility to ensure that no law stands between it and justice even if it means ‘making’ law in that regard. That is the only stance that can give hope to the hopeful and the hopeless in the society.¹⁹

What we have is judicial activism versus judicial restraint. In the course of our study, we found that judging today is a divide between the closed minded and the open minded.²⁰ The end result is to take a big, bold and convincing decision in furtherance of the social contract between the ruled and the rulers. If the *judex* must be the bastion of hope for all people, it cannot continue to act less concerned about the plight of the people it is to rescue from oppression, hunger and ignorance. In developed economies, the

¹⁹ Egbewole, W. “Socio Economic Rights Litigation in Nigeria: The Judiciary Challenge” paper presented at the 14th Annual International Conference of International Academy of African Business and Development May 14-18, GIMPA, Ghana

²⁰ Imam, I, Sambo, A.O. **Egbewole, W.O** & Abdulkadir, A.B. “Judicial Activism and Intervention in the Doctrine of Political Questions in Nigeria: An Analytical Exposition” **African Journal of Law and Criminology** 2011 Vol.1 No.2 p.51

judex can afford to exercise restraint but in underdeveloped or developing economy like Nigeria, it is imperative for the judiciary to be pro active but avoid being rascally. Without this attitude, I ask where will Governor Amaechi of Rivers State be today in the light of the decision in **UGWU V. ARARUME**?²¹

Mr Vice-Chancellor sir, for a long time to come there is need for the judiciary in Nigeria to be active in order to stamp out the impunity of the executive and legislative arms of government as well as sanitise the political class and indeed the Nigerian State. The big question however is how equipped is the *judex* to discharge this onerous responsibility in Nigeria in the light of the perception of the judiciary as a corrupt and inept institution?

The public perception of the Nigerian judiciary as corrupt may be baseless or indeed out rightly and absolutely uncalled for but the statistics may not allow for that kind of dismissive approach. As argued by Ali²², the phenomenon of corruption in the Judiciary is gradually inching into reality if we consider what is happening in our society today.

Our various researches in the last few years confirmed that this problem has indeed permeated the Nigerian judiciary.²³ There is

²¹ (2007) 6 SC (Pt.1) 88

²² Ali, Yusuf SAN "Politics and Corruption in the Judiciary: Myth or Reality" delivered to the Muslim Law Students of the University of Lagos on 5th June, 2013

²³ Egbewole, W. "A Review of Constitutional Court Decree, 1998" **Journal of International and Comparative Law** 1999 Vol.2 pp98-107; Egbewole, W. "African Court Protocol and Development of Human Rights in the Continent" 2002 **Ilorin Bar Journal** Vol.1 No.1 pp.51-62; Ali, Y. & Egbewole, W. "A New Window in the Enforcement of Human Rights in Nigeria, Gen. Sani Abacha V. Chief Gani Fawehinmi Considered" 2002 **Unilorin Journal of Private and Property Law** Vol.5 No.2 pp.83-106 and Egbewole, W. "The Place of Judiciary in Sustenance of Democracy" in Hassan, A. (ed.) **Democracy and Development in Nigeria** (University Press, Ibadan:2002) pp.285-306

need for a concerted effort on the part of all to exterminate it. In doing this however, it must be a holistic affair otherwise we may not achieve the desired goal. In our work on the issue of Constitutional Court in Nigeria it was our view that while it is good to dismiss or retire serving judicial officers that are found to be corrupt, it is imperative that the correct signal should be sent to others that they should not get involved in corruption. The way to send the message as we suggested in 1999 which is still relevant today because the appropriate authorities refused to use it, is that the present approach that if you are involved and caught then you will practically be set free to go and enjoy the loot may not achieve the desired effect. The implication of this is that the impunity will continue. It is important to let such corrupt judicial officer face the law by being prosecuted and possibly jailed if found guilty by the courts. The present approach could be described as a ‘slap on the wrist’ which amounts to nothing.

Mr Vice-Chancellor sir, from findings deducted from the previous work done in this regard²⁴, it is our view that the present disposition will be on the rise because it appears to us that it is only one side of the coin that we are looking at. How did they bribe those judges caught? Did the money given to them drop from the sky? What is the system doing to the couriers who from our findings in various oral interviews include seasoned and senior lawyers, judges, retired justices and administrators? Such people are equally guilty and should be punished through prosecution and made to pay the price if we want to get it right.

Corruption is anti-thesis to judicial office which is expected to be integrity driven, sustained by respectability as vicegerents of the Creator on earth. They possess power over ‘life and death’ they

²⁴ Egbewole, W. “Independent Judiciary and Sustainable Democracy” in Ojo, E. ***Challenges of Sustainable Democracy in Nigeria*** (Archer Publishers, Ibadan:2006) pp. 209-234

must like Ceaser's wife live above board because 'if gold rusts, what will iron do?' It must be emphasised that corruption is not only about money. A judge must be able to sense danger of corruption and run away from it. Judging is integrity driven and where there is a slightest inkling that a question mark is cast on one's integrity, one must vote with one's feet.

Our deductions from various researches show clearly:

- It is not out of place for a judicial officer to cultivate friendship across divides
- The friendship judicial officers cultivate must be strictly at social levels
- The friendship must not have anything to do with the discharge of the judicial functions
- It is not right to discuss cases before the Judges outside of the court under any guise
- Integrity of a judicial officer is paramount and it must be maintained at all times and under all circumstances
- If for any reason, the integrity of a judicial officer is challenged, he/she must do everything to protect it and at the earliest time disqualify him/herself from proceeding with the matter even if it is possible that it may be viewed differently. The issue is likelihood of bias and not the actual bias
- All judicial officer must cultivate the habit that 'if God see me, human beings must also see me' that is justice must not only be done but must be manifestly seen to have been done.²⁵

In our research, we have found that the problem of corruption in the Judiciary is as a result the mode of appointment to judicial offices in Nigeria which today is guided by nepotism, ethnicity, promotion,

²⁵ See also Akanbi, M. M. A. "Restoring Confidence in the Judiciary: The Role of the Bar and the Bench." 8th edition of the J.I.C. Taylor Memorial Lecture delivered on 30th November, 2011

lack of merit, ‘who you know’ and not ‘what you know’ and indeed ‘god fatherism.’²⁶ The result is what we are witnessing. How else can it be rationalised that the two most senior judicial officers in Nigeria at a time were engaged in public altercation practically resulting in open abuse.

It has been argued that the *judex* in Nigeria is exposed to corruption or that their involvements in political cases allow them to be corrupt. It must be said without equivocation as we found out that the judiciary cannot be insulated from the politics of its environment.²⁷ The *judex* is expected as political animals to appreciate the political dynamics of the society but be independently minded and determine issues brought before them honestly, dispassionately and in accordance with the law. As we argued elsewhere, it is not right for the judiciary to run away from the political cases on the unfounded pretext of influencing them to be corrupt.²⁸ It is our position that the essence of section 6 of the Constitution of Nigeria is that the judiciary must be ready to take all cases brought before it.

If corruption must be exterminated from the judiciary in Nigeria, the present composition and structure of the National Judicial Council (NJC) must be given a fundamental surgical operation. This position is informed by the result of a research conducted by Egbewole and Etudaiye on the adjudication of election petition in the North Central

²⁶ From our findings, the sons and daughters of serving judicial officers are now appointed to the bench irrespective of the quality of the individuals. For example, a serving Chief Judge in one of the States in the North Central Zone appointed his daughter as a Magistrate immediately the young lady finished her national youth service. It is also on record that a serving Justice of the Supreme Court at a time worked tirelessly to make his child a Justice of Court of Appeal without reference to the order of seniority from his zone to mention just two.

²⁷ Egbewole, W. *Jurisprudence of Election Petitions by the Nigerian Court of Appeal* LAP Lambert Academic Publishing Deutschland:2011 p.38

²⁸ *ibid*

Zone through the Senate Research Grant in 2011.²⁹ The NJC by virtue of the provisions of the 1999 Constitution (as amended)³⁰ is composed of 22 members 20 of whom are directly or indirectly linked to the approval of the Chief justice of Nigeria. It has been said that power corrupts absolute power corrupts absolutely. As postulated by Harry Truman, “there is lure in power, it can get into a man’s blood just as gambling and lust for money have been known to do.”³¹ In a situation where the body is in the firm grip of an individual who holds the fate of the entire judiciary in Nigeria, the tendency is to feel “there is nothing I cannot do.”

All decisions by *judex* must be according to the law and nothing else and if any extraneous factor like filial relation, monetary consideration or social influence has a place in the determination of issues brought before the court then, the *judex* will lose its potency, relevance and place in the governmental scheme and indeed the society at large. More importantly, it ceases to be the hope of the common man. In order to discharge its function as the last hope of the common man, the judicial oath imposes duties of probity, honesty and impartiality on them.³²

²⁹ Egbewole, W. & Etudaiye M. “The Performance of Election Tribunals in the North central zone of Nigeria between 2003 and 2010” being the report research conducted in 2011

³⁰ Paragraph 20 Third Schedule Part I

³¹ Gibbs, N & Duffy, M. ***The Presidents Club*** Simon & Schuster New York:2012 p.47

³² Nweze, C.C. “Prologue” in Umezurike, I. A. & Nweze C.C. (eds), ***Perspectives in Law and Justice*** (Enugu: Fourth Dimension Publishers, 1996) p.vi reproduced in Nweze, C.C. “Challenges of Administration of justice in the Sustainance of Good Governance in a Transition Era” in Abdulqadri, I.A & Abdullahi, S.I. (eds), ***Nigerian Judiciary: Contemporary Issues in Administration of Justice (Essays in Honour of Hon. Justice Isa Ayo Salami)*** Nigerian Bar Association, Ilorin:2013 pp.15-16

Judex, the Hope of the Common Man and Delay in Adjudication

Mr Vice-Chancellor sir, the general refrain all over the world is that judiciary is the last hope of the common man. It is our position that it is indeed the hope for the hopeful and the hopeless.³³ Before now, it is generally believed especially during the military regime that might is right and that if one is a lowly person in terms of financial standing, then one is hopeless and may never get justice and that if one is financially strong then one is hopeful and that one can turn even one's wrong to right in the law court.³⁴ From our study it has been found out that the *judex* is for all categories of people no matter one's standing and status in life and that all strata of people need the judiciary irrespective of one's financial standing³⁵. Gradually, we are coming to the understanding, realisation and appreciation of the axiomatic reality that whatever one's status, the law is above one. We may not be there yet but with the examples of people like General Ibrahim Babangida who wielded power for eight years as military President in Nigeria between 1985 and 1993, when he was to appear before the Oputa panel, he found succour in the court to excuse the compellability of his attendance. The court also rescued General Abdulsalam Abubakar from the same panel. Mohammed Abacha (the son of the late military Head of State of Nigeria who ruled with draconian laws) also needed the *judex* to save him from the gallows.

This view that the judiciary as the last hope of the common man perceived to be a mirage is not peculiar to Nigeria. For instance in

³³ See Akinnaso, N. Hopless Hopefuls *The Punch* March 12, 2013 p.60 where he argued that unhappy and hopeless people often become angry, rebellious, riotous and violent.

³⁴ See <http://www.nairaland.com/536349/judiciary-last-hope-common-man-assessed-25/9/13> and <http://www.gamji.com/article/5000/NEWS547.htm>

³⁵ Egbewole, W. "Constitutional Justice and Democracy: Inputs and Linkages" paper delivered at the Pan African Conference of Presidents of Constitutional Courts Marakech, Morocco 26-28 November, 2012

India it is believed that common man and celebrities are differently treated by the justice system and this was the argument of Anagha Thakur.³⁶

In the discharge of this onerous duty, the Nigerian judiciary is expected to act promptly because justice delayed is justice denied but now the judiciary is being accused of slowly grinding the wheel of justice and that if care is not taken, it will hit the rocks. Dispensation of justice in Nigeria appears too slow and sluggish. Averagely a matter takes about 15 years before it is concluded judicially.³⁷ Take the case of Williams Owodo who was accused of murder of one Daniel Obi and was in prison custody for 17 years 10 months only to be discharged and acquitted having been found innocent of the allegation. His innocence was discovered after having spent 17 years behind the bars. The basis for his conviction by the trial court was the reliance placed on the extra judicial confessional statement allegedly made by him. He was merely 16 years old by the time he was condemned to death. This attitude of the trial court was deprecated in very strong language by the Court of Appeal as the conviction and sentence were perverse and the said Owodo was consequently discharged and acquitted after 17 years.³⁸

The police was accused of forcing suspects to sign the extra judicial statement forming the basis of the conviction of the accused persons. It is expected that trial courts are to hold trial-within-trial to confirm the authenticity, genuiness and voluntariness of such

³⁶ See <http://toostep.com/debate/do-you-think-that-india-judiciary-treats-common-man-and-celeb> assessed on 25/9/13

³⁷ The case of *Idi Iju v. Mustapha* Appeal No. SC/78/2009. The case started in 1994 and was partly concluded in 2013; Equally, the case of *Access Bank PLC V. Rabelat* started in 2008 and only concluded at the High Court in 2013 after 5 years and parties can still appeal to the Court of appeal and Supreme Court if they so desires.

³⁸ Reproduced in *The Nation*, Lagos December 29, 2012 pp. 48 & 49

statements. I wish to suggest that in view of the rampant and wanton disregard for the rights of the suspects by the investigating authorities, government should deploy technology to the confirmation of the voluntariness of such statements. In these days it is no longer possible to hide that an accused made an extra-judicial statement when in truth he did not with the availability of lie detectors. From our researches on this issue, it was discovered that this instrument is not being used in judicial proceedings.³⁹

Why will it take 17 years to detect that Owodo is innocent? Or the case of Mr. Tunde Akinlusi whose employment was wrongfully terminated and it took 21 years to reinstate him.⁴⁰ Delay in the administration of justice is a major inhibiting factor to administration of justice in Nigeria. By constitutional arrangement, a case is expected to be concluded promptly and within a reasonable time. Section 36 (1) of the Constitution of Nigeria provides:

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, **a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal** established by law and constituted in such a manner as to secure its independence and impartiality.⁴¹ (Emphasis mine)

The crux of this provision is not that a litigant must only be given fair hearing but it must be within a reasonable time. What is

³⁹ Forkosch, M. "The Lie Detector and Mechanical Jurisprudence available on www.bibliojuridical.org/libro/3/.../16.pdf accessed on 21st November, 2013

⁴⁰ Reported in Editorials of The Nation May 8, 2012 p.19

⁴¹ See also Section 15(3) of the Jamaican Constitution cited in Nweze, C.C "Challenges in Administration of Justice op. cit p.17

reasonable time? Agreed this is not defined in the Constitution and we must appreciate the fact that reason varies according to the idiosyncrasy of the individual and the times and circumstances in which a person thinks⁴² but Oputa provided a guide by defining it as “the period of time which, in the search for justice, does not wear out the parties and their witnesses and which is required to ensure that justice is not only done but appears to reasonable persons to be done.”⁴³ This definition is not without its fault because who is a reasonable man is also a very subjective concept. What however is important is that a case must be disposed off without delay. This constitutional provision appears to be observed in the breach if we carefully look at Table 1 and figures 1 to 7 which graphically captured the state of affairs on this issue which is the result of the research carried out over time.

⁴² Hargave & Butler Coke upon Littleton 18th ed referred to in *Sasegbon’s Laws of Nigeria* Vol.11 DSC Publications Lagos:2005 p.508

⁴³ *Ariori V. Elemo* (1983) 1 SC 13 at 24; See also *Ogundare JSc in Effiom V. State* (1995) 1 NWLR (Pt.373) 507 at 594

TABLE 1

| SUBJECT MATTER | YEAR | SUPREME COURT (S.C) | COURT OF APPEAL (C.A) | TOTAL CASES | % IN S.C. | % IN C.A | NO CONVICTED | % CONVICTED | NO ACQUITTED | % ACQUITTED | UNDECIDED | % UNDECIDED |
|---------------------|------|---------------------|-----------------------|-------------|-----------|----------|--------------|-------------|--------------|-------------|-----------|-------------|
| CRIMINAL CASES | 2000 | 5 | 14 | 19 | 26 | 74 | 10 | 53 | 5 | 26 | 4 | 21 |
| COMMERCIAL DISPUTES | 2000 | 1 | 0 | 1 | 100 | 0 | | 0 | | 0 | | 100 |
| CHIEFTANCY MATTERS | 2000 | 1 | 2 | 3 | 33 | 67 | | 0 | | 0 | | 100 |
| LAND DISPUTES | 2000 | 12 | 15 | 27 | 44 | 56 | | 0 | | 0 | | 100 |
| ELECTORAL DISPUTES | 2000 | 0 | 1 | 1 | 0 | 100 | | 0 | | 0 | | 100 |
| CRIMINAL CASES | 2001 | 17 | 19 | 36 | 47 | 53 | 23 | 64 | 8 | 22 | 5 | 14 |
| COMMERCIAL DISPUTES | 2001 | 0 | 4 | 4 | 0 | 100 | | 0 | | 0 | | 100 |
| CHIEFTANCY MATTERS | 2001 | 2 | 3 | 5 | 40 | 60 | | 0 | | 0 | | 100 |
| LAND DISPUTES | 2001 | 15 | 19 | 34 | 44 | 56 | | 0 | | 0 | | 100 |
| ELECTORAL DISPUTES | 2001 | 0 | 0 | 0 | 0 | 0 | | 0 | | 0 | | 0 |

| | | | | | | | | | | | | |
|---------------------|------|----|----|----|-----|-----|----|----|----|----|---|-----|
| CRIMINAL CASES | 2002 | 16 | 15 | 31 | 52 | 48 | 14 | 45 | 11 | 35 | 6 | 20 |
| COMMERCIAL DISPUTES | 2002 | 1 | 2 | 3 | 33 | 67 | | 0 | | 0 | | 100 |
| CHIEFTANCY MATTERS | 2002 | 1 | 2 | 3 | 33 | 67 | | 0 | | 0 | | 100 |
| LAND DISPUTES | 2002 | 10 | 12 | 22 | 45 | 55 | | 0 | | 0 | | 100 |
| ELECTORAL DISPUTES | 2002 | 1 | 0 | 1 | 100 | 0 | | 0 | | 0 | | 100 |
| CRIMINAL CASES | 2003 | 7 | 17 | 24 | 29 | 71 | 12 | 50 | 7 | 29 | 5 | 21 |
| COMMERCIAL DISPUTES | 2003 | 0 | 3 | 3 | 0 | 100 | | 0 | | 0 | | 100 |
| CHIEFTANCY MATTERS | 2003 | 5 | 4 | 9 | 56 | 44 | | 0 | | 0 | | 100 |
| LAND DISPUTES | 2003 | 16 | 14 | 30 | 53 | 47 | | 0 | | 0 | | 100 |
| ELECTORAL DISPUTES | 2003 | 4 | 7 | 11 | 36 | 64 | | 0 | | 0 | | 100 |
| CRIMINAL CASES | 2004 | 10 | 13 | 23 | 43 | 57 | 14 | 61 | 4 | 17 | 5 | 22 |
| COMMERCIAL DISPUTES | 2004 | 0 | 2 | 2 | 0 | 100 | | 0 | | 0 | | 100 |
| CHIEFTANCY MATTERS | 2004 | 3 | 4 | 7 | 43 | 57 | | 0 | | 0 | | 100 |
| LAND DISPUTES | 2004 | 7 | 14 | 21 | 33 | 67 | | 0 | | 0 | | 100 |
| ELECTORAL DISPUTES | 2004 | 2 | 35 | 37 | 5 | 95 | | 0 | | 0 | | 100 |
| CRIMINAL CASES | 2005 | 4 | 24 | 28 | 14 | 86 | 12 | 43 | 9 | 32 | 7 | 25 |
| COMMERCIAL DISPUTES | 2005 | 1 | 0 | 1 | 100 | 0 | | 0 | | 0 | | 100 |

| | | | | | | | | | | | | |
|-------------------------|------|----|----|----|----|-----|----|----|----|----|----|-----|
| CHIEFTANC Y MATTERS | 2005 | 4 | 2 | 6 | 67 | 33 | | 0 | | 0 | | 100 |
| LAND DISPUTES | 2005 | 10 | 14 | 24 | 42 | 58 | | 0 | | 0 | | 100 |
| ELECTORAL DISPUTES | 2005 | 1 | 18 | 19 | 5 | 95 | | 0 | | 0 | | 100 |
| CRIMINAL CASES | 2006 | 16 | 26 | 42 | 38 | 62 | 19 | 45 | 13 | 31 | 10 | 24 |
| COMMERCIA L DISPUTES | 2006 | 0 | 3 | 3 | 0 | 100 | | 0 | | 0 | | 100 |
| CHIEFTANC Y MATTERS | 2006 | 4 | 3 | 7 | 57 | 43 | | 0 | | 0 | | 100 |
| LAND DISPUTES | 2006 | 23 | 21 | 44 | 52 | 48 | | 0 | | 0 | | 100 |
| ELECTORAL DISPUTES | 2006 | 2 | 21 | 23 | 9 | 91 | | 0 | | 0 | | 100 |
| CRIMINAL CASES | 2007 | 20 | 30 | 50 | 40 | 60 | 23 | 46 | 15 | 30 | 12 | 24 |
| COMMERCIA L DISPUTES | 2007 | 0 | 0 | 0 | 0 | 0 | | 0 | | 0 | | 0 |
| CHIEFTANC Y MATTERS | 2007 | 4 | 3 | 7 | 57 | 43 | | 0 | | 0 | | 100 |
| LAND DISPUTES | 2007 | 17 | 19 | 36 | 47 | 53 | | 0 | | 0 | | 100 |
| ELECTORAL DISPUTES | 2007 | 7 | 9 | 16 | 44 | 56 | | 0 | | 0 | | 100 |
| CRIMINAL CASES | 2008 | 26 | 24 | 50 | 52 | 48 | 28 | 56 | 12 | 24 | 10 | 20 |
| ELECTORAL DISPUTE | 2008 | 8 | 31 | 39 | 21 | 79 | | 0 | | 0 | | 100 |
| COMMERCIA L DISPUTE | 2008 | 1 | 1 | 2 | 50 | 50 | | 0 | | 0 | | 100 |

| | | | | | | | | | | | | |
|-------------------------|------|----|----|----|-----|-----|----|----|----|----|----|-----|
| CHIEFTANC Y MATTERS | 2008 | 1 | 7 | 8 | 13 | 87 | | 0 | | 0 | | 100 |
| LAND DISPUTES | 2008 | 12 | 18 | 30 | 40 | 60 | | 0 | | 0 | | 100 |
| CRIMINAL CASES | 2009 | 19 | 30 | 49 | 39 | 61 | 21 | 43 | 24 | 49 | 4 | 8 |
| ELECTORAL DISPUTES | 2009 | 9 | 55 | 64 | 14 | 86 | | 0 | | 0 | | 100 |
| COMMERCIA L DISPUTES | 2009 | 1 | 0 | 1 | 100 | 0 | | 0 | | 0 | | 100 |
| CHIEFTAINC Y MATTERS | 2009 | 0 | 5 | 5 | 0 | 100 | | 0 | | 0 | | 100 |
| LAND DISPUTES | 2009 | 17 | 23 | 40 | 43 | 57 | | 0 | | 0 | | 100 |
| CRIMINAL MATTERS | 2010 | 13 | 29 | 42 | 31 | 69 | 16 | 38 | 12 | 29 | 14 | 33 |
| ELECTORAL DISPUTES | 2010 | 7 | 58 | 65 | 11 | 89 | | 0 | | 0 | | 100 |
| COMMERCIA L DISPUTES | 2010 | 1 | 0 | 1 | 100 | 0 | | 0 | | 0 | | 100 |
| CHIEFTAINC Y MATTERS | 2010 | 0 | 4 | 4 | 0 | 100 | | 0 | | 0 | | 100 |
| LAND DISPUTES | 2010 | 16 | 30 | 46 | 35 | 65 | | 0 | | 0 | | 100 |
| CRIMINAL MATTERS | 2011 | 11 | 27 | 38 | 29 | 71 | 22 | 58 | 14 | 37 | 2 | 5 |
| ELECTORAL DISPUTES | 2011 | 9 | 21 | 30 | 30 | 70 | | 0 | | 0 | | 100 |
| COMMERCIA L DISPUTES | 2011 | 2 | 1 | 3 | 67 | 33 | | 0 | | 0 | | 100 |
| CHIEFTAINC Y MATTERS | 2011 | 1 | 5 | 6 | 17 | 83 | | 0 | | 0 | | 100 |
| LAND DISPUTES | 2011 | 7 | 26 | 33 | 21 | 79 | | 0 | | 0 | | 100 |

| | | | | | | | | | | | | |
|---------------------|------|----|----|----|----|-----|----|----|----|----|----|-----|
| CRIMINAL MATTERS | 2012 | 30 | 50 | 80 | 38 | 62 | 54 | 68 | 11 | 14 | 15 | 18 |
| ELECTORAL DISPUTES | 2012 | 19 | 42 | 61 | 31 | 69 | | 0 | | 0 | | 100 |
| COMMERCIAL DISPUTES | 2012 | 0 | 1 | 1 | 0 | 100 | | 0 | | 0 | | 100 |
| CHIEFTAINCY MATTERS | 2012 | 3 | 8 | 11 | 27 | 73 | | 0 | | 0 | | 100 |
| LAND DISPUTES | 2012 | 13 | 76 | 89 | 15 | 85 | | 0 | | 0 | | 100 |

Figure 1

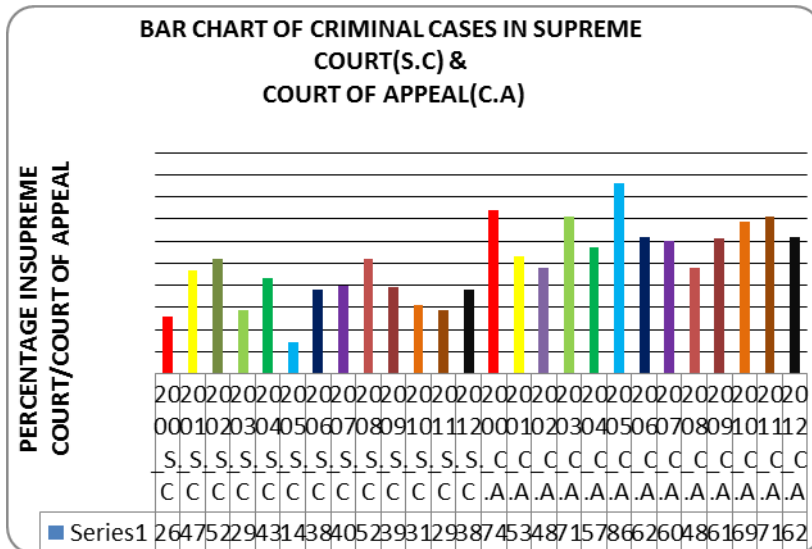


Figure 2

BAR CHART ON LAND AND COMMERCIAL CASES IN SUPREME COURT & COURT OF APPEAL

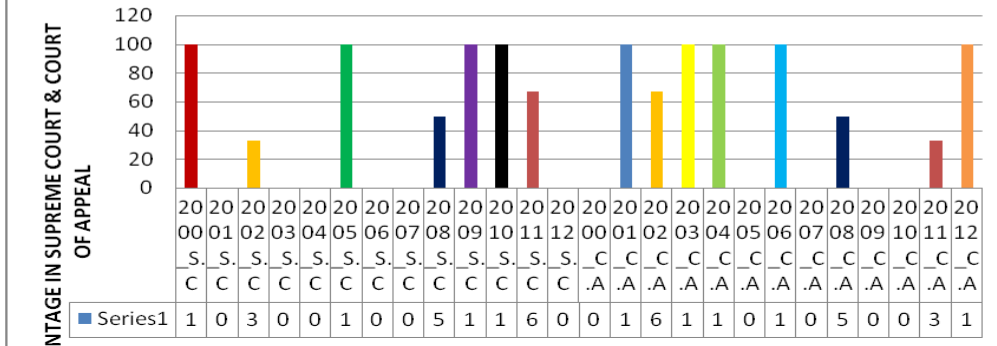


Figure 3

BAR CHART ON ELECTORAL DISPUTES IN SUPREME COURT & COURT OF APPEAL

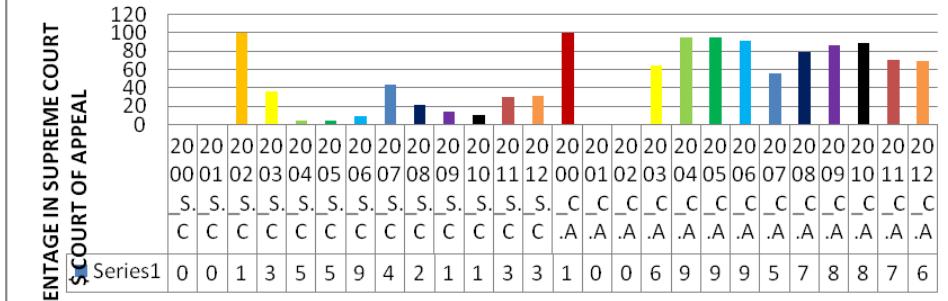


Figure 4

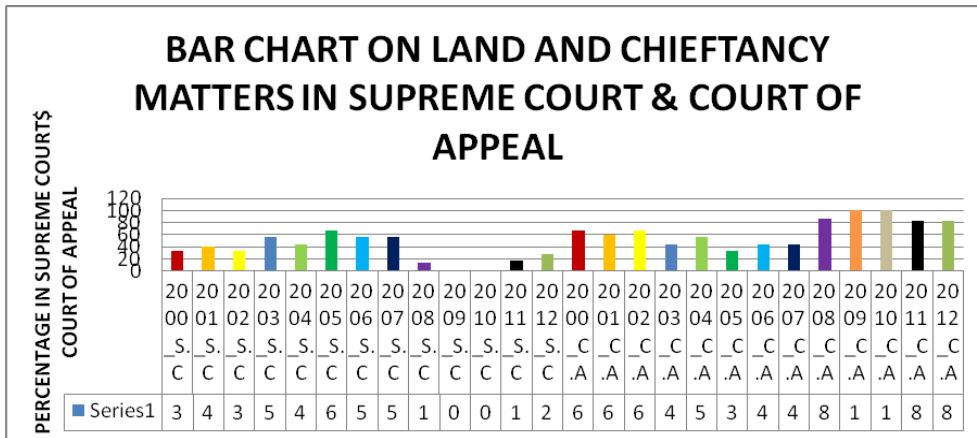


Figure 5

BAR CHART ON LAND DISPUTES IN SUPREME COURT & COURT OF APPEAL

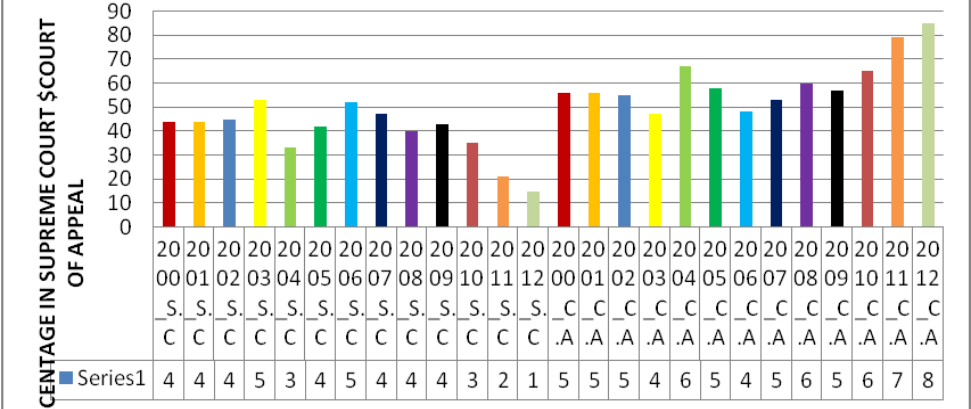


Figure 6

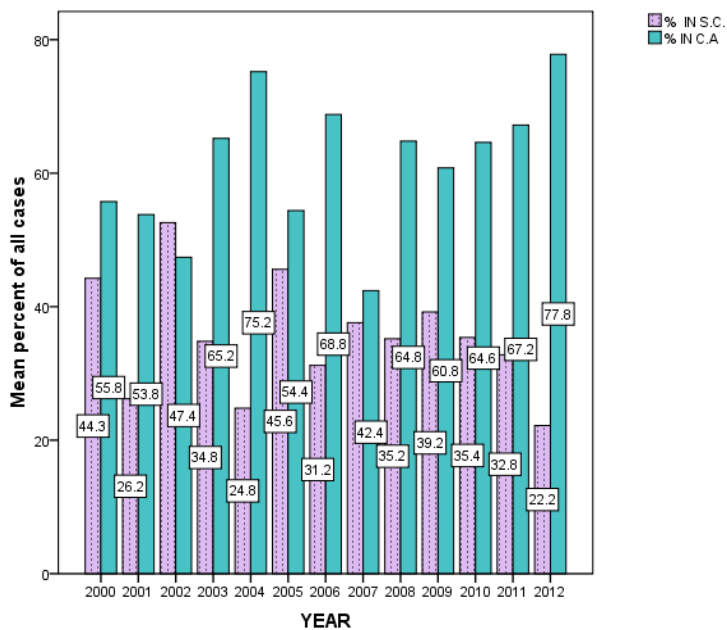
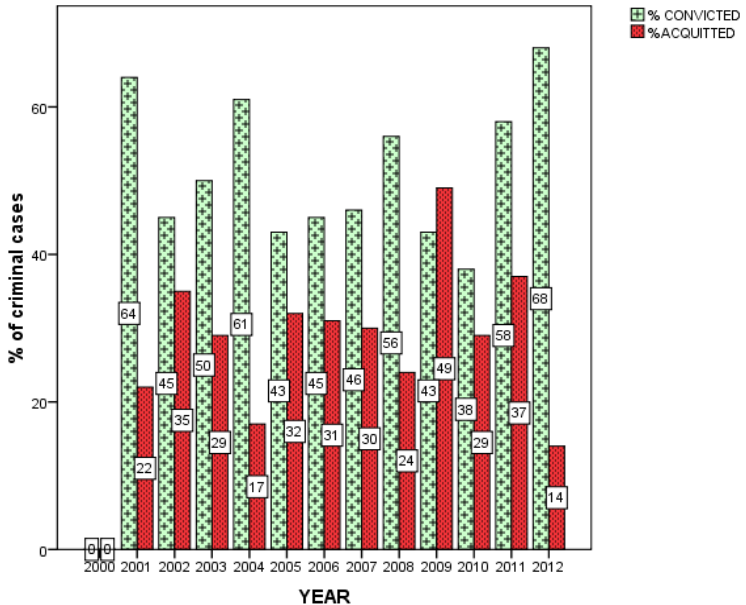


Figure 7



Mr Vice-Chancellor sir, from the Table 1, a number of cases were analysed by us for a period of 12 years with respect to criminal matters, commercial disputes, chieftaincy contests, land disputes and electoral cases. The results were indeed startling. For example, only 26% of the criminal cases reported for 2000 were determined by the Supreme Court, 33% of the Commercial disputes within the period were so concluded by the Supreme Court and no electoral disputes were so reportedly decided. The reason for this is constitutional provision which restricted appeals to the Court of Appeal except in Presidential election disputes. Figure 1 dealt with the trajectory of criminal cases, figure 2 with that of commercial cases while figures 3, 4 and 5 projected the fate of electoral disputes, chieftaincy, and land disputes respectively.

Figure 6 provides for mean percentage of all cases for the 12 years showing that in 2000, 44.3% of the cases were determined by the Supreme Court with the Court of Appeal determining 55.8%. In 2012, the apex court had 22.2% of the reported cases and the Court of Appeal 77.8%. This was what the picture depicted throughout except 2002 and 2007. These findings confirmed that the Supreme Court is truly bogged down by all sorts of appeals and its efficacy, efficiency and effectiveness is seriously hampered. There is therefore the need to have a second look at the jurisdiction of the apex court in Nigeria. Figure 7 focused specifically on the mean percentage of criminal cases juxtaposing the percentage of criminals convicted with those acquitted within the period of research.

The result clearly showed that the number of criminals convicted is far higher than those acquitted. The Criminologist may need to further analyse the result to examine the implication on the society. To the student of jurisprudence, the picture painted is that there appears to be a mindset for conviction by the judiciary. If this postulation is right then, there is a justifiable fear that the presumption of innocence is at risk and that the concept of proof beyond reasonable doubt is suspect. This dove tails to the hopelessness of the common man because in a study we conducted in 2000 it was revealed that the criminal activities are prevalent among the poverty stricken members of the society.⁴⁴ This is not to conclude however that the rich or wealthy members of the society are not involved in commission of crime. What the study concluded was that very few of such people are hardly arrested and tried.⁴⁵

From the result of our study as shown in Table 1 and Figures 1-7 above, there is a palpable concern for delay in determination of

⁴⁴ Egbewole, W. "Crime, National Development and Security of Person" in Ogan, C.A. (ed.) *The Challenge of Peace, Security and Development in the Twenty-First Century* (Nigerian Society of International Law, Lagos:2002) pp. 69-98

⁴⁵ *ibid*

cases by our courts. This matter of delay has acquired a lot of scholarly attention⁴⁶ but it appears there is no end in sight as a number of cases were examined by Udombana⁴⁷ apart from the statistics provided in the table and figures earlier referred to and it is obvious the Judiciary must take concerted steps to address this albatross. The challenge is further elucidated upon by the Nigerian Institute of Advanced Legal Studies in the research carried out in the various states of the Federation which depicts a very gloomy picture and calls for urgent attention.⁴⁸

This phenomenon is not peculiar to Nigeria as in other jurisdictions, such challenges are present but they appear to be more proactive in confronting the challenge as against the rather docile attitude to solving the problem by the authorities concerned in Nigeria. The Woolf Report identified delay as a major impediment of access to justice.⁴⁹

⁴⁶ Abdullahi, S. I & Abdulqadri, I.A. "Curbing Delaying Justice on the Ground of Jurisdiction in the Nigerian Courts: Lessons from the Islamic Law" in Abdulqadri, I.A. & Abdullahi, S. I. (eds) ***Nigerian Judiciary: Contemporary Issues in Administration*** p.124; Peters, D. "Minimizing Delay in the Administration of Civil Justice in Nigeria" in Yusuf, F.A.O. (ed) ***Issues in Justice Administration in Nigeria-Essays in Honour of Ho. Justice S.M.A. Belgore*** (VDG International Limited, Lagos:2008) p.p.449-461; Chijioke, J. "The Role of the Judiciary in the Crusade against Corrupt and Unethical Practices in the Public Service in Yusuf F.A.O. *ibid* p.324

⁴⁷ Udombana, N.J. "Speedy Administration of Justice in Nigeria: Which Way Forward?" in Abdulqadri, I.A. & Abdullahi, S.I. (eds) ***Nigerian Judiciary: Contemporary Issues in Administration of Justice*** pp.79-107

⁴⁸ ***Nigerian's Judicial Performance Evaluation 2008-2011*** in www.nials-nigeria.org/text/estore.aspx accessed 26th October, 2013

⁴⁹ See **Lord Woolf Final Report** available on <http://www.lawteacher.net/english-legal-system/lecture-notes/civil-justice-review.php> referred to in Udombana N.J. "Speedy Administration of Justice in Nigeria: Which Way Forward" p. 80 but the page no longer available as at 27th October, 2013.

The effect of this challenge on the justice system was put in perspectives by Zeisel and others that delay in the courts is unqualifiedly bad.⁵⁰ The question that must come to mind in Table 1 where a case lasts about 30 years and in some 40 years⁵¹ is can there ever be justice at the end of the exercise? Can this institution that grinds so slowly provide hope for the common man? Without mincing words, the answer is no. In most of the cases, the original litigants must have died especially in land matters and even in some instances the substitutes are also long dead. In the case of **ABIOYE V. MUSTAPHA AJAO**⁵² which I handled personally, we started in 1994 and the case was eventually struck out by the Supreme Court on technical grounds on 16th July, 2013. It was the third generation of Plaintiffs and defendants that eventually concluded the matter.

A number of reasons have been advanced for the delay in disposal of cases and they include the inadequacy of judicial officers compared to the number of cases, the attitude of some judicial officers who are accused of being generally lazy and indolent, attitude of some lawyers who generally delay cases for material gains, abuse and misuse of interlocutory applications and appeals, lack of modern case management technology, outdated laws, inadequate infrastructure and personnel, corruption to mention a few.

In the course of our research on the determination of election petitions by the Court of Appeal in Nigeria we found that the most fundamental reason for delay in judicial process is lack of

⁵⁰ Zeisel, H. Halven, H. & Bucholz, B. Delay in the Court (1959) reproduced in Udombana, N.J. p.84

⁵¹ The case of Ubani V. State (2003) 18 NWLR (Pt.852) 224 was concluded at the Supreme Court 31 years after it was filed and the case of Oronti V. Onigbanjo (2012) 12 NWLR (Pt.1313) 23 was concluded 41 years after the suit was filed.

⁵² SC/78/2009

knowledge on the part of the judicial officers.⁵³ A case which can be disposed off with a bench ruling may cause adjournment of more than two months. It has been said that ignorance of a judge is the doom and undoing of the innocent. Ogundere argued further that a judge “must possess deep knowledge, sharp intellect, wisdom and understanding including the capacity to present his decision in a manner which makes it acceptable and legitimate to all concerned.”⁵⁴

The way out of the logjam in our view is first and foremost the change of attitude on the part of the bench to consciously determine to move the justice sector forward and exterminate any form of delays, serious hard work to clear the Aegean’s table, proper case management technology⁵⁵, appoint judicial officers who truly merits the name, strict adherence to schedules as put forward during pre trial proceedings and need to change the rules to accommodate speedy trial especially in civil cases as done by the Supreme Court for specialised criminal cases.⁵⁶ It is possible to argue that most High Court Civil Procedure Rules introduced the front loading procedure to fast track the conclusion of cases but there is so much to be done beyond court rules or practice direction.⁵⁷ It has even

⁵³ Egbewole, W. *Jurisprudence of Election Petitions by the Nigerian Court of Appeal* (LAP Lambert Publishing, Germany:2011)

⁵⁴ Ogundere, J.D. “Judicial Ethics with Particular reference to Discipline within the Judiciary Including comportment of Judges” *1990 Judicial Lectures: Continuing Education for Judiciary* MIJ Professional Publishers Ltd Lagos:1991) p.49 reproduced in Nweze, C.C. “Challenges of administration of justice” p.18

⁵⁵ The current effort of the Chief Justice of Nigeria on technological management is in a good direction but we must appreciate the challenge posed by the inadequacy of energy in Nigeria. There is also the need to make the effort nationally deployed

⁵⁶ Supreme Court (Criminal Appeals) Practice Direction 2013 made on 5th July, 2013.

⁵⁷ Egbewole, W. *Jurisprudence of election Petitions by the Nigerian Court of Appeal* p.350

been observed that too much reliance on front loading may end up sacrificing the justice of a case. According to Agube JCA in **OLANIYAN V. OYEWOLE** he held that the philosophy behind front-loading procedure is to quicken the dispensation of justice but different result is the outcome.⁵⁸

The way the rules are deployed even elongates court proceedings instead of fast tracking and this takes us back to attitude. The rules by themselves will not lead to quick dispensation but how the rules are employed. Okutepa argued that front loading is working injustice to the litigants.⁵⁹ This position with due respect appears too general and not borne out of empirical analysis. The rationale of a witness not being in Nigeria at the time of filing the suit, and the documents not available at the time of commencement of proceedings cannot be basis for the conclusion that “front-loading is working more injustice”. What must be done is for the lawyer to look more deeply at the rules and the Evidence Act to deploy other processes of achieving his/her goal instead of concluding as if there are no alternatives.

So much for the *judex* and the rules, it is important that lawyers must also change their attitude. It is no longer profitable to keep cases un-concluded as it speaks volumes about the lawyer. Indeed, it is becoming an economic burden to be on a case for 20 years. The economic gain appears to be the basis for kicking against Alternative Dispute Resolution (ADR) but from experience, it is now clearer that it makes more economic sense to both the lawyers and litigants to explore the ADR option and it has in a way improved the dispensation of disputes more quickly. This is not to blur over the challenges posed by the ADR approaches.

⁵⁸ (2008) All FWLR (Pt.393) 503 at 523-524

⁵⁹ Okutepa J.S. “Front-Loading System in Election petition Cases in Nigeria: The Good, The Bad and The Ugly in the Administration of Electoral Justice” in Adenipekun, A. (ed) **Current Legal Issues in Contemporary Nigeria** (Afe Babalola University, Ado-Ekiti:2013) p.445

In 2008,⁶⁰ we suggested that the legislature should amend the constitution by fixing time period for conclusion of election cases to achieve quicker dispensation of justice. This recommendation was effected by the National Assembly in 2010. The legislature may go further by limiting the period within which all cases may be concluded as done for election petitions which now has only 180 days lifespan before the Tribunal and 60 days before the Court of Appeal and Supreme Court respectively.⁶¹ In spite of criticisms against this provision,⁶² it is one of the good things that has happened to our jurisprudence because whether we like it or not, it has introduced sanity into conduct of election petitions in Nigeria. If we carefully consider the schism and legal gerrymandering employed in the gubernatorial case in Borno State in respect of the 2011 election, the justification for the 180 days and 60 days respectively will be apparent.⁶³ This is not without acknowledging the fact that the provision has its shortcomings but what is important is for all contestants to know that somebody must win in a contest and that another round of election is at the corner at the turn of four years. It is also important that a limit is put to types of cases that can proceed beyond the Court of Appeal and the extent to which interlocutory appeals can be entertained.⁶⁴ In short, the legislature must speedily consider the Judicial Reform Bill before the National Assembly in order for litigants to truly have access to justice in Nigeria. The House of Representatives is currently concluding the reform of the criminal law legislations which now provides for ‘one stop legislation’

⁶⁰ Egbewole, W. “Determination of Election Petitions by the Court of Appeal: A Jurisprudential Perspective” being the Ph.D. thesis submitted to Faculty of Law, University of Ilorin submitted in August, 2008

⁶¹ See amendment to Section 285 of the 1999 Constitution

⁶² Fagbemi, L.O. “Law as an Instrument of Social Change and the Courts as its Driving Force: A Reflection on the Role of Judiciary in Entrenching Democratic Ethos” in Adenipekun A. (ed) *Current Legal Issues in Contemporary Nigeria* (Afe Babalola University, Ado-Ekiti:2013) pp.163-164

⁶³ Shettima V. Goni (2011) 18 NWLR (Pt.1279) 413 or (2011) 10 Sc 92

⁶⁴ Egbewole, W. “Determination of Election Petitions by the Court of appeal: A jurisprudential Analysis”

for criminal matters as well as providing for time lines within which certain steps can be taken. This no doubt is in the positive direction but unfortunately, it has taken one segment of the National Assembly about two years to get to this point.⁶⁵ We must ask ourselves if we succeed in fast tracking criminal processes what is the fate of civil cases. There must be a concerted effort on the part of all the stakeholders to change the way cases are conducted in order to achieve a quicker disposition of cases and make the *judex* truly the hope of the people. In this regard the legal practitioners, the Judiciary, the court officials, the legislature and the litigants must be ready to change the way we conduct the business of litigation in Nigeria. This suggestion is guided by the result of the research conducted from the reported cases for 2000-2012 where it has been discovered that the civil cases also last for as long as 40 years.⁶⁶ This is definitely not good for our business and indeed our society. This leads to the relationship the *judex* has with other arms of government.

- ***Judex and other arms of government***

The Judiciary anywhere in the world is not an island unto itself but rather a critical player in governmental tripod arrangement of the legislature, the judiciary and the executive.⁶⁷ There are contestations on which of the bodies is the mother, which is father or that they are equals with differing roles. We pitch our tent with the partnership theory as the basis of their relationship. We cannot run away from the fact that they are equals but with what operates in ordinary partnership, we have dormant partners and managing partners. In the light of the fact that the purse is controlled by the legislature and the

⁶⁵ The Chairman of the House committee on judiciary, Dr Ali Ahmad on Tuesday, 29th October, 2013 presented the report to the House and after the passage by the House, it proceeds to the Senate and finally to the President for assent. It is clear we still have a long wait before we can start using the final product.

⁶⁶ See the case of *Oronti V Onigbanjo* (2012) 12NWLR (Pt. 1313) 23

⁶⁷ Egbewole, W. "The Place of the Judiciary in Sustenance of Democracy" in Saliu, H.A. ***Democracy and Development in Nigeria Vol.1 Conceptual Issues Democratic Practice*** Concept Publications, Lagos:2006 p. 285 See also Egbewole W. & Etudaiye, M. "Judicial Review and the Legislature under the 1999 Constitution" in Alabi, M.O.A. & Egbewole, W. ***Perspectives on the Legislature in the Government of Nigeria*** CAFRAD, Morocco:2010 p.73

executive by way of budgetary provisions, it is possible to suggest that the judiciary is the junior partner. In any civilized society, there is no room for senior and junior partners in relationship of the Judiciary and the other arms of government. Our Constitution envisaged the likelihood of this disposition when it provides unequivocally for the funding of the Judiciary from the Consolidated Revenue Fund and making it a first line charge.⁶⁸ In spite of this provision, the Judiciary in Nigeria still remains largely dependent on the Executive for funding.⁶⁹

The relationship of the arms of government is a constitutional arrangement⁷⁰ and it has been argued that liberty implies the limitation of power by law⁷¹ and that “one institution above all others essential to the preservation of the law has always been and still an honest, able, learned, independent judiciary.”⁷² This is however subject to different models in various African countries and even in advanced economies. This power is given to other bodies aside the judiciary by way of what Nwabueze referred to as attenuation.⁷³ For instance, in the constitutions of Madagascar and Central African Republic made in 1959, that of Somalia, Burkina Faso and Mali enacted in 1960, that of Gabon and Mauritania promulgated in 1962, Cameroon of 1980 and that of Equatorial Guinea, 1982 the power to determine the state of the law by parliament is assigned to political organs instead of courts.

In the 1958 French Constitution, it is only executive acts that are subject to the determination by the courts but laws made by

⁶⁸ See Sections 81(3)(c) and 121(3) of the 1999 Constitution of the Federal Republic of Nigeria.

⁶⁹ Aloma-Muktar, M. Speech by CJN at the 2013 Opening of the legal year in Abuja

⁷⁰ See Sections 4, 5 and 6 of the 1999 Constitution (as amended)

⁷¹ Nwabueze, B. *Judicialism and Good Governance in Africa* Nigerian Institute of Advanced Legal Studies 2009 p.93

⁷² McLwain, C.H. *Constitutionalism: Ancient and Modern* (1940) p.144 reproduced in Nwabueze, B. *ibid* p.94

⁷³ *Ibid* p.94

parliament or a legislative decree is not to be subjected to the interpretation of the courts to determine their constitutionality or otherwise.⁷⁴ The Constitutional Council established to undertake the determination of such questions of constitutionality under the French Constitution which appears to have infested the Francophone African States has been criticised by Nwabueze on the ground that the Council is not a court of law and the functions are not judicial in nature.⁷⁵ It must also be emphasised that decisions rendered by such councils are not judicial decisions.⁷⁶ The most disturbing aspect of this arrangement is that the decisions rendered by the Council are binding on the judiciary and they are not subject to judicial review. This in short is against the grain of the settled principle of separation of powers. The body is imbued with judicial powers and without any form of check or balance as envisaged by the interplay of power relations.

Dicey also commented on this arrangement as it affects the Third Republic French Constitution made in 1876 that the restrictions it placed on the action of the legislature are not in reality laws, since they are not rules which in the last resort will be enforced by the courts.⁷⁷ It must be emphasised that apart from the fact that the legislators are not trained in the specialised act of judicial expertise they are also largely controlled by party politics and subject to the concept of party supremacy. It may be argued and the question may

⁷⁴ Articles 56-63 of the French Constitution gives the power to Constitutional Council and what is now common in the Francophone countries in Africa today is the establishment of such Councils to determine the legality or otherwise of such laws.

⁷⁵ Nwabueze, B. *Judicialism and Good Governance in Africa* p.98

⁷⁶ United States V. Ferreira 12 How, 40 (1851); United States V. Evans 213 U.S. 297, pp.300-1 (1909) and Nwabueze B. *Judicialism in Commonwealth Africa* (1977) pp.84-97 referred to in Nwabueze B. *Judicialism and Good Governance in Africa*

⁷⁷ Dicey, A. V. *The Law of the Constitution* 3rd edn. P.157 reproduced in Nwabueze B. *ibid* p.100

be asked that can we truly say the judiciary in the third world is independent? In spite of this possible criticism of the judiciary there is no justification for the Third and Fifth Republics French Constitution or the adaptation by the Francophone African countries. To this end, it is suggested that all affected countries should revert back to the pristine principles of separation of powers and allow each arm of government to undertake that in which she has the requisite competence.

In the same vein, the British constitution that is largely unwritten also projects the supremacy of the parliament thus laws enacted by the parliament (legislature) is also not subject to questioning by the courts. The United States of America (USA) epitomises the supremacy of the law with the court given near absolute powers to determine the legality of any law. The court in the USA is exemplified by its Supreme Court which has interpreted the Constitution and has decided the country's preeminent legal disputes for nearly two centuries.⁷⁸

This shows that truly the judiciary is giving hope to the hopeful and the hopeless in that society. Your status and standing in society is not the determinant of your access to justice. The situation in Nigeria is fashioned in line with that of America since the Second Republic when the Presidential Constitution was adopted in 1979.⁷⁹ The relationship between the judiciary and other arms of government has been that between the cat and the mouse riddled

⁷⁸ Woodward, B. Armstrong, S. *The Brethren-Inside the Supreme Court* Avon Books, New York:1979 p.xi

⁷⁹ After the 13 year military interregnum a 50 man Constitution Drafting Committee was put in place and the rationale for the Presidential System of government was given to the military regime which after tinkering with the submission agreed to the approach and the Second Republic was put in place with President Shehu Shagari as the First Executive President of Nigeria. This regime was short lived because the army took over the reigns of government 4 years 3 months after its inauguration.

with all forms of challenge including funding, independence, autonomy, interference, executive recklessness and legislative rascality. The usual excuse is that it is a learning process. After the collapse of Second Republic, the abortion of the Third Republic and the emergence of epileptic Fourth Republic which has been on for about 14 years now, can we justifiably claim learning? For how long should we and can we be a toddler? There is need for a concerted effort on the part of all the arms of government to place the *judex* in Nigeria in its prime of place in order to have a society that is orderly, respected and worth its name that will give hope for the hopeful and the hopeless.

The clear position of the courts in America is not in doubt as it is the ultimate with all the segments of the society. Why has that eluded us in Nigeria and indeed the larger part of the African continent? Jennings argued for the supremacy of the decisions of courts in determination of disputes generally which underscored the importance of the courts' decisions in the efficacy of judicial decisions in important governmental matters as not lying in enforcement, but in the precision of judgment, the recognised sanctity of law, and the power of public opinion.⁸⁰

The position of Jennings is the ideal but it appears the situation in Nigeria in spite of constitutional provision still accommodates the watering down of the constitutional provision. In the case of **AG LAGOS V. AG FEDERATION**⁸¹ the Supreme Court decided that the funds of Lagos State withheld by the Federal Government was unconstitutional and said so in no unmistakable term as reflected in the judgment of Niki-Tobi JSC that the President of the Federal Republic of Nigeria has no legal right to stop the release of the statutory allocation to the Local Government Councils.⁸²

⁸⁰ Jennings, I. *Cabinet Government* 3rd ed. (1961) p.4

⁸¹ 2004 18 NWLR (PT.904) 1

⁸² *Ibid* p.127

In spite of the unequivocal and unambiguous position of the apex court, it still took political intervention to get the Lagos State opportunity to utilise the funds to which it is entitled due largely to the recalcitrance of the Federal Government during the regime of President Obasanjo. The same court earlier deprecated executive recklessness in the case of *THE MILITARY GOVERNOR OF LAGOS STATE V. CHIEF OJUKWU*.⁸³ It is rather preposterous that the same Lagos State that turned to the Supreme Court for bail out with respect to its funds refused to obey the decision of the court which was given in favour of Chief Ojukwu. It is indeed a case of the hopeful and the hopeless. In 1986, the Lagos State Government refused to obey a court order and in 2004, the Federal Government refused to obey an order given in its favour. What goes round comes round.

Equally, in the case of *UGWU V. ARARUME*⁸⁴ Chief Ararume was held to be the candidate of the Peoples Democratic Party (PDP) for the 2007 gubernatorial election of Imo State on the ground that the substitution of the name of Chief Ararume was not backed up by cogent, verifiable, genuine, convincing, compelling and persuading reasons. Instead of the party complying, PDP went on air to announce that it is not contesting the election and rendered the decision ineffective. It was indeed a hollow victory for Ararume. The party at that instance was the hopeful and appeared to laugh last. This was short lived as it became the hopeless in the case of *AMAECHI V. INEC*⁸⁵ where the Supreme Court directly declared Hon. Rotimi Amaechi as the winner of the election and ordered that he be sworn in because it is the party on whose platform he ought to have contested won the election when indeed, he was unjustifiably substituted by the party. The apex court justified its position that a

⁸³ (1986) 1 NWLR (PT.18) 621

⁸⁴ (2007) 12 NWLR (PT.1048) 367

⁸⁵ (2008) 5 NWLR (PT.1080) 227

winner in a court proceeding must not go home in a worse situation than he approached the court.⁸⁶

Incidentally, the two cases were handled for Amaechi and Ararume by Lateef Fagbemi SAN whose hope was dashed in Ararume not by the judiciary but powers that be but his hope was restored in Amaechi by the judiciary. On the Amaechi's case, Fagbemi himself argued that the Supreme Court made far-reaching pronouncements, which if consistently applied thereafter, would have, to a great extent, straightened the tumultuous line of political parties in Nigeria, in terms of conducting intra-party and primary elections among their members and ultimately had a positive impact on the country's electoral process as a whole. But unfortunately, he said the steam was allowed to die down.⁸⁷

It must be said unequivocally that Amaechi as basis of putting the political parties on the path of rectitude is just one positive aspect of the judgment, the most poignant aspect of the judgment is the pro-activeness and activism that the judgment represents and in spite of the subsequent attempt to water down the implications of the judgment, it remains a watershed in our jurisprudence and it is important to build on the gains of the decision why the polity try to improve on the possible shortcomings identified in it.

To emphasise constitutionalism and project the place of the *judex* in the scheme of affairs, the South African Constitution of 1996 established the Constitutional Court sitting at the apex of the judicial system imbued with powers to determine the constitutionality of any law enacted by parliament with both original and appellate jurisdictions and open to both individuals and government. It also

⁸⁶ Amaechi V. INEC (2008) 5 NWLR (PT.1080) 315-316

⁸⁷ Fagbemi, L.O. "Law as an Instrument of Social Change and the Courts as its Driving Force: A Reflection on the Role of Judiciary in Entrenching Democratic Ethos" in Adenipekun A. (ed) ***Current Legal Issues in Contemporary Nigeria*** (Afe Babalola University, Ado-Ekiti:2013) pp.163-164

has power to confirm constitutionality of any amendment to the constitution, the failure of legislature and President to fulfil a constitutional obligation, certification as to whether a provincial constitution or amendment thereto conforms.⁸⁸

The place of courts in the determination of legislative and executive acts is gradually improving in Africa with the power to adjudicate provided in 8 countries including 1963 constitutions of Congo (Brazzaville), Togo and Senegal (as amended in 1984), 1962 constitutions of Morocco, Chad and Rwanda as well as that of Benin of 1964 and Egypt of 1980. It is instructive to note that the 1978 Constitution of Rwanda also removed the provision. It appears that in principle the pendulum is changing to the effect that the courts now have the prime of place in the determination of the constitutionality or otherwise of any act. The 1969 Constitution of Ghana provided for “any question whether an enactment was made in excess of the power conferred upon parliament or any authority or person under this constitution” is subject to the jurisdiction of the court. In Nigeria, section 315(3) of the 1999 Constitution as amended also conferred the power on the court the express power that:

Nothing in this Constitution shall be construed as affecting the power of a court of law or any tribunal established by law to declare invalid any provision of an existing law on the ground of inconsistency with the provisions of any other law...

With regards to the rights of citizens, the various Bills of Rights empower the courts to enforce such rights if they are breached or threatened in any manner. In a plethora of authorities, the courts

⁸⁸ See generally Nwabueze, B. op. cit and sections 79, 80, 121, 122, 144, 165-167 and 174-178 of the Constitution of South Africa, 1996

have resolved to take an activist approach to the determination of such questions that affects the rights of citizens. In the recent case of *LAFIA LOCAL GOVERNMENT V. GOVERNOR OF NASARAWA STATE*⁸⁹ Rhodes-Vivour emphasised the point that that courts should assume activist role on issues of human rights. The courts in Nigeria in spite of the seeming liberal approach are still constrained by two main theories of justiciability and political question which essentially appear to undermine their adjudicatory powers and consequently deeming the hope of the hopefuls and the hopeless in their quest for justice.

***Judex* and the Two Theories of Justiciability and Political Question**

The challenge the *judex* is facing today all over the world is the need to strike a balance on the existing two theories of justiciability and political question. On the one hand, the judiciary is expected to determine all disputes brought by litigants and on the other hand the claims brought are not justiciable either for lack of jurisdiction, locus standi or competence of the suit on the plank of technicalities or that the issue is political in nature and the courts must avoid it like a plague. Let us reiterate as argued elsewhere, you cannot insulate the judiciary from the politics of its environment but judiciary must avoid partisan politics.⁹⁰ These positions may appear diametrically opposed to themselves but it is important to understand that first and foremost the Judges are human beings and subject to human foibles and frailties. Also, we are all political animals as it is generally said.

In discharging their duties, judges must balance between their humanity and their sacred responsibility of judging. They must listen carefully and determine dispassionately.

⁸⁹ (2012) 17 NWLR (PT.1328) 94 AT 128

⁹⁰ Egbewole W. *Jurisprudence of Election Petitions by the Nigerian Court of Appeal* Chapter 3 pp120-198

By the provisions of the Constitution of Nigeria, the courts are created to determine **all matters** between individuals, government and its agencies.⁹¹ This provision does not excuse issues that are political, economic or social and has nothing to do with the political question or non-justiciability theories. It must be underscored that the same Constitution by Section 6 (c) provides that rights guaranteed under Chapter 2 are not justiciable. These rights include right to education, right to health, right to sustainable environment and others.⁹²

The rationale for non justiciability as a concept evolved from the interpretation of Justice Frankfurter of the provision of the United States Constitution to the effect that it “shall guarantee to every state in the Union a republican form of government, and shall protect each of them against invasion; and....against domestic violence.”⁹³ This provision was then interpreted by Frankfurter that it only imposed a duty of peculiar political nature.⁹⁴ Further *raison detre* has been provided by Robertson and Merrills arguing that such rights are merely promotional and governments cannot meet the obligation but must rather strive. They argued that the rights rather list standards which they undertake to promote and which they pledge themselves to secure progressively, to the greatest extent possible, having regard to their resources.⁹⁵ In justifying this position, one of the authors argued elsewhere with respect to civil and political rights that such rights can be enforced by the superior court but the same is not applicable to economic and social rights.

⁹¹ Section 6(6)(b) of the 1999 Constitution

⁹² See Sections 13-24 of 1999 Constitution of the Federal Republic of Nigeria (as amended)

⁹³ Article iv section 4 of the US Constitution

⁹⁴ *Colgrove V. Miller*, 307 U.S. 433 at p.457; See also Frankfurter, F. “A Note on Advisory Opinion” *Harvard Law Review* 37 (1923) pp.1002-1007; reproduced in Nwabueze, N. *Judicialism* op. cit p.108

⁹⁵ Robertson, A.H. and Merrills, J.G. *Human Rights in the World* (1992 edn) pp.230-232

The realization of the right to work depends on economic circumstances, and if the labour exchange is unable to find a man employment the writ of a court of law will be of no avail.⁹⁶

These arguments appear unassailable but the question that must be asked is why do we have government? In our view, government exists to ensure that the largest component of the society have the best form of opportunities in terms of economic and social standing. Even if we assume that these rights are promotional and in the words of the authors they are “standards which they undertake to promote and which they pledge themselves to secure progressively, to the greatest extent possible, having regard to their resources.” How far has our government in Nigeria made effort to meet these standards? Since 1979 that these rights were introduced into our constitution none of the rights have been sufficiently promoted to meet the progressive recommendation of the authors. One conclusion that may therefore be drawn is that the government of Nigeria is not willing to give these rights and to that extent the citizens of Nigeria must be prepared to take it as minimum irreducible consideration for governance. This can only be done with the active support of the judiciary as done elsewhere.

The judiciary in Nigeria must be pro-active in ensuring the availability of these rights to Nigerian citizens like their other counterparts in other parts of the world with similar provisions like India and South Africa. It must be understood that government generally are usually not willing to fund these rights. The approach in India is to define through judicial interpretation of the Right to Life guaranteed under Article 21, rather than any direct guarantees in the Indian Constitution. The expanded notion of the right to life has enabled the courts, in its Public Interest Litigation (PIL)

⁹⁶ Robertson, A.H. *Human Rights in Europe* (1963) pp.140-141 reproduced in Robertson and Merrills, *Human Rights in the World* (1992 edn) p.246 and quoted in Nwabueze, N. *Judicialism*

jurisdiction, to overcome objections on grounds of justiciability to its adjudicating the enforceability of ECSRs. Subsequently, rights to work, health, shelter, education, water and food are regularly litigated. Expressions such as "basic necessities of life" "bare minimum expression of the human self" and "human dignity" found in several of the judgements have explored the import of "life" in Article 21.⁹⁷

The implication of this is that these rights have acquired the status of fundamental rights in some jurisdictions. Why not the same status in Nigeria? In fact in India, Public Interest Litigations (PIL) have taken a different dimension when Economic and Social Rights issues are involved. The constraints of locus standi, procedural technicalities and jurisdictional competence are now relegated to the background. It is now possible to convert a mere newspaper comment or complain to a writ or petition which the court must look into. The rationale for this in India is not farfetched; poverty and illiteracy. Our trajectory as a nation is not different from that of India with our over 150 million population, more than 250 ethnic groups, bubbling religiosity without Godliness, comatose economy, staggering rate of unemployment and a battered, scattered and poverty ridden people. This approach may equally work in Nigeria as it is presently making the government in India live up to its responsibility. As argued by Egbewole and Onuora-Oguino⁹⁸ that non justiciability is a

⁹⁷ [_Justiciability_of_Economic_Social_and_Cultural_Rights_-_Relevant_Case_Law_Verma__Shivani__2005__background.pdf](#) (accessed November 20, 2011).

⁹⁸ Egbewole, W. Onuora-Oguino, A. "Social Conflict in Nigeria; Non Justiciability of Economic and Social Cultural Rights a Catalyst" in a paper presented at the Institute of African Studies Conference, University of Ibadan, April, 2012 and Egbewole, W. and Onuora-Oguino, A. "Beyond the Horizon: Search for Innovative Justice Models" submitted for publication by African Insight Journal, South Africa

euphemism for non-responsiveness of government to its citizens, thus all matters must be justiciable especially where ECSR issues are involved. Egbewole has further argued that the Nigerian judiciary can no longer hide under the concept of non justiciability of chapter two of the constitution in the light of the fundamental developments in other parts of the world.⁹⁹

The second leg of this theory is political question and the main argument has been that there are some issues which are better left with the political class instead of adjudicating on them as it brings the judiciary to the political wicket. The basis and rationale have been addressed comprehensively by Egbewole and Olatunji and concluded that “over application of the doctrine will impose a moral cost on the courts which will have to decline jurisdiction, not because there is no legal justification but the matter in question before it involves some political colouration.”¹⁰⁰ The judiciary cannot run away from determining these issues in spite of the fact that it will be impolitic or inexpedient to take jurisdiction on such matters. Finkelstein’s justified this concept and argued that “sometimes it will be induced by the feeling that the matter is too high for the courts. But always, there will be a weighing of considerations in the scale of political wisdom.”¹⁰¹

⁹⁹ Egbewole, W. “Social Economic Rights Litigation in Nigeria: The Judiciary Challenge.” Paper delivered at the international conference of Annual International Conference of International Academy of African Business and Development GIMPA, Ghana, May, 14-18 2013

¹⁰⁰ Egbewole, W. and Olatunji, O. “Justiciability Theory Versus political Question Doctrine: Challenges of the Nigerian Judiciary in the Determination of Electoral and other Related Cases” *The Journal Jurisprudence* Vol.14 June 2012 p.148

¹⁰¹ Finkelstein, M. “Judicial Self Limitation” *Harvard Law Review* 37 (1923), pp.338, 344-345; “Further Notes on Judicial Self-Limitation” *Harvard Law Review* 39 (1925) p.221; Scharpf: *Judicial Review and the Political Question: A Functional Analysis*” *Yale Law Journal* 75 (1966) pp.517, 562; See generally on the position of support in Nigeria Nwosu, I. *Judicial Avoidance of ‘Political Question’ in Nigeria* (Ikenna Nwosu, Lagos:2005)

We however completely agree with John Marshall in his position rendered about two centuries ago that judiciary in spite of all difficulties determine all matters brought before it.¹⁰²

Mr Vice-Chancellor sir, it is our view that the judiciary has a job to do and this must be done without let or hindrance and since the constitution does not acknowledge that some cases are political and must be avoided then there is no justification to so compartmentalise. In Nigeria, the most troublesome of the cases in that category classified as political is nomination of the candidates of the parties. Since the decision in **ONUOHA V. OKAFOR**¹⁰³ the courts have decided **DALHATU V TURAKI**, **UGWU V. ARARUME**¹⁰⁴, **AMAECHE V. INEC**¹⁰⁵ and it is clear that the pattern has changed in Nigeria. The position of the court is that the laws have equally changed. The world over, there appears to be a decline in the application of this judicial self restraint.¹⁰⁶

Another issue which Nigerian courts have avoided is impeachment of political office holder. Since the decision in **BALARABE MUSA**

¹⁰² Marshall, J. *Cohen V. Virginia* 19 US 264, 404 (1821)

¹⁰³ 1983 NSCC 494

¹⁰⁴ (2007)12 NWLR (pt. 1048) 222

¹⁰⁵ (2007)12 NWLR (pt. 1048) 367

¹⁰⁶ David Strass, "The Decline of the Political Questions Doctrine" <<http://balkin.blogspot.com/2008/12/decline-of-political-question-doctrine.html>> accessed on 17 June 2011; Paul Daly, "Justiciability and the 'Political Questions' Doctrine", (2010) P.L. 160 – 178 at 163 <[agc-wopac.agc.gov.my/e-docs/Journal/0000016602.pdf](http://www.agc-wopac.agc.gov.my/e-docs/Journal/0000016602.pdf)>. See also *Council of Civil Service Union v. Minister for the Civil Service* (1958) A.C. 374 at 418, per Lord Roskill; Enyinna Nwauche S., "Is the end near for the Political Question Doctrine in Nigeria?" (June 30, 2010). **Fostering Constitutionalism in Africa**, Charles Fombad, Christiana Murray, eds., pp. 31-60, Pretoria University Law Press, 2010. Available at SSRN: <http://ssrn.com/abstract=1632861>

V. PRP¹⁰⁷ a lot has also changed as depicted in the cases of **INAKOJU V. ADELEKE**¹⁰⁸, **ABARIBE V. ABIA HOUSE OF ASSEMBLY**¹⁰⁹ and **DIAPLONG V. DARIYE**.¹¹⁰ Our views on the political nature of impeachment processes as canvassed during the impeachment saga of President Bill Clinton which was not popular then has now been validated by the decision of the courts especially the Supreme Court that while courts may not look into this issue, the processes and procedure to be followed must be adhered to strictly.¹¹¹ The attempt to make the Supreme Court to expand the scope was rebuffed in the case of **AGF v AG ABIA**¹¹² when it was argued before the court that the issue of seaward boundary was a matter for the executive and legislature. The political question doctrine is shrinking and the *judex* is gradually expanding the justiciability of all issues and living up to its bidding as an arbiter on all issues brought before it. This cannot be otherwise as the protection against anarchy, chaos and self help is for all disputants to have the confidence that when they approach the court they will have all their issues determined and not cut such challenge short on the ground of it being a political question or that the issue is not justiciable.

Judex, the Hopefuls and the Hopeless

The twin issues of justiciability and political question as well as criminal prosecution bring to the fore more poignantly the place of the hopefuls and the hopeless in the society and the reliance they place on the *judex* to have their wishes materialise. On the political plane, the cases of President Olusegun Obasanjo, General Ibrahim

¹⁰⁷ (1981)2 NCLR 453

¹⁰⁸ (2003) 7 SC 1

¹⁰⁹ (2000) FWLR (Pt.9) 1558

¹¹⁰ (2007) 8 NWLR (Pt.1036) 332

¹¹¹ Egbewole, W. "Impeachment trial of William Jefferson Clinton-Law or Politics" 1999 *Nigeria Education Law Journal (NELJ)* Vol.2No.1 pp.53-63

¹¹² 2001 FWLR (PT.64) 202

Babangida, General Abdulsalam Abubakar, Mr. Mohammed Abacha and Major Al-Mustapha represent the appropriate place of the judiciary as the rejected stone which became the corner stone of the building. These people when they had opportunity provided ouster clauses and such other impediments to the discharge of the duties of the judiciary and stultified the courts from performing effectively their constitutional duties. However, out of power they needed the same court to assist them to enforce their rights.

The case of Amaechi, Ararume, Ladoja, Dariye, Atiku Abubakar also present an interesting scenario. They had power yet they were powerless to get their rights restored and only succeeded through the courts. Alhaji Atiku Abubakar was a sitting Vice-President who had disagreement with his President and he was shown the 'way out' only for court to emphasise his rights and let the President know his limitations in the power calculations.¹¹³ Governor Amaechi was the Speaker of the Rivers State House of Assembly and by constitutional protocol arrangement, number three powerful person in the State. He wanted to be Governor of that same State when the powers that be said no. He resorted to court to be able to claim the mandate. Today, even as a sitting Governor he owe his stay in office to the court.

Governor Ladoja and Governor Dariye of Oyo and Plateau States were impeached from office. Ladoja was removed by the House of Assembly that sat in a hotel in Ibadan while less than the required members of the House of Assembly in Plateau State sat to remove Dariye. The courts held that the removals were invalid because the two Houses of Assembly did not comply with constitutional provision. Balarabe Musa the face of impeachment in the Second Republic did not have court intervention to rescue him because the position of the court then was that it is purely a political matter and

¹¹³ AG Federation & Others V. Alhaji Atiku Abubakar (2007) 10 NWLR (Pt. 1041)

the court could not be involved. The law has not changed but thinking has changed and it has been discovered that if the court does not come in decisively, the polity will derail.

The point here is however powerful you think you are, the law is above you. It may not be apparent at a point in time and that is why the common man concept was developed and whether we like it or not, we all become common before the law.

Mr Vice-Chancellor sir, the *judex* has been the harbinger of hope for the big and the small, the powerful and the powerless, the hopeful and the hopeless, the privileged and the disadvantaged. It is the story of the more you run away from it, the closer to it you are, with due apology to late Professor Ola Rotimi. It is when the powers that be relegate and decide to rubbish the *judex* at the height of their power that somehow they get back to need it.

It is therefore important that there must be concerted effort on the part of all of us to protect the judiciary so that it can protect the society in return. This is the imperative because at a time we are the hopeful and at another the hopeless.

Recommendations

Mr Vice-Chancellor sir, the Nigerian nation cannot be an island unto itself and must operate within the global village. As done elsewhere, if the *judex* must be in a position to discharge its constitutional duties effectively and efficiently as the hope of the hopeful and the hopeless, it must be repositioned and to that effect the following recommendations are offered:

- **Extermination of Corruption-** For the judiciary to assist the society, it must cleanse itself of corrupt elements. These people have no business in the judiciary in the first place. From the present composition of the NJC, it is not possible to get the kind of corrupt free judiciary of our dream. I also suggest that any judicial officer caught for corruption he/she should be tried and jailed without any option of fine.

The judicial officers should however be made to work under a very conducive environment that will not expose them to corruption in any form. After all, opportunity makes the thief. To this end, the governments at various level especially state governments should look into the issue of funding the judiciary and make them self accounting as against the present regime of having to go to government for all their needs. The heads of the judiciary in the various states should also use whatever is made available to them prudently.

- **Amendment to 1999 Constitution on composition of the NJC-I** strongly recommend that the aspect of the 1999 Constitution on the composition of the NJC be amended urgently. My view on the present composition is that the membership and spread is okay the way it is but the Retired Justices be restricted to past Chief Justices of Nigeria and past Presidents of the Court of Appeal in order of seniority of retirement from service be retained, the Chief Judges of the States to be representative of one per geo-political zone and in order of seniority. The representatives of the Grand Khadis and President, Customary Court of Appeal to be in order of seniority of the present occupants of the seat, such that the most senior Grand Khadi and the most senior President of the Customary Court of Appeal will represent the two courts. The representatives of the Nigerian Bar Association should not be subject to the approval of the Chief Justice of Nigeria as presently required. It is my firm position that this will give a level of independence to the members and will not see themselves being on the NJC at the mercy of the Chief Justice of Nigeria with the attendant implication of losing the seat if he/she loses the favour of the Chairman.
- **Training & Re-training-** To be more is to know more. For effective judicial service delivery, it is important that our

judicial officers and the judicial staff should be trained and re-trained in the art of judging and the new developments in the law. The present effort by the National Judicial Institute (NJI) is commendable but a lot of restructuring need be done in terms of the management of the Institute and the course contents of the modules. It takes the deep to call to the deep. For a 21st Century judiciary in Nigeria, the present formation of the NJI cannot deliver. It is suggested that the Nigerian Institute of Advanced Legal Studies be mandated to rework the curriculum and get a mix of academic, legal practitioners and seasoned judicial officers to deliver the modules. It is also important to get relatively new judicial officers to relish their experience during such training sessions.

- **Addition of Value, Knowledge and Skill to legal training-** Like computer, it is garbage in, garbage out. The present mode of training legal practitioners who eventually find their way to the bench is skewed in favour of legal practitioners and against being judicial officers. To this end, clinical legal education should be introduced in the curriculum of law, the curriculum should also consciously provide for the practice of law as a judge. In order to achieve maximum effect of the law school programme, it should be totally practical. In that vein, the present arrangement where theoretical practical approach is used is not going to achieve the goal. Let the students in the law school for the whole year go to court, prepare the processes themselves, argue real life cases, let them make the mistakes, get corrected. Let them go to Corporate Affairs Commission file documents, go to Securities and Exchange Commission and provide legal services and let them go to companies and cover their board meetings as Company Secretary. In short, the law school programme should be fashioned in a way the present houseman ship for medical doctors and pharmacists are being coordinated.

- **Restructuring of the Curriculum of legal education to reflect Nigerian Jurisprudence-** In suggesting restructuring of legal education, the course module should reflect the ‘Nigerianess’ of the law programme. The present arrangement where the lecturers are left to their own designs to call attention to the emerging Nigerian jurisprudence is not ideal. All the courses should be redesigned in such a way that evolving and existing theories be taught within the context of Nigeria. Today the jurisprudential theories of Akanbi, Belgore, Uwais, Bello, Oputa, Aniangolu, Niki-Tobi, Karibi-Whyte to mention a few must be developed in the areas of natural, positive historical or sociological schools. The teachers of law should be more pro-active in putting these thoughts in perspective and not the present hogwash approach of just putting together judgments of the judicial officers or selected writers to write articles as collection of essays in honour of the judicial officers which mostly are self serving without bringing out the uniqueness of the honouree. In most cases, it is money making exercise.
- **Adequate funding of the judiciary-** Just for emphasis, it is important that the judiciary be funded adequately. It is important that the judiciary should be a first line charge and must be made truly self accounting. They need not rely on their good relationship with the governor or the attorney-General before they get things done.
- **Critical appraisal of jurisdiction of appellate courts-** It is now time that the appellate jurisdiction of the courts-Supreme Court and the Court of Appeal be looked into more pragmatically. We should ask ourselves like Lord Denning what next in law. In my view, there appears to be nothing new under the sun it is just a function of different perspectives. This is one area that is causing serious delay in the adjudicatory system in Nigeria. I recommend an

amendment of the constitution to reduce and narrow down the type of cases that can go on appeal. In fact, any case that is not stating any new principle however important should not go beyond the Court of Appeal to reduce delay in conclusion of cases.

- **Restructuring the NJC-** As indicated in the body of the presentation, the NJC should be restructured to be more effective and additionally, the number should be pruned down drastically. It is a policy making body and therefore the goal should be to provide the appropriate framework for the workings of the judiciary and not to be representative focused. As a federal state, Nigeria needs to decentralise the more. Each State should have a level of autonomy and control over its judiciary as it has on the legislative and executive arms. The present arrangement of centralisation is not good for us and it should be unbundled. The present approach of the NJC in its bid to reduce corruption is commendable, salutary but appears cosmetic and superficial. In order to get at the root of the problem, the appointment procedure must be reworked in such a way to give room for transparency and merit. We have had enough appointment of the sons, daughters, cousins, in-laws, brothers and sisters of judicial officers. It is time to appoint truly deserving people to judicial office and not the prevalent approach of lobbying and ‘who you know.’
- **Justiciability of all issues-**For the judiciary to effectively live up to its name as the hope for the hopeful and the hopeless, there cannot be ‘no go areas’ in adjudication. It pays the political class to put impediments in place like we presently have in Chapter two of the Constitution of Nigeria. The judiciary must put off the garb of retrogression and be progressive and active in its thinking and make the rights to be truly available to Nigerians. Since the case of **OLUBUNMI OKOGIE V AG LAGOS STATE**, our

economy has improved tremendously to accommodate right to education, health and environment. The lessons from other jurisdictions should be imported to make such rights justiciable because it is the essence of government.

Conclusion

This presentation has called attention to the various areas in which the *judex* has contributed its quota to the development of our society, its challenges and the areas in which it can improve its contributions. The challenges and contributions must be understood from the perspectives of its operations and the limitations placed on it by the Constitution and the relationships it has with the other arms of government which are more visible, more open, more accessible and much richer in carrying out their activities. By tradition, the *judex* can only be seen and not be heard and the Nigerian Bar which should be its voice is largely fragmented and so speak with muffled voice. This has opened the *judex* to all sorts of criticisms by the high and the low, the informed and the ignorant, the wise and the fool as well as being a subject of beer parlour discussions.

The *judex* in Nigeria has done its best in the circumstances in which it operates. No doubt it could have done better if it purges itself of corruption, indolence and internal politicking which has opened it up to the critics.

If the *judex* must advance in its quest to bring justice to the doorstep of all Nigerians, it must take to heart the gauntlet of Teddy Roosevelt thrown to all the armchair critics and pundits that:

It is not critics who counts, not the one who points out how the strong man stumbled, the credit belongs to the man who is actually in the arena, whose face is marred with sweat and dust and blood; who strives valiantly; who errs and comes short again and again....who, if he

wins, knows the triumph of high achievement; and who, if he fails, at least fails while daring greatly.¹¹⁴

Therefore, let justice be done to all manners of people without fear, favour, affection or ill-will. If this code is the mantra of operation of the *judex* then, hope would have been restored to the hopefuls and the hopeless in Nigeria.

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¹¹⁴ Reproduced in Gibbs, N. and Duffy, M. *The Presidents Club* Simon & Schuster, New York:2012 p.9

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