UNIVERSITY OF ILORIN

THE TWO HUNDRED AND SEVENTY-EIGHTH (278TH) INAUGURAL LECTURE

"JUDICIALISING POLITICS WITHOUT POLITICISING THE JUDEX"

By

PROFESSOR ABDULFATAI OLADAPO SAMBO
LL.B (Combined Hons) (Ilorin); LL.M (Ilorin); Ph.D. (Malaysia); B.L (Abuja)

DEPARTMENT OF PUBLIC LAW,
FACULTY OF LAW
UNIVERSITY OF ILORIN, NIGERIA

THURSDAY, 17TH APRIL, 2025

This 278th Inaugural Lecture was delivered under the Chairmanship of:

The Vice-Chancellor

Professor Wahab Olasupo Egbewole, SAN
LL.B (Hons) (Ife); B.L (Lagos); LL.M (Ife); Ph.D. (Ilorin); FCArb; Fspsp

17th April, 2025

ISBN:

Published by:

The Library and Publications Committee,
University of Ilorin, Ilorin, Nigeria

Printed by
Unilorin Press, Ilorin, Nigeria

PROFESSOR ABDULFATAI OLADAPO SAMBO
LL.B (Combined Hons) (Ilorin); LL.M (Ilorin); Ph.D. (Malaysia); B.L (Abuja)

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My Lords, Spiritual and Temporal,
Distinguished Invited Guests,
Gentlemen of the Press,
Students of the Faculty of Law and other students here present,
Great Students of the University of Ilorin,
Distinguished Ladies and Gentlemen.

Preamble

By the special benevolence of the Almighty Allah, the uncreated Creator, I stand before this very august audience to present **278th** Inaugural Lecture of this great University. This inaugural lecture is the **16th** in Faculty of Law and the **1st** in the Public Law Department. This is not to deny the excellent contribution of my mentor, my teacher, whom I fondly call *Oga oga*, the sitting Vice-Chancellor of this *Better by Far* institution, Professor Wahab Olasupo Egbewole, SAN, who wrote on a similar topic at the **139th** Inaugural Lecture titled 'Judex: Hope for the Hopeful and the Hopeless.' Another similar lecture was the one by Professor Mojeed Olujinmi A. Alabi of the Department of Political Science, titled 'Politics and Law: Anatomy of the Siamese Twins' at the **153rd** Inaugural Lecture, where he analysed the inescapable link between law and politics. Vice-Chancellor, Sir, I was born into the family of Late Mallam Abdulrahman Jakun Sambo. I was told they named him Jakun because he survived still-birth after the 8th time.

He was of the Government Secondary School, Ilorin, and 1963 Set. He completed his undergraduate and Master's degrees at University of Cambridge, London, before becoming the Political Adviser to the then Governor of Kwara State, Adamu Attah. He later became a Chief Lecturer at Kaduna State Polytechnic, about 34 years ago.

After his death, Mr. Vice-Chancellor, things became extremely difficult. My mother, being a full time house wife, found it difficult to pay our bills. My other six siblings and l wanted to stay at one place to maintain our unity. We are seven in number and l am the 6th in the family. Some family members contacted were reluctant to accept all of us. However, as fate would have it, my Aunt, Late Alhaja Halimah Sambo, decided to house five of us, including my mother, in a room and parlour at Ile Agba, Isale Gambari, Ilorin. This was before my mother later secured a job as a Librarian at Kwara State Polytechnic. Late Alhaja Halimah was a firewood seller (*Iya Ruki Onigi*). May Allah forgive her shortcomings. I later named one of my daughters after Alhaja Halimah. Nevertheless, friends of our father did not leave us. The boys, now men, were enrolled in G.S.S. Ilorin, where my father also graduated from. The then Principal, Mr. Olanipekun, paid our school fees throughout. Two weeks before my IJMB exams, l lost my mother. My Ustaz, now Khalifa Gobir, was asked to come and deliver the shocking news to me. He cajoled me to escort him to somewhere. I told him it was barely 2 weeks to my exams and my maternal uncle, Senator M. S. Ajadi, who paid my fee had warned me not to waste his money. I told him l needed to concentrate. He nevertheless persuaded me. When we got to Amilengbe, he broke the sad news. I felt like jumping into the River but he held me. I told him what's the essence of life because even if I make it in life, where are my parents that l would take care of? He nevertheless persuaded me that l should pray for them and make them proud. I named my first daughter after her (Hajarah Arionla Sambo).

Vice-Chancellor, Sir, I later passed my exam and was given admission on merit for Common and Islamic Law in the year 2000. Public Law Department was our host. I never knew l would be the first to deliver an inaugural lecture in that same department. I am also sitting today as the Head of the Department of Public Law.

Mr. Vice-Chancellor, my area of specialisation is constitutional law. Many would wonder why this topic is interdisciplinary i.e. law and politics. The reason is not farfetched. The original conception of the Constitution is that it was a political

document. The Constitution was simply seen as a blueprint, or yardstick of government and fundamental objectives and directive principles of state policy (Nwabueze, 1982; **Sambo** & Abdulkadir, 2012). It governs the affairs of politicians. It is a contractual document between the citizens and the government. Hence, its provisions were seen as merely declaratory not justiciable (**Sambo** & Quadri, 2011). However, with the United States Constitution of 1787, the conception of the Constitution changed to being a legal document (Louis, 2001). Its provisions were not only declaratory, but were also legal. Its observance became justiciable. This practice has been exported to many constitutional democracies across the globe although some Francophone countries still hold on to the original conception of the constitution being a political document.

My assessment of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 as altered is that the Constitution is a legal as well as a political document. This is because it has many justiciable provisions and the non-justiciable ones. It is a fundamental rule and regulation according to which a state is governed. It largely governs the affairs of the political class who use constitutional powers for political purposes. The Constitution is indeed a voluminous document. It comprises about 58,349 words incorporating the alterations without the schedules. It is also about 67,000 words with the schedules. It consists of 320 sections, 5 Alterations, 7 schedules and 8 Chapters.

Introduction

One of the major problems confronting the judicial arm of government today is the lack of understanding of the legitimate way of deciding political disputes. This has been a central problem of constitutional theory which is explained by the actions of the political class constituted by the executive, legislature and political parties (**Sambo**, 2009; Greene, 2008).These actions, in many occasions, require some legal and political considerations (Miller, 1990). Since the political class use legal powers for political purposes, the judiciary needs to play a role in the review of the actions that appear political, but with legal and constitutional stings **(Sambo** & Kadouf, 2013).

Democratic government with calls for constitutionalism has gained more recognition in Nigeria, like in many parts of the world, and needs to be sustained. Given the general functions of the judiciary as one of checks and balances in a democratic government, most people and government have developed interest

in the judiciary and judicial process, leading to a higher number of political cases being submitted before the courts for resolution. Yet, the court's dabbling into political matters in cases brought before it is a herculean task in view of the far reaching implications of the court's decision and the risks associated with judicial errors in such matters. Nevertheless, as a result of the perceived weaknesses in the institutions of political class, there are many political disputes, questions, injustices, and the courts seem to be the only major avenue with adjudicatory powers, where these political disputes are resolved with finality.

Vice-Chancellor, Sir, over the years, in making the analysis, I have, in my studies, endeavoured to analyse how best to judicialise political disputes without politicising the judex. I have propounded the pragmatic theory of political questions, **(Sambo,** 2013, 2015**)**. I have endeavoured to find out the specific attitudes or reactions of the courts to political questions when matters relating to it are brought before the courts for adjudication. I have been able to find that judicialisation of political disputes is the current doctrine in Nigeria. I have tried to analyse the merits and risks involved in judicialising political disputes. I have analysed the legal and political implications of judicialising political disputes. I have attempted to reveal the legal impediments to the proper judicialisation. Finally, I have analysed the constitutional significance of judicialising politics. This will be the focus of discussion in this lecture.

Conceptualisation

Judicialisation, in this context, is the legal way in which the court controls or overturns the actions of the political class, or decides disputes arising from the exercise of powers and functions by the political class (**Sambo**, 2013). The judiciary in Nigeria has been visible in shaping the dynamics of politics (**Sambo,** 2018).Judicial review, now contextualised as judicialisation, has continued its relevance in courts in the modern day; perhaps because most modern constitutions now give the courts power to check the excesses of other coordinate arms of government (**Sambo**, 2011). The continued relevance requires that the judiciary be creative, independent and vigilant in order to carry out its duty effectively (*Inakoju v Adeleke* (2007) All FWLR (Pt. 353), 3 at 26, (**Sambo** & Abdulkadir, 2012).

In Nigeria, the most important legal framework enabling the court to judicialise politics is the Constitution itself. Section 4(8)

and section 6(6) (b) of the 1999 Constitution confer on the courts the power to review legislative and executive actions. Also, the powers of the Supreme Court of Nigeria though an appellate court, extends to exercising original jurisdiction in disputes between the State and the Federal Government and disputes between the States themselves (section 232 of the CFRN, 1999). The Court of Appeal also decides some high content political matters in its original and appellate jurisdictions, (section 239 and 240 of the CFRN, 1999). The High Court also has the jurisdiction in civil matters whether it involves the Federal or the State government, subject to section 251 relating to the jurisdiction of the Federal High Court, section 254C relating to National Industrial Court and section 285 relating to election petitions (**Sambo** & Haji, 2018). Apart from the Constitution, each court in Nigeria also has its Act or Laws complementing the powers already bestowed on the court in relation to judicial review by the Constitution. The head of each court is also empowered in the Constitution to make rules which regulate practice and procedure in the court (Sections 236,248, 254, 259,264,269,274,279,284 of the CFRN, 1999).

More importantly, the Nigerian Constitution strengthens the concept of judicialisation by prohibiting the legislature from enacting ouster clauses in any law on any matter in the Federation (section 4(8) of the CFRN, 1999). This is mainly because Nigeria operates the doctrine of separation of powers (sections 4, 5, and 6 of the CFRN, 1999). Also, Nigeria has a colonial heritage by operating on the doctrine of common law where judicial precedent plays a crucial role in the administration of justice (*Dalhatu v Turaki* (2003) FWLR (Pt. 174) 247). Moreover, the nation operates the concept of constitutional supremacy where the Constitution is seen as the supreme law of the land (section 1(1) and (3) of the CFRN, 1999). It operates under a Federal system of government (section 2(1) and (2) of the CFRN, 1999 (**Sambo** & Adekilekun, 2020) and its governance is based on the concept of democracy (section 14(1) and (2) of the CFRN, 1999).Nigeria also operates a presidential constitution (Nwabueze, 1982; **Sambo** & Farid, 2012).

In fact, in Nigeria, despite the 28 long years of military rule, the role of the judiciary and respect for rule of law in this civilian rule increasingly come to the centre stage (**Sambo**, 2015). The general public now significantly takes interest in judiciary and judicial process. All these together with the fact that various interests towards the rule of law, human rights, power sharing,

political pluralism and so on ultimately signifies that the courts will often be called upon to pronounce on issues that border on or which cannot be separated neatly from politics (Shamrahayu & **Sambo**, 2012). Undoubtedly, there exists a relationship between law and politics (Alabi, 2014; **Sambo**, 2012). This relationship ultimately puts to fore scholarly examinations of the role of judiciary in resolving political disputes. This is unlike the classical conception of the judiciary as an impartial umpire having nothing to do with politics (**Sambo**, 2013).

The judicial arm of government is expected to be an arbiter between the government and the people and between other arms of government (section 6 CFRN 1999). This is based on the principles of separation of power. Nonetheless, courts are not expected to use its interpretative powers to encroach on the powers of other arms of government. This purely legalistic view of the nature of judicial powers and functions appear to have been warmly received even by judges who often see themselves not interested in the political aspect of a view (*Balarabe Musa v Hamza* & Ors (1982) 3 N.C.L.R 229 at 247). This non-political view of the judiciary and judicial process contributed significantly over the years to the development of the nation (**Sambo**, 2017).

This lecture is, therefore, coming at a time when judicial review of political issues is gaining more recognition in Nigeria, and indeed the world. The challenge of sustainable democracy requires that careful decisions be made with regards to political controversy put before the court in this digital age (Abdulkadir & **Sambo,** 2022; Adekilekun**, Sambo** & Ali, 2020). Also, a study of the judiciary as an essential institution will be useful to assess the relationship of the judiciary with other arms of government, to describe and assess the role of the courts in the determination of political disputes (Ansari, **Sambo** & Yamusa, 2012). It also helps to understand the underlying basis of judicial powers exercised by courts and the symbiotic relationships that exist among the various institutions of government as a preface to better organisation of states for better governance (Jamal, 2008).

Politics is generally defined as who gets what when and how (Laswell, 1936). Politics, in this sense, refers to the exercise of political powers by political class. Political actions are the actions which the constitution or the law has given its exercise to the political class (sections 4 and 5 of the1999 Constitution. It is ordinarily a non-justiciable matter or actions which the courts may

decline to consider, or to decide on their merits because of their purely political nature or because their determination would encroach upon an executive or legislative powers (*Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).A judge is the judex. Politicising the judex is used to convey a situation where a judge has veered off the cultural norm of judicial role and has entered into a political thicket or dirty water of politics. There is a distinction between a judex and the court. A judex does not cease to be one merely because he is out of the court room. Nonetheless, a judge out of the court room exercising non-judicial function cannot be regarded as the court (**Sambo**, 2018).

Evolution and Development of Judicialisation of Political Disputes in Nigeria

By way of historical background, Nigeria was a colony of Britain and inherited the English common law just as other dependencies of the Queen. So, predictably, English common law exported the paradigm applicable in England to Nigeria. One of the legacies was the one that says it is the duty of the court to merely interprete the law and not to make the law. This formed the bedrock of literal interpretation in England exported to Nigeria. This reflects the initial court attitude to political disputes making the court to decline jurisdiction in almost all matters relating to political questions. This accounts for the reason why from almost all the decisions of the court, after independence, the courts refused to determine the matters on their merits. Instances are in legislative actions, such as *Adegbenro v Akintola and anor* (1962) WNLR 205, *Williams v Majekodunmi (N0.2)* (1962)1 All NLR 328), executive actions, such as *Attorney General of Eastern Nigeria v Attorney General of the Federation* (1964) 1 All NLR 224), and ouster clauses as in *Memudu Lagunju v Olubadan-in- Council and Another*12 WACA 233, *Senator Chief T. Adebayo Doherty v Sir Abubakar Tafawa Balewa and others* (1961) NSCC 248; *J.S. Olawoyin v Commissioner of Police* (1961) ALL NLR 203. The court later, after the collapse of the 1st Republic, during the Military regime, took some bold steps by judicialising the political disputes as in *N.K. Adamolekun v Council of University of Ibadan* (1967) NSCC 210; *Lakanmi and Another v Attorney General of Western Nigeria and Another* (1970) NSCC 143).

The courts largely declined hearing the merit of the cases because after independence, the courts felt that its primary duty was to safeguard the interest of the state. This was in the spirit of the

constitutional principles of judicial avoidance, judicial deference, judicial restraints and political questions (**Sambo**, 2015). Thus, our studies revealed that in decisions from 1960s-66, the courts largely declined jurisdictions in matters that appear political in nature (**Sambo**, 2013). As a result of this, it was almost predictable that the regime was not going to last. Indeed, when the Military struck in 1966, part of their reasons for the incursion into politics was the attitudes of the judiciary to political issues.

This attitude continued up till the period of 2nd Republic but with some reinvention of the judicial attitude (**Sambo,** 2019). The courts, now to some extent, with the advantage of hind sight, knew that this attitude was not good for Nigeria's democracy. However, there was no much change in attitude. Thus, with regard to executive actions, there was a slight change in attitude as in S*hugaba v Minister of Internal Affairs* (1981) 2 NCLR 459; *Okogie v Attorney General of Lagos State* (1981) 2 NCLR 337; *Adewole v Jakande* (1981) 1 NCLR 262; *Ehimare v Governor of Lagos State* (1981) 1 NCLR 166; *Ilori v State* (1983)1 SCNLR 94). With regard to legislative actions, the attitude remained the same as in *Attorney General of Bendel State v Attorney General of Federation & 22 others* (1982) 3 NCLR 1; *Ezeoke v Makarfi* (1982) 3 NCLR 663; *Okwu v Wayas* (1981) 2 NCLR 522; *Governor of Kaduna State v The House of Assembly, Kaduna State*(1981) 2 NCLR 722; *Abraham Adesanya v President, Federal Republic of Nigeria* (1981) 2 NCLR 358; *Musa v Hamza* (1982) 3 NCLR 439; *Balarabe Musa v Speaker, Kaduna State House of Assembly* (1982) 3 NCLR 450; *Obayuwana v Alli* (1983) 4 NCLR, 96; *Peenok Investment Ltd v Hotel Presidential Ltd* (1983) 4 NCLR, 122.

On legislations, the Supreme Court in *Unongo v Akwu* (1983) 2 SCNLR 332 at 340 -341 paras. H-D declared that section 129 (3) and 140 (2) of the Electoral Act, 1982 which limits the time for disposing of election petitions by the courts were *ultra vires* the National Assembly and therefore null and void. Similar position was taken in *Attorney General of Bendel State v Attorney General of the Federation* (1983) 1 SCNLR 239 at 251-252. On ouster clauses, judicial deference was adopted as in *Military Governor of Ondo State v Adewunmi* (1988) 1 NSCC 1136). The courts still held that matters relating to affairs of the political parties were still political questions not within the powers of the courts to decide as decided in *Onuoha v Okafor* (1983) 2 SCNLR 244; *Okoli v Mbadiwe* (1985) 6 NCLR, 724; *Akure v National Party of Nigeria,*

Benue State (1984) 5 NCLR 449; *Ogunsan v Oshunride* (1986) 6 NCLR 611; *Rimi and Musa v Peoples Redemption Party*(1981) 2, NCLR, 734; *Balarabe Musa v Peoples' Redemption Party*(1981) 2, NCLR, 763; *Obayemi v Awojolu* (1984) 5 NCLR 425; *Rimi & Anor v Aminu Kano*(1982) 3NCLR 478).

However, with the ushering of democratic dispensation in the Fourth Republic, there has been a remarkable change in the courts' attitude to political disputes (**Sambo**, 2018). There has been a bold attitude or reinvention of the judicial attitude. Thus, matters of executive actions such as allocation of revenue (*Attorney General of Ogun State v Attorney General of the Federation* (2002) 18 NWLR (Pt. 798), allegations of withholding statutory funds by the President (*Attorney General of Lagos State v Attorney General of the Federation* (2004) 18 NWLR (Pt 904) 1at 91 para E-H), relationship between the President and the Vice-President where the President purportedly declared the office of the Vice-President vacant (*Attorney General of the Federation & ors v Abubakar & ors* (2007) ALL FWLR (pt 375) at 405), disqualification of Vice-President from contesting elections (*Action Congress & Anor v Independent national Electoral Commission* (2007) 12 NWLR p 259 para D-E.), allegation of breach of fundamental objectives and directive principles, tenure of office of some governors (*Peter Obi v Independent National Electoral Commission & Ors* (2007) 11 NWLR (pt.1046) 436 & (2007) 11 NWLR (pt 1046) 565), management of environment (*Attorney General of Lagos State v Attorney General of the Federation* (2003) 12 NWLR (Pt 833) 1 at 118–119), truncating of the tenure of local government officers (*Attorney General of Abia State v Attorney General of the Federation* (2002) 6 NWLR (Pt. 763) 264), Naira redesign (*A.G of Kaduna State & Ors v. A.G. of the Federation & ors* (2023) LPELR-59936, SC), local government autonomy (*AG Federation v. AG Abia State & Ors* (2024) LPELR) and the recent actions of Governor Fubara of Rivers State truncating the legislative house by dealing with 3 legislators (Governor of *Rivers State v. Rivers State House of Assembly & Ors* (2024) LPELR-62961) have all come within judicialisation by the courts.

Nevertheless, the courts have been careful in matters relating to emergency declaration. Based on the constitutional principle of judicial avoidance, judicial deference, and judicial restraints, the Court on two occasions in the 4th Republic *(Plateau State of Nig. & Anor v. AG Federation & Anor* (2006) LPELR-

2921(SC) and Fayose's case) refused to determine whether a state Governor can be suspended from office under section 305 of the Constitution. It looks like a tacit approval given to the president to use his discretion to consider the situation and use extraordinary measures which may mean extra constitutional measures to restore peace and security. The Constitution does not envisage a situation of hopelessness and helplessness.

Also, with regard to legislative actions such as suspension of some members of the House of Representatives (*Hon. Dino Melaye & ors v The Speaker, House of Representatives & ors* Suit no.FHC/ABJ/CS/460/2010), House of Representatives investigation of civil unrest in Jos (*The Government of Plateau State & Anor v The Speaker of the House of Representatives of the Federal Republic of Nigeria & ors*), impeachment of a State Governor by the legislature (*Inakoju v Ladoja & others*(2007) All FWLR), and legislations on allocation of revenue (*AG Abia v AG Federation Supra*), public contracts (*L.S.D.P.C v Adold/ Stamm Int. Ltd* (1994) 7 NWLR (Pt 358) 545 at 568 -569) have been judicialised. Also, the courts have reviewed ouster clauses strictly as if it never existed as in *Jimoh v Olawoye* (2003) 10 NWLR (Pt. 828) 307; *Inakoju v Adeleke* (2007) 4 NWLR (pt.1025) 423; *Ekpenyong v Umana* (2010) All FWLR (Pt. 520) 1387 at 1397 paras G-H; *Akinmade v Ajayi* (2008) 12 NWLR (Pt 1101) 498.

With regard to the affairs of political parties, issues of nomination and substitution of candidates of political parties without cogent and verifiable reasons (*Ugwu and Anor v Ararume* (2007) 12 NWLR (Pt 1048) 367; *Rt. Hon. Rotimi Chubuike Amaeachi v Independent National Electoral Commission* (2007) 9 NWLR (pt. 1040) 504), and validity of the nomination and sponsorship of political party's candidates (*Saidu v Abubakar* (2008) 12 NWLR (Pt1100) at 296 para E-G) have been judicialised (**Sambo,** 2018). In fact, the Supreme Court on 24th of May, 2019 in *All Progressives Congress (APC) & Anor v. Sen. Marafa & 179 Ors* (2020) 6 NWLR (Pt 1721) 383 nullified the victories of all candidates of All Progressives Congress (APC) in Zamfara state describing the votes as waste. The entire elective positions in the state were lost to Peoples' Democratic Party (PDP) who was first runners up in the elections. The Court held that APC did not conduct valid primaries in the state and could not field candidates in the general elections thus making the entire political structure in the state a product of judicialisation.

Currently, the position is that any question, in so far conceivable, under the provisions of the Constitution can come under judicialisation. The current attitude of the court can be conveniently described as judicialisation of politics. The courts are now, instead of avoiding political disputes, judicialising them. All the issues identified above as it were, were supposed to be political disputes. However, the courts have found a way of making incursion in order to determine the merits of the cases so that justice would prevail. There is no way the court can run away from them for the simple reason that the courts have been invested with the power of the guardian of the Constitution (section 6 CFRN, 1999). Thus, if the court is the guardian of the Constitution, its duty is to see that nothing happens prejudicially to the Constitution. The courts in Nigeria are even lucky. In America, there was no provision for judicial review. It took the stature of Marshall CJ in *Merbury v Madison* (Supra) to entrench judicial review into American mode (**Sambo**, 2018). Nevertheless, Nigeria Constitution expressly empowers the court to review legislative and executive actions.

The court found a way of making incursion because it drew a distinction between what was substantive and what was procedural. If it is a matter within the substantive province of the legislature, there is an ordained procedure for doing it. Where the procedure is not followed, the court will intervene. This is how the courts have been able to make inroads into such areas because for every substantive provision, there is a procedure for doing it. As held in *Inakoju's* case, the House of Assembly' decisions cannot ordinarily be interfered with. Since the House violated the Constitution, the court interfered. The Constitution that gave this liberty also ordains the way of doing it. So, where the legislature wants to supplant the basis of its own authority i.e. the Constitution, its spirit, letter, and intents, the court must hold it accountable. In fact, in *Amaechi'*s case, there was indeed even a pending matter before the Supreme Court. In that case, there was a matter for hearing at the apex court and somebody in contempt of the likely outcome of the case took a step prejudicial to the decision, the court should be failing in their duties if they did no vacate such exercise. Thus, because the Constitution is supreme, every other authority must be under the Constitution. That was why the Court took an extra bold decision in *Amaechi's* case that notwithstanding that Amaechi was not the person who contested the election to install him as the Governor. That was how the courts have been able to

expand the frontiers. The Court broke down what used to be the unbreakable frontiers of political questions.

Also, the whole Chapter II of the Constitution, as it were, was supposed to be a political question since section 6(6) (c) has rendered it non justiciable. However, there is now authority for the view that chapter II of the Constitution is not sacrosanct (Nikki Tobi JSC in *Anache v FRN* (2004) 14 WRN 1). If one amalgamates or marries the provisions with other provisions of the Constitution, judicialisation is possible. For instance, Section 14(3) says in making appointments, political diversity of the country must be taken into account. So when a Governor, in making an appointment, which is essentially a political matter, concentrates his appointment in just one area or to a particular religious class, one can use Section 42 and make it justiciable. That becomes a matter of the Constitution. That is how the courts have now broadened the political question.

Thus, it appears impossible today for anybody to hide under the globe of politics to avoid the determination of his matter except, the provision is so couched in a way which is also very difficult to imagine. Thus, where the removal of the Governor or the President is done in such a way that is inconsistent with the Constitution, the court will void it. The Independent Electoral Commission (INEC)'s case is also worth examining. The Electoral Act has provided the way of registering (Shamrahayu & **Sambo** 2011). The INEC, pursuant to this provision, limited the numbers of political parties to two. Nonetheless, in *Balarabe Musa's* case (supra), Chief Gani Fawehinmi went to court to challenge the restrictions. Uwaifor J.S.C. speaking for the Supreme Court gave a favourable verdict. This accounts for the reason why Nigeria now has many political parties in Nigeria. This therefore opens political space. Otherwise, Nigeria will be having just one or three political parties now.

Therefore, anybody who says that judiciary today is still the judiciary of the 1960s must either be mischievous or expressing his ignorance. Indeed, if one looks at the current Electoral Act, one will find a reflection of what the courts have been saying. Through their pronouncements, the courts have facilitated the alteration of the Constitution and amendment of the Electoral Act. The Constitution has been altered to reflect most judicial positions. It is no longer possible to say that the court's duties are just to interpret the words of the constitution as they are. That was an ancient doctrine.

The truth of the matter today is that courts now make laws not directly but tactically through their decisions, pronouncements, through interpretation of the words of the statutes to give them meaning (**Sambo**, 2013; Davies, 2006). It is what the courts say that is the law as the Constitution permits this to happen. The makers could make their laws and until the courts pronounce on it, it cannot be said to be the position of the law. If not, there will be no difference between statute law and the law as it is in the real life. The doctrine of judicialisation of political disputes is now a current doctrine in Nigeria (**Sambo**, 2015). This is not to say that there is now judicial supremacy as this will entail a kind of arrogance of power by the courts. It is judicial review exercised by the courts itself instead of calling it judicial supremacy. Better still, it may be called constitutional supremacy in action.

Thus, our studies show how the courts treat issues of politics. It is clear that the courts in Nigeria review matters relating to political questions. This is not the case in some jurisdictions. For instance, courts in Malaysia have generally refrained from this practice. It, therefore, means that the doctrine of political questions flourishes and is well practised by the courts in Malaysia. This is because the Federal Constitution of Malaysia, like many Federal Constitutions which are political documents, is full of political questions. It however precludes the courts from interfering with those questions. Also, the Federal Constitution of Malaysia has not conferred the power of judicial review of legislative actions on the courts (Kadouf & **Sambo**, 2014). Rather, it precludes the courts from questioning or reviewing the regularity or otherwise of the proceedings of the legislature (**Sambo**, 2013). This is even extended to that of its committees.

Apart from Constitution, legislations in Malaysia may also oust the jurisdictions of courts in certain matters and confer adjudicatory powers on institutions other than courts for the purpose of deciding certain matters **(Sambo**, 2019). These used to be the practices of the courts in Nigeria before now. Thus, judicialisation of politics is the order of the day in Nigeria. There is, no doubt, however, that the legal frameworks play an important role in shaping the reactions of the courts to political questions. Apart from the legal frameworks, the system of government being operated and the political background of both countries play roles in shaping the courts attitude to political questions and the number of cases brought to court for review. While, as earlier stated, Nigeria

practices presidential system of government, Malaysia operates the parliamentary system of Westminster model. However, Malaysia does operate constitutional supremacy not parliamentary supremacy. Again, the effect of Military rule in Nigeria which does not exist in Malaysia has effects on the operation of the courts. At any rate, judicialisation of politics no doubt has merits but with some risks.

Merits and Risks of the Judicialisation of Politics

A well-managed judicialisation of political issues or disputes prevents the abuse of power by political class. It also ensures that the majorities do not abuse their powers against those who are stigmatised as minorities or individuals (Kadouf & **Sambo**, 2014). Therefore, the rights of everybody will be recognised and protected in the contemporary democracies. The role of the court in this regard is not only crucial but also necessary for the sustenance of democratic process as they are the guardians of the constitution (**Sambo** & Abdulkadir, 2011).In relation to the above is the significance of fundamental rights in a democratic system. These rights are condition precedent for a functioning democracy (**Sambo** & Abdulkadir, 2011). This is because a real democratic debate could hardly be put in place where there is no free speech, transparency, right of association and mobilisation, open space in government and where other political rights were not guaranteed and well protected (Ansari, **Sambo** & Abdulkadir, 2012). This is one of the reasons why the courts in Nigeria have declared Public Orders Act as void. The protection of these rights, then, is necessary for a democracy to be truly considered a system in which citizens have the choice to deliberate who govern their affairs. These rights are necessary for all people to enjoy the dignity necessary to be truly free, equal and autonomous citizens. Therefore, since fundamental rights are necessary conditions of democracy, these rights need to be guaranteed, in spite of the opinion of the majorities. Where these rights are protected by the courts, then, it is clear the judex is performing an essential constitutional function in a democracy.

Also, a well-managed judicialisation also seems inevitable when there is need for overhauling of the political system. When injustices or bad practices in a system grow, so prevalent to the extent that they become part of the scheme's normal rules of play, the intervention of the courts, an umpire that is to a large extent insulated from the political pressure, is necessary. In effect, it can

serve as a catalyst of the system's necessary reforms that may otherwise have been impossible. In such a situation, judicialisation is not in itself detrimental, since it acts as a catalyst igniting a democratic overhaul of political processes (**Sambo** & Abdulkadir, 2012).

However, judicialisation comes with some risks where it is too excessive or not properly managed. Firstly, it can put difficult burden on the judicial system. This is because many cases will be taken to courts for a review even the ones that are purely political without any legal sting (**Sambo** & Shamrahayu, 2012). The judiciary may thus find it hard to assume tasks which are meant for the political class. Therefore, the shift of an unnecessary number of cases to be resolved by judges could eventually affect the very legitimacy of the judiciary as arm of government meant for administration of justice. The judiciary obviously does not have the long-term capability to react to such a challenge (**Sambo** & Shamrahayu, 2012). This happens not only because of the number of cases which the judiciary will eventually resolve, but also because of the issues concerned, since the judiciary may not be the most appropriate place for some disputes. The risks of judicial error may be enormous (**Sambo** & Akanbi, 2012). This accounts for the reason why Nigeria has a lot of political cases being submitted before the judiciary for review. People find it difficult to abide by the spirit of sportsmanship. However, it is very difficult to do without that in Nigeria because of the series of injustices committed by the political class on daily basis. The political institutions are weak as they always want to do things without due regards to law and due process (**Sambo,** 2013).

Secondly, the judicialisation of political disputes may more or less unavoidably politicise judicial conflicts (**Sambo,** 2019). This is because the courts and judicial processes become tools to be exploited by political actors. The upheavals between the former Chief Justice of Nigeria and the former President of the Court of Appeal present an interesting example. The then President of the Court of Appeal alleged that the Chief Justice of Nigeria wanted him to favour a particular party in a case before the Court of Appeal. He also said his refusal led to his unsolicited elevation to the Supreme Court during the pendency of the case. This eventually led to the removal of the Justice as many alleged that this conflict was taken advantage of by the political class. This may undermine the role of the judiciary as the guardian of the constitution, a place

of justice for all, protector of human rights and the rules of the democratic process (Abdulkadir &**Sambo,** 2022). The rule of law is, therefore, jettisoned as the judiciary may then be manipulated depending on the interests at play. Consequently, people, therefore, start to have doubts about all judicial decisions as these decisions may be seen as being politically motivated. This may eventually undermine the very legitimacy of the administration of justice.

Furthermore, this excessive judicialisation of political disputes may delay political solutions that are essential to tackle particular problems. Also, while judicialisation in countries like Nigeria can be partly explained in view of the weakness of political class, then, it can also bring out the lack of interest of citizens in the country's political affairs. The use of legal solutions to many political issues may raise the feeling that the way out to many political issues does not require democratic commitment, but instead judges. This has a serious effect; as not only does it mean the citizen's loss of interest in state affairs. It also casts doubts on the very democratic principles, since it becomes the duty of the judiciary, who are not elected, to defend the ultimate virtues of democracy. This may be seen as anti-democratic solutions as society would increasingly rely on judges to restore desirable quality and to resolve political problems. This could lead to several scandals on the judiciary which may weaken the institution as a place of justice for all (Kadouf & **Sambo**, 2017).Therefore, while it is obvious that judicialisation of political disputes has its merits, it also comes with risks. This depends on how it is managed by the stakeholders. For it to be properly managed, everybody must be willing to abide by the rule of law. The question that readily comes to mind is the legal and political implication of judicialising politics.

Legal Implications of Judicialising Politics

Judicialisation of political disputes has come with some legal implications. This aspect analyses its implications on constitutional sanctity and justice, prevention of tyranny, anarchy and promotion of checks and balances, rule of law and due process in government, and ultimate development of the law.

1. **Constitutional Sanctity and Justice**

Sambo (2018) reveals that judicialising politics has led to the sanctity of the organic document called the constitution. Judicialisation will force the political class to abide by the letter, spirit and intent of the Constitution. The main idea being to retain

the integrity and sanctity of the Constitution. In so far as the Constitution has ordained outlined functions of each branch, the judiciary, in resolving disputes, does not pretend to usurp or hijack or arrogate to itself the supremacy over other arms of government. It merely calls attention to that organic document (Constitution), which, first and foremost, outlined the functions of each branch and the means of realising those functions. It does not, for instance, pretend to be a technician or a technocrat to make argument about budget; policy and so on. If there is a substantive provision on matters of budget, there is also an ordained way of doing it. Thus, if it is the duty of the executive to propose appropriation, it is the duty of the legislature to make appropriation i.e. through law. Where the legislature purports to propose appropriation, the court will intervene. The courts also decide each matter on the merit so long as it has jurisdiction without unnecessarily being curtailed under the guise of political question or non-justiciability (Kadouf & **Sambo**, 2013). This, therefore, leads to the justice of the matter.

Vice-Chancellor, Sir, it should also be observed that the court does not, by this action of judicial review; purport to usurp the constitutional duties of other arms of government. That would mean it is supplanting the basis of its own authority. This is because the Constitution says the legislature must not violate the Constitution. It presupposes the fact that the court cannot also violate the Constitution. That is why the courts have not also spared themselves. In situations where the courts violated the clear words of the statute, stating how the courts should exercise its function, the appellate court chastised the lower court (*Ozo Nwankwo Alor v Christopher & Ors* SC/21/2002). Even where the courts have violated the right to fair hearing, that is the essence of appellate courts; they have nullified those decisions (**Sambo**, 2017).

The earlier position of judicial avoidance of political questions did not protect the sanctity of the Constitution. For instance, in *Balarabe Musa's* case, despite the series of alleged constitutional irregularities, the courts nevertheless closed its eyes to it. Despite alleged irregularities in the census figures in *AG Eastern Nigeria v AG Federation*, the court declined jurisdiction. The hands tied approach is not good for the country.

2. **Prevention of Tyranny in Government and Promotion of Checks and Balances**

The practice of judicialising politics without politicising the judex has reduced tyranny in government of Nigeria. This is the essence of checks and balances. This is also a form of constitutional

dialogue. The judiciary is not doing this to spite any arm of government. It merely calls attention to the danger inherent in the abuse or overreaching one's functions. If, for instance, the executive in Nigeria had been allowed to interfere with the tenure of the local government as earlier stated, there would have been tension and this would have consumed everybody; including the three arms of government. That is why it requires somebody (an institution like the court), that is independent itself to remind the other arms of government of their constitutional roles. If the executive were allowed to declare the office of the Vice-President vacant, as earlier stated, there would have been tension everywhere as a result of the power overreaching of the then President of Nigeria.

3. **Promotion of Obedience to Rule of Law, Due Process and Prevention of Anarchy**

The practice of judicialisation in Nigeria has ensured the promotion of rule of law, due process and has prevented the nation from going through anarchy. The effect of not judicialising these questions is that there is the chance that people will resort to anarchy, chaos, confusion. That is why instead of resulting to self-help, people come to an arbiter which is the judiciary. Where the Constitution does not permit the incursion, the court will decline jurisdiction, but must have gone to the merit of the case to be able to do so. In fact, when a presidential candidate declared that he would not challenge the result of the election in court, it led to post-election violence in many parts of the country especially the Northern part claiming so many lives and properties (Report of the Presidential Committee on Post-Election Violence). This is because it was felt that by not seeking courts' intervention, there would not be rule of law and that hopes in the justice of the matter might have been lost.

The practice of judicialisation has today limited the absolute powers of the legislature as they are subject to constitutional limitations with the courts active enough to curtail their excesses. The legislature today knows that they cannot impeach the executive the way they like without any due regard to rule of law and due process. They cannot also manage their own affairs the way they like as their powers are rooted in the Constitution; they have to comply with their standing rules which they have set for themselves and the law. They cannot, like before, reject ministerial nominees without due regard to the procedure. They must also comply with the directive principles of the state policy. They cannot also suspend any member anyhow; they cannot

enact laws that restrict or oust the powers of the courts; they cannot enact laws that affect the fundamental rights of the people. They cannot enact laws that restrict supervisory role of the courts. Today, their discretion is fettered to an extent by the law. This is the power of judicialisation.

4. **Development of the Law and the Nation**

The position of judicialisation allows the court to interpret the Constitution and the law in such a way as to assist in developing the law, thereby leading to the development of the country (**Sambo,** 2019). Where the court does this role very well, it has assisted in the growth and development of the country through its interpretation. The law has to be interpreted in a way that will assist the growth and development of the nation. The judiciary has recently and marvelously performed this role in Nigeria during Naira scarcity. Issue of elongation of the tenures of Governors was decided by the court. The matter concerned Governors, who won elections but were rigged out before they were declared winners by the court. The Governors argued that having been re-elected into their positions, their tenure would start afresh instead of continuing with the remaining tenure. The Supreme Court held that his tenure should start afresh. That accounts for the reason for off-season elections in at least 5 states. That has assisted the development of the law, thereby assisting the development of the society. This is because there should be no more rancour on what happens when somebody has been removed from office.

Another one which the Supreme Court decided was the issue of on shore off shore. There was a dispute between the Federal government and the littoral states. They opted for a better solution on division of revenue that accrues to them. They agreed on a political solution. One of the Governors tried to breach the agreement because he felt that did not support their own cause. However, the Supreme Court held that once a person has entered into a contract whether good or bad, the court cannot change the terms of the contract because it does not rewrite terms of contract. The Court said they must be bound by their political solution which they have adopted unanimously. That helps in bridging the difference between the states and it helps in cementing the relationship which would have been frosty and quarrel between the states. This kind of interpretation has led to the development of the law, thereby assisting the development of the nation itself.

Political Implications of Judicialising Politics

Apart from the legal implication, the exercise of judicial review power on political questions has got its political implications. This segment analyses its implications on stability of polity and deepening of democracy, evolution of opposition parties, reduction on intra-party and legislative strife, and its effects on federalism (**Sambo** & Adekilekun, 2020).

1. **Stability of Polity and Deepening of Democracy**

The present position has ensured stability in polity and has deepened democracy (**Sambo**, 2013). For instance, in between 1999-2007, Nigeria had a powerful President. He was so powerful to the extent that he could muscle up oppositions. Indeed, his Vice-President became a target, a casualty, a victim of capricious exercise of executive powers. It took the boldness of the Vice-President to recognise the latitude of the powers of the guardian of the Constitution namely the judiciary. Thus, he approached the court in many matters challenging one arrogance of the exercise of powers or the other and he won in all (Gidado & Ojukwu, 2013; **Sambo**, 2024). This is a tribute to what the judiciary can do. It should be noted that that was a sitting President. Systematically, methodically, the court nullified all the acts of the President. Indeed, at a point, the President withheld the funds meant for Lagos State government. Ordinarily, the release of fund was supposed to be a political matter purely within the discretion of the President. The court intervened as a guardian of the Constitution. This is because it is the same Constitution which allocates powers to the President and the state government that also ordains the way of exercising such power. The court was able to ingeniously hold that the federal government lacks such powers to withhold the fund.

Indeed, there was an attempt to truncate the tenure of the Local Government and that gave rise to the case of *AG Abia v AGF (Supra)*. In that case, AG Abia (Supra) challenged the power of the Federal government to extend the tenure of the local governments in Nigeria. It should be noted that there are 774 local governments. It means there were 774 Chairmen, Deputy Chairmen, and Speakers of local governments. There would have been riots and tensions all over the place. However, the declaration of Uwais CJN doused the tension. What would have been a political volcano was doused over night by the pronouncement of the Supreme Court dabbling into the so-called political question and judicialising politics.

The practice of judicialisation has ensured continuity of the local government. It is necessary for constitutional justice and

indeed the system of Nigeria's constitutionality and the entire system of government rest upon this proposition. This is because if there is confusion in the 774 local governments, the centre cannot hold. If in a state like Kano State where they have 44 local governments and all of them are in turmoil, then there is no way the Governor can govern effectively. Thus, if 774 local governments are in turmoil, the centre can never hold. That would have been the end of our democracy, but for the intervention of the courts. Judicialisation of politics, especially by the Supreme Court of Nigeria, has ensured political stability in Nigeria.

2. Evolution of Opposition Parties

The practice of judicialising politics has led to the evolution of many political parties in Nigeria (**Sambo**, 2018). Many opposition parties have emerged as a result of the nullifications of the result of elections of the then ruling party (PDP). Following Electoral Act 2006, several sitting Governors of the ruling party were chased out of office through the pronouncements of the courts. Also, evolution of opposition parties in Nigeria today is purely moved by judicialisation. Today, Nigeria has opposition parties. Action Congress of Nigeria in the South West was able to hold many states because of judicialisation of politics. Labour party, APGA in the South east came into being as a result of judicialisation. In Ekiti State, the then Governor was removed through the judiciary and another installed (*Fayemi v Oni* (2009) 7 NWLR, (PT1140) 223; *Oni v. Fayemi* (2008) 8NWLR (PT.1089) 400). Also, in Ondo State, the then Governor was removed through the judiciary and another installed (*Agagu v Mimiko* (2009) ALL FWLR (PT 462) 1122). In Osun State, the then Governor was removed through judicialisation and another installed (*Aregbesola v. Oyinlola* (2009) (1162) 429) (2008) ALL FWLR (436) CA 2018. In Edo State, the then Governor was removed by judicialising politics and another installed (*INEC v Oshiomhole* (2009) 4 NWLR (PT 1132) 607).

Today, the All Progressives Congress can declare that they moved from opposition to ruling party. This is a tribute to what judiciary can do under judicialisation of politics. In fact, the court also judicialised or reviewed the action of INEC to narrow down the numbers of political parties when it was challenged (*National Conscience Party of Nigeria v INEC* (2005) All FWLR (Pt 281) 325). An action by INEC to impose further requirement other than the ones listed in the Constitution was challenged and set aside by the Supreme Court (*INEC v Balarabe Musa* (2003) 1 SC (Pt 1)).

This has now opened political space that Nigeria had up to Ninety-three (93) political parties before some were deregistered.

3. **Reduction in Intra–Party and Legislative Internal Strife**

The practice of judicialisation of politics has reduced the intra-party and legislative internal strife (**Sambo**, 2019). Unlike the former practice where the political parties would do what they liked as regards their internal affairs, the era appears to have gone. However, there was an ingenious move by the National Assembly to abridge the freedom the courts have introduced in internal affairs of political parties. This is in consequence of the case of *Ugwu v Ararume* which interpreted section 34(2) Electoral Act on cogent and verifiable reason. Historically, in *Onuoha v Okafor* (Supra), Obaseki JSC said nomination of candidates was an internal matter for the political parties. The court must not choose for the parties. However, wisdom, experiences and a lot of intrigues subsequently showed that the position in *Onuoha's* case was too open- ended. Thus, there was the need for qualification. Political parties were hiding under this *Onuoha*'s case to breach the right of the members. Thus, if the leadership does not like the radical views of a particular candidate, they will truncate his ambition. That is why the courts in modifying electoral justice have led to the interference with the so-called internal affairs of the parties. Qualification has been added to Onuoha's case. That is, if a party nominates and one wants to substitute, the party must present cogent and verifiable reason. Also, the Electoral Act now limits reason for substitution to be death of the candidate or express withdrawal of a candidate. Affairs of the political parties are now subject to judicialisation.

It is pertinent to mention, however, that the National Assembly came behind to truncate this authority in the Electoral Act, 2010 (Section 140(2) and 141 of the Electoral Act, 2010). They added a provision to check or water down the court's intervention. This is because following Electoral Act 2006, several sitting Governors of the ruling party were chased out of office. They have now inserted a clause in the Electoral Act i.e. to say that where the courts have found that the elections have been massively rigged or was not in compliance with the Electoral Act, what the courts should do is to order a fresh election and not declare any person as the winner. This has been challenged. The Counsel of the National Assembly made an unusual concession that the National Assembly lacks such powers. It means that the National Assembly is interfering with the exercise of judicial functions. That will be a

legislative judgment (**Sambo**, 2013). They cannot tell the court the way to exercise its jurisdiction because there are consequential orders and section 6(6) (a) conserves the authority and inherent power in the courts of records. Inherent powers include the authority to make consequential orders. If not, the whole exercise of judicial functions will be a nullity. If a court makes a declaration without following it with a consequential order, it will be a declaration in vain; a peril victory. However, Justice Kolawole of the Federal High Court sitting in Abuja has nullified this provision of the law on the ground that it is inconsistent with the provision of the Constitution.

Also, there is a change in legislative behaviours. The legislature now, unlike before, knows that there is an institution like the court that can overrule any illegal decisions taken by them. This has actually reduced internal strife in the National Assembly and many legislative Assemblies across the states. They have now, to some extent, faced their legislative duties compared to the ones that used to prevail. The courts' decisions have to an extent conditioned the behaviour of the politicians. Initially, what prevailed were high rates of impeachment or threats of impeachment such as Ladoja (Oyo State) in *Inakoju v Adeleke*; Peter Obi (Anambra State), Diepreye Alameyeseigha (Bayelsa State), Ayodele Fayose (Ekiti State). Ladoja, Dariye and Obi successfully challenged theirs and were reinstalled. Some others did not challenge theirs in court. Other impeachments are Deputy Governors: Abdullahi Argungu (Deputy Governor of Kebbi State), Iyiola Omisore (Osun State), John Opka (Cross Rivers State) and Eyinnaya Abaribe (Abia State). Despite the severe criticisms of Balarabe Musa's case, the court nevertheless followed the case in *Abaribe v the House of Assembly Abia State* (2002) 14 NWLR (Pt 778), 46. This has reduced to a large extent.

4. Development of Federalism

Federalism is an arrangement by which powers of government are shared between a central government and a number of regions or component states (Nwabueze, 1982). One thing that is central to a federal arrangement is the separateness and independence of each government. This autonomy of each government presupposes independence of each government from the control of the other. Autonomy also implies that neither the Federal government nor state government should confer additional functions or responsibilities on the others without the consent of the

other. It therefore carries with it some notion of equality of status as a government (**Sambo**, 2024). The federalism in Nigeria is now dictated by the pronouncement of the Supreme Court (**Sambo**, 2024). An instance is the crisis between the National Assembly and the Houses of Assemblies. What operates now is fallout of the decision of the Supreme Court. Previously, the National Assembly was under the illusion that they could use the concept of overriding power to dabble in an area that the State Assemblies felt it was not meant for the Federal Government.

The Supreme Court held that tenure of local government is not under the exclusive legislative list thereby falling within the residual power of the States. That is the reason why the States do what they like with local government till today. That decision has effectively placed the entirety of the local government within the powers of the States (**Sambo**, 2013) until recently when the Supreme Court decided on Local Government autonomy (AG Federation v. AG Abia State & Ors (2024) LPELR-62576(SC). In fact, in *AG Ogun v AGF* (2002) 18 NWLR (Pt. 798) 232, the Supreme Court even said neither of the Federal or State government can confer additional responsibility on each other (*Attorney General of Bendel State v Attorney General of the Federation* (1983) 1 SCNLR 239 at 253). The Court also said in *AG Lagos's case* that money already appropriated for a purpose cannot be used for another purpose. Thus, how the government behaves is largely dictated by the pronouncement of the Supreme Court.

Legal Impediments to Judicialisation of Politics

Legal impediments mean legal obstacles that may or has hindered the review of political actions where necessary. There is no doubt from the foregoing that situations did arise where the courts needed to intervene in the interest of justice and fair play. The decisions of the courts had been or might have been hindered as a result of some legal obstacles. These impediments may lead to politicising the judex. I found the legal obstacles to include the nature of judicial power in the country; the inadequate provisions for judicialisation; strict adherence to purposive approach to interpretation; ouster clauses; *locus standi* and non-truly independent judiciary (**Sambo**, 2013, 2015).

1. **Nature of Judicial Power**

It is submitted that whether or not the courts in a given country will review the actions of the political class is, to a large

extent, dependent on nature of the power that the court is bestowed in the Constitution. Where the Constitution so much restricts the exercise of judicial powers, the court is not likely to be able to review the actions of the political class. The same situation occurs when the Constitution takes away the exercise of judicial powers from the court, but merely recognises the existence of courts without conferring in it, the inherent powers i.e. powers necessary to perform the judicially ordained functions. The same result will arise when the Constitutions, in many occasions, confer adjudicatory powers on other bodies apart from the courts. In all these situations, where the courts decide to act to the contrary, that would mean supplanting the basis of its authorities, which is the constitution. Since other arms of government are to follow the law and the Constitution, it presupposes the fact that the court should not also violate the law and the Constitution.

As earlier found, the Nigerian Constitution not only vests judicial powers in the courts, but also gives the courts powers of inherent sanctions of all courts of law. Apart from this, adjudicatory or judicial powers are also conferred on the courts to the exclusion of any other bodies or authority. This would make the court reserve the right to pronounce on the legality or otherwise of all actions, including the actions of the political class. Thus, this accounts for the reason why courts have judicialised many political actions of the political class in Nigeria. However, the contrary is the case in some countries like Malaysia. (Kadouf & **Sambo**, 2014).

2. **Provisions for Judicial Review of Political Actions**

Some constitutions make provisions for judicial review. The effect of this is that all actions of the political class, in as much as it is conceivable under the constitution, are reviewable by the courts. It also has the effect of vesting in the court the status of the guardian of the constitution. The courts, therefore, make sure that nothing prejudicially happens to the organic document i.e. the constitution. Where this is not included in the constitution, it is doubtful whether the courts can exercise such powers validly. As earlier stated, the Nigerian Constitution subjects the actions of the political class, especially the legislature to the review by the ordinary courts of the land (section 4(8) CFRN, 1999; **Sambo**, 2019). This makes the legislature to be wary of the fact that their exercise of powers may be checked by another arm of government. This thereby ensures that their actions are within the confines of the law. This is not the case in some jurisdictions. For instance, an

express provision of judicial review power is not present in the Malaysian Federal Constitution. This, to a great extent, constitutes an impediment to the exercise of power of judicialisation of politics. However, the court can do away from this by becoming more active so as to entrench this power in the Constitution. In United States, there was no power of judicial review in their Constitution. It took the stature of Marshall CJ in the case of *Merbury v Madison* to entrench judicial review in the American model. This is also achievable by the courts in Malaysia (Kadouf & **Sambo**, 2013).

3. **Strict Adherence to an Approach to Interpretation**

In interpreting the provisions of the law or the constitution, the courts over the years have developed many rules of interpretation to allow the courts do justice to matters that are in controversy before it. The rules of interpretation, which have been developed over the years, include the literal rule, the golden rule, the mischief rule, the purposive rule etc. The courts apply any of these rules depending on the circumstances of each case brought before it and the one that meets the justice of the case. In a situation where the judiciary is compelled to adopt one style or approach of interpretation, it has its advantages and demerits. The merit of one approach to interpretation is that it limits the exercise of judicial discretion thereby reducing mischief in decision making. It, in a way, also curtails judicial law making.

However, the disadvantage is that it cages or ties the hands of the courts from dispensing justice in a case, especially in a situation where the application a rule of interpretation required of the court will lead to injustice in a particular case. It also amounts to legislative judgment as the legislature, by this, is telling the courts how to exercise its powers, which is against the doctrine of separation of powers. It also restricts judicial power, thus limiting the role of judiciary in government. Also, since the rules of interpretation evolve with time, restricting the courts to a rule of interpretation will prevent the courts from developing better rules of interpretation that would serve the interest of justice in future cases. This, therefore, constitutes an impediment to judicial review of political questions (**Sambo**, 2013).

The courts in Nigeria are free to apply any established rule of interpretation which best serves the interest of justice in a case. The courts are enjoined, especially when interpreting the provisions of the Constitution, to adopt a liberal approach to it (*Nafiu Rabiu v The State* (1980) NSCC 291). This will ensure the smooth running

of the system. There is, therefore, no codified law in Nigeria that enjoins the courts to adhere strictly to a rule of interpretation. The courts can adopt literal, golden, mischief rule so on, depending on the ones that best serve the interest of the case.

4. **Ouster Clauses**

Ouster clause is another major impediment to the ability of the courts to play any meaningful role in the development of any political system. It curtails the powers of the courts to review or decide political disputes. It is usually an instrument in the hands of the legislature to curtail the court's exercise of judicial review. However, as earlier mentioned, the ability of the legislature to use this as the machinery to curtail the courts' powers depends on the extent to which the court is ready to allow the usurpation of its powers. The reason is that the court has jurisdiction to determine whether or not its jurisdiction has been effectively ousted by the provisions.

The position in Nigeria, as earlier stated, is that the Constitution precludes the legislature from making any law in respect of any matter which ousts or purports to oust the jurisdiction of a competent court of law (section 4(8) of the CFRN 1999). Thus, where the courts find ouster clauses in any law, it is interpreted strictly (**Sambo** & Abdulkadir, 2012). The aim is to mitigate the effects of such clauses. However, the Constitution itself contains some provisions ousting the court's jurisdiction. Judges use their legal eyes to interpret ouster clauses. The ouster clauses do not exist as no democratic constitution should contain ouster clauses in the view of many judges (**Sambo**, 2013). The era of technicality defeating the interest of justice is, therefore, gone.

5. **Locus Standi**

The doctrine of *locus standi* denies a person of judicial assistance where he is held not to have the standing to sue as far as the case is concerned (**Sambo**, 2009). Generally, before a person is held to have the standing to sue in public interest litigation, he must show that he has suffered a particular damage over and above the ones suffered by the general public. Where there is breach of constitutional provisions, it is only the Attorney General who is usually appointed by the executive that can sue to correct the wrong. The argument is that allowing actions brought by individuals will open the floodgate of litigations against the government. It is submitted that asking the Attorney General to sue

in order to correct a breach is not realistic as he may not be favourably disposed to bringing an action against the government (**Sambo**, 2009).

Locus standi has been an impediment to judicialisation of political disputes. The approach in Nigeria is now being liberalised as the courts, unlike before, are holding that a citizen of Nigeria has the right to challenge the constitutionality of the acts of government (*Fawehinmi v President Federal Republic of Nigeria*, & Ors (2007) 14 NWLR (Pt. 1054) 275). Generally, however, locus standi deprives a person who cannot show sufficient locus in a matter justice in that case.

6. **Non-truly Independent Judiciary**

To enable the judiciary to judicialise political disputes where necessary, there is the need for an independent judiciary. In a situation where the judiciary is not truly independent, it will be used as a stooge of the government of the day. It has to be independent in terms of the appointment and removal of judges; funding of the judiciary; and there must be machinery to enforce its judgments. This will, therefore, be examined.

1. ***Appointments of Judicial Officers***

To enable the judges to properly decide controversies relating to political issues or questions, the process of selection or appointments of judges should be fair and devoid of nepotism and favouritism (**Sambo** & Abdulkadir, 2015). Also, it should be made independent of the executive and the legislature. In Nigeria, judges are appointed by the President or Governor, as the case may be, on the recommendation of National Judicial Council subject to the approval of the Senate or the House of Assembly as the case may be (231, 238(1) and (2), 250(1) and (2), 256 (1) and (2), 261(1) and (2), 266 (1) and (2), 271 (1) and (2), 276 (1) and (2), 281 (1) and (2) of the CFRN, 1999). In one of our studies (**Sambo,** 2013), we found that with this arrangement, the executive in some occasions, have their ways in the appointment processes of judges, thereby affecting the performance of those judges. Those judges would find it difficult to give judgments that should otherwise and glaringly be decided against the executive. This is, therefore, an impediment against judicialisation of political disputes in Nigeria.

2. ***Removal of Judicial Officers***

It needs to be stated that where the judges are not protected from being removed at the mercy of the executive, then, this is a

serious impediment to judicialising political disputes by the courts. The judges should be tenured judges and their removal should be independent of executive. Where this is done, the power of judicial review will be well strengthened. By this, judges will be able to give judgments fearlessly in accordance with the dictates of the constitution, law, and their conscience no matter who is involved. The position in Nigeria is that judicial officers, though, enjoy some tenure of office, they can be removed from office by the President or Governor as the case may be only on the recommendation of National Judicial Council subject to the approval by the Senate or the House of Assembly as the case may be (sections 153, (1) (i), para. 21(d) of the third schedule; 271, 291, 292 of the CFRN, 1999).

Two-third majority of all members of the Senate or House of Assembly as the case may be is required to remove a judge. Also, the executive and legislature alone cannot initiate removal proceeding without an input from the National Judicial Council (*Elelu –Habeeb v National Judicial Council and ors* (2010) All FWLR (Pt.536) at 494). Where this is done in violation of the procedure, the court will review it. Although this gives a measure of independence, this cannot totally stop the influence of the executive in removal process. The reason is a recalcitrant executive may take advantage of judicial conflicts. This, therefore, constitutes an impediment to judicialisation.

3. ***Funding of the Judiciary***

The judiciary needs to be financially independent in order to function effectively or judicialise political disputes. In another study (**Sambo**, 2013) we revealed the significance of a judex being financially independent. In a situation where the judiciary still begs the executive for funds, then it constitutes an impediment to judicial review of political disputes. It is not enough that the salaries and wages of judges are charged on consolidated funds, those of their staff and the day to day running of the judiciary should be charged on the fund without any hindrance. This will ensure financial independence of the court, thereby enhancing its independence.

In Nigeria, the Constitution provides that the funds of judiciary be charged from consolidated revenue funds and shall be paid to the National Judicial Council for onward disbursements to the heads of courts (section 81(3) of the CFRN, 1999). Our studies, therefore, reveal that only their salaries and allowances are charged on consolidated funds. The Governors still pay them certain allowances. Monies for the day to day running of the courts such as

providing certain facilities in the courts are also given by the executive. This may require some form of lobbying to get paid on time. Thus, it will be difficult under these circumstances to judicialise the actions of the executive as he who pays the piper dictates the tone. Also, the salaries and allowances of courts' officials are paid by the executive and not from the consolidated fund. That is why they sometimes go on strike. The staff welfare too is important for an administration of justice.

4. ***Enforcement of Courts' Orders***

Courts' decisions must be capable of being enforced in order to allow the court properly judicialise the decisions of the political class. In a situation where the courts make orders, it is usually the executive that enforces the courts orders through the police. Where the judgment is, however, against the executive, the problem of enforcements becomes an issue. This is also a major impediment to a review of political decisions. In such a situation, the courts will have no option. In fact, in Nigeria, despite the fact that the Constitution requires courts' judgments to be obeyed by all authorities and persons (section 287 of the CFRN, 1999), there are situations where the executive chooses the judgment that would be obeyed and the ones that will not be obeyed. This is executive lawlessness.

In fact, there was a regime in Nigeria where the President withheld the funds meant for Lagos State despite judgment of the apex court of the land ordering the release of fund in *A.G. of Lagos State v. A.G. of Federation (2004) LPELR 10(SC)*. The executive sometimes decides not to comply with their judgments without even appealing on it (**Sambo**, 2013). Even the judgment of the apex courts in a regime was subject to their own interpretation by the Attorney General. In such situations, the courts' hands are tied and nothing can be done because the courts lack machinery of enforcement. This attitude would not scare the courts from still deciding against the executive if the cases are against them in the interest of justice. The judex are of the view that their duty is dispense justice with sound interpretation of the law no matter who is involved (**Sambo**, 2013).

Constitutional Utility of Judicialising Politics without Politicising the Judex

There is no doubt about the fact, as seen from the foregoing, that judicialising politics without politicising the judex is

highly of constitutional importance in a constitutional democracy such as Nigeria. Constitutional democracy, which is entrenched in the concept of judicial review, is a complex phenomenon in which the majority, minority and individuals have rights and obligations **(Sambo** & Kadouf, 2013). Thus, constitutional democracy, in as much as it must preserve the interests of the majority, must also protect minority rights by forcing the majority to respect the values and interests of minorities (*Larbi-Odam and Others v MEC for Education (North West Province) and Another* 1997 (12) BCLR 1655 (CC), at para 28). Minorities must also be protected and given the chance to enjoy the benefits provided by the democratic process (**Sambo**, 2013).

The practice of winner takes all or majoritarian democracy is dangerous in that once the majority has assumed power, if not checked, they tend to marginalise minorities in such a way that minorities are effectively unable to express their views (Kadouf & **Sambo**, 2013). These views are sometimes expressed in terms of demonstration, violence, thus, breeding anarchy in society. Thus, many who have opposed judicialisation have relied heavily on issues such as separation of powers, the desire or power of internal institutional regulations, counter-majoritarianism, judicial incompetence, possibility of institutional clashes, thereby leading to unimaginable situations (**Sambo**, 2023). It is submitted that these arguments are weak, supports judicialisation and does not represent the realities of democratic institutions of developing countries.

1. **Separation of Powers Concerns**

One argument for denying the judicialising of politics is because of the doctrine of separation of power. The doctrine stipulates that each arm of government namely the executive, legislature and the judiciary should perform their functions without any external interference (Barber, 2001). It also postulates that each arm of government should strive to protect their own interest against any external regulation or control (Quadri & **Sambo**, 2011). Based on this doctrine, it is prudent for the proceeding of the legislature to be regulated by the House itself and not subject to the control of the court. Subjecting the legislature and executive to the control of the courts would amount to violating the long existing doctrine of separation of power.

It is, in this respect, submitted that absolute adherence to the doctrine of separation of power is not practicable. In fact, the postulate of the doctrine of separation of power admits that there cannot be absolute adherence to the doctrine (**Sambo** & Farid,

2011). This is likely to render the government impotent and cripple the administration of government. This is, therefore, the essence of checks and balances. To achieve this, the court must satisfy itself of the factual premises upon which legislative actions are based. This, in a way, will prevent absolutism and tyranny in government (**Sambo**, 2015).Also, those who argue that the courts should not exercise judicial review based on the doctrine of separation of powers lack a deep understanding of the doctrine itself. There are absolute separation and partial separation. Those criticisms have been offered in terms of 'pure' separation of powers. The partial version of the doctrine lays emphasis on the significance of the checks and balances and this makes the doctrine itself meaningful.

2. **Power of Internal Regulations**

Another argument why the court may be prevented from exercising the power of judicialisation in respect of legislative actions is that section 60 of the Constitution has given the legislature the power to determine its rule by regulating its own procedure. This provision is also capable of two interpretations. The first is that since the legislature is given the power to determine its own rule or regulate its procedure, disputes relating to the rule should also be determined by the legislature without any external intervention either from the court or from the executive. The better argument perhaps is that determining its own rule or regulating its own procedure is one thing, power of interpretation of the rule is another.

It is, therefore, submitted that the purpose of Section 60 of the Constitution is to protect the legislature from the control of the executive by allowing the legislature to determine its own rule by creating the rule of procedure to regulate the affairs in the House and not the court. This is because the court even has the power to interprete the statutes which have more potency than the rules of procedure of the House. In other words, while the Constitution confers on the legislature the power to determine their own rules, the utmost interpretation and application of the rules are within the inherent powers of the court. It is thus submitted that the fact that the Constitution has textually committed the power to do an act to the political arm of government does not imply exclusivity in respect of the matter. Rather, the court is allowed in deserving circumstances to intervene by not allowing the law to be breached with impunity (**Sambo** & Kadouf, 2014).

The same argument is also presented in favour of executive actions and internal affairs of political matters. This will not also hold water because the executive arm of government tends to be recalcitrant because of the powers bestowed on it. Where judicial review or judicialisation is not put in place to check executive excesses, the country will not only be totalitarian, it will definitely lead to lawlessness as people may be eventually fed up with his abuse of power, thereby leading to all sorts of political volcanoes, military coup, revolution or unnecessary demonstration, depending on the nature of abuse of power and the country where this takes place.

With regard to political parties, we found that without judicial review in a country, such as Nigeria, in matters such as internal affairs of political parties, is an invitation to anarchy (**Sambo**, 2013; **Sambo** & Shamrahayu, 2012). The ability of political class to manage their affairs without recourse to court is doubtful. The leadership of the political parties would always want to do things at all cost without regards to law and democratic principles. This would definitely be against the Constitution which the courts have sworn to guide and guard jealously. The reason why the court should interfere by interpreting their internal regulation is that the courts act as an unbiased umpire, a neutral party relieved of political pressure to a large extent. Allowing the political class to finally decide their disputes would mean making them judges in their own cause (**Sambo**, 2015). Thus, the might will always want to have their ways. That is why the House in Nigeria are sometimes rancorous, which sometimes lead to fight and even loss of life.

3. **Judicial Incompetence**

The argument of judicial incompetence also worths consideration. It argues here that the judiciary lacks the competence to deal with matters having political undertones. In other words, the whole proceedings of the legislature, internal affairs of political parties, executive actions are filled with political undertones. The judiciary is, therefore, being seen as incompetent to handle issues relating to politics. This is because where the court deals with such issues, the judex is likely to be politicised by finding himself in politics, which judges are not trained to handle. It is, however, submitted that the duty of the court is to examine the legality or otherwise of the matters brought before it. The court is not and should not be concerned with the political aspect of a view brought before it. This is in line with the long established legal maxim that let justice be done even if the heaven falls. The truth, however, is

that no heaven will fall because justice has been delivered in a particular case. The mere presence of political undertones in a matter should not deter the court from exercising its powers of judicial review in appropriate cases (**Sambo**, 2013).

In so far as the Constitution has ordained outlined functions, the judiciary in resolving disputes, as earlier stated, does not pretend to usurp or hijack or arrogate to itself the supremacy over other arms of government. It merely calls attention to that organic document i.e. the Constitution that first and foremost outlined the functions of each branch and the means of realising those functions. The main idea being to retain the integrity and sanctity of the document called the Constitution. It does not pretend to be a technician or a technocrat to make argument about budget etc. There is a substantive provision on matters of budget. Thus, if it is the duty of the executive to propose appropriation, it is the duty of the legislature to make appropriation i.e. through law. Where the legislature purports to make appropriation, the court will intervene.

It is possible for the court to decide political matters without finding itself in the arena of conflict because it does not pretend to be in the arena. It must always be independent. It works a delicate balancing. The court can never ever purport to usurp the constitutional duties of other arms of government. That would mean it is supplanting the basis of its own authority. This is because the Constitution says the legislature must not violate the constitution. It presupposes the fact that the court cannot also violate the constitution. That is why the courts have not also spared themselves. In many cases where the courts in arriving at the guilt of the accused violated the clear words of the statute stating how the courts should exercise its function, the court of Appeal or Supreme Court would chastise the lower court. Even where the courts have violated the right to fair hearing, that is why the appellate courts exist. They have nullified those decisions, portending any form of such notion.

4. **The Possibilities of Institutional Clashes Leading** to **the Occurrence of an Unimaginable Situation**

Another argument why the court is being urged not to intervene in matters relating to internal affairs of the legislature, an executive and political party is to prevent the occurrence of an unimaginable situation. The highest form of unimaginable situation could be disobedience of the court order, promulgation of laws to oust the jurisdiction of the court, removing judicial powers out

rightly from the court, arresting judges, or abolishing the whole of the judiciary (**Sambo**, 2019). It is, with respect, submitted that all these are not enough to scare the court from deciding the disputes which is the courts' main constitutional responsibility anywhere in the world. Firstly, the duty of the court is to pronounce its decision. The duty to enforce the decision of the court lies in the executive. The executive cannot choose which law to enforce and which one not to enforce.

Thus, despite the court's deference to the executive, are all the court's decisions enforced? Also, despite the fact of deference to the legislature, do they not nevertheless pass laws to oust the court's jurisdiction? Despite the fact of deference, does it mean that judicial powers are not being allocated to another branch or being taken away from the court? Are judges not being arrested and prosecuted? Thus, when the judiciary is totally abhorred, that gives a very clear picture that the government does not observe the doctrine of rule of law. A government cannot and should not pretend to be ruling under the doctrine of rule of law while in actual fact it is not because almost all the wings of the judiciary have been cut off.

5. **Counter-majoritatarian Argument**

In some jurisdictions, there is what is called the counter majoritarian doctrine. They oppose judicial review on the grounds that it is counter-majoritarian. They argue that majority of the people elected their representatives. They queried how the unelected people (i.e. the court) can assume the responsibility to nullify the actions of the majority. They, therefore, consider the courts as undemocratic merely because they set aside decisions reached through a democratic process, and that the courts, as a result, act in a counter-majoritarian manner. The major argument is that judicialisation is a counter-majoritarian force in a democratic system. Thus, according to them, when the Supreme Court declares unconstitutional, a legislative act or the action of an elected executive, it frustrates the will of representatives of the actual people; it exercises control, not on behalf of the prevailing majority, but against it. That, without mystic overtones, is what actually happens.

Sambo (2019) posited that this argument is counterproductive because somebody must be there to remind the so called representatives of the majority that there is a working document, an organic law that spells out the model of operations. If this is not done, there would have been chaos all over the place. The

argument of counter-majoritarian is further weakened by the fact that, sometimes, elected representative or the political class have much more power than citizens to determine political decisions. In such situations, both the majority and the minority will be better protected by relying on the courts to force their representatives to account to them. Unlike the political class, the judges are insulated from the political pressures and their professional ideals allow them to decide matters in a more dispassionate and impartial manner. The judex will, therefore, be able to entertain and consider in a more or less impartial manner the complaints of aggrieved members of society who may consider themselves to have been let down by the political process.

Mr. Vice-Chancellor, from our previous research efforts, our findings on issues which bother on judicialising politics without politicising the judex are recounted hereunder.

1. The Nigeria's constitutional framework empowers the court to judicialise political disputes through the power of judicial review (**Sambo**, 2018; 2019).
2. Courts' power to judicialise the actions of the political class is in furtherance of the principles of separation of power (Imam, **Sambo**, Egbewole & Abdulkadir, 2011).
3. Pragmatic theory of political questions as propounded by **Sambo** (2013; 2015) captures rationale for judicialising of political disputes.
4. Legislative actions have been judicialised by the courts (**Sambo**, 2015).
5. Validity or otherwise of legislations have been judicialised **(Sambo** & Kadouf, 2013; 2014).
6. Executive actions have been judicialised (**Sambo** & Kadouf, 2013).
7. Internal affairs of political parties and political defections have been judicialised (**Sambo**, 2018; **Sambo** & Shamrahayu, 2012). Happenstances and experiences over the years revealed that the earlier position of not judicialising affairs of political parties was too open-ended as politicians took the opportunity of non-court intervention to violate the rights of other members, the Nigerian Constitution, the parties' constitutions, rules and guidelines set for themselves. As a result, party discipline deteriorated. The courts, therefore, without

expressly overruling its previous decisions, began to exercise its power of judicial review in this respect.

8. Judicialisation of politics has its merits and risks, legal and political implications (**Sambo**, 2018, 2019).
9. Impediments to Judicialisation of politics may pave way for politicisation of the Judex (**Sambo**, 2018).
10. Judicialisation of politics is constitution essential if properly implemented (**Sambo**, 2019).

Judicialising Politics under Islamic Law

Judicialising or reviewing the acts of the executive is not alien in Islam (**Sambo** & Kadouf, 2014). This is because the judiciary enjoys some measure of independence and could exercise the power of judicial review, especially during the periods of the rightly guided caliphs. This is more so that acts of sovereign are required to be in accordance with the law i.e. Qur'an and *Sunnah*. Thus, in many occasions such as where the acts of the sovereign become oppressive, it is subject to judicialisation. Therefore, issues like tax evasion, maltreatment of prisoners, inadequacy of pension fund, unlawful seizure of properties, non-compliance with regulations, unlawful acts of aggression against neighbouring state are subject to judicialisation. However, the only exception to this seems to be acts of sovereign in a state of emergency or during the period of necessity. In such a situation, normal legal order is suspended in order to deal with the emergency situation **(Sambo** & Kadouf, 2014).

In the same vein, acts of the Prophet (S.A.W.) were not and could not have been subject to judicialisation. This is because the Prophet (S.A.W.) was the sole recipient and interpreter of divine revelations during his life time in Medina and the executive and judicial head. Also, modern concept of constitutionalism which entails legal limitation of powers of the head of state and his political accountability to an institution other than himself was not applicable to the Prophet (S.A.W.) (**Sambo**, 2013). This is because Messenger of Allah (S.A.W.) was equipped with revelations from time to time. His actions and deeds are therefore yardsticks of validity and legality. In an attempt to follow the examples of the Prophet (S.A.W.), the caliphs became the agents of divine sovereignty in political matters.

The caliphs, especially the four rightly guided caliphs, who succeeded the Prophet (S.A.W.) followed his practices and ruled based on the belief in the caliphs' moral integrity and utmost

faithfulness to the teachings and practices of the Prophet (S.A.W.). They were accountable as they instructed their followers to obey them as long as they follow the teachings of Islam; hence a form of constitutionalism. They were always ready to subject their acts to judicialisation before an impartial and independent judiciary. Thus, Islam has two major mechanisms for judicial review. The first is an independent judiciary and the second represents the institution of *Wali al- Mazelim* (Onbudsman or constitutional court). This is an effective checks and balances mechanism on the autocratic powers of the sovereign; in addition to accountability to Allah (S.W.T.).

My Contribution to the University

Mr. Vice-Chancellor, I joined this great university on the 26th of February, 2008. I started as an Assistant Lecturer and rose through the ranks to become a professor in 2022. In different capacities, I have served to fulfill, as an academic, the tripartite mandate of research, teaching, and community service. In terms of research, my work has significant implications for public law, particularly in the areas of constitutional law, administrative law, and human rights.

In terms of impact on policy and practice, my studies inform policy reforms aimed at promoting good governance, accountability, and human rights. My research contributes to the development of capacity-building programmes for judges, lawyers, and government officials, enhancing their understanding of public law principles. My study has advanced the rule of law by promoting a culture of respect for constitutional principles, human rights, and the law. Overall, my work has a significant impact on public law, contributing to the development of constitutional principles, promoting accountability and good governance, and advancing human rights. The implications of my research are far-reaching and significant, with potential impacts on various aspects of society, governance, and human rights.

As regards teaching, I have taught courses like constitutional law, criminology, criminal law, legislations, administrative law, local government law, policing, and introduction to constitutional development and organisation of government. I still teach many of these courses. I taught these courses to the best of my ability to the extent that students now call me 'the walking constitution himself'. Other students describe me as '*Olu Aiye* of Constitutional Law.' At postgraduate level, I have been teaching "Legal Research Methodology" and "Comparative

Constitutional and Administrative Law." I have supervised numerous undergraduate projects. I have supervised over 30 Master degree dissertations. I have supervised to graduation 3 Ph.D. students and currently supervising 7 Ph.D. theses.

Furthermore, I have served/been nominated to serve in various capacities within my department, Faculty of Law and University of Ilorin at large. Some of these are: Head of Department, Public Law (2022-Date); Member, University of Ilorin Transcript Task Force Committee; Member, University of Ilorin Strategic Plan 2019-2023 Review Committee; Member, Centre for International Education (2021-Date); Faculty Postgraduate Representative on PGS Board (2016-2018); Postgraduate Coordinator, Common Law (2014-2016); Chairman, Unilorin Law Journal Committee (2023-Date); Chairman, Faculty of Law Moot Court Committee (2025-Date); Member University of Ilorin Strategic Committee (2025-date); Member, Faculty of Law Journal Editorial Board (2015-2019); Member, GNS Board (2014-2019); Member, Faculty of Science Board (2010); Member, Rapateur Committee for the International Islamic Conference on Banking And Finance Organised by the Department of Islamic Law, Faculty of Law, University of Ilorin (2009); Member, Transportation and Tourism Committee for the International Islamic Conference on Banking and Finance Organized by the Department of Islamic Law, Faculty of Law, University of Ilorin (2009); Member, Exhibition Committee for the International Islamic Conference on Banking and Finance Organised by the Department of Islamic Law, Faculty of Law, University of Ilorin (2009); Member, Committee on 1st M. M. A. Akanbi Faculty of Law Public Lecture, (2009); Examinations Coordinator for the Department of Public Law, (2007/2008) to mention but a few.

Also, I have granted press interviews in print and electronic media such as NTA, AIT, Channels TV, TVC News, Arise TV, The Guardian, Radio Kwara, Kwara TV, NTA Ilorin, Sobi FM, Albarika FM to mention but a few. I have also been invited guests to many TV stations to discuss matters of national importance, particularly on constitutional law. I have been privileged to be a guest on NTA Tuesday Live' anchored by Cyril Stober, where the present Deputy Chief of Staff to the President of Nigeria, Senator Ibrahim Hassan Hadejia, was also a guest on the alteration of the 1999 Constitution. I have been a guest at Channels TV to discuss constitutional issues surrounding the exit of the former Chief Justice of Nigeria from office.

I have been invited to deliver numerous public lectures, talks and I have participated in dialogues at different fora locally, nationally and globally. Constitutional and democratic justice took the centre stage of these discussions. May I cite some examples. I was one of the resource persons at Unilorin Security Summit, 2024; Workshop for Kwara State Magistrates on Small Claims Court, 2024; Executive Workshop for Elected Councillors and Management Staff of Osun State Local Government Councils, on Osun Local Government Model for Good Governance under the Parliamentary System on Thursday 15thFriday February, 2018. I was one of the three Nigerians sponsored for Global Youth Intensive Programme for Young Constitutional Law Scholars at the 10th World Congress of Constitutional Law, Seoul, South Korea, in June, 2018.

I was a resource person at the Workshop on the Future of Decentralisation: Co-existence and Co-prosperity targeted at the Unification of South and North Korea organised by the Sungkyunkwan University, Seoul & Korea Legislative Research Institute on the 20th of June, 2018. I was also one of the resource persons who taught Public International Law at the training organised by the United Nations Environmental Programme (UNEP) for South Sudanese judges in Malaysia. I have attended and presented papers in many local and international conferences including the 10th World Congress of Constitutional Law Scholars held in June, 2018 at South Korea and the 11th World Congress of Constitutional Law Scholars held in University of Johannesburg, South Africa from 5-9 December, 2022. I am a Member of Human Dignity: A Constitutional Principle Research Group of the International Association of Constitutional Law Scholars. I am the founder of the Constitutional and Democratic Justice Initiative, an NGO aimed at using the principles of constitutional and democratic justice to encourage the government and others to address developmental issues and the challenges posed to constitutionalism and real democracy as a result of poverty, injustice, corruption, inequality and equity. Vice-Chancellor, Sir, these are my modest contributions. I hope I will, *in Shaa Allah*, build on this in the future as most probably the youngest professor of law (age wise) in Kwara State and the first Inaugural lecturer in the Department of Public Law.

Conclusion

Disputes on matters, which are political in nature are inevitable in a democratic country. Yet, most, if not all, political disputes being judicialised, have some legal and constitutional stings. It is very difficult, if not impossible, to analyse politics and democracy without discussing the institution (i.e. the courts) in which its principles are anchored. Thus, the future of democratic institutions in a country largely depends on its ability to build and nurture the institution for resolving political disputes with finality. Effective judicialisation of politics without politicising the judex largely depends on suitable and justly balanced constitutional and legal framework for the courts to operate.

Recommendations

As findings showed, problems identified with judicialising politics are many but they are surmountable. In view of overall findings, I proffer the following recommendations. It is hoped that if adopted, it will not only ensure the quality of courts' decisions when judicialising political disputes. It will also lead to speedy, efficient, effective and just resolution of disputes arising from matters which are political in nature thereby sustaining the democratic system of government in Nigeria and other similar jurisdictions.

1. **Constitutional and legal framework for judicialising politics should be urgently altered and amended to avoid politicising the judex**

   The constitutional and legal framework for judicialising politics needs urgent amendment. There should be an alteration to the Constitution itself. All ouster clauses in the Constitution and statutes should be removed. There should not be any ouster clauses in a democratic Constitution. Whatever be the case, matters should be decided on their own merits. The purpose of courts' creations is to dispense justice.

2. **All the legal impediments to judicialisation of political disputes as identified in this lecture should be removed**

   This is because these impediments marginalise judicial roles and functions in government and creates injustice. Thus, all democratic constitutions should make adequate provisions for judicial power and not mere judicial existence. The nature of judicial power should be seen not as mere agents of the political class but an organ of government, an institution with power of instrumental interpretation of the constitution and the law.

3. **The judiciary should be financially independent**

   The court can have greater independence when they manage their own fund/budget. However, the judiciary has been conservatively avoiding holding money in the past. It was felt that this could lead to more scandals on the judiciary. This is because if a head of court decides to hold judiciary money and a clerk petitions that he is a thief that could touch on the integrity of the judiciary. Thus, there is the need to balance financial independence of the judiciary and the conservatism of not wanting to hold money. Thus, the way out is that

money should come to the coffers of the judiciary for their utilisation so that they do not go to beg the executive or legislature like beggars.

4. **There should be a Constitutional Court**

The questions we need to ask is that are the courts overloaded in terms of specialisation or are they insufficient in terms of specialised man power or without the integrity of a particular group of people. However, there must always be room for improvement. The establishment of constitutional court, with clearly defined jurisdiction, will improve quality of courts' decisions in matters which are political in nature. Judges who may be appointed to mount the position of the court must be experts in constitutional matters. They will develop their expertise more in that area of law. The law will be further developed in this area thereby benefiting the society at large. This will translate to better justice to the people.

5. **Enforcement of court orders must be strengthened**

There is the need for armed judiciary law enforcement agents. The President controls the police and armed forces. There should also be a constitutional provision empowering the judiciary to employ its own law enforcement agents answerable to the heads of courts. As long as rule of law must prevail, there should be no need for any clash.

6. **The process of judges' appointments should be fair, transparent, just, devoid of executive influence and in accordance with the ethics of the profession**

The executive should have no much say in the appointment of judges. In line with our previous findings, is difficult for a judge to decide a matter against his appoint or i.e. the executive even when the justice of the matter so dictates. Thus, judges should be appointed, removed or disciplined mainly by a judicial body set up for that purpose. The process should be fair, transparent, just, devoid of executive influence and in accordance with the ethics of the profession.

7. **The judiciary should be above board and purges itself of the bad ones**

The whole issue of expansion in courts' powers for judicialing politics rests on the proposition of trusting the

judiciary. The judiciary should also strive to be above board. A situation where the executive extends the tenure of a judge casts doubt on whatever decision given by the judge. Judges should always remember that they have taken oath of office and sworn to defend the constitution and the law. They should always interprete the law according to the spirit, intent and letters of the constitution or law and in such a way as to meet justice of the matter. They should also act according to the sound dictate of their conscience and follow the ethics of their profession strictly. They must instill confidence of the courts' ability in the people who will receive the end product of their decisions; justice.

8. **The political class should have an effective and efficient in-built system of dispute resolution**

All political institutions should have an effective in-built system of dispute resolution. The Legislature, for instance, can have an institution comprising of former parliamentarians who are of high integrity without being partisan and who are experienced in dispute settlement mechanism. This body may be responsible also for disciplinary actions, the limit set by law, on the members of the legislature. Thus, in the time of crisis, this institution would play a major role in dispute resolution. Matters may not need to be taken to courts as the dispute may be settled in the process. However, their decisions should not be regarded as final but should be subject to judicialisation.

9. **There should be upward review of basic educational qualification stated in the Constitution for people aspiring into legislative houses and the executive**

As it is presently, the Constitution permits people with school certificate and below educational qualification and experience to be elected into the legislative houses and executive. Most of these people are into politics not because of any vision but because of other selfish or personal interests. Many politicians get richer as soon as they get elected or appointed into political positions. The Constitution, as it is today, does not unconditionally allow people in public offices to contest without resigning their positions. Similar position applies to the private and public sectors. It, therefore, remains the self-employed, the unemployed or unemployable, even the

unmarried who can play practical politics. These people who find themselves as law makers or executive have the tendency to misbehave and disregard any laid down procedure. Where this is reduced to the minimum by stipulating special qualification and experience, this will reduce the numbers of matters relating to internal affairs of law legislature being submitted before the courts for judicialisation.

10. **There should be spirit of sportsmanship by the political class**

A situation where the political class react negatively to courts' decisions given validly against them is not in the interest of the nation they claim to serve. Where the Supreme Court takes a decision on a matter, everybody should be at peace and allow the rule of law to prevail. The political class should not forget that the courts do not institute the matter against them. The courts are disinterested and impartial arbiter. This posture of disinterestedness and impartiality in the matter before the court should make whatever decisions given tolerable to the political class. The politicians can be embarrassed but certainly not antagonistic.

11. **There should be a new Constitution**

There is need for a new Constitution to reflect the will and original act of the people. This can be through Referendum, or Constitutional Convention or Constituent Assembly whose memberships are elected not for anything but with a mandate to give Nigerians a new Constitution. The present Constitution can be altered to give room for this proposition. The merits of this suggestion are numerous. First, it will confer legitimacy on the Constitution. Second, it will justify the preamble to the Constitution which says "We, the people of the Federal Republic of Nigeria…" Third, people themselves will give to themselves what they want. It is strongly doubtful if the National Assembly, as it were, can alter the Constitution to their disadvantage. It will only be altered, in most cases, to further their selfish interests. Also, citizens will be aware of the contents of the Constitution as the making process will be put into popularisation.

Acknowledgements

All praises and adorations are due to Almighty Allah, the uncreated creator and incomparable majesty for seeing me through till today. Even though the journey is tasking, He bestowed His mercies, protection and guidance on me throughout the journey.

My profound gratitude goes to my father, Late Mallam Abdul Rahaman Jakun Sambo, for instilling in me the virtue of hard-work, commitment, love and fear of God. Even though you did not live long to enjoy the fruits of your labour, I am certain that you would be proud of me, if you had the opportunity of witnessing this event today. As he was often praised, *Olutumo, abambamba ogun, a kerima kerima ogun, owo lo nbe ni apo reni abi ogun, ogun lonbe lapo reni abi owo*? He would reply, *Qurani lo nbe ni apo mi*. You are an amazing role model that I strive to emulate. Your empathy, kindness and sense of humour, which ended about 34 years ago still inspire me to be a better person. I pray Allah (S.W.T.) to forgive your short-comings and reward you with *Al-janatul fridous.*

I deeply appreciate my late mother, Hajia Hararah Arionla Ajoke Sambo. I remember our last conversation before your departure about 25 years ago. "I know that whether I am alive or not, I would be proud of you. Always remember the son of the person you are.' You would always tell me why you took care of other people's children because you did not know who would take of us. I remember how I would escort you to sell melon (*egusi*) produced from the farming activities of my brother (Engr. Muritala Sambo) and I to market women at Ipata and Oja Oba Markets just to pay our bills. Your passing reminded me of the preciousness and fragility of life, which makes me strive to make the most of every moment. Your kindness, strength, resilience and courage taught me valuable lessons about preservation and hope.

I am deeply pained that you are not alive today but I take solace in the fact that Allah is answering your prayers on me. I am deeply humbled and privileged to say that l have become a person of many firsts. I am the first Lawyer in the Sambo's family; the first Professor of Law in my father and mother's family; the first Professor of Law in Moro Local Government Area; the first Professor of Law in Ile-Agba, Gambari, where my family house is in Ilorin; the first Professor of Constitutional Law in Ifelodun local government, my maternal Local Government; the first Professor of Constitutional Law in Kwara North Senatorial District; the first Professor to deliver inaugural lecture in Public Law Department;

and probably the youngest Professor of Law (age wise) in Kwara State. May Allah forgive your short-comings and reward you with *Al-janatul fridous*.

Mr. Vice-Chancellor, since my parents did not live long, I am indebted to a lot of other people's parents, who took me as their own. Pardon the long lists of acknowledgement even though I cannot mention all of them. For those not mentioned, or mentioned not in sequence, kindly pardon me. I appreciate my step mother, Alhaja Zainab Sambo. Thank you for stepping into the shoes of my mother. I appreciate your usual prayers, encouragement and kind words on me. May Allah (S.W.T.) never desert you. I am grateful to Alhaja Halimah Sambo (Iya Ruki), you stood for us, when it mattered most. To my cordial siblings, I appreciate you so much. I particularly thank my elder sisters: Alhaja Funmilayo Abdulrazak, Alhaja Afusat Nike Musa, Mrs. Fatimoh Sambo and my younger sister, Biliqees Abubakar (our last born), for their invaluable supports. My brothers, Alhaji Sambo Bolaji Yakub, CNA, and Engr. Sambo Olaitan Muritala deserve my deep appreciation. Apart from their moral supports given to me, their youngest brother in the family, they were in active charge of almost all my domestic affairs while away. To them I say thank you so much.

I profoundly appreciate all my teachers from the *madrasah*, through to primary and secondary schools to the university. I appreciate all Professors in the Faculty of Law. I must specially appreciate those who taught me for your sacrifice, outstanding teaching and mentorship. Wahab Olasupo Egbewole, SAN (Vice-Chancellor, University of Ilorin), Late (Dr.) Z. I. Aje, A. A. Oba, Zubair Abdulqadir, Late M. M. Akanbi (former Vice-Chancellor, Kwara State University, Malete), Hakeem Ijaiya, Abdulqadir Ibrahim Abikan (DG, Nigerian Institute of Advanced Legal Studies), Etudaiye Mukhtar (DVC, Academic), Nihmah Modupe Abdulraheem (Dean of Law), J. O. Olatoke, SAN, K. I. Adam, O. Y. Abdulhameed, Ismael Saka Ismael, R. K. Salman, and B.A. Omipidan. I am grateful sirs. Some of you are also teaching my daughter in the Faculty. Others who taught me, Mr. Y.K. Saadu, Late Prof. Rasheed Ijaodola, SAN, Prof. Najeem Ijaiya, now of Kwara State University, Malete; Prof. A. T. Shehu, now of Al-Hikmah University, Akin Akintoye Jnr., SAN and Late Baba Abdel. I am grateful for the opportunity to learn from your erudition and versatility.

To all my colleagues in the Department of Public Law, starting from Prof. Ibrahim Imam (Director, ILS), an unassuming gentle man, thank you so much. My brother from another mother, Prof. Abdulkadir Bolaji Abdulkadir and friend, whom we have been together since IJMB days, employed the same day and became professors the same day, thank you for your trust in me and friendship. I specially thank Prof. Mariam Adepeju Mustapha-Abdulraheem (Council Member), Dr. Lukman A. Abdulrauf (Sub-Dean, PGS and Chairman, Inaugural Lecture Committee), Dr. R. J. Adebimpe, Dr. Hamza Okene AbdulAzeez, Dr. Ridwan F. Mahmoud, Mr. Seye Thompson Adeboye and Mrs. Abdul Azeez Ruqayyah. I thank the administrative staff that made the Department enjoyable. As HoD, I enjoy the cooperation of Mrs. Adejoke Abidemi and Mrs. Imam Ruqayyah. I thank my other distinguished colleagues in the Faculty, particularly, Dr. Khairat O. Akanbi (my sister from another mum), Prof. L. A. Ayinla, Prof. M. T. Adekilekun (my brother and friend), Prof. Azubike, Prof. Azeezat O. Amoloye-Adebayo, Prof. Ganiyat Olatokun, Prof. A.O. Abdulkadir (Sub-Dean), Prof. A. I. Mustapha (HoD, Business Law), Dr. Barakah Raji, Dr. M. K. Imam-Tamim, Dr. A. A. Owoade, Dr. A. H. Folohusho, Dr. I. F. Yusuph, Dr. Ridwan Olagunju, Dr. Hameenat Ojibara, Dr. B. L. Ijaiya, Dr. D. A. Ariyoosu, Dr. Bunmi Niyi-Gafar (HoD, JIL),Dr. Abdulrazaq Daibu, Dr. Ugowe and Mr. John Ogedengbe.

My profound gratitude goes to my supervisor, Prof. Dr. Shamrahayu A. Aziz, for a display of versatility and erudition, which she used in guiding me through my Ph.D. thesis. May Allah (S.W.T.) reward you abundantly. I also appreciate my co-supervisors, Prof. Dr. Farid Sufian Shuaib and Prof. Dr. Mohd Akram Shair Mohamed, who painstakingly scrutinised the research and encouraged me. My heartfelt appreciation also goes to the entire management and staff of AIKOLS, particularly the former Dean, and my Postdoctoral Supervisor, Prof. Dr. Hunud Abia Kadouf. I remember when he told Late Prof. M. M. Akanbi upon his courtesy visit to his office in Malaysia that 'Sambo will be retained here in Malaysia. We have a job for him as An Assistant Professor.' Prof. Akanbi replied, 'Sambo must return to Nigeria to contribute his quota'. I thank the Prof. Dr. Abdul Ghafur Hamid, Prof. Dr. Abdul Aziz Bari, Prof. Dr. Abdul Haseeb Ansari, and Prof. Ainu Jariyyah.

To my mother's side, I thank my grandfather, Late Alhaji Muhammad Mahmud, the former Chief Imam of Adio Community.

My profound thanks go to my uncle, Senator Makanjuola Suleiman Ajadi for supporting me financially and morally. He was responsible for my university and law school education fees. I cannot thank you enough. I also thank my uncles, Akanni A. Saliman, Abdulrahaman Akanni, Yunus Akanni, and Dauda Mohammed for their moral support and prayers. Alhaji Abubakar Abdulkadir (Bro. Taiye) deserves my special appreciation for his moral and financial supports. My cousins, Ayuba Salahudeen, Suebat Abiuwa, and Muibat deserve my gratitude. I specially thank Alhaji (Dr.) Muritala Abdulraheem (the Personal Assistant to the Emir of Ilorin and my Brother). Alhaja Afusat Akanni (Iya Remi), Iya Mariam (Iya Eba), thank you. I greatly appreciate Mrs. Aminat Salahudeen (Mama Abuja), thank you for buying my Wig and Gown during my Call to Bar Ceremony, when I could not afford it. You did not allow me to borrow. I still use the wig and gown till date.

To my Father's side, my Uncles, I thank Alhaji L.A.K. Jimoh, Late Muhammad Sambo (Alfa Kaduna), Alhaji Salihu Sambo, Late Ahmad Sambo (Boda Obalowu), Mallam Hamisu, Mr. Hadi Liman and others. My cousins, Mr. Ibrahim Sambo deserves a special gratitude. Wasiu Sambo and Alfa Abdulrazaq Sambo, I thank you. My people at Ladabu, starting from the Chief Imam and Magaji of Ladabu, I appreciate you. My people at Ile Agba. Isale Gambari, I thank Alhaji Nuhu (Alh. Kano), Mr. Nuhu Yusuf, Mr. Lanre Kao Kudi, Mr. Taiye Adelodun, Wahab Adelodun, Mr. Toyin Adelodun, Mr. Jimoh Solihu and the Imam of Ile Agba. Khalifah Dare Gobir deserves my special appreciation.

To my in-law, let me start with my Father in-law, I thank Professor Lanre Badmas Yusuf (former Commissioner, Nigeria Hajj Commission). My Mother in-law, Alhaja Shifau Akanke Yusuf deserves a special gratitude for her support. Hajia Adama Yusuf, Hajia Wasilat Yusuf, Dr. Abdulhameed Yusuf Badmas, Alhaji Ibrahim Badmas Dansuki, Alhaja Hussainat Yusuf Badmas,Zainab Kemi Yusuf, Barr. Danjumo Ismail Badmas, Is'haq Badmas Yusuf, Robiah Yusuf, Aishah Yusuf Badmas. Alhaji Saidu Maimasa and the entire Ile Onimasa family, I appreciate you. Thank you for your prayers, well wishes, love and support.

To my association, Nigerian Bar Association, Ilorin Branch, led by Alhaji Kosemani Suleiman, Muslim Lawyers Association of Nigeria, Kwara State Chapter under the leadership of Dr. T. A. Abdulraheem; Gambari Academic Forum led by Prof. Mubarak Sanni and my humble self as the Secretary, GSS Ilorin

Old Boys Association 1997 Set under my chairmanship; Ilorin Emirate Descendant Union; International Association of Constitutional Law Scholars; Nigerian Association of Constitutional Law Scholars; Balogun Gambari Development Association; Gambari Ward II Development Association; and Balogun Gambari Youth Movement. I thank my principal, now Hon. Justice Demola Bakre (Judge of the Eastern Caribbean Supreme Court), for his moral and financial support. The Law Lounge family, Constitutional and Democratic Justice Initiative family, I salute you.

I would like to appreciate the management of University of Ilorin. In particular, I thank Prof. Abdulraheem Oba (former Vice-Chancellor), who admitted me as a student during his tenure. I thank Prof. Is'haq Olanrewaju Oloyede (the former Vice-Chancellor, and now JAMB Registrar and Emeritus Professor), for employing me into the University. I must specially thank the current Vice-Chancellor, my mentor, *Oga oga mi*, efficiency personified, Prof. Wahab Olasupo Egbewole, SAN. You have supported me in many ways. May Allah never cease His mercy and support for you. I thank the DVC (Academic), DVC (Management Services), DVC (RTI), the Registrar, the Bursar and the University Librarian. I greatly appreciate the Chairman of Library and Publications Committee for his useful comments, and editing of the lecture's manuscript for this improved version.

On the home front, I appreciate our Royal Fathers for your support and prayers. Mai Martaba, Sarki Ilorin, Dr. Ibrahim Sulu-Gambari, ably represented here by Balogun Alanamu, the Olupo of Ajase Ipo (Oba Ismail Alebiosu), the Olupako of Share (Oba Haruna Ilerika), the Balogun Fulani, Balogun Gambari, Balogun Alanamu and others. I also express my gratitude to the Imam of Gambari, the Chief Imam of Adio and other Imams and Uztaz here present.

My Lord, the Chief Judge of Kwara State, all judges of the Kwara State High Court, particularly Hon. Justice (Dr.) F. F. Abdulrazaq, Hon. Justice Dikko Yusuf, Hon. Justice Muritala Folohunsho, Hon. Justice T. Z. Umar, Hon. Justice Oloyede Oyediran (Oyo State Judiciary), thank you for finding time to be here. Justice M. I. Sanni (Justice of the Court of Appeal) deserves my immense gratitude. I salute the Grand Khadi of Kwara State, Hon. Justice Abdullateef Kamaldeen, and other Kadis, former Grand Khadis and Khadis of Kwara Sharia Court of Appeal.

To my very valuable Senior Advocates, Mallam Yusuf Olaolu Ali, SAN, the Kulliyyan geri and Professor of Practice. Thank you for all your usual support. Your Patronage of our family business (Samola Bread) in which my wife is the CEO is well appreciated. A.U. Mustapha, SAN, thank you for your usual support and for coming all the way from Abuja. I also thank K. K. Eleja, SAN, B. R. Gold, SAN, Abdulmumini, SAN, Dr. (Chief) Taiye Ayotunde Oniyide, SAN, and others too numerous to mention.

The Committee on this Inaugural Lecture, I cannot thank you enough. My dear students of the Faculty of Law, thank you so much. I salute my class mates of Unilorin 2004. You are all greatly appreciated. I specially greet Dr. Mutiu Agboke, the Resident Electoral Commissioner for Osun State. I appreciate all my former students; you are greatly appreciated. My present Ph.D. students, particularly Hon. Gbenga Makanjuola, Rose Adima Esq, Mr. Leye-Bunmi Falode, Emmanuel Adesina Esq, Chief Magistrate Kabir Mohammed and Prof. Aderemi Ajala deserve my profound appreciation for your well wishes and prayers. I also greatly appreciate my former Ph.D. students, particularly Dr. Jimoh Saliu, Dr. S.T. Abubakar and Dr. Wahab Shittu, SAN for your invaluable support and prayers.

I am also grateful to my amiable beautiful wife, Aminat Abiola Sambo. Thank you for your invaluable support and for ensuring our children are well-brought up. Your beauty inside and out, love, partnership, intelligence, and strength makes me adore you more and more each day. I am proud to call you my wife. Lastly, I appreciate my beloved children. I thank Hajarah Arinola Sambo for her prayers and for making me proud. Scoring 315 in your JAMB and 74 in Post-JAMB is no mean feat. You made your admission into the Faculty of Law on the merit and seamless. I hope you would keep it up. May Allah forgive you, Late Muhammad-Sambo O. Sambo given birth to in Malaysia but lost in Nigeria. Haleemah Bisola Sambo, thank you for your usual calmness and brilliance. Aishah Boluwatife Sambo and Muhammad Olanrewaju Sambo deserve my appreciation for being my coolness of the eyes. To everyone that has come to attend this lecture, I am indeed very grateful, May the good Lord take you to your destinations safely. "… and the end of our affairs is: Glory be to Allah, the Lord of the Universe."Thank you for your rapt attention.

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