

## OFFICIAL MISCONDUCT: IS THE JUDICIARY REALLY GETTING WORSE?

By Ahuraka Yusuf Isah

“Go placidly amid the noise and the haste, and remember what peace there may be in silence. As far as possible, without surrender, be on good terms with all persons. Speak your truth quietly and clearly; and listen to others, even to the dull and the ignorant; they too have their story. Avoid loud and aggressive persons; they are vexatious to the spirit. If you compare yourself with others, you may become vain or bitter, for always there will be greater and lesser persons than yourself...” Desiderata found in Old Saint Paul's Church, Baltimore AD 1692.

A school of thought, duly corroborated by the views of the Chief Justice of Nigeria (CJN), Justice Mahmud Mohammed held that the Judiciary usually comes under intensive criticism during periods of election petition proceedings in the Tribunals or at the appellate courts. Other observers maintained that those facing trials for corruption deliberately sponsored hoopla of calumnious “judicial corruption” discourse just to whittle down the potency of the Judiciary against bringing them to justice.

But there are those who have suffered one fate or the other, either in isolated cases or under a prevailing political weather of heist ravaging the country at a time. Of course, no amount of explanation or change of guard will put them off from viewing the world of the Judiciary through that prism of experience.

But the attacks on the Judiciary in the recent times from some quarters cannot easily be placed in the categories of reasons mentioned so far. Like a thunderbolt, the Nigerian Bar Association (NBA) President, Augustine Alegeh (SAN) had during the special session of the Supreme Court to mark the commencement of the 2015-2016 legal year and the swearing-in of newly conferred Senior Advocates of Nigeria stated that some judges are rendering judgments for a fee. In his words, “It is indeed very worrisome that certain judicial officers still engage in rendering judgments for a fee”.

President Muhammadu Buhari has severally levied blame on the judiciary of mismanaging or stagnating corruption trials in various courts in Nigeria.

In his speech at the 55th Annual General Conference of the Nigerian Bar Association held in August this year, the President said: “Ability to manipulate and frustrate the legal system is the crowning glory of the corrupt and, as may be expected, this has left many legal practitioners and law courts tainted in an ugly way.”

At the recently concluded All Nigerian Judges Conference organised by the National Judicial Institute, Buhari also said: “unfortunately, in recent years,

perhaps more than ever before, allegations of judicial corruption have become more strident and frequent. Some of the available surveys on public perception of the Judiciary clearly show that the Judiciary is losing the trust and esteem of the Nigerian population''. The latest salvo was fired from within, indeed, by the former President of the Court of Appeal, Justice Ayo Salami, who called on President Buhari to direct the Economic and Financial Crimes Commission (EFCC) and other anti-graft agencies to investigate corrupt judges; which to all intent and purpose is a welcome recommendation.

The presidency, according to him, should also copy the Kenyan model to rid the nation's judiciary of corruption, while kicking against quota system in appointing judges.

Salami, speaking at the 8th Annual Forum of the laureates of the Nigerian National Order of Merit (NNOM) and the Award in Abuja, said Chief Judges of both the State and Federal High Courts should have a prescribed tenure of not more than five years.

Both the quota system, removal and fixing of Chief Judges' tenure requires Constitutional amendment which can be achieved even with a sponsored private bill. But some of these suggestions will bring to ones memory of Honourable Justice Salami's letter with reference number PAC/S.25/Vol.1/143 dated 4 February 2011 which had the heading "Offer of Appointment To Supreme Court-Rejection".

While rejecting the promotion, Justice Salami had this to say; "... it was alleged that in giving reasons for this disturbing action, the CJN said that the appointment would add value to the Supreme Court. He further assured Council members that I would not lose my seniority. I regret to say that I am not taken in''.

"I am contented with being the President of the Court of Appeal. Indeed it is common knowledge that I had even in a more auspicious moment, declined for good reasons to be appointed to the Supreme Court. Nothing has changed since then. I prefer to remain in the Court of Appeal to continue to give service to the nation to the best of my ability''.

"Finally, I prefer to follow in the wake of my worthy predecessors who inspite of their experiences retired as President of the Court of Appeal with their honour and reputation unsullied. The present unholy move to push me out of the Court of Appeal for whatever reason has no precedent in our legal history. I do not therefore think that it will be fair for the Chief Justice of Nigeria to seek to create a dangerous precedent which may give rise to chained reactions'', Justice Salami added.

The CJN, Justice Mahmud Mohammed had during a seminar organized by the Anti-Corruption Commission of the Nigerian Bar Association (NBA) on 24 June 2015 held that contrary to the much talked about corruption in the Nigerian judiciary, only 64 out of the whole lots of 1,020 judges serving in the superior courts have so far been punished by the National Judicial Council (NJC) for various offences especially bordering on corruption between 2009 and 2014.

While admonishing the NBA, he said, the Bench cannot be clean if the Bar that gives birth to is not. “Unless we work in synergy to ensure that only fit and proper persons remain in our midst, it will be impossible to expect a different Bench when its origin remains the same. I hereby call on the leadership of the Bar to expunge from its ranks such persons whose conduct may be unfit, improper, dishonest or unethical”, the CJN thundered out.

The CJN went further to say that it is rather curious that none of the beneficiaries of those involved in compromising standard of justice or buying and selling of judgements have ever been tried and punished by those in charge of criminal justice administration in the country.

“It is however sad to note that the public officials and persons who benefited from corrupting Judicial Officers are never investigated, apprehended or even prosecuted, even though the Judiciary disciplines its own. The basic question, my lords, ladies and gentlemen is, how can we stop corruption when the scale is seemingly tilted in favour of the beneficiaries”, Justice Mohammed asked.

The last quiver of the CJN’s arrows would remind the legal system historians of the pre-modern Europe when crime was viewed as a private matter in Ancient Greece and Rome. Even with offences as serious as murder, justice was the prerogative of the victim's family and private war or vendetta the means of protection against criminality. Corruption in the judiciary cannot abate unless and until the federal government stops regarding such criminality as a family affair or solely a matter for the judiciary.

According to the former CJN, Justice Mariam Aloma Mukthar, the judiciary doesn’t have a garrison of soldiers to fight its cause or enforce its orders and decisions. NJC for instance can only recommend disciplinary actions against erring judicial officers for approval and enforcement by the President. It cannot go further to levy charges against the judge for his or her criminal acts; neither can NJC prosecute the persons that bribed the judge to balkanize the cause of justice. The Council doesn’t have a criminal investigation unit or “Fraud Detective Squad” to detect and investigate criminal involvement of any judicial officer. Furthermore, the Constitution does not permit NJC to constitute itself into a court, but can only put the judge on administrative trial if there is a petition filed against him or her. Again, the trials are based mostly on documentary evidence.

Though one may wish to argue that the CJN's 64 corrupt judges out of 1020 in the judiciary hypothesis is not a true reflection of the numerical strength of "corrupt judges," on the grounds that it is not proportional to the casualty figure of those that had suffered from rampant 'bad judgements' or 'integrity deficit' of some judges in Nigeria within the same period of time. But what other measures can the Judiciary apply to sanitize itself other than what the laws or the Constitution prescribed in the absence of the 'state apparatchiks'? This must have led to the CJN's advice during the swearing-in of 30 new Judges of the Federal High Court that "he who alleges must prove" But then, NJC will not fail to punish any judicial officer that contravene his or her oaths of office..

Of course, it is the duties of the state to detect, investigate, prosecute and apply appropriate punishment to serve as deterrent for criminal acts in any clime. None of those 64 judges sacked by the NJC was ever prosecuted by the state; yet, the pronouncements of some of them led to blood shed or mini civil war in the country, especially those who were sacked for their pronouncements, which led to the ignominious 12 June 1993 Presidential Election annulment by the then Military President Ibrahim Badamasi Babangida. None of those that conspired with any of the 64 judges sacked by the Council for compromising the standard of justice was prosecuted and punished by the state in the country.

Prevention is generally agreed to be better than cure. In keeping with this article of faith, as well as in the absence of Constitution amendment process, the Judiciary leadership is constantly reviewing old policy guidelines and practice direction with the aim of fast-tracking justice delivery in the courts and removing soft spots in the guidelines that encourage misconduct.

For instance, by mid this year, the CJN banned the launching of books in honour of serving Judges.

During the run up to the 2015 General Elections, all Heads of Courts, acted under the CJN's supervision to ensure Judicial impartiality and independence in order to create the level playing field necessary for all parties and candidates taking part in that election. Hence, politicians that had wished to employ services of the Judiciary to undermine the electoral processes were disappointed.

The CJN has since directed the National Judicial Council to implement the new Revised NJC Guidelines and Procedural Rules for the Appointment of Judicial Officers of all Superior Courts of Record in Nigeria 2014. The rules were strictly applied in the appointment of 30 Judges for the Federal High Court recently, with resounding success. Notwithstanding, the temporary strident attacks by some individuals, public confidence now runs deeper and makes it right to say that the Courts are still viewed as the last hope of the common man.

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