



JUDICIAL APPOINTMENTS IN NIGERIA: THE SELF INFLICTED INADEQUATE REPRESENTATION OF THE IGBOS IN FEDERAL COURTS

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ABSTRACT

Judicial officers play such a major role in the administration of justice that people have personalised law and the legal order in judicial officers, and for a more effective justice administration system, judicial appointments in a federal state like Nigeria, needs an equitable representation of the various federating units; as long as the appointees meet the minimum requirements for the appointment. This paper discusses the need for a better representation of the Igbos of South East Nigeria in judicial appointments at the various federal courts. The paper notes that though there has been a general marginalisation of the Igbos in virtually every facet of governance in Nigeria, in the case of judicial appointments, it would seem that the general poor leadership among the Igbos is contributory to their inadequate representation. This is evident in the appointment of either incompetent or old persons as judges at the State High Court level. As most appointments at the federal courts are elevation of High Court judges from the states, most Igbo High Court judges may not be qualified to be elevated to the federal courts. There is need for Igbo leaders to be focused and to take decisions that are in the best interest of the generality of the Igbos rather than do so for personal interests. Without this, our agitation for adequate representation in the country would be futile.

Keywords: Judicial appointments, Igbos, Nigeria, federal character, equitable representation

INTRODUCTION

Judges are the chief officers in the administration of justice and their function impacts a great deal in the lives of the people. Judges are important public officials whose authority reaches every corner of the society. They resolve disputes between people and interpret and apply the law by which we live. Through that process, they define our rights and responsibilities, determine the distribution of vast amounts of public and private resources and direct the actions of officials in other branches of government.³ The role of the judge in the administration of justice is so important that he may be likened to the Almighty God. This is depicted in this statement by Azinge and Rapu, that:

Justice is a lofty ideal and an attribute of God. God almighty is just and He only is capable of dispensing perfect justice in all ramifications. The human judge is nonetheless cast in this mould of the invincible God, to dispense justice to all and sundry without considerations of extraneous factors. The human judge holds the scales of justice in trust for the almighty invincible God.⁴

The judge functions under the judiciary, the third arm of government, that branch of the country's central administration that is concerned with dispensing justice. In doing this, it conjures its inherent power of interpreting laws that are passed by the legislature and signed by the executive. The judiciary also

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³W. Whitman, "Great are the Myths" in *Leaves of Grass* Philadelphia: Sherman & Co., 1900, cited in A Wayne Mackay, "Judicial Ethics: Exploring Misconduct and Accountability for Judges" p. 1 cjei.org/publications/mackay.html, 25/11/2013

⁴ E. Azinge and J.F. Rapu, "Roadmap to Judicial Transformation: Through the Lens of Retired and Serving Jurists of the Supreme Court," p. 2 www.nials-nigeria.org/journals/AzingeandJudith-RoadmaptoJudicialTransformation.pdf 28/11/2013

interprets any legal logjam that may arise out of the function of the other two arms; the legislature and the executive. Under section 6 (6) (b) of the 1999 Constitution,⁵ the judiciary is given the responsibility of determining:

All matters between persons or between government or authority and to any person in Nigeria and to all actions and proceedings relating thereto for the determination of any question as to the civil rights and obligations of the person.

The judiciary is the most critical arm on which rests the rights and liberty, and sometime, the very life of the people. It is therefore not surprising that scholars have propounded numerous aphorisms to cloak the judiciary. For example, the judiciary has been described as “the last hope of the common man,” “the temple of justice, with the judge as the high priest,” “the institution vested with the power to play God;” and “the sentinel of justice.” The judiciary occupies a recognised and entrenched position in the dynamics of any evolving political system or polity especially one that professes the rule of law and obeisance to the doctrine of separation of power. It is a bastion or bulwark against oppressive or arbitrary actions of citizens or governmental authorities against legal persons or juristic entities; as well as a repository of, or guardian of the Constitution. In its role as an arbiter between government authorities and the people, its role transcends the arena of protecting the fundamental rights of the citizens and also dovetails into social responsibility of ensuring that the power delegated to the other two arms of government are used for the good of the society. Thus the judiciary may even strike down legislation or an executive measure as unreasonable.

The Constitution makes a distinction between the judicial powers of the federation and that of the states, and provides⁶ that “the judicial powers of the federation shall be vested in the courts to which this section relates... and the judicial power of the state shall be vested in the courts to which this section relates being courts established subject as provided by this Constitution for a state.” The federal courts include the Supreme Court, the Court of Appeal and the Federal High Court, while the state courts include the High Court of a State, the Sharia Court of Appeal of a state, the Customary Court of Appeal of a State etc.

By its nature, the judicial function requires that the judicial officers should be made up of a collection of different interest groups in the society in order that in resolution of disputes, there shall be proper consideration of the rights of all the peoples. This is why it is usually advocated that in making judicial appointments apart from other necessary criteria such as age at the bar, knowledge of the law, integrity diligence etc, other considerations such as gender, social status, ethnic groups etc should be considered. In a federation like Nigeria, one major consideration in judicial appointment particularly in federal courts is the need for a proper representation of the different federating units to ensure that the interests of the diverse people of the country are properly articulated by that all important arm of government. The Constitution itself recognises this fact and provides generally that:

The composition of the Government of the federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of other sectional groups in that government or any of its agencies.⁷

It is our contention however, that in the appointment of judges of the federal courts in Nigeria, this stipulation of the Constitution is not adhered to with particular reference to South East Nigeria which is made up of the Igbo speaking states of Abia, Anambra, Ebonyi, Enugu and Imo. The reason attributed to this is the poor leadership initiative among the Igbos by which appointments of judges into the State High Courts is motivated not by merit and forward-looking principles but personal, parochial and selfish considerations. The result is that old, inefficient and incompetent persons are appointed and thereby

⁵The Constitution of the Federal Republic of Nigeria, 1999 (as amended) hereinafter referred to as “the 1999 Constitution”

⁶See section 6(1) & (2) 1999 Constitution

⁷Section 14 (3) of the 1999 Constitution

limiting any chance of such appointees being elevated to any of the federal courts.

THE ROLE OF THE JUDICIARY IN THE ADMINISTRATION OF JUSTICE IN NIGERIA

The judiciary plays a very major role in national affairs. Most importantly, the judges who make up the most part, they are the impartial decision-makers in the pursuit of justice. In our adversarial system of justice where cases are contested between opposing sides ensuring that evidence and legal arguments will be fully and forcefully presented, the judge remains above the fray, providing an independent and impartial assessment of the facts and how the law applies to those facts. In search of justice, the judiciary holds the aces in playing its role as the champion of the society against oppression and arbitrariness in government or in adjudication involving the civil rights and obligations of the citizen. In line with the all-important role of the judiciary, Hon Justice Phillip Nnaemeka-Agu JSC (of blessed memory) declared that:

The courts are in fact the arm of the government mostly designed and expected to do justice according to law – judicial justice. On the abandonment of the concept of justice as the interest of the stronger, humanity had no alternative but to turn to the courts so as to fill up what would have been a vacuum. Men had to turn to the courts as the fora for public administration of justice. Courts try and punish criminals; the enemies of peace and tranquillity in society. They adjudicate on civil disputes between citizen's interests or between the citizen and the state. They are constituted and intended to be the last hope of the weaker in society.⁸

The judiciary is therefore the watchdog of the people, and should be independent enough to prevent any unjustifiable attempt by the executive to encroach on the liberty of the people or make itself supreme authority in the matters of conscience. According to Justice C.A. Oputa

The courts are among the last (if not the last) lines of the defence in a free society. When the courts are overrun by the ever advancing avalanche of moral decay or interference or of pressure, or of all three, then the warning shots are being fired for the inauguration of a reign of terror and chaos.⁹

The judiciary's roles in the society are numerous, but we will discuss some of the very major roles which space and time will permit in this work, and they include:

Interpretation of Laws: The central function of the judiciary is to interpret the laws passed by the legislature including the Constitution. In *Obi v. INEC*¹⁰ the court stated that the power of interpretation must be lodged somewhere and the custom of the Constitution has lodged it in the Judges. In interpreting the law, all the judges must always reckon with the imperative need to engender justice. In exercising this power the judiciary is to give proper and purposeful interpretation to the statutes adhering ordinarily to the text of the law for that certainly allows for fairness. This is in line with the doctrine of separation of powers that the duty of law making belongs to the legislature, and the judiciary is to interpret. As Alexander Hamilton said "liberty can have nothing to fear from the judiciary alone as the legislature, not the judiciary has the power to make laws." The Nigerian judiciary often towed this path. Thus, in *Attorney-General of Abia State v. Attorney-General of the Federation*¹¹ the Supreme Court warned against courts going out on "an unguarded voyage of discovery." In a plethora of cases, the apex court has followed this trend in deciding cases before it. In *Obi v. INEC*¹² the court, in spite of the seeming absurdities arising from their interpretation of S. 180(1) (2) of the Constitution, still stated that since Peter Obi, the appellant took his oath of allegiance and oath of office on the 17th of March 2006, the 4 – years

⁸Quoted in U Kalu and S.C. Ifemeje *op. cit.*

⁹C.A. Oputa, *The Law and Twin Pillars of Justice*, Owerri: The Government Printers, 1981, p. 75

¹⁰(2007) 11 NWLR (Pt. 1046) 565

¹¹(2006)16 NWLR (Pt. 1005) 265

¹²*supra*

term of office of the appellant as governor of Anambra State will only terminate on 17th March 2010. Thus, as at 14th April, 2007 when INEC, the first respondent was conducting gubernatorial election in Anambra State, the seat of the Governor of that State was not vacant. The court in that case also stated that to interpret the provisions of section 180(2) (a) otherwise will be to read into that sub-section, what the legislators never intended. The duty of a *judex* is to expound the law and not to expand it. In the resources control case of *Attorney-General of the Federation v. Attorney-General of Abia State*,¹³ the court had cause to interpret section 162(2) of the 1999 Constitution and held that in calculating the 13% of revenue accruable to a littoral state, the boundary of a littoral state is the low-water mark of a state. Thus, oil found beyond the low-water mark of a state exclusively belongs to the Federal Government.

Adjudication: Courts adjudicate on matters between parties brought before them. In this way they resolve conflicts involving individuals, organizations, government and political parties. The Nigerian courts have in recent years given a lot of landmark decisions.¹⁴

Law-Making (Case Law): The judiciary, in the process of interpretation of law and settling of disputes, make new laws known as case law. This role of the judiciary emphasizes interpreting the law to fit changing circumstances and technologies, and may seem to contradict the role of interpretation under which it is emphasized that the role of the judge in interpreting the laws is not to bring into the law what the legislators did not intend. Case law is however different from what is envisaged above, as there may arise issues for determination for which there are no existing laws by the legislature, in which case the courts will still have to give a decision one way or the other and this decision becomes case law on the particular issue. Lower courts will be bound by such laws in deciding similar issue. This is known as the doctrine of *stare decisis*. In *Dalhatu v. Turaki*¹⁵, the apex court, in support of this doctrine, stated thus:

It is unfortunate that although the case was cited to the trial judge, he deliberately and consciously refused to apply it ... he too was wrong not to have followed the age long established doctrine of *stare decisis* otherwise known as judicial precedent. His action has been variously described as “gross insubordination,” “judicial impertinence” amongst others.

Judicial Review: Another function of the judiciary is supervision and review of actions of the lower courts and other government agencies and arms of government.

APPOINTMENT/ELEVATION OF JUDGES

Constitutional Requirements: In Nigeria, Judges are appointed from the rank of legal practitioners. The essential constitutional qualification is a prescribed period of qualification to practice as a lawyer. The person to be appointed Chief Justice of Nigeria and the other Justices of the Supreme Court shall be a person qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than fifteen years.¹⁶ The post-call qualification requirement for the appointment of the President of the Court of Appeal or Justice of the Court of Appeal is twelve years;¹⁷ while that of the Chief Judges and other Judges of the Federal High Court, High Court of the Federal Capital Territory Abuja and State High Courts, is fixed at ten years.¹⁸ To be qualified to hold the office as the Grand Kadi or Kadi of the Sharia Court of Appeal of the Federal Capital Territory as well as that of the States, a person shall be a legal practitioner in Nigeria with post-call qualification of ten years and would have also obtained a recognised qualification in Islamic law from an institution acceptable to the National Judicial Council.¹⁹ Alternatively

¹² (2002) (2002) 6 NWLR (Pt. 764) 160

¹³ See for instance the cases of *Ngige v. Obi* (2006) 4NWLR (Pt. 999) 1, *Action Congress and Abubakar v. INEC* (2007) 12 NWLR (Pt. 1048) 222, *Amaechi v. INEC* (2007) 18 NWLR (Pt. 14065) 105, and *Ugwu v. Ararume* (2007) 12 NWLR (Pt. 1048) 367

¹⁵ (2003) FWLR (Pt. 174) 247 at 263

¹⁶ Section 231 (3) 1999 Constitution

¹⁷ Section 238 (3)

¹⁸ Section 250 (3) 256 (3) and 271 (3)

¹⁹ Sections 21 (3) (a), 276 (3) (a)

a person who has attended and has obtained a recognised qualification in Islamic law from an institution approved by the National Judicial Council and has held the qualification for a period of not less than twelve years (ten years, for the states) and he either has considerable experience in the practice of Islamic law or he is a distinguished scholar of Islamic law may be appointed.²⁰ In the case of President or Judge of the Customary Court of Appeal of the Federal Capital Territory Abuja and the Customary Court of Appeal of the states, they need, apart from such other qualifications as may be prescribed by an Act of the National Assembly (or a law of the State House of Assembly, for those of the states), ten years post-call qualification as a legal practitioner in Nigeria and in the opinion of the National Judicial Council, he has considerable knowledge and experience in the practice of customary law.²¹ Also in the alternative, such an appointment could be made apart from such other qualifications as may be prescribed by an Act of the National Assembly, if in the opinion of the National Judicial Council, a person has considerable knowledge of and experience in the practice of customary law.²²

The appointment of the Chief Justice of Nigeria and other Justices of the Supreme Court is to be made by the President on the recommendation of the National Judicial Council, subject to confirmation of such appointment by the Senate.²³ This is a change from the innovation introduced in the 1979 Constitution where the Chief Justice of the Federation was to be appointed by the President in his discretion but subject to the confirmation by simple majority in the Senate.²⁴ This same power and procedure for appointment applies in the appointment of the President of the Court of Appeal; the Chief Judge of the Federal High Court; the Chief Judge of the High Court of the Federal Capital Territory, Abuja; the Grand Kadi of the Sharia Court of Appeal and the President of the Customary Court of Appeal of the Federal Capital Territory Abuja.²⁵ At the state level, also the appointment of Chief Judge of a state, the Grand Kadi of the Sharia Court of Appeal and the President of the Customary Court of Appeal of the state is made by the Governor of the state on the recommendation of the National Judicial Council, subject to confirmation of such appointment by the House of Assembly of the State.²⁶ This provision is in contrast with that of in the 1979 Constitution, where the word ‘advice’ is used in place of ‘recommendation.’ In that case, by making the power exercisable on the advice of another, no discretion is imported, as the power has to be exercised only as advised, the role of the repository of power being the purely formal and nominal one of merely executing the advice. The real maker of the appointment under that method is thus the Federal or State Judicial Service Commission as the case may be. Under the extant Constitution, the method does not completely exclude discretion in the President or Governor. Whilst they cannot appoint a person who has not been recommended by the council they are not bound to appoint a person to whom a favourable recommendation has been made in that a binding recommendation is a contradiction in terms. Where the President or the Governor turns down a person recommended by the Council, a non-recommended person cannot be appointed. The council must be requested to recommend another person. The requirement of a simple majority in cases where there is need for approval of the Senate or House of Assembly of State under the 1979 Constitution is omitted in the present Constitution, which does not specify the majority required where such confirmation is needed.²⁷

Another method of appointment is by the President or Governor acting on the recommendation of the National Judicial Council but without any requirement for confirmation by the Senate. The judicial officers affected by this method are: the Justices of the Court of Appeal,²⁸ Judges of the Federal High Court²⁹ and the High Court of the Federal Capital Territory, Abuja; Kadis of the Sharia Court of Appeal³⁰

²⁰Sections 261 (3) (b) (i) & (ii) 276 (3) (b) (i) & (ii)

²¹Sections 266 (3) (b) 281 (3) (a)

²²Sections 266 (3) (b), 281 (3) (b)

²³Section 231 (1) & (2)

²⁴Section 211 (1) 1979 Constitution

²⁵Sections 238 (1), 250 (1), 256(1), 261 (1), 266(1)

²⁶Sections 271 (1), 276 (1), 281 (1)

²⁷ *ibid*

²⁸Section 238 (2)

²⁹Section 250 (2)

³⁰Section 261 (2)

and Judges of the Customary Court of Appeal³¹ of the Federal Capital Territory Abuja; Judges of the State High Court;³² and the Kadis of the Sharia Court of Appeal³³ and Judges of the Customary Court of Appeal³⁴ of a state.

Under the extant Constitution the recommendation to the President and the Governors of person for appointment to the judicial offices is done by the National Judicial Council. The recommendation shall be from among the list submitted to it by the Federal Judicial Service Commission (for appointment of federal judicial officers);³⁵ the Judicial Service Commission of the Federal Capital Territory Abuja; (for appointment of the judicial officers of Federal Capital Territory Abuja)³⁶ and the State Judicial Service Commission (for appointment of the state judicial officers).³⁷ The National Judicial Council is the body under the 1999 Constitution, saddled with the responsibility of screening and appointing persons to the higher courts ranging from the various High Courts of the states to the Supreme Court. The Council, is one of the executive bodies created by virtue of section 153 of the 1999 Constitution, and is novel as it has not existed in any other Constitution before it. It is composed predominantly of judges and is vested with enormous powers and functions. The membership of the National Judicial Council consists of the following:

- (a) the Chief Justice of Nigeria who shall be chairman;
- (b) the next Senior Justice of the Supreme Court who shall be the Deputy Chairman;
- (c) the President of the Court of Appeal;
- (d) five retired Justices selected by the Chief Justice of Nigeria from the Supreme Court or Court of appeal.
- (e) the Chief Judge of Federal High Court;
- (f) five Chief Judges of States to be appointed by the Chief Justice of Nigeria from among the Chief Judges of the States and of the High Court of the Federal Capital Territory, Abuja in rotation to serve for two years.
- (g) one Grand Kadi to be appointed by the Chief Justice of Nigeria from among Grand Kadis of the Sharia Courts of Appeal to serve in rotation for two years
- (h) one President of the Customary Court of Appeal to be appointed by Chief Justice of Nigeria from among the Presidents of the Customary Courts of Appeal to serve in rotation for two years.
- (i) five members of the Nigerian Bar Association who have been qualified to practice for a period of not less than fifteen years, at least, one of whom shall be a Senior Advocate of Nigeria, appointed by the Chief Justice of Nigeria on the recommendation of the National Executive Committee of the Nigerian Bar Association to serve for two years and subject to re-appointment:
Provided that five members shall sit in the council only for the purposes of considering the names of persons for appointment to the superior courts of record; and
- (j) two persons not being legal practitioners who in the opinion of the Chief Justice of Nigeria, are of unquestionable integrity.³⁸

³¹Section 266(2)

³²Section 271(2)

³³Section 276(2)

³⁴Section 281(2)

³⁵Third Schedule, part 1 Para 1, 21 (a) (1)

³⁶Para 21 (a) (11)

³⁷Para 21 (c)

³⁸3rd Schedule, part 1, para. 1 (20)

The dominance of the council by judges and legal practitioners is a welcome development³⁹ as they are better placed to judge the suitability of persons for judicial appointments. Justice Nnamani (of blessed memory) criticizing the composition of the Judiciary Service Commission under the 1979 Constitution, expressed the view that there is danger in using politics as the dominant consideration in the appointment of judges especially at the state level. This danger he said, would emanate from the unsatisfactory composition of the Judicial Service Commission.⁴⁰ The years spent by a judge at the bar and the bench give him an intimate knowledge of prospective judicial aspirants. However, considering the federal status of Nigeria, the establishment of the National Judicial Council, its powers and composition makes it essentially a federal government institution, under the almost total dominance of the Chief Justice of Nigeria.⁴¹ The composition of the National Judicial Council presently does not guarantee equitable distribution of judges from the different federating units.⁴²

Other Criteria: Generally, other criteria considered in appointment of judicial officers are character of a person and the quality of the mind, reasoning and intellect. A suitable candidate for appointment as a judge should be a person of impeccable character. Given the nature of work of a judge to dispense justice to all and sundry without consideration of extraneous factors, integrity must be given a very weighty consideration in appointing a person as a judge. "The Judges must be men of probity and of impeccable character. No aspect of a judge's conduct should give cause for concern. He or she must show the highest sense of discipline and good behaviour. It is the duty of a judge to present to the nation a judiciary which the people of this country can be justly proud of."⁴³

Such candidates must also have sound legal background, and intellectual acumen. They must possess professional competence such as intellectual capacity, professional and personal judgment, writing and analytical ability, and knowledge of the law and of professional experience. The work of a judge is an arduous task and requires persons of high intellectual capacity and ability to research and demonstrate scholarly writing. Without these qualities, a judge will be a mediocre and will not properly dispense justice as required.

Experience however shows that these basic criteria for appointment and elevation of judges have been jettisoned in a lot of appointments so that there are a lot of persons who are intellectually inadequate and morally bankrupt who are on the bench today. This is most unfortunate for such "persons unsuitable for such lofty ideal of dispensing justice have by omission or commission found themselves in the corridors of justice, holding the scales unevenly and determining the fates of mortals through unworthy extraneous considerations." You will therefore find in our courts today, judges who neither have the knowledge of law nor the tasking matters of *judex* and thus easily succumb to the subtle manipulations of crafty and brilliant lawyers. Such judges without the necessary intellectual capacity not being able to grasp the rudiments and ramification of cases before, them sometimes slyly either choose not to sit for as long as they can get away with it, or adjourn unnecessarily. This in turn has contributed immensely to the backlog of cases pending in the courts. For instance, at the occasion of swearing in of the former Chief Justice of Nigeria, the Honourable Justice Dahiru Musdapher in 2011, he revealed that there are over 1500 appeals before the Supreme Court, and that in that year, the court was still dealing with 2000 and 2001 appeals. Worst still, some members of the Bench because of intellectual laxity delegate their legal assistants to write judgments for them⁴⁴.

At the core of judicial function is the integrity of the judge. The judiciary generally must not be regarded, perceived or believed to be pervasively corrupt. It must be a temple of justice, a beacon of credibility, and

³⁹ Unlike the unsatisfactory composition of the Judicial Service Commission under the 1999 Constitution

⁴⁰ J.N. Aduba, "Independence of the Judiciary in Nigeria's Third Republic" p.8

www.dspace.unijos.edu.ng/bitstream/10485/191/26... 10/5/2010

⁴¹ I.E. Sagay "The Judiciary in a Modern Democracy" I. A. Ayua et al (ed.), *Issues in 1999 Constitution*, Lagos: Nigeria Institute of Advanced Legal Studies, 2000, p. 109

⁴² This is particularly so, because Nigerians in key positions look out mainly for the interest of people from their states or ethnic groups.

⁴³ E. Azinge and J.F. Rapu, *op. cit.*, p.38

⁴⁴ E. Azinge and J.F. Rapu, *op. cit.*, p. 7

a repository of integrity. Even if the judiciary has every other thing right, once its actors are not regarded as credible men and women of integrity, it can hardly act as an enforcer of rights and a just redresser of wrongs. Yet, the problem of corruption or lack of integrity which is wrecking untold havoc on the socio-economic fabric of the nation as a whole has not spared the judiciary. It is a general belief in Nigeria that Nigerian judges are overly corrupt and incompetent. There are confirmed and unconfirmed information gathered by lawyers on this issue, which are mind-boggling. There are stories of how money exchange hands to influence judges in order for them to give favourable judgments.⁴⁵ Decrying the mounting cases of corruption within the judiciary, the NBA National President, Chief Okey Wali⁴⁶ lamented that judges allowed litigation to continue indefinitely, while criminals walk freely. He said:

They insensitively invoke their 'neutral' 'referee' and 'umpire' mantras to derail, frustrate and inhibit agile prosecution. They descend into an orgy of 'plea bargaining' an anomalous, amorphous, and amoebic piece of witchcraft aped from the United States. If you steal a goat or a thousand Naira, you go to jail. But if you steal oil or a billion Naira, you plea bargain and walk – a sublime piece of mysticism and nonsense!

Some judges run their courts with despotism and impunity. They come to court late, leave early, and are absent for days. With such level of indiscipline and lack of accountability corruption thrives. Corruption in the judiciary has among other things made it impossible for the judiciary to perform its role of playing a neutral and fair role in resolving disputes. A corrupt judge is a disgrace to his peers and curse to the noble profession. Capturing the incalculable harm a corrupt judge inflicts on the society, Uwaifo JSC said:

A corrupt judge is more harmful to the society than a man who runs amok with a dagger in a crowded street. The latter can be restrained physically. But the corrupt judge deliberately destroys the moral foundation of society and causes incalculable distress to individuals through abusing his office while still being referred to as 'honourable.'⁴⁷

Appointment of Judges of South East Extraction into Federal Courts

Nigeria is a federal state, and the Constitution specifically provides that: "Nigeria is one indivisible and indissoluble sovereign state to be known as the Federal Republic of Nigeria." "Nigeria shall be a federation consisting of states and a Federal Capital Territory."⁴⁸ Federalism is a concept that attracts a plethora of definitions, as its operation differs in many societies where it operates. However there are certain basic characteristics of federalism which a definition must contain to be acceptable. In that vein, we adopt the definition that federalism is:

An arrangement whereby powers within an multi-national country are shared between a federal or central authority, and a number of regionalised governments in such a way that each unit including the central authority exists as a government separately and independently from the others, operating directly on persons and property within its territorial area, with a will of its own and its own apparatus for the conduct of affairs and with an authority in matters exclusive of all others.⁴⁹

⁴⁵ E.J. Etaghene, "Is Judiciary still the Last Hope of the Common Man?"

www.urhobotimes.com/individual_news.php?itemid=887, 25/11/2013

⁴⁶ Ikechukwu Nnochiri, "NBA Canvasses Review of Criteria for Judicial Appointments," www.vanguard.com/2013/07/nba-canvasses-review-for-judicial-appointments/ 25/11/2013

⁴⁷ Uwaifo JSC, *Valedictory Speech, reproduced in* (2005) 1 SCNJ, at 20 – cited in D. Musdapher CJN, "The Nigerian Judiciary: Towards Reform of the Bastion of Constitutional Democracy" *Fellows Lecture Series* Lagos: Nigerian Institute of Advanced Legal Studies (2011), p.15

⁴⁸ Section 2 (1) & (2) of the 1999 Constitution

⁴⁹ B.O. Nwabueze, *Federalism in Nigeria under the Presidential Constitution*. London: Sweet and Maxwell (1983), p. 1

Furthermore, Nigeria has the various qualities that are attributable to a federation, one of which is equality in powers between the regional governments. As a federal relationship is between the national government on the one hand and the state government on the other, and not between it and each regional government separately, the powers of the regional governments and their relations to the national government should be exactly the same. No regional government should have more or less powers than the other, or be accorded a special position in relation to the national government. Otherwise, the regional government cannot interact among themselves and with the national government as equal partners. The lodging of greater powers in one regional government would tend to produce in it an attitude of superiority and arrogance towards the others and thus destroy the equilibrium of the system. The Constitution in guarding against this possible inequality provides in section 14(3):⁵⁰

The composition of the Government of the federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or any other sectional groups in that Government or in any of its agencies.

In this vein, the country is divided into 6 geopolitical zones; South East, South South, South West, North East, North West and North Central and each zone shall be equally represented in government appointment at the federal level. As far as judicial appointments at the federal courts are concerned, the constitutional provision of section 14(3) has not been fulfilled as there is not the appropriate number of judges of the south east extraction in the courts. At the Supreme Court, there are presently 15 Justices and the Chief Justice of Nigeria. Of these 16 Justices, only 2 are of the south east extraction. At the Court of Appeal, there are 66 Justices sitting at the various divisions of the court, and the President of the Court of Appeal. Of these 67 Justices only 9 are of the south east extraction. In the Federal High Court, only about 7 out of the 64 Judges of that court are Igbos of South East Nigeria. It is of interest to note that since the inception of the Supreme Court in 1958, there has never been a Chief Justice of Nigeria from the South East extraction till date. In the Court of Appeal from its inception in 1976 till date there has only been one president of the court from the South East.

The reason for this position is not far-fetched. It is due to the failure of the people of South East Nigeria to produce judges the calibre of which would qualify for appointment/elevation to the federal courts. Where persons unqualified for the position are appointed based on the 'Nigerian factor' in the long run, they may not be found fit for elevation to the federal courts. This situation is further compounded by the current practice of climbing from states judiciary to the Court of Appeal and eventually to the Supreme Court. So that though there are several lawyers who are excelling in legal practice, the academia and corporate legal practice, there are still not enough competent south easterners to be elevated to the higher bench. Furthermore, to become the head of such a higher bench, that is to say, the Chief Justice of Nigeria or the President of the Court of Appeal, the time-respected rule of seniority applies. Therefore, a person has to be the most senior justice of the court to be appointed the head of that court, and if one becomes a justice of the Court of Appeal or the Supreme Court at a very advanced age, he may never get to the position of head of that court before he attains the age of retirement.

Reasons for the Seeming Marginalization of the Igbos in Appointments into Federal Courts

Mode of Appointment at the Lower Courts: The procedure of appointment in Nigeria generally and in the South East Nigeria in particular is believed not to be based on merit but on 'who you know.' This can be deduced from the fact that better qualified candidates for the positions are not appointed. It is not surprising as such candidates are likely to be less able or willing to compromise or ingratiate themselves with political authorities and so will be less likely to be preferred. It is warned that politicising judicial appointments would not augur well for the judiciary. Criticizing this manner of appointment, the NBA president opined that:

⁵⁰ of the 1999 Constitution

Judicial appointments are becoming political and they should not be. The job is not that for the boy, experience must count. So, the process must therefore be extricated from favouritism and the NBA will continue to monitor the process closely.⁵¹

Appointments are sometimes made for irrelevant reasons like that a person has served very long as a chief magistrate, or chief registrar, or because his father was a judge. Through this method of appointment the state judiciary is filled with either very incompetent judges, or in other cases, judges who are starting off their carrier as judge at very advanced age. This invariably results in non-appointment/elevation of such judges to the federal courts.

Short Listing of Applicants only on Recommendations from Judges: The method of appointing by recommendations from sitting High Court Judges need to be revisited for it has not created enough room for competition. Though this method is aimed at recommendation by judges of members of the bar who have proved themselves as worthy of being called to the bench through their performance at the bar, it has a lot of disadvantages. There are lots of lawyers who have distinguished themselves in their practice as lawyers and really merit to be recommended to the bench, but because they do not have godfathers at the bench or the proper connections, they are never recommended. On the other hand, there are lawyers who do not have any knowledge of legal practice or possess any quality necessary for the bench, but once they attain the 10 years post call requirement for appointment to the bench, get several recommendations from judges because of who they know. This way you may find persons who have not successfully moved even a motion in court in the ten years of their post call being short listed and eventually appointed as judges.

Appointment/Elevation to the Higher Bench from the Next Lower Court: Conventionally, in Nigeria, persons for promotion/elevation to the higher bench are usually taken from the next lower court. Thus where for instance there is a vacancy in the Bench of the Court of Appeal or Supreme Court, the head of the court where the vacancy occurs would notify the head of the next lower court in the hierarchy to commence the process of replacement. Then follows the necessary steps provided by the Constitution for appointment. This way appointment/elevation to the higher bench is made from only among judges and invariably, it is the most senior on that bench that gets the nod, whether or not he is competent. In line with the need to reform the judiciary by denying appointment to incompetent and corrupt judges, it is expected that at this stage, indolent and lazy judges who have not proved themselves worthy of the elevation will not be so elevated. Therefore where no such competent judges are found from the judges of the South East extraction, in spite of the federal character requirement of section 14(3) of the Constitution, the appointing authorities might find it difficult to appoint them where there are more competent candidates from other parts of Nigeria

THE WAY FORWARD

Diversification of the Pool of the Higher Bench: Appointment into the higher bench especially the Court of Appeal and Supreme Court should be made from the rank and file of practitioners; the Senior Advocates of Nigeria and other experienced legal practitioners, the academia, or corporate private legal institutions and not just from the Bench of the State High Court. This gives the appointing authorities a wide range of choices within which to choose and select the best brains for the job. This will also help to uphold the federal character policy which is necessary in a federal democracy like ours. With appropriate exploration into other areas, it will be possible to find and acquire the right materials to meet the policy. Furthermore, there is considerable merit in the call to diversify the pool from which judicial appointments to superior courts are made. A wider diversity of experience will undoubtedly add quality to judicial deliberations in our courts

Competing for Appointment: Invitation for application for appointment of judges or elevation to a higher bench should be made open to every Nigerian legal practitioner who meets the constitutional requirement. There should be transparent and open self-application followed by interviews and other

⁵¹ The NBA President's Speech at the 2013 Annual General Conference of the Nigerian Bar Association, held in Calabar, cited in M. Affe and Fabiyi "Judicial Appointments becoming Political – NBA", **The Punch Newspaper**, August 27, 2013

forms of objective assessments. This way the appointing authorities will be able to assess competence and philosophy of a prospective judge/justice. This position is reiterated by the former Chief Justice of Nigeria thus:

In the very near future, as part of the reforms undertaken by the judiciary, processes for appointment will be more rigorous and may include test and interviews in order to choose the most suitable Nigerians to man the courts.⁵²

Setting Criteria for Appointment: There should be a set down criteria for qualification for appointment as judges. Where such criteria are set out and known by the public, those persons that meet such criteria are encouraged to apply and those that do not will know that they are not qualified. This will also help to prevent appointments based on irrelevant criteria such as that a man has served very long as a Chief Magistrate or Chief Registrar or that his father was a judge which breeds mediocrity in the bench, for a “society or institution which tolerates mediocrity is inevitably left behind. When it is installed in the judiciary it breeds a whirlwind of injustices.”⁵³

Advertising for Appointment and Publication of Appointment Procedures: Members of the profession should be made aware of vacancies and recruiting exercise for the appointment/elevation of judges. Also list of applicants should be made public to the members of the profession. It may also be necessary for applicants to be made to get clearance from their NBA branches on their personality. This way you prevent the appointment of persons who are not fit to be elevated to the bench and prevent mediocrity and corruption from escalating.

CONCLUSION

The problem of leadership among the people of South East Nigeria has created and continues to create lots of problem for the people. In the case of judicial appointments it can be seen that the failure of the leaders to make proper appointments at the state level for the right reasons has created a ripple effect and has led invariably to inadequate representations of that geopolitical zone at the federal courts. Apart from the fact that there are very few of south easterners at the federal courts, they have not been able to produce heads of the Court of Appeal or Supreme Court from the inception of the courts to date; because as such positions are attained by seniority they have not produced judges who have been able to fare long enough in those courts to get to the headship position. The only reason for this is because they do not start off on the right footing. A lot of people are appointed judges at the High Court not because they are qualified, or because they are the best brains but because they have the ‘power’ to be appointed. When the necessary qualifications of knowledge and integrity are jettisoned at this stage, at the next stages when these qualities are required for elevation, they fall out and remain High Court judges till retirement. One cannot therefore insist on the federal character principle because it will be fool hardy for a country to appoint out right mediocre in order to fill up the quota, where there are millions of persons who are very capable to do the job. For while we must respect the federal character principle, we should bear in mind that only people of proven ability, learning and character should be appointed to the bench.

There is an urgent need for a rethink among the Igbos of the South East Nigeria. Fortunately we can boast of having the best brains in every facet of life in the country, so that there will not be need to search far to get the right persons once equal opportunities are granted to all. Let us therefore make use of what we have in abundance so that we may be able to claim our rightful place in the affairs of the country and the world at large.

⁵²I. Chiedozie, “Judges to Sit for Exams before Appointment” www.punchng.com/news/judges-to-sit-for-exams-before-appointments/, 25/11/2013

⁵³Uwaifo CON Speech delivered on 15th April 2005 on the occasion of his Valedictory cited in Azinge & Rapu *op.cit.*, p.22