

LAW ACCORDING TO JUSTICE OR JUSTICE ACCORDING TO LAW: EXAMINING THE JUDICIARY AS THE LAST HOPE OF THE COMMON MAN IN A DEMOCRATIC STATE

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ABSTRACT

Every society is governed by laws, paramount of which is the grundnorm. In a proper democratic setting, no one is above the law which, as an engine of social change, regulates the conduct of persons, institutions and government. Law is a guide to decision-making by courts. It has been recognised that law itself is incapable of solving human problems since it is not an end in itself but a means to an end. Justice is what the courts should do while interpreting laws because justice; inclusive of substantial and social justice, is the pivot of law. In a democratic state, it should be conspicuously evident that the judiciary is the last hope of the common man. Thus, in exercising its judicial functions, should law be applied according to justice or justice should be done according to law? Courts exist *inter alia* to do justice, to resolve disputes, to maintain the rule of law, to guarantee liberty. This is why the courts are regarded as the last hope of the common man. The judiciary will lose one of its distinctive appealing characteristics if justice cannot be found in court. Through the doctrinal methodology, this paper examines the judiciary as the last hope of the common man in the course of performing its judicial functions. The paper is divided into five parts beginning from the introduction. The conclusion drawn is that good governance and the welfare of people in a country are like Siamese twins. It is through the instrumentality of an unfaltering judiciary that this duo can be achieved.

Keywords: Justice, Democratic State, Grundnorm, Judiciary, Common man, Rule of Law

INTRODUCTION

Independence of the judiciary is a *sine qua non* for the court to effectively exercise its judicial function of interpreting statutes and constitution impartially. Like the Biblical King Solomon, it takes wisdom and intelligence to deliver sound judgment after considering the law and the facts.ⁱ Law, for the courts, is a guide to decision making.ⁱⁱ Law has been said by jurists to be the legal order, the body of authoritative guides to decision or models of decision; whether judicial or administrative.ⁱⁱⁱ For there to be certainty in law by the application of the doctrine of *stare decisis*, the courts usually avoid injustice and absurdity in the interpretation of statutes.^{iv} In the performance of their judicial duties, judges should have two salts; the salt of wisdom lest he becomes insipid and the salt of conscience lest he becomes devilish.^v This paper sets out to examine the judiciary in a democratic state, as the last hope of the common man in the light of its judicial functions. Although an attempt will be made to define certain germane concepts such as judiciary, democracy, justice, and common man, the writer would like to borrow from the wording of Justice Niki Tobi^{vi} and state that this paper does not intend to engage in any 'forensic exercise in legal semantics or give a jurisprudential definition of any of the concepts.

JUDICIARY AND DEMOCRACY

Judiciary is defined as the branch or arm of government responsible for interpreting laws and administering justice; a system of courts; or a body of judges.^{vii} As an arm of government vested with the power to interpret laws, the judiciary is not meant to make laws. Law-making is the function of the Legislative arm of government. The laws made are then implemented by the Executive arm. This is the doctrine of Separation of Power propounded by the French political philosopher, Montesquieu.^{viii} Although the judiciary is not meant to make law but to interpret the law, in its interpretative function, justice should be done.

Democracy is the rule of the many as against the rule of the few exemplified in oligarchy, tyranny and monarchy. The standard definition of democracy is attributed to Abraham Lincoln who defined democracy as the government of the people by the people and for the people. According to Justice Oputa, there is little or no argument as to whether or not government is

of the people or by the people in Nigeria. The only vital but unsettled question is whether the government is for the people or for the elite,^{ix} their families and allies? Justice Oputa posed certain germane questions – Is Nigerian government a government for the welfare of all persons in the country, including rural village dwellers, or is it building a society in which nobody is regarded except a politician or a government (public) official?^x Democracy is based on the notion that all men are created equal which means that every person should have equal opportunity for self-realisation and self-fulfilment.^{xi}

THE COMMON MAN AND THE CONCEPT OF JUSTICE

The common man is the ordinary man on the street or in the remote rural communities with no road, no electricity supply, no healthcare facility, no water supply, probably no shelter or no decent shelter and little or no means of livelihood. This description depicts a poor condition or state of affairs. However, a common man does not only refer to the poor and uneducated but to anyone who is not at the helm of affairs of a State or who is not influential in a country. It is oppressive and dehumanising for a common man in such poor condition described above, therefore, equality before the law must be seen to be an ingredient of social justice.^{xii}

In a case before the court, justice must not only be done but must also be seen to be done. This dictum was laid down by the then Lord Chief Justice of England, Lord Hewart in the case of *Rex v. Sussex Justices*.^{xiii} He observed that it is not merely of some importance but it is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done. Although Lord Hewart's dictum or observation is connected with the principles of natural justice, it is quite relevant to this discourse. Justice is a concept which is more preferable to describe than to define. Justice is derived from the Latin concept *Justitia* and comprised in it is *justus* which means lawful, rightful and just.^{xiv} The word Justice implies fairness, honesty, just, sound reasoning. Justice seeks to promote what is utmost fairness in relations among a society and thus remove the ills in society.^{xv} A concise definition of justice - as the fair and proper administration of laws - has been given in Black's Law dictionary.^{xvi} There are different types of justice such as natural justice,^{xvii} social justice,^{xviii} distributive justice,^{xix} commutative justice,^{xx} and substantial justice.^{xxi} This paper shall focus more on social justice and substantial justice. The essence of government particularly in a

democratic state is to attend to the needs of society, meeting the expectations of the common man. Government does this through its laws and its legal system.^{xxii} Since the end of the law is justice, the interpretation of every law should be geared towards producing justice; not technical justice but substantial justice.^{xxiii} In order for substantial justice to be done, the court does not aim at satisfying both parties to a dispute or making both parties happy since courts are meant to do justice and not to make litigants happy. This is the pronouncement of the court in *Emerald Energy Resources Ltd. v. Signet Advisors Ltd.*,^{xxiv} where the Court of Appeal held *per* Ebiowei Tobi J.C.A. delivering the leading judgment that –

The appellant is urging me to set aside the ruling of the lower court while the respondent is asking me to affirm the decision of the lower court. This court cannot satisfy both parties as their demands and desires are mile apart. At the end of this judgment, one party will be happy while the other will be unhappy. The duty of a court is not to make litigants happy but to do justice within the context of the law.^{xxv}

The public must have confidence in a Judge's impartiality and sense of fairness and honesty otherwise confidence in the administration of justice will be lost.^{xxvi}

INTERPRETATIVE FUNCTION OF THE COURTS

Courts are vested with the power to interpret the Constitution and other statutes. The Constitution is not a mere Act or Law. It is an instrument of government under which laws are made. In exercising the judicial powers contained in the Constitution, the main function of a Judge is to interpret the provisions of the Constitution. A number of principles, all aimed at doing justice in the matter before him, are taken into consideration. The first of such principles is that a Judge is to interpret the actual wordings of the Constitution and not to borrow provisions from Constitution of foreign countries.^{xxvii} It is the law that the Constitution of the Federal Republic of Nigeria is complete in its wordings. Therefore courts of law cannot embark upon a borrowing voyage in search of meanings from other provisions.^{xxviii} Whatever is not provided for in the Constitution is not part of it and the courts cannot add to or subtract from the provisions.^{xxix} The courts cannot arrogate to a statute any extraneous interpretation which that statute does not represent. Also, where the Constitution commands, discretion

terminates.^{xxx} However, the Supreme Court held in the case of *Attorney General Ondo State v. Attorney General Federation*^{xxxii} that, the Constitution is the organic law or grundnorm, any narrow interpretation of it will do violence to it and will fail to achieve the goal set by the Constitution.^{xxxiii} Thus, there is no harm in the courts making use of a foreign case in deciding a similar provision in the Constitution, if such provision has not received judicial articulation.^{xxxiii}

The Constitution of a country is the grundnorm. In a proper democratic setting, no one is above the law. All persons and authorities are subject to the grundnorm; the basic norm, order, or rule that forms the underlying basis for a legal system. The Grundnorm is a concept in the Pure Theory of Law formed by Hans Kelsen; a jurist and legal practitioner.^{xxxiv} In Nigeria, the Constitution is supreme and its provisions have binding force on all authorities and persons throughout the federation.^{xxxv} The Constitution provides that governance of all aspects of the country shall be in accordance with the provisions of the Constitution.^{xxxvi} Every other law made by the legislature shall not be inconsistent with the Constitution. Where there is inconsistency, the Constitution prevails and that law shall to the extent of the inconsistency be void.^{xxxvii}

LAW ACCORDING TO JUSTICE OR JUSTICE ACCORDING TO LAW?

Law is sometimes nebulous until it has been interpreted by the judges in their judgments. It is the interpretation that adds flesh to the skeleton since a court's judgment is the declaration of the law.^{xxxviii} Justice is one of the greatest interest of man on earth and the ligament which binds civilised nations together.^{xxxix} It is symbolised as a blind-folded figure balancing a set of scales oblivious of anything that could detract from the pursuit of a fair and just outcome. One reason that the symbol of justice is depicted by a blind-folded figure (goddess) is that she is utterly ashamed to see the amount of injustice often perpetrated in her name – the name of Justice.^{xl} In order to avoid injustice, it is the duty of a Judge adjudicating on a matter to strive to avoid and abstain from any act which savours injustice because the Courts exist to promote justice and thus to serve the public interest.^{xli} As stated earlier, justice is the pivot of the law, but even when just laws have been passed, there would be a need for a just judge to administer the laws in order to produce justice.^{xlii}

There has been an age-long dispute between certainty in law on the one hand and justice in any particular individual case on the other hand. Certainty in law is good but justice is better and should be preferred^{xliii} particularly in a democratic state where human rights and civil liberties are guaranteed by the written Constitution. In considering and determining the outcome of a particular case, should the court apply the law according to justice or should justice be done in accordance with the law? Which of these would best serve the essence of judicial function? Lord Reid of the House of Lords described these as two inconsistent and probably irreconcilable things. He opined that people want two inconsistent things; that law should be certain and also be just and move with the times. He questioned how far certainty in the law can be reconciled with the achievements of justice in each individual case?^{xliv} In an attempt to resolve the desire for certainty and stability on the one hand with the need for change on the other, the use of precedents cannot be overlooked.^{xlv} The judicial philosophy in support of certainty in the law is the established principle or doctrine of *stare decisis* – *stare decisis ET quia non movere* – meaning ‘Stand by the decision and do not disturb that which has been settled’. This is also known as the doctrine of judicial precedent upon which the case law in Nigeria is built. It has been acknowledged that precedent provides some measure of certainty on which individuals could depend on in the conduct of their affairs, as well as providing groundwork for the orderly development of legal rules.^{xlvi} Standing by the decision or following precedent strictly does have its challenges particularly when strict adherence to the precedent will lead to manifest injustice.^{xlvii} In situations such as this, a judge may decide to distinguish the case before him from an earlier case but he may end up creating an uncertainty of the law in future cases since new distinctions would be set up.^{xlviii} In order not to create uncertainty, a conservative judge may just succumb to what he regards as the inevitable and apply the law^{xlix} as it is and not as it ought to be since justice must be according to law. Everyone acquainted with the administration of justice via the law, will readily concede that laws when strictly construed, strictly interpreted, and strictly applied do not always produce justice.¹ Too rigid adherence to precedent might lead to injustice in a particular case and also unduly restrict the proper development of the law.^{li}

Commenting on the doctrine of *stare decisis*, the Supreme Court of Nigeria emphasised the imperative for judges of lower courts to follow decisions of higher court, particularly decisions of the apex court, in the case of *Dalhatu v. Turaki*^{lii} thus –

The conduct of the learned trial judge ... is to say the least most unfortunate. This court is the highest and final Court of Appeal in Nigeria. Its decisions bind every court, authority or person in Nigeria. By the doctrine of stare decisis, the courts below are bound to follow the decisions of the Supreme Court. The doctrine is a sine qua non for certainty to the practice and application of law. A refusal, therefore, by a Judge of the [High Court] to be bound by this court's decision, is gross insubordination (and I dare say such a judicial officer is a misfit in the judiciary).^{liii}

Supporting the leading judgment delivered above on the issue of *stare decisis*, Kutigi JSC stressed the point thus –

[T]he case of *Onuoha v. Okafor* ... was rightly applied to the facts of this case by the Court of Appeal. It is unfortunate that although that case was cited to the trial Judge, he deliberately and consciously refused to apply it because he thought the Supreme Court was wrong in its decision in that case. If the Supreme Court was wrong, he was also 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 rascality,” “reckless,” “judicial impertinence” among others. I think he richly deserved the descriptions. I have nothing more to add.^{liv}

It has been acknowledged that, the fact that law is what the Judges say it is through their interpretative power, does not mean that judges have a licence to interpret the law according to their own subjective standards. The point to be noted here is that if such is done by every judge, there would be no certainty in law. Law has its own standard which is an objective standard - the standard of the reasonable man.^{lv} Therefore, it is obvious from the court's decision stated above that Judges of lower courts do not have the leverage to expand the frontiers of legal jurisprudence or in other words, develop the law but are only bound to follow decisions of higher courts; more especially decisions of the apex court. Therefore, it behoves of the apex court; the Supreme Court, to expand the frontiers of our legal jurisprudence, and this can be achieved through judicial activism - by applying law according to justice, when occasion demands, while maintaining justice according to law.

The National Judicial Policy requires Judges to consider only the law while dispensing justice.^{lvi} This is ideal for certainty in law. This will only be attainable where the judiciary is in law and in fact independent - where Judges discharge their duties without a show of favouritism or fear of intimidation of any sort, including unexpected and unpleasant results shortly after delivering judgment;^{lvii} where there are no subtle or dominant interference by the Executive arm by means of threats of coercive invasion of the privacy or homes of Judges at night^{lviii} in search of imaginary evidence in an attempt to incriminate Judges, and threats of embarrassing allegations of corruption or misconduct. All these interferences are capable of making an impression in the minds of the common man who may consider the interferences as diversionary tactics to cause the judiciary sidetrack the course of justice. Judges should be manifestly and indisputably independent in order to be able to deliver judgment in any case before them without fear of intimidation or fear of unexpected and unpleasant effect or consequence.

NIGERIAN JUDICIARY AS LAST HOPE OF THE COMMON MAN – A MYTH OR REALITY?

In any country where the Executive and Legislative arms of government seem to have failed the citizens, the only succour ought to be to the Judiciary or courts. Where the citizens have lost their confidence in the courts, there will be resort to self-help and jungle justice. The principal constitutional role of the judiciary in a democracy is the protection from arbitrary use of power or abuse of power. The judiciary has been described as the last hope of the common man. This means it has the responsibility to run to the aid of the common man struggling against legislative or executive vagaries of power and injustices.^{lix} A timid and conservative judiciary cannot fight against state lawlessness, abuse of power or the promulgation of oppressive and draconian laws.^{lx} The judiciary in a democratic state ought to be fearless, to be the defence of the defenseless, the hope of the hopeless, a haven for the downtrodden person, and a place where redress is easily and quickly sought for the legally injured. In any country where legally injured persons are afraid to seek redress in court or to make a complaint against a criminal offence because either they have lost confidence in the court system and governance or they have fears for the safety of their lives, then, it points to the fact that the government has failed.

In any country where people in communities are massacred in cold blood; people are abducted on daily basis; hoodlums are shielded by public officials while law abiding citizens are molested by government agencies, these also point to the fact that government and governance have collapsed. The only hope for redress and justice in situations such as these should be the judiciary. The legally injured should be willing to seek redress in court and the perpetrators of crime dealt with according to law. However, where the judiciary seems pusillanimous particularly when hearing high profile cases, such society is bound to suffer harm to its system of justice. Good governance should be coterminous with welfare of citizens. Good governance and welfare of citizens are like Siamese twins; inseparably bound together.

This paper shall now consider some indices which tend to show that a country's judiciary is indeed the last hope of the common man. These include independence and impartiality of the judiciary, its adherence to the rule of law, its capability to stand out as the defender of fundamental rights, evidence of access to court and legal representation of litigants or accused person (defendant), speedy justice dispensing mechanism, and zero tolerance for corruption. A few of these will be considered in respect of Nigerian judiciary to address the question whether it is a myth or reality that the judiciary is the last hope of the common man.

SAFEGUARDING THE RULE OF LAW

The Nigerian Constitution is founded on the rule of law, the primary meaning of which is that everything must be done according to law. The rule of law connotes that government should be conducted within the framework of recognised rules and principles.^{lxi} It also presupposes the exclusion of arbitrary power.^{lxii} A Judge takes, on appointment, an oath which involves observance of the Constitution and the Rule of Law. A Judge must fearlessly keep to that oath. The rule of law involves holding the scale of justice evenly before the parties.^{lxiii} According to Justice Niki Tobi, a Judge is the custodian of the rule of law which is the life-blood of democracy. Thus, by virtue of his constitutional, statutory and common law functions, a Judge is hired to protect the rule of law in a democracy, and he must live up to his hire. The only way to live up to his hire is to interpret the Constitution and the law of the land without fear or favour, honestly and faithfully to the best of his professional ability. In other words, he should live up to his judicial oath and not deviate or deflect from it at any time.^{lxiv} The judiciary cannot

shirk its sacred responsibility to the nation to maintain the rule of law. It is both in the interest of the government and all persons in Nigeria that the judiciary upholds the rule of law.^{lxv} As the custodian of the rule of law, the Supreme Court has to a great extent lived up to expectation of the common man, right from the military era up to this democratic era. It has in its brave feat while upholding the rule of law in the past and to a reasonable extent, in the present, checked the excesses of the Executive arm of government. One notable pronouncement of the Supreme Court which still reverberates in recent times is the pronouncement in the case of *The Military Governor of Lagos State v. Ojukwu*.^{lxvi} It would be more appropriate to replicate part of the Court's decision than to summarise it in order to have a full grasp of and appreciate the 'mind of the Court' on the issue of rule of law. Kayode Eso, J.S.C., delivering the leading judgment noted thus –

I think it is a very serious matter for anyone to flout a positive order of a court and proceed to taunt the Court further by seeking a remedy in a higher court while still in contempt of the lower court. It is more serious when the act of flouting the order of the court, the contempt of the court, is by the Executive. Under the Constitution of the Federal Republic of Nigeria... the Executive, the Legislative (*sic*) (while it lasts) and the Judiciary are equal partners in the running of a successful government. The powers granted by the Constitution to these organs by s. 4 (Legislative powers), s. 5 (executive powers) and s. 6 (judicial powers) are classified under an omnibus umbrella known under Part II of the Constitution as "Powers of the Federal Republic of Nigeria". The organs wield those powers and one must never exist in sabotage of the other or else there is chaos. Indeed there will be no federal government. I think, for one organ, and more especially the Executive, which holds all the physical powers, to put up itself in sabotage or deliberate contempt of the other is to stage an executive subversion of the Constitution it is to uphold. Executive lawlessness is tantamount to a deliberate violation of the Constitution.^{lxvii}

This bodacious pronouncement by a hardy judiciary, in a military era, indicates the resolute stance of the court to defend the rule of law. The essence of which is that it should never operate under the rule of force or fear. Summarising its scope, Oputa J.S.C. opined that the rule of law presupposes that the State is subject to the law; the judiciary is a necessary agency of the rule of law; governments should respect the rights of the individual citizens under the rule of law;

and the judiciary is assigned both by the rule of law and the Constitution the determination of all actions and proceedings relating to matters in dispute between persons or between government or an authority and any person in Nigeria.^{lxxviii} An impartial, independent, competent and ethical judiciary is also essential in order to uphold the rule of law.^{lxxix} This is necessary for the fair and impartial resolution of disputes, for the fearless interpretation of a written constitution, the clear, just and predictable application of the law, and for holding governments and private interests to account.^{lxx}

ACCESS TO COURT, LEGAL REPRESENTATION AND LEGAL AID

One of the attributes of civilised legal system is ready and easy access to the court for the determination of his civil rights and obligations by a genuine claimant.^{lxxxi} This right is a basic constitutional right guaranteed under the Nigerian Constitution.^{lxxii} Thus, everyone has access to court. For those who are indigent; poor or under-privileged, there is provision for access to court through the instrumentality of Legal Aid Council which is programmed to be majorly funded by the government. The question whether the fund of the Legal Aid Council is sufficient to handle the cases of the many under-privileged persons that would require access to court via the Legal Aid Council is a big poser. The writer does not intend to delve into the depths of this question, but to only state that sufficient funds are quite necessary for sustaining the legal aid programme for indigent persons in order for everyone to have access to court as guaranteed in the Constitution and access to justice at the long-run. There are pockets of legal aid programmes organised by tertiary institutions such as the Nigerian Law School and Faculties of Law of various universities through Legal Aid Clinics to sensitise communities around the environs on their rights thus creating legal awareness and promoting legal literacy.

In commenting on the issue of lawyers and legal aid, Justice Oputa noted that in Nigeria, there is this challenge of the common man who feels that justice is too expensive and too slow, so he resigns himself to the denial of it. This is because the rights of the poor are trampled by mighty forces yet the Bar and the Bench appear to be in a helpless and emasculated impotence at the negation of justice in the land.^{lxxiii} To address this challenge, an indigent person standing trial for a criminal offence is giving the benefit of having a legal representation assigned to him by the court. Such brief assigned by the court is termed dock brief.^{lxxiv} It is the professional

responsibility of a lawyer assigned to defend an indigent person or prisoner to exert his best effort in the defence of an indigent person, irrespective of the fact that it is likely to be done *pro bono*, and not ask to be excused except for substantial reason.^{lxxv} For umpteenth times, the court has held that it is a breach of his fundamental right to fair hearing for a person accused of an offence, particularly capital offence, to stand trial without being legally represented.^{lxxvi} Another means of tackling the challenge is that the rendering of *pro bono* or free legal services to indigent persons is a fundamental requirement for persons seeking to attain the rank of Senior Advocate of Nigeria (SAN)^{lxxvii} which is the counterpart of Queen's Counsel in England.^{lxxviii} With the help of legal aid by the Legal Aid Council and *pro bono* services rendered by different lawyers particularly those aspiring to be SAN, poor litigants can have access to legal representation. More so, every person accused of a criminal offence and standing trial is by constitutional provision entitled to be legally represented by a lawyer of his choice^{lxxix} and where he has none, the court can assign a lawyer to represent him.

COURT AS DEFENDER OF FUNDAMENTAL RIGHTS

By virtue of his creation, man has certain rights which are common to those of all other men, and fundamental human rights refer to 'universal humanity' which man enjoys and shares with his fellowmen.^{lxxx} Thus, right connotes a just claim under the law.^{lxxxii} The role of the judiciary in developing societies with written constitutions is quite crucial. The judiciary is considered as the defender of fundamental rights entrenched in the constitutions of those countries.^{lxxxiii} In his role as defender of fundamental rights, justice should be a Judge's watchword. Injustice should therefore be an outcast.^{lxxxiii} In the projection of justice, the Judge should always lean in favour of the liberty of the individual and the wider freedoms of man in society.^{lxxxiv} In Nigeria, the courts have greatly displayed courage in the defense of human rights particularly during the military regime, and much more under democratic government. The Supreme Court *per* Ngwuta JSC in *Ihim v. Maduagwu*,^{lxxxv} held that, the fact that a person has been accused of a crime, however serious, will not deny such person access to court to enforce his fundamental rights if those rights have been violated. After all, he is presumed innocent unless proven guilty.^{lxxxvi} The courts of law are established to guard jealously against the civil rights of every citizen, and to enforce at all times the inalienable right to fair hearing.^{lxxxvii}

SPEEDY DISPENSATION OF JUSTICE OR DELAYED JUSTICE?

One perennial problem in the administration of justice in any legal system is the question of delay. There are quite a number of causes which include police, lawyers, and courts. Delay, is therefore, part of the judicial process.^{lxxxviii} Even in the most articulate democracy, delay cannot be completely avoided. The problem is that when delay becomes immoderate, to the extent that injustice is done to the parties, then the rule of law, which is a life-blood of democracy, is hurt.^{lxxxix}

Justice delayed is justice denied. This is a legal maxim which means that if legal redress or equitable relief to an injured party in a case is available, but not forthcoming in a timely fashion, it is effectively the same as having no remedy at all.^{xc} Delays can lead to degradation of evidence, victims and witnesses may die or become unavailable or their memory may fail them due to passage of time, the rights of the accused person may be compromised if he is in detention.^{xcii} One of the banes to justice delivery in Nigeria is the period of time it takes for cases to be decided after being filed in court or the time frame it takes for cases to go through the different hierarchies of courts by way of appeal and be finally determined by the Supreme Court. Recently, the Supreme Court decided on an appeal before it in the case of *Emeka Ofor v. Commissioner of Police Rivers State*.^{xcii} This case actually commenced at the Chief Magistrate's Court Port Harcourt, Rivers State in 2004. It took about 17 years for this criminal case to pass through the judicial hierarchy to the Supreme Court and be finally decided by the apex court. The Supreme Court held in the above case that the appellant's right to fair hearing had been breached by the Chief Magistrate that presided over the case at the court of first instance, and ordered a *de novo* trial; that the case be tried afresh by another Magistrate.

A recapitulation of what transpired at the court of first instance resulting in the decision of the apex court, as recounted by Mary Peter-Odili J.S.C., while delivering the leading judgment, is that the appellant together with the 2nd and 3rd respondents as well as one Bartholomew Agada (who is now deceased) were standing trial at the Chief Magistrate's Court, Port Harcourt, Rivers State in Charge No. PMC/284C/2004. In July 2004, precisely 12/7/2004, the matter was listed for hearing and as at 11.00am - two hours after the usual court sitting time - the learned presiding Chief Magistrate had not arrived in court. Consequently, the respective counsel for the accused persons including counsel holding watching brief for the complainant in the case

as well as the Police prosecutor agreed with the clerk of court for an adjournment of the criminal charge off-record to 19/8/2004 for the hearing of the case. Based on this agreed adjourned date taken off-record, counsel to the appellant and counsel to the 3rd respondent left the courtroom to attend to other matters they had for the day while counsel to the 2nd respondent (i.e. the 1st accused person), Police prosecutor and counsel holding watching brief lingered on in the courtroom. After the exit of counsel to the appellant and that of the 3rd respondent from the courtroom, the learned Chief Magistrate arrived the court, ignored the earlier agreed adjournment already taken off-record, called the case and commenced the hearing of the charge. The counsel for 2nd respondent announced his appearance as well as Police prosecutor and the counsel holding watching brief for the complainant. The Police prosecutor fielded his first witness who testified in chief before the learned trial Chief Magistrate adjourned the matter to 18/8/2004 for cross-examination of the first prosecution witness. Dissatisfied with the hearing of the criminal charge in the absence of their legal practitioners, the appellant and one Bartholomew Agada (now deceased) applied for judicial review to the High Court of Rivers State for an order of certiorari to quash the Chief Magistrate Court proceedings of 12th July, 2004. The High Court delivered a ruling on 13th April 2006 dismissing the application and ordered the learned trial Chief Magistrate to accelerate the hearing of the charge. Not satisfied with the ruling of the High Court, the appellant appealed to the Court of Appeal which dismissed the appeal on 17th January, 2013 and affirmed the decision of the High Court. Still dissatisfied, the appellant finally appealed to the Supreme Court. Delivering the leading judgment, Justice Mary Peter-Odili held that –

The gravamen of this appeal is that the appellant was denied fair hearing at the trial Magistrate court in the circumstances prevailing therein and the Court of Appeal was wrong to have upheld the decision of the High Court which held that the appellant's right to fair hearing was not breached.^{xciii}

The Supreme Court delivered its judgment setting aside the decision of the Court of Appeal which affirmed the decision of the High Court, and ordered that the case be re-assigned to another Magistrate in the Port Harcourt Magisterial District Rivers State for trial *de novo* on the merit. This Supreme Court judgment was delivered on 29th January, 2021. The apex court in its judgment emphasised the fact that, in criminal trial, the calling of a witness and the adducing of any evidence in the absence of the Counsel to an accused person being tried is a

grave irregularity that renders that trial a nullity. Consequently, the appellant's right to fair hearing under section 36(6) of the 1999 Constitution was breached. Although this is a laudable decision by the apex court, the length of time it took for the case to reach the Supreme Court can be said to be discouraging to other litigants seeking justice in their matters. As opined by Justice Niki Tobi, there is so much delay in the administration of justice in the country that one wonders whether litigants get value justice at the end.^{xciv} Justice delayed is a denial of justice. But the Supreme Court has also held that the reverse is equally disturbing. Justice rushed is a travesty of justice and a threat to the fabric that binds civilised society together.^{xcv} It has also been acknowledged that delay is part of the judicial process. However, a balance is what the law seeks when justice is to be administered, as it is usually said that 'delayed justice is as equally untoward and unconscionable as hurried justice'. Hence, while justice delayed is tantamount to justice denied; similarly, hurried justice is hurried justice. Both are to be avoided in the pursuit of justice.^{xcvi} Although it is the desire of all involved in the administration of justice to ensure that justice is not delayed or denied, it is equally unacceptable to encourage or do injustice in an attempt at speedy dispensation of justice. Justice may be slow sometimes but it will surely arrive at its destination.^{xcvii}

ZERO TOLERANCE FOR CORRUPTION

In recent times, Magistrates and Judges have been dismissed, suspended or compulsorily retired for abuse of their office or misconduct. Some of the Judges dismissed or compulsorily retired were involved in corrupt practices such as demanding and receiving sums of money in millions as a bait to influence judgment.^{xcviii} Once justice becomes pricey the public would certainly lose interest in the entire judicial and justice system.^{xcix} A former Chief Justice of Nigeria; Justice Mahmud Mohammed, decried the demeaning allegations against Judges who have compromised the standard of justice by being corrupt. He said it was regrettable that allegations about corrupt Judges and staff of the judiciary now make headline news on a more frequent basis. Some registrars and clerks of courts and even senior lawyers act as the conduit pipes for corruption in the judiciary. While judicial officers found culpable of corruption are being disciplined by the National Judicial Council, public officials and other persons who benefit from corrupting judicial officers are never investigated, apprehended or even

prosecuted. The former Chief Justice concluded that the pernicious ghost of corruption must be exorcised from the judiciary.^c Judges must constitute themselves, collectively and individually as anti-corruption crusaders, and this must begin from individual court. The standing accorded judges by society must not be desecrated by turning justice into a mercantile affair.^{ci} In the opinion and words of Omirhobo, once a case is filed against the Federal Government and the Attorney General, there is always one additional deadly invincible defendant to reckon with, who is hidden like the secret bean of a building. That hidden and powerful defendant is no other person but the Judge himself.^{cii} Omirhobo concluded that, it is easier for a ‘camel to pass through the eye of a needle than for the common man in Nigeria to get justice against the Nigerian Government’.^{ciii} If a human rights’ lawyer can perceive this in the justice system of the country, then, it is unthinkable what the common man perceives of the judiciary. It is true that there are corrupt Judges and Magistrates, but there are also many who are incorrupt. Therefore, all hands must be on deck because everyone has a role to play in order to ensure that the judiciary continues to be or remains the last hope of the common man, the defence in the fight against arbitrariness of power, the fight between right and might. The aphorism – judiciary as the last hope of the common man – imposes on the Bar an obligation to fight for a free, independent, learned, honest and well paid judiciary.^{civ} It is an aphorism that calls on the citizenry, the populace to rise to their responsibility of defending their constitutional rights. It is a wake-up call to all and sundry to end Executive vagaries and renounce Legislative draconian laws and impositions. This fight for a well-paid judiciary and judicial autonomy has already begun and the Bench or the Judiciary, with the support of the Bar, will certainly prevail over the Executive arm.^{cv} Some States governors in the federation have started signing into law the Judicial Autonomy Bill.^{cvi}

CONCLUSION

Law is made for man and not man made for the law. It should therefore be a means to an end, not an end in itself. It should be a means to ensuring man’s self-fulfilment, a means to ensuring that justice is attained in society,^{cvii} particularly a democratic society like that of Nigeria. Justice is what law is for. Justice is what both lawyers and judges should do. Law in itself cannot solve human problems but it may facilitate the solution of a given problem. Human beings are not to

expect the law to tell them how the problem ought to be resolved.^{cviii} Despite all the laws regulating human conduct, there are still problems or disputes requiring the courts to resolve. It is in the interpretation of the law that justice is done and a fair resolution of the disputes is accomplished. A court must do justice by procedure laid down by the law and indeed the Constitution.^{cxix} It has been noted that the Constitution is the fundamental law of the land and everybody has a duty to comply with its provisions. The Constitution is the grundnorm. It is the fountain from which all other laws derive their legitimacy and it admits of no rivals.^{cx}

Public interest demands that the Judge should scrupulously observe the rule of law.^{cxii} The rule of law connotes that every person is subject to the law, and that includes lawmakers or legislators, those who enforce the law or the executive, and those who interpret the law or the judiciary. In order to gain and retain the confidence of the public in the judiciary; in which the judiciary remains the last hope of the common man, the court must play a vital role. The words of Justice Mohammed Bello^{cxii} are apposite and encapsulate the vital role to be played. According to him, Judges should excel by doing the essence of justice which is to give a person what is lawfully due to him; to compel him to do what the law obliges him to do and restrain him from doing what the law enjoins him not to do.^{cxiii}

The function of the court is to adjudicate legal disputes between parties and carry out the administration of justice in accordance with the rule of law. Courts exist *inter alia* to do justice, to resolve disputes, to maintain the rule of law, to guarantee liberty. This is why the courts are regarded as the last hope of the common man. The court will lose one of its distinctive appealing characteristics if justice cannot be found therein. Therefore, by considering only the law in compliance the National Judicial Policy and by applying the doctrine of *stare decisis*, would the courts attain justice? This question has been addressed in this paper. Justice is symbolised by a blind-folded figure balancing a set of scale. Justice should be according to law, but where strict adherence to a precedent will lead to injustice, then, the law should be interpreted according to justice.

It is an aberration for the judiciary to become a mercantile centre. It taints the essence of its existence. Some senior lawyers, court registrars and clerks allow themselves to be used as conduit pipes through which some Judges and Magistrates receive illicit gratification, both in cash and otherwise, in order to thwart judgment for the benefit of the highest bidder, which is

usually a public official. It is suggested that dismissing magistrates and judges alone is not sufficient. The registrars and clerks that aided and abetted the corruption should be dismissed alongside their ‘masters’. Lawyers who serve as conduit pipes for corruption should be disciplined more severely. These would serve as deterrent to others and would help sanitise the judiciary. By allowing corrupt registrars and clerks or other corrupt judiciary staff to remain in the system, there would be increasing number of ‘conduit pipes’ to lure more magistrates and judges into illicit financial gratification. Furthermore, public officers and persons benefiting from corrupting the judiciary should be prosecuted and punished accordingly. Although there are lapses in the administration of justice in Nigeria, it can be asserted that considering the indices discussed above, it is not a myth or fiction but a reality that Nigerian judiciary is the last hope of the common man. There are notable decisions of the court in which justice was done in accordance with the law and in which judicial discretion was exercised cautiously and judiciously. It is not doubtful that there are corrupt Judges but there are many incorruptible Judges in the Nigerian judiciary and the National Judicial Council is working indefatigably to prune the corrupt ones from the system. The lapses in the judiciary and justice delivery system may have hampered but have not halted the administration of justice in Nigeria.

ENDNOTES

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^v Chukwudifu Oputa, *In the Eyes of the Law* (Friends’ Law Publishers Limited, 1992, Owerri), p.13.

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- xv J. D. Ogundere, *The Nigerian Judge and His Court*, (University Press Plc., 1994, Ibadan), p. 106.
- xvi Bryan A. Garner (ed), *Black's Law Dictionary*, (7th edn., West Publishing Co., 1999, St. Paul, Minn), p. 869.
- xvii Natural justice is justice as defined in a moral, as opposed to a legal sense. Bryan A. Garner (ed), *Black's Law Dictionary*, (7th edn., West Publishing Co., 1999, St. Paul, Minn), p. 869.
- xviii Social justice is justice that conforms to a moral principle such as that all people are equal. Bryan A. Garner (ed), *Black's Law Dictionary*, (7th edn., West Publishing Co., 1999, St. Paul, Minn), p. 869.
- xix Distributive justice is justice owed by a community to its members, including the fair disbursement of common advantages and sharing of common burdens. Bryan A. Garner (ed), *Black's Law Dictionary*, (7th edn., West Publishing Co., 1999, St. Paul, Minn), p. 869.
- xx Commutative justice is justice concerned with the relations between persons and especially with fairness in the exchange of goods and the fulfillment of contractual obligations. Bryan A. Garner (ed), *Black's Law Dictionary*, (7th edn., West Publishing Co., 1999, St. Paul, Minn), p. 869.
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- xxxix Yemi Akinseye-George, 'Law, Justice and Stability: What Connections?' in Yemi Akinseye-George (ed.), *Law, Justice and Stability in Nigeria: Essays in Honour of Justice Kayode Eso*, (J. Shalom Multiserve Bureau, 1993, Ibadan), p. xiv.
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- xlii Chukwudifu Oputa, (n5) p.11.
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- ^{lxxi} *Ajuwon v. Governor of Oyo State* (2021) 16 NWLR (Pt. 1803) 485 @ p. 531, *per* Eko J.S.C., paras. E-F.
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