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Review article

The Nigerian judiciary and the travails of rule of law

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ABSTRACT

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Nigerians are increasingly losing hope and confidence in the nation's judicial system because of the unethical conduct of some judicial rascals. Some judgements have brought embarrassment to the nation. Verdicts are no longer based on facts of law. Through indirect observation: reading newspapers, listening to news on TV, It is established that a large number of judgements delivered were based on rule of men, and status differentials instead of rule of law. It is recommended that the judiciary be urgently overhauled with a view to flushing out the bad eggs or the judicial rascals.

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1. Introduction

The judiciary in a modern and civilized society is the last hope of the common man given its independence and its status in the principle of separation of powers. It is the arm of government saddled with the responsibility of settling disputes among citizens and between the citizens and the state. In doing this, punishment is awarded to offenders. Therefore, any citizen whose rights are violated can go to court to seek redress.

This may not be applicable in Nigeria. It is only the rich who have the resources to hire the profiteering senior advocates that get "justice" irrespective of the condemnable infractions committed. This is possible with the unholy alliance between some corrupt judges and the greedy senior defense lawyers. Once a rich and highly-placed suspects are charged to court, the application for bail is speedily looked into by the judges rather than making the suspects to answer to the charges first. Granting of bail is a discretion of a court but it has become a

rule in Nigerian courts. Painfully, the poor languish in detention for very minor offences and no senior lawyers complain about their human rights. Only the indicted corrupt politicians who had enriched themselves from the public funds are the people whose rights matter most. This is why the Abuja High Court hurriedly sentenced Yakubu Yusufu to prison for two years with an option of a fine of N750, 000 for stealing a whopping sum of N23 billion from the Police Pension Fund (Vanguard Newspapers, 29, Jan. 2013) This happened in the same country where other less privileged people are in jail without option of fine for stealing goats, fowls, GSM phones etc. Why should a judge grant an injunction barring security organizations from investigating and prosecuting an indicted politician? Are we therefore unequal before the law as some privileged people are untouchable? This type of black market injunction granted to some high profile criminals to evade justice is a serious negation to the rule of law (Premium Times, Sept.17th 2015)

The justice delivery system is skewed in favour of the mighty and rich. It is only the rich that can pursue a case up to the Supreme Court. So the notion of the judiciary being the last hope of the common man in Nigeria is a useless cliché. The delay in hearing cases in Nigerian courts especially those involving the poor is also a brutal limitation to the rule of law. I give an example here: After the gruesome murder of Pa Alfred Rewane on 6th October 1995, eight suspects were arrested in connection with the murder. One of the suspects was set free after spending 14 years in detention, while Lucky Igbinovia and Effiong Eleme were also discharged and acquitted after spending 15 years in jail. The other five suspects died in detention (PM News, Jan. 17, 2011) The delay in dispensing justice is something to be worried about. Why should a case drag on for more than a decade? Were the freed suspects compensated for unlawful detention? What about their human rights? Where were the senior advocates when these men were rotting away in detention? Why are the senior barristers showing interest only in the rights of the wealthy suspects? The police must be deservedly blamed here for arresting and prosecuting innocent men for offence they didn't commit.

In discussing the judiciary in Nigeria, the ignoble role of some lawyers must be mentioned as they are part and parcel of the judiciary. In a serious country many of them would have been barred from practising law. In a bizarre bid to pervert justice in favour of a kidnap suspect, a member of the Nigerian Bar Association (NBA), was arrested while allegedly offering a bribe of N700,000 to a Police Officer handling the kidnap case (National Mirror, Dec.15th 2012) Why should lawyers, seen as ministers in the temple of justice, engage in morally reprehensible acts because of money? Why should senior advocates put on their wigs and appear in court to defend terrorists who kidnapped married women, raped them and collected ransom before releasing them? Is it morally right for lawyers to benefit from the proceeds of crime? The judiciary has negated the principle of rule of law in Nigeria. In supporting this assumption, I shall look into some other judicial outcomes as well as the judicial misconduct on the part of some judges.

2. The court verdicts on 2015 election petitions

Most of the court judgements are terribly conflicting. Court verdicts are supposed to be reflective of public opinion and also based on judicial precedent. The Election Tribunal in Rivers State sat at Abuja to hear the petitions. The defendant went to the Supreme Court to challenge the relocation of the tribunal to Abuja. The Supreme Court ruled that the Tribunal sitting in Abuja instead of Port Harcourt was right because Port Harcourt was a theater of war before, during and after the elections. When the Tribunal and Appeal Court nullified the governorship election, the case went to the Supreme Court. Surprisingly, the decision of the Appeal Court was set aside and the election upheld. How could election that emanated from a "theater of war" be accepted as free and fair by a Supreme Court? Legitimacy has therefore been given to violence, arson, murder, intimidation in any election. The apex court has set an anarchic judicial precedent in Nigeria. This travesty is capable of removing morality from politics, and politics without morality, according to Professor Peter Ekeh, is destructive. Then, what is the fate of rule of law in a country governed by destructive politics?

This endorsement of election violence by the apex court verdict led to another round of savagery in the recent rerun polls for national and state legislature in Rivers State. Before the rerun took place, the governor who is also the chief security officer of the state, had openly threatened the officials of the Electoral Umpire, INEC, deployed for the exercise to write their wills before coming to the state (The Nation Newspapers, Dec.19th 2015). This singular judgement was a judicial tragedy. While on Channels TV Interview '*Sunday Politics*', a renowned professor of law, Chidi Odinkalu criticized this reckless judgement as a rape on democracy and rule of law. Many other respected legal luminaries had also berated the judgement. The voters who were murdered by thugs were

not remembered by the apex court. The rights of those that were maimed for life did not matter to the court. This brazen miscarriage of justice for whatever reason is a nauseating impediment to the rule of law. The apex court is only supreme because appeal does not go beyond there, but the judges are not supreme.

The Election Tribunal in Taraba State nullified the election of Darius Ishaku of PDP as the governor of Taraba State and declared the APC candidate, Aisha Alhassan, popularly known as Mama Taraba, as the winner on the ground that the PDP candidate was not validly nominated. The PDP candidate went to Appeal Court where the Tribunal judgement was set aside on the ground that the APC candidate had no *locus standi* to challenge the validity of the primary election of another political party (Premium Times, Dec.31st 2015). The matter went to the apex court and the appeal court verdict was upheld.

A judicial precedent was therefore, set. That means that the nomination of a candidate for election by a political party cannot be challenged by a member of another political party. The election of the dazzling amazon, Senator Uche Ekwunife in Anambra Central senatorial district was challenged by Victor Umeh, the APGA candidate, on the ground that the PDP candidate was not validly nominated. The petitioner lost the case at the Tribunal and proceeded to the Appeal Court. But surprisingly, the appeal court at Enugu set aside the decision of the lower court and nullified the election of Uche Ekwunife (The News Chronicle, Dec.14th 2015). This reckless decision of the appeal court was probably based on rule of men rather than rule of law as it was taken against the backdrop of a widely celebrated judicial precedent.

Equally worrisome, is the position of the courts on the legality of the card readers introduced by the electoral body. The card readers were used to accredit voters with permanent voter cards and whose names appeared on the voters register. This was meant to prevent over voting, snatching of ballot papers, manipulation of figures etc. as the total votes cast must be in consonance with the number of voters captured in the card readers. When the former INEC chairman, Professor Atahiru Jega, conceived the idea of card readers for the 2015 general elections and other future elections, he requested for funds which the national assembly approved after series of debates. If the lawmakers approved funds for the procurement of card readers for the 2015 general elections, it means deploying them for the elections had a legal backing, even though the Electoral Act was not formally amended to take cognizance of the gadgets in addition to the voters register. Therefore, it was a height of judicial absurdity for the courts to have posited that the card reader innovation in the elections, which was highly applauded, had no legal backing and as such its non-usage could not be a criterion to nullify an obviously rigged election. This position of the courts would encourage dubious and morally bankrupt politicians to rig elections and win. Many countries are trying to emulate the US in the area of full blown electronic voting. Sadly, Nigeria is retrogressing. What is wrong with Nigeria? What is wrong with the judiciary?

3. Judicial misconduct

There are clear cases of judicial misconduct in the Nigerian Judiciary which have been militating against the rule of law. The National Judicial Council (NJC) had received several petitions against many judges over judicial misconduct such as bribery, granting *black market* injunctions, unnecessary adjournments aimed at weakening witnesses, delay in delivering judgement, etc., in favour of the *higher bidder*. Many of such erring judges have been sanctioned by the NJC. Justice Gladys Olotu was dismissed for gross misconduct following investigations brought against her. Justice Lambo Akanbi of a federal high court, Port Harcourt, was sacked for judicial misconduct (Vanguard Newspapers, Nov. 19th 2015) The NJC has also reprimanded Justice Rita Ofili-Ajumogobia of the federal high court for misconduct. She has been placed on the watch list and would not be promoted till she retires (ThisDay Newspapers, March 3rd 2016).

Justice Mohammed Yunusa of the federal high court, Lagos, was recently queried by the NJC following allegations of judicial misconduct and perversion of justice including a bribe of N225,000 received from a very senior lawyer who is being prosecuted by the Economic and Financial Crime Commission, EFCC (Vanguard Newspapers, April 5, 2016).

Owing to the urge for material acquisition, some of the judges have engaged in unethical conduct. Some of them have turned billionaires especially after handling election cases. Judges are supposed to be heard, not seen, but these days, judges attend all sort of parties organized by politicians. This affects justice delivery. If a greater number of the population loses confidence in the judiciary, then the society would be gravitating into the Hobbesian state of nature – self-help or anarchy.

4. Concluding remarks

Some members of the judiciary in Nigeria had negated the rule of law with unethical conduct occasioned by their bourgeois tendency. There are billionaires in the judiciary. They might have been corrupted by desperate politicians. It is no longer very correct to say that the judiciary is the last hope of the common man. Getting justice is determined by status- the higher bidder. Poor suspects are rotting away in overcrowded colonial prisons because of unnecessary delays in hearing cases. It is recommended that:

- The judiciary must be insulated from politics.
- The judiciary needs urgent clinical overhaul aimed at flushing out the bad eggs as was done in Ghana recently.
- The Chief Justice of the Federation, CJN be separated from the NJC for the latter to be headed by a senior member of the bar.
- Time frame be assigned to all cases to avoid a situation where cases drag on for several years at the detriment of suspects who are presumed innocent until proved otherwise.
- Any judge seen socializing with members of the public outside judicial functions be queried immediately to deter others.
- Any judge found guilty of corrupt practices be dismissed without gratuity and pension and imprisoned to deter others as fairness, equity, honesty cannot be compromised in the serious business of dispensing justice.

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