

THE EVOLUTION OF IDEAL NIGERIAN JUDICIARY IN THE NEW MILLENNIUM

by

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Introduction

The search for the perfect is inherent in all human endeavours. Man tries to look for a perfect woman to marry, a perfect profession to practice, a perfect relationship in all matters, a perfect home and work place. In short, the life of man revolves around the search for the ideal, the perfect, and the utopian. Man forgets that perfection is virtually unattainable by him but remains an illusion. It is the desideratum for man to measure his success or lack of it. Is the goal to which every creation strives? Perfection is very near yet so far. It is a nebulous concept because what is perfect to you may be absurd to the other person. Like beauty, it is in the eye of the beholder.

The search for an ideal judiciary is a human effort to get what is best out of a system. As it is well known, what is ideal today may become a problem tomorrow. In other words, the search for the ideal in any institution is a continuous search. For the ideal that sustains the human race and lead to breakthrough in various spheres of life is continuous struggle. We cannot but make efforts to look for and search for the ideal in the oldest human institution, the judiciary. To stop the search is to stop the process of justice. To continue the search is to try to attain felicity. Human civilization is sustained and maintained on the search for the ideal, the perfect and the utopian. This is what we are trying to do in this paper, make

prescriptions for the attainment of an ideal, perfect or utopian judiciary in our country in this millennium.

With the advent of the new millennium, which is seen as the beginning of a magical era where things should operate at a near perfect level, at worst at a higher level than what obtained in the past millennium, the expectations of the people extend to the improvement of the functional performance of the Nigerian judiciary.

This paper attempts to highlight what needs to be done about our judicial institutions towards the attainment of the ideal.

To begin with, permit me to adopt some working definitions of some key words in this paper that is “Judiciary”, “Ideal” and “Millennium”.

The word “Judiciary” has been defined as the court system of a country. It is the branch of Government vested with judicial powers. It is generally regarded

as the third arm of government. The function of the judiciary is the interpretation of the laws enacted by the legislature.

The next word is “Ideal”. This word has been said to connote “a standard of perfection existing only in the imagination or as an idea, unrealistic and so not likely to be achieved”. It is a utopia, a perfect setting or idealistic expectation. Lastly, the word, “Millennium” accordingly to the ***Oxford Advanced Learners Dictionary*** means a period of 1000 years and a future time of great happiness and prosperity for everyone.

An examination is the topic at hand that is “The Ideal Nigeria Judiciary in the New Millennium” reveals, as it is with every other things that there exists a continuous room for improvement in the level or state of our judiciary. That is why there will always be the crave or search for an ideal. This is not to be understood by the unwary as an indictment of the level of

performance of the judiciary thus far. If one takes into consideration, the peculiarities and difficulties of our environment, one cannot but give kudos to our judiciary for flourishing and discharging their judicial functions under very harsh and unfavourable conditions.

Achieving an ideal judiciary in this millennium is a collective duty of all that is, from judges, to lawyers, to the government and to the generality of the people.

Before undertaking an expository discussion of the various roles expected to be played by each of those mentioned, it is perhaps well to embark on a historical excursion into the history of the Nigerian Judiciary.

HISTORY OF NIGERIAN JUDICIARY

The Nigerian Judiciary has had a history of 4 distinct eras namely, the period before 1842,

1845-1912, 1914 to 1953 and 1954 to date.

Before the advent of the Europeans, the various indigenous people of Nigeria had difficult methods of dispute resolution mechanism.

Among the Yoruba and Ibo, the system resolved around their traditional institutions. It was fashionable among the Yoruba to refer contentious matters to the head of the family. If he could not settle the dispute, the matter was taken to the head of the compound until a solution could be found up to the Oba. Similarly systems existed among the Ibo.

In the North, there was a bit of formalization as founded on the Islamic legal system, the Sharia. There was an elaborate system of court systems, the hub of which was the Alkali system. The Emir was the ultimate appellate judge.

After 1842, the power to administer and dispense justice in Nigeria was mainly vested in native courts. These courts in

dispensing justice, fashioned out systems of taxation, civil laws and procedure, penal law and sentencing policies including death sentence. It should be noted that these Native Courts are the forerunners of the present Customary Area and Sharia Courts.

With the advent of the colonialists in the Southern part of Nigeria between 1843-1913, the British through a combination of **Foreign Jurisdiction Act of 1843 and 1893** established law under which various courts were set up. In 1854, the earliest courts called the **Courts of Equity** were established by the British in the Southern parts of Nigeria particularly Brass, Benin, Okrika and Opobo.

The principal agents of trading firms, consular or other administrative officers constituted this court of equity they acted as the judges.

Simultaneous in exercise with the courts of equity and

consular courts were courts that were established by the **Royal Niger Company**. By a Royal Charter granted in 1886 the company had the power to govern and administer justice in its areas of operations, until the Charter was revoked in 1899. Despite the establishment of British Courts, native courts were still allowed to function, in so far as the native law and custom they administered were not repugnant to natural justice, equity and good conscience.

In 1863, by **Ordinance No 11 of 1863**, the Supreme Court of Lagos was established, it had both civil and criminal jurisdiction.

In 1900, via the **Supreme Court Proclamation Order No. 6**, a Supreme Court was established for the Southern Nigerian protectorate. The Court exercised same powers and jurisdictions as were vested in Her Majesty's High Court of Justice in England.

The common law, the doctrines of equity and status of general application in England were to be administered in the court in so far as local circumstances permitted.

Before 1892, Sharia Law in all its ramification was operative in most parts of Northern Nigeria. By the Northern Nigeria Order in Council of 1899, the British Crown claimed that by treaty, grant, usage, sufferance and other lawful means, Her Majesty had power and jurisdiction in the Northern territory. In 1901, **Sir Henry Gollan** was appointed as the Chief Justice of Northern Nigeria.

In 1899, the **Northern Nigerian Order in Council 1899** gave the Commissioner of the protectorate of Northern Nigerian the power to provide for the administration of justice in that protectorate. By virtue of that order, the High Commissioner issued the **Protectorate Courts Proclamation of 1900**, which

established a Supreme Court, Provincial Court and Cantonment or Magistrate Courts. The High Commissioner also issued the **Native Courts Proclamation Order of 1900**, which established a new system of Native Courts for the territory. The Native Courts were presided over by an Alkali, the higher grade called Judicial Council was presided over by an Emir.

This arrangement endured until 1914 when the Northern and Southern Protectorate of Nigeria were amalgamated, Provincial Courts were abolished and in its place were established High courts which consisted of Chief Judges, Judges and assistant Judges. Below these High Courts were Magistrate Courts. Native Courts will remain at the bottom of the judicial hierarchy.

The Supreme Court exercised appellate jurisdiction over the High Courts. Between 1934 and 1954 appeals from the Supreme Court went to the West

African Court of Appeal. Appeals from the West African Court of Appeal went to the Privy Council. However from 1954, appeals from the Supreme Court of Nigeria went directly to the Privy Council.

In 1954, a Federal Supreme Court was established and was presided over by a Chief Justice of the Federation, Nigeria then consisted of regions, each region then has a High Court presided over by a Chief Justice Appeals from each of the High Court of the regions laid to the Federal Supreme Court. While appeals from Magistrate Courts, Customary or Native Courts Grade A went to the regional High Courts.

In 1967, Nigeria became a Federation of 12 States each with its own state judiciary. In the same year, the Western State via the Court of Appeal Edict, No 15 of 1969 established a Regional Court of Appeal.

In the Western State, the Supreme Court ceased to have

directed jurisdiction to hear and determine appeals in any matter from the high Court of the state (including appeals in any proceeding pending in any court in the State) except in any case in which noticed of appeal to the Supreme Court had been filed 1st June 1967.

In order to meet the need for cases, involving the revenue of the Federal Government to be expeditiously determined, the **Federal Revenue Court** was established by the Federal Revenue Court Decree No 13 of 1975. In 1970, 19 states were created in 1976 via the Constitution (Amendment No 2) Decree No 42 of 1976. Its function among others was to hear and determine appeals from the State High Courts. The law setting up the Western court of Appeal was replaced.

Presently under the 1999 Constitution, the Courts recognized as constituting the judiciary are the Supreme Court, the Court of Appeal, the Federal

High Court, the High Court of the Federal Capital Territory Abuja, the Customary Court of Appeal, Abuja, the States High Courts, the Sharia Court of Appeal of the States and the Customary Court of Appeal of the states.

These courts are vested with the functions or duties of dispensing justice, in accordance with jurisdiction vested in them. It should be noted that the establishment of a Sharia Court of Appeal or Customary Court of Appeal by a state is optional.

Against this historical background of the Nigerian Judiciary, I now proceed to deal with the subject matter of the topic that is, an ideal Nigerian Judiciary in the present millennium.

As mentioned earlier, Judges, Lawyers, the Government and the public at large all have roles to play in ensuring the attainment of an ideal judiciary in this present millennium. To this end the part to be played by each of those

mentioned will be outlined and explained. The realization of an ideal judiciary is not an issue that can be left to any segment of the Nigerian society, it is a collective that should be strived to attain.

ROLE OF JUDGES

For the realization of an ideal judiciary, the judiciary should be composed of judges who possess or exhibit some of the under listed qualities:

A sound of knowledge of the law: judges by the nature of their job are confronted on daily basis with diverse legal issues and problems which could be intellectual propensity, as well as a sound mastery of the law in order to cope with the ever-changing situations of law. A judge who lacks the required level of intellectual capacity will find it pretty tough coping on the job. An ignorant judge is the death not only of the law but of the society.

Justinian the *great Roman Jurist* in his institute sums it up in the following words.

“The ignorance of the judge is the calamity of the innocent, for a judge who is not up to date in his law can ruin a party, by giving him a wrong judgement, which unless he has the means to appeal the case to the highest court in the land, may perpetuate injustice”.

A judge must not only be learned in the law, he must know a bit of every topic. He should be a master of the arts, the sciences and other branches of knowledge. He should be knowledgeable in the rudiments of accounting, book keeping and

on matters of day-to-day affairs of modern business. In short, he must be a streetwise person, a man of the world and an encyclopaedia of human behaviour and action.

Be humane and Exhibit patience

In time past, lawyers have been known to muddle up clients cases not because of their professional ineptitude but due to the fear of incurring the wrath of judges when conducting the case of their clients. In some circles of lawyers, the fear of certain judges is the beginning of wisdom.

With respect some judges do not condone any form of mistake from lawyers no matter how slight or trifle.

An ideal judge of the new millennium should possess the following attributes as postulated by Socrates the ancient Greek Philosopher:

- (a) he should hear courteously
- (b) answer wisely

- (c) consider soberly
- (d) decide impartially

A judge that shouts and abuses lawyers and litigants is not only a disservice to the bench but also to humanity.

We all know that respect is reciprocal. If a judge abuses a lawyer he can be sure that he may be paid back in kind. We are all witnesses to many rancorous scenes in the courtrooms. Such untoward events tend to bring the authority of the bench into dispute.

A talkative judge will in all probability end up receiving strictures from the appellate Courts as it happened to the trail judge in AKINFE VS the State.

One is regaled on a daily basis with stories of negative happenings in our courtrooms between judges and lawyers.

The recurring accusation of bias against many judges is usually as a result of the descent of such judges into the arena of litigation. A judge that descends

into the arena of legal battle cannot but have his vision blurred and possibly have his nose bloodied.

Bold, upright, honest, truthful and hardworking

An ideal judge of this millennium should be one who is truthful, honest and willing to risk censure for his conviction. A judge should be serious minded, but not bad tempered. He must not do anything that will bring him disrepute. An ideal judge for this millennium must be in his official at fixed times, he must sit promptly, he must be impartial and must not listen to one side of a dispute without the other person involved being present.

An ideal judge must also possess exemplary character and judicial decorum that is, patience, courtesy, good manners, and he must be imbued with integrity, humility, impartiality and a good conscience with the fear of God.

The incorruptibility of a judge is a commodity that should not be taken for granted. A corrupt judge is the worse specimen of creation. Corruption in any form should be shunned and should be an anathema to a judge.

Humility is not a sign of weakness, and arrogance is not a sign of power. A judge that is arrogant, disdainful and haughty will soon know that he is not worthy of the call to the bench.

Indolence, tardiness and lack of seriousness are things a judge should abhor like the plague. The tradition of the bench is that sitting starts at 9.00a.m. A judge that comes late to the court has a duty to apologize to the counsel in court for lateness.

It is now a common occurrence to hear that some judges sit from 11.00am upwards. Punctuality is the soul of business, especially a serious business like what happens in

the hallowed portals of a court of law.

A judge should not be too sensitive to issues concerning his person. He should strive to protect the institution he represents rather than his personality. The power to punish for contempt should be sparingly used. Power that is not exercised has much value than one arbitrarily exercised.

A judge should be bold and courageous especially in the face of tyranny. The exemplary example of the Supreme Court in the cases of *Lakanni vs A. G. West* and *Gov. of Lagos State vs Ojukwu* are very commendable.

To hold the Rule of Law

A judge that pays lip services to the rule of law will discover sooner than later that he has no profession to practice.

The rule of law demands equality before the law, therefore there should not be “Kabiyesi” syndrome on the bench. The law

is no respecter of anyone or institution. The rule of law also connotes that things should be done in accordance with the law, not on the whims and caprices of any person. Our judges have the bounden duty to help uphold this tenet of the rule of law.

The rule of law also means that no one will be damned without a hearing nor will one person be a judge in his cause. Partiality, favouritism and sentiment should have no place in the judiciary of the new millennium.

Judge should scrupulously insist that Court orders should be obeyed and sanctified by all. Selective justice is no justice. There should be harmony between law and justice. Justice should be done in accordance with the law. The application and interpretation of law should be even handed as between the powerful and the powerless, the rich and the poor, the affluent and the humble.

The power to grant **ex-parte** orders should be watched and exercised with circumspection.

Over Socialization: the nature of the job of the Judge makes him a social outcast of some sort. While he should not become a hermit because he is a judge, he should also not become a disc jockey or a man about town. He should be reserved, without becoming self effacing, he should be modest without becoming a social outcast, and he should be friendly without becoming a jester. He must watch the circle of his friends. A judge that patronizes nightclubs or such other organizations is an easy target for blackmailers and other social miscreants.

The judge of the new millennium should strive to strike a balance between the various contending social issues and problem of the society.

Computer Literate: we are now in the world of Information

Technology (IT) especially the personal computer (PC). The judge of this millennium must have more than a smattering knowledge of computer. He should be well schooled in the art of e-mail, Internet and the cyberspace generally.

The immediate past was the age of technology; the new one is one of information technology. A judge that is not computer literate may find out rather too soon that he will be a misfit at any international forum of jurists.

The judge of the new millennium must be able to access a computer and carry out simple operations thereon.

From the foregoing, an ideal judiciary of the new millennium should be composed of judges who have a sound mastery of the law, who are humane and patient and in addition who are upright, honest, truthful, diligent, and hardworking, who keep their

oath of office strictly and are computer literate.

THE ROLE OF THE GOVERNMENT

When we talk of government here we mean the two other arms of the government other than the judiciary that is the legislature and the executive.

Continuing legal education: To enhance a standard of excellence in the work of our judge in this millennium, there is a need for constant training in legal education for judges. In this regard, the effort of the National Judicial Institute is highly commended.

Nevertheless a judge's work being substantially individual and for the prevention of decay of the sense of knowledge, probity and integrity among other things, rest on the untiring industry and dedication of each judge. The judge must therefore strive to improve his intellect and develop

his mind by constant study and deep thinking buttressed where available by formal continuing education in courses, seminars, conferences and workshops.

Lord Denning in emphasizing the importance of continued personal education of a judge said thus:

“law does not stand still, it moves continually, once this is recognized then the task of the judge is put on a higher plain. He must constantly seek to mould the law so as to serve the needs of time. He must not be a mere mechanic, a mere working mason, laying brick on brick without thought for the overall design. He must be an architect, thinking of the structure as a whole, building for society as a system of law, which is strong durable and just. It is on his work that civilized society depends.”

Conducive environment and ouster clauses:

The provision of a conducive environment to facilitate effective dispensation of justice and non-interference by the executive is the minimum expectation of all lovers of the judiciary from the other arms of government.

The thoughts or prospect of attaining an ideal judiciary will seem unrealistic if the environment is not made conducive for judges to dispense justice without fear or favour. In the past, one would note the unpleasant effects that ouster clauses have had on the judiciary. These obnoxious laws came into existence with the advent of military rule in 1966.

Some examples of such clauses, which tended to circumscribe the jurisdiction of course in the dispensation of justice, can be found in The Constitution (Suspension and Modification) Decree No. 1 of 1966. Section 6 of that Decree stated, “No question as to the validity of this or any other

Decree or Edict shall be entertained by any Court of Law in Nigeria.” Another example of this harmful legislation can be found in the investigation of Assets (Public Officers and other person). Decree No 36 of 1968. Section 12 of that Decree provides that “the validity of any direction, notice or order given or made or anything whatsoever done under the Decree shall not be inquired into in any court of law and accordingly nothing in the provision of Chapter III of the Constitution on Fundamental Human Rights shall apply”. It was under this Decree that the Lakanmis case was decided and it was on this account that decree No. 28 of 1970 was enacted to nullify the judgment.

In 1984 under another military regime, The Constitution (Suspension and Modification) Decree 1984 No 1 was promulgated. Sections 2 and 5 of the Decree contained the familiar ouster of courts jurisdiction clauses. It was also followed by

State Security (Detention of Persons) Decree No 4 of 1998. Section 4 of the decree provided that “no suit or legal proceeding shall lie against any person for anything done or intended to be done in pursuance of this decree.

The foregoing Decrees to mention but a few have done immeasurable harm to the work of the judiciary. The judiciary has been hamstrung in dispensing justice. This has many a time brought the judiciary to the lowest level of disregard and disrespect. These ouster clauses have had the negative effect of inhibiting the right of access of litigants to court, and tending to limit the scope and extent of the general jurisdiction of the courts, and bringing to the fore, the factual situation that the judiciary as a third arm of government is indeed weak. The type of education one conceives given the above scenario is one that equips the judges to confront such monstrous provision with judicial activism.

The interpretative role of judge in a developing and nascent democracy should be progressive and dynamic. The judiciary as the last hope of the common man cannot wring its hand in helplessness on the group of a draconian law. Any law that is ad hominem should be treated as legislation only fit for the trash bin.

The courageous decision of the Court of Appeal Lagos Division in the celebrated case of *Guardian Ltd. vs. A.G. Federation* is a case in point.

Thanking goodness, happily democratic days are here. Our courts need no worry about ouster clauses again. The groundnorm of the land, the Constitution has expressly made the insertion of ouster clauses in any of our laws, unconstitutional. For its importance Section 4 subsection 8 of the Constitution provides inter alia as follows:

“Save as otherwise provided by this Constitution, the exercise of

legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law”.

The above provision has buried the vestiges of any ouster provision in any existing law in Nigeria. The burden on the judiciary is now lighter in that regard.

Better Funding of the Judiciary

The funding of the Judiciary has been one of the intractable problems with which the Nigeria Judiciary has had to contend with in the last millennium. To talk of attaining the ideal by the judiciary would be akin to the wishful, if the

judiciary is not given adequate funds to operate with.

For the judiciary to discharge its function up to a level of as level as seen as ideal, it needs to be properly funded. Without adequate funding, the judiciaries like any other arm of government, can hardly perform or do its duty creditably and effectively. Worse still, it can hardly maintain any semblance of judicial independence if at every twist and turn, it has to look up to the other arms of government for sustenance, succour and support, financial or otherwise, before it can execute any of its programmes.

It is commonplace to see judges quartered in dilapidated structures called houses, they still patch on cars that have seen better days. The experiences of magistrates are even worse; most of them have to board public transport to come to work. This is highly precarious considering the sensitive nature of their work.

This situation is not a healthy one, for an institution, which is regarded as the bastion of democracy and the last hope of the common man. For one may ask, how can an institution in distress give hope to the people?’

To think of an ideal standard being attained by the judiciary in this present millennium the judiciary must have direct control over its budget. A beggarly judiciary is the anti-thesis of freedom.

Happily, the 1999 Constitution has provided for this desired autonomy. Section 80(1) of the Constitution provides that:

“all revenue or (other moneys raised or) received by the federation (not being revenues or other moneys payable under this Constitution or any act of the National Assembly into any other public fund of the federation established for specific purpose) shall be paid into and form one consolidated revenue fund of the federation.

Section 81(3) goes further to state that:

‘Any amount standing to the credit of the judiciary in the consolidated revenue fund of the federation shall be paid directly to the National Judicial Council for disbursement to the heads of courts established for the federation and the states under section 6 of this Constitution.’”

By the foregoing provisions of the 1999 Constitution, the days of the judiciary having to always go cap in hand to the executive and begging for funds to execute its projects seems to be over. Section 84 of the Constitution also provides for the payment of salaries of judicial officers from the consolidated revenue fund. The nation anxiously awaits the inauguration of the National Judicial Council.

Improved Conditions of Service

An ideal judiciary of the new millennium should be one in which judges are adequately remunerated for services rendered by them. The mind that administers justice must be free from financial embarrassment, constraints, or troubles.

Poor remuneration disturbs the mind and consequently prevents one from discharging one’s functions to be the best of one’s ability. It is common knowledge that judges are poorly paid, and the amount paid at the end of each month can hardly sustain a judge and his family. With the meagre salary being paid to judges, a judge will be lucky not to live a beggarly life demeans the judge and lays him open to all sorts of temptations.

A good judgment flows from a mind that is not bogged down by the thought of where the next meal will come from. If one is to expect the ideal from the judiciary, the ideal salaries should also be paid to judges in

this millennium. The emoluments of our judges should be comparable to that of their counterparts in other parts of the world.

The nature of job of a judge is such that it holds the fabric of the society together. A man that is poorly paid is wide open to temptation. A country gets the judiciary it deserves. In the new millennium, Nigeria cannot afford to treat its judges as second rated citizens.

There is no earthly reason why our judges should not have two official cars with decent accommodation.

With the paltry income of judges, it will be a pipe dream to expect the best brains among legal practitioners to give up their lucrative practice for a life of penury as it were on the bench.

Improved court facilities

With the advancement made in science and technology, there should be simultaneous

improvement in court facilities. In this day and age, there is no reason why judges should continue to take notes in long hand and under great stress and strain. There is no reason why recording devices should not be installed in the courts. The use of computer and word processors are now commonplace things at least in the chambers of successful practitioners of the law. Then why not judges? The old and archaic way of talking down proceedings in long hand, has the effect of slowing down the work of the court, they contribute in no small way to the congestion of cases in courts, they cause delay, and inordinate delay leads to a denial of justice.

Furthermore, there is the need to make courtrooms as comfortable as possible for judges. Generating sets should be provided to provide stand-by electricity supply due to erratic power supply. Nothing is as uncomfortable as a judge having to sit, all robbed up in a

courtroom, which is devoid of the minimum level of ventilation. A courtroom should be fully air conditioned to sooth and calm frayed nerves of lawyers and judges when they are involved in highly contentious matters.

Part of the facilities for a dynamic and learned judiciary is the provision of books. Most of the libraries of our High courts house old and almost useless law books. Modern law reports are not in existence in these libraries. Stationeries are luxuries, law journals are a rarity. No wonder, many a times a legal practitioner that cites authorities must provide then to the judge to enable him write his ruling and or judgment.

The private libraries of many legal practitioners are by far better stocked than a few law libraries in the court.

The government in a nutshell must be prepared to provide the necessary tool for the judiciary to enable it perform its constitutional role as expected.

THE ROLE OF LAWYERS

Defend the rule of law: The first duty of a lawyer is to defend the tenets of the rule of law in its pristine nature. The survival of a democratic polity depends on the state of the law of the law. Any society in which the rule of the law is stifled, so also the profession of law. It is therefore instructive for a legal practitioner to know that his livelihood depends on the virility of the rule of law.

It is not only unethical but self destructive for a lawyer to support any arrangement that stifle the rule of law. Certainly the law does not benefit from the rule of force.

The sustenance of the rule of law equals the sustenance of the legal profession.

The lawyer much kick against retroactive laws, must speak against extra judicial punishment, must be an advocate of the observance of due

process at all times, he must fight against corruption in the judicial process and should stand up against tyranny.

A lawyer should not see himself as the mouthpiece of his client to say only the things he wants to hear. No, he should stand on the side of justice and fair play. The court of appeal Kaduna Division made these points poignantly in the case of *Ibrahim vs Emien* where Muhammad JCS states thus:

“I am of the firm view that for a nation such as ours, to have stability and respect for democracy, obviously rule of law must be allowed to follow its normal course unencumbered. If for any reason, the Executive arm of the government refuses to comply with court orders, I am afraid that arm is promoting anarchy and executive indiscipline capable of wrecking the organic framework of the society. The corporate existence of Nigeria, it must be admitted postulates the principle of

cooperation between the three arms of government (Executive, Legislature and Judiciary). Where these work together in the same framework, then the rule of law shall prevail in that society. But where each selects to work in isolation and/or in utter disdain of the other, then havoc wrecks the society. Thus, by this unique position each knowing the limits of its powers and not to attempt to enter brusquely into the preserve of the other or ride rough shod of the powers of the other, then the rule of law has achieved its purpose, which is ensuring for the law. It is only then that government or authority by whatever name called shall rule by the pronouncements of the courts. I must not drop my pen without deprecating the behaviour of the Niger State Attorney General, Chief Law Officer, and Commissioner for Justice. He should not have forgotten his primary responsibility to the court, as by his calling, he is an

officer of the court. As a Commissioner of a State, the Niger State Attorney General, under Section 174© of the 1979 Constitution is bound to advise the Military Administrator generally in the discharge of his executive functions other than those functions with respect to which the Military Administrator is required by the Constitution to seek the advice or act on the recommendation of any other person or body. It is inconceivable to say for instance that a Governor or a Military Administrator of a state will refer a Court's ruling or status for advice or interpretation to the Commissioner of Finance, as interpretation of officering legal advice are not synonymous with liquidity of cash. It must be referred to its rightful place and that is the Ministry of Justice. A legally qualified person holding the esteemed office of Attorney General cannot allow himself to be psychopathic. His own responsibility is to offer his

candid advice according to how he understands the issue involved uninfluenced by any consideration. That will not in anyway, shake the integrity, confidence and professional dexterity of the Attorney General. And I think it is more honourable always in a situation where you cannot beat them, they you better bulge out instead of following them. I am not in anyway impressed by the role of played by the Niger State Attorney General.”

What is said above was true when it was said, as it is a true today.

The professional should have a scheme to bring its erring members especially those who are serving in political positions to book for the infraction of the inviolate rules of the rule of law.

Defend the Bench: The bar and the bench are like the two side of a coin. One cannot exist without

the other, for if there are no lawyers, there will be no judges, before whom will lawyer appear?

By the nature of the job of a judge and convention, a judge can only be seen and not heard. It therefore behoves the lawyers to be spoke-persons for the bench.

At all times the bar should stand up to the defend, protect and side with the bench. When an overzealous member of the executive or legislative arm of government disobeys an order of a court, it is the bar that can mount pressure to effect compliance.

When the other arms of government short change the judiciary, the lawyers should be up in arms to rectify the situation. The twin writ of ***mandamus*** and prohibition are goof flexible tools to make the executive arm of the government see reason and treat the judiciary as the stabilizing tripod of governmental powers. All unwarranted assaulted from any quarters against the judiciary must be warded off by the bar. Whenever the bench is disparaged, the bar is the ultimate loser.

Support Legal Education: There can be no gainsaying the fact

that there are problems with our legal education in Nigeria. The quality of lawyers trained in the last twenty years or so is not the same with those earlier trained. The Nigerian factor has crept into the training lawyers.

The faculties of law have refused to abide by the quota of graduands they are to send to the law school, the hurried and unprepared relocation of the law school from Lagos to Bwari, the dearth of law teachers and law books have all ensured the lowering of standards. Coupled with the above is the geometric jump in the population of law graduates and lawyers is the parlous state of facilities for their training.

The unsatisfactory state of our legal education was captured by a former Attorney General of the Federation in the following words:

“But this does not imply that the present legal curriculum is the most ideal for our development aspirations. Except for the general change from the sessional to the semester system and the implementation of the 6-3-3-4 systems in education, which necessitated the introduction of non-law courses, a cursory look at the legal curriculum bears close remembrance to what it was in the 1960s when our first generation universities mounted the law course.

The general effect is a poor adaptability of law and lawyers to the ever-changing needs of the society. Imagine that it was only recently (a month or so ago) that one state, Lagos, blazed the trail by introducing audio-recording facilities in the court system. But for a few law offices, computerization is virtually unknown in the legal profession. Even when it is known, the emphasis is essentially on word

processing. Even basic equipments like phones, fax, photocopies, etc are lacking in our justice system.

If the quality education is poor, then the position is worse given the very poor continuing legal education profile in the country. There is a tendency among other professions to emphasize the need for continuing professional education. This is true of the accounting and taxation professions, for instance, for how long do we think that we can delay imbibing that culture within the legal profession?

For us to have an ideal judiciary in this millennium, lawyers must support a sound legal education and strong continuing legal education for the bar and the bench.

Support the right of the public: The efficacy of the judiciary is judge usually from the prism of the ordinary man in the street. What he thinks of the judicial

system means a lot. The advocate has a Herculean duty to inspire the confidence of the ordinary man in the judiciary. He must not consciously or otherwise say or do anything that will bring the honour of the court to disrepute.

He must avoid like the plague unwarranted attacks on the person of judges. One can hardly do better in discussing this point than to quote in extenso the words of wisdom of Oputa J. as he then was in his book *Modern Bar Advocacy*¹⁵ where he stated thus:

“The effective administration of justice through the law, by the bench, in our courts presupposes a virile, dynamic and courage Bar full of advocates who are bold and fearless and who have enough courage to defend the essential liberties of the subject and expose injustice from any quarter whatsoever. To fulfil this purpose every advocate appearing before our courts

should be the watchdog of the community. He should be, whatever the need arises, a determined fighter for the freedom of the ordinary Citizen. The ordinary citizen may not and perhaps cannot protect himself against those concentration of power which by their weight or by their nature conduce to the oppression of the individual, it may be power of prosecution (wrongful prosecution), the power of parliament, the power of the executive, the power of wealth and status, the power of monopoly and big business or the power of numbers. It is duty of the advocate, a duty he owes to the community to ensure that the individual is properly protected from power, to see that there is a fair, equitable and just balance between those who have power and those who are subjected to such power. This the advocate can do by defending vigorously any infringement of the rights of the individual by oppressive use of power thus

helping to “break the rod of the oppressor”. The Bar cannot help the court to maintain a just balance between the claims and the rights of rich and poor, strong and weak oppressor and oppressed if it has to compromise their interest in any way and for any inducement whatsoever. But if members of our Bar inculcate some of the noble qualities of the great Thomas Erskine the (Brighter ornament of which the English Bar can boast) they will like him be fearlessly defending the right to condemn wrong and will in so doing be cooperating with the Bench in seeing that justice is done between man and man, between the poor and the rich, between the strong and the weak and the citizen and the State.

Support the profession: Loyalty to the profession involve the support of the advocate for all the institutional frameworks that support the judicial system. The advocate must treat as

sacrosanct the ethical values of the profession.

A bar that is not disciplined cannot insist that the bench be disciplined. A corrupt and inept bar cannot tell the bench to be upright and diligent. A bar that is disorganized and in disarray cannot evoke confidence of the bench and the public. A strong, virile, dynamic, progressive and committed, bar will go along way in enhancing the ideal judiciary of the new millennium.

ROLE OF THE PUBLIC

The public should exercise patience when dealing with issues concerning the judiciary. They should not be too quick in jumping to conclusions on the happenings in judiciary.

The public should insist that other arms of government should properly do things. The public should serve as the watchdog of the judiciary and desist from any act that can lead to corruption on

the bench. It takes two to tango. If there is no giver of bribe there will be no receiver.

The public should not embark on a campaign of calumny to run down and destroy the judiciary. The ordinary man is the biggest loser whenever the judiciary is emasculated.

If things are not as expected with the judiciary, one is not saying that such should not be pointed out but it should be pointed out in decorous and elegant way.

The public should take up the gauntlet to assist the judiciary to attain full independence.

A fearless, free, incorruptible, upright, diligent and dynamic judiciary is the bastion against arbitrariness. The public can help and assist the judiciary to attain this and more. After all, the members of the bench are first and foremost members of the public. They are also throws

ups from the larger society and they also minor same.

CONCLUSION

We have tried in this paper to call attention to and highlight the importance factors that will help Nigeria to have an ideal judiciary in the new millennium.

We have shown that the judiciary, the bar, the government and the generality of our people have different roles to play to attain the dream judiciary befitting of Nigeria's status.

Like in other things in life, the judiciary and the bar will have to champion the cause of this noble attainment. After all, he who feels it, knows it.

Let us draw the curtain on this paper with the quotation of an excerpt from the editorial comment in the Legal Digest of March, 2000 which runs thus:

“as we are in a new millennium, the main question to ask ourselves is: is the system (Bar, Bench, Police, Justice, Ministries, etc.) serving the purposes for which it was established? The simple answer is No.

We are seeing a situation where certain persons believe that one or two changes in Law will bring about revitalization. It is our considered view that before any meaningful procedural defects in the system can be addressed; the essential infrastructures must be put in place. Surely, it is more than just a question of continuing with age-old values, traditional and practice methods but a time to prepare the profession for the many challenges ahead”.

Reference:

1. See: Tobi N. Understanding the 1989 Constitutional Better: Page 10.

2. See: Oxford Advanced Learners Dictionary
3. See: Lord Lugard: Political Memoranda
4. See: Omoniyi Adewoye: Judicial System in Southern Nigeria Page 33-40.
5. See: Obilade: Nigerian Legal System: Page 17 - 18 Op Cit. Adewoye Page 139
6. See: Sections 230 – 284 of the Constitution of the Federal Republic of Nigeria 1999.
7. Moyle Imperatories Justinian Institutions
8. (1988) 7 SCNJ (pt II) 226 at 223-234