

**AVOIDING TRIAL DELAYS IN CIVIL  
PROCEEDINGS: BEING A PAPER DELIVERED  
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**INTRODUCTION**

The topic is lucid and devoid of any ambiguity, therefore one can emulate **Humpty Dumpty** in its saying that “when I use a word it means exactly what I want it to mean, no more no less.” One can afford not to launch into any elaborate definition of terms. What amounts to delay is well known as opposed to urgent or fast. Administration of justice is the whole plenitude of adjudication and dispensation of justice. Justice in the context of our discourse, is the whole gamut of what is just, equitable and conscionable. There are as many factors responsible for delay in the dispensation of justice in the magistrate courts, as the number of magistrates court in the land.

The solutions to the endemic delay can be found in the opposite of all the factors responsible for the delay. The delay could be man made and in exceptional circumstances due to **force majeure**.

In our view, the man made delay is the crux of the matter. If one has empherical data, one can safely assert that natural causes of delay in the administration of justice will be less than 2% of all the causes of delay in the Magistrate Courts all over our nation. The man made delay will therefore account for 98% of all the factors responsible for the delays.

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At this juncture, we may want to answer the question, from where does the Magistrate court derives its existence?

### ***THE SOURCE OF MAGISTRATE COURT***

Section 6(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that:

“The judicial powers of the state shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a state.”

Sub section 4 provides inter alia as follows:

“Nothing in the foregoing provisions this section shall be construed as precluding –

(a) the National Assembly or any House of Assembly from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of a High Court.”

Finally paragraph k of subsection 5 provides that:

This section relates to –

“.....(k) such other courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House Assembly may make laws.”

It is clear like crystal from the foregoing, that it is the constitution that creates Magistrate courts because if power was not given under section 6 of the Constitution, we would have had only the superior courts of record set out in section 6(5)<sup>2</sup> of the said Constitution.

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<sup>2</sup> (a) The Supreme Court of Nigeria  
(b) The Court of Appeal  
(c) The Federal High Court  
(d) The High Court of the Federal Capital Territory, Abuja  
(e) A High Court of a State  
(f) The Sharia Court of Appeal of the Federal Capital Territory, Abuja

The various magistrate courts laws operating in all the states of the federation found their legitimacy in the above provisions of the constitution, read alongside with the provisions of section 315 of the same Constitution dealing with existing laws.<sup>3</sup>

The establishment, Constitution, jurisdiction, practice and procedure and grades of magistrates courts are provided for under these state laws.<sup>4</sup>

The importance of magistrate courts in the criminal justice system of Nigeria cannot be over emphasized. It is a matter of common knowledge that except for offences, that attract capital punishment, rape and a few other high offences, most of the offences created in our penal laws are attended to by the magistrate courts.

This is a proper place to try and discuss the qualities of a judex that will assist not only in the attainment of justice but speedy justice according to law.

### ***THE QUALITIES OR EXPECTATION FROM A JUDEX***

There are some minimum irreducible qualities that anyone called upon to decide dispute between persons must possess. The society also has expectation of these qualities in anyone that sits in judgment over others. If we remember that more than 60% of the decisions of from Magistrate courts do not get appealed from, to higher courts, then the importance of these qualities will be better appreciated.

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(g) A Sharia Court of Appeal of a State

(h) The Customary Court of Appeal of a Federal Capital Territory, Abuja

(i) A Customary Court of Appeal of a State

<sup>3</sup> See Magistrate Courts Law Cap M1 Laws Lagos State 1999, Magistrate Courts Law Cap 70 Laws Oyo State and Magistrates Courts Law Ondo State 1976 applicable to Ekiti State.

<sup>4</sup> See generally parts 2 and 5 of the Magistrate Courts Law Cap M1 Laws of Lagos State 1999.

### *ENSURE EQUALITY BEFORE THE LAW*

Commenting on the need for a judicial officer to ensure equality of all persons or authorities before the Court, a notable philosopher **Caliph Mohammed Bello** in his book ***Tanbih-Ikham, Infak Al-Maisur*** Page 8 (quoted in the ***Nigerian Magistrate & His Court by J. D. Ogundere JCA***) observed in his work thus:-

“He must not listen to one side of a dispute without the other person involved being present, nor must he judge a case involving a close relative. He should observe equality before the law, and refrain from giving preferential treatment to anyone.”

We cannot agree more. The Magistrate has a duty to ensure that parties are treated equally. The impression must not be given that one of the parties is superior to the other. The best way a magistrate could do this is to affirm the twin maxim of ***Nemo judex in causa sua*** and ***Audi Alteram partem***.

By ***Nemo judex in causa sua*** it is meant that a Magistrate should not adjudicate on a matter in which he is interested. In other words, a Magistrate should decline to hear and determine a case in which he is personally interested. The acceptable stand now is that the magistrate is even precluded from adjudicating on a matter, if though not personally interested, there are some persons in some degree of closeness to him who are interested in the outcome of the case. Accordingly a Magistrate is expected to decline to assume jurisdiction in a matter in which his family members, friends, associates and persons who are sufficiently close to him in some other respect are interested. It is by so doing that justice could inure to all and sundry.

Magistrates over the years have found themselves in embarrassing positions merely for failing to adhere to the time honoured practice of declining to adjudicate over matters in which they are interested. This is because they unconsciously descended into the arena of conflict between litigants and in the

process failed woefully in holding evenly the scale of justice as their vision and sense of justice would have been beclouded.

The other maxim of ***Audi alteram partem*** means that a decision should not be handed down without both sides to litigation having been afforded all reasonable opportunities to present their respective cases. Accordingly both the plaintiff and the defendant and indeed the prosecution and the accused in a criminal case must be afforded equal opportunity in stating their cases.

There is constitutional support in the provisions of Section 36(1) of the 1999 Constitution for the twin maxim of ***Nemo iudex in causa sua*** and ***Audi alteram partem***.

Section 36 (1) provides:

“In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a ***fair hearing*** within a reasonable time by a court or other tribunal established by law and constituted in such manner as to ***secure its independence and impartiality.***”  
***(emphasis ours)***

The Courts have not failed in lending support to the all important provisions of the constitution earlier set out. The Supreme Court of Nigeria in the case of ***Nwokoro vs Onuma***<sup>5</sup> held per Nnamani JSC of blessed memory thus:

“The right to be heard is so fundamental a principle of adjudicatory process that it cannot be compromised on any ground.”

Along the same line, the Supreme Court has held that delayed justice is preferable to hurried trial that ultimately culminates in injustice. In the case of ***Oshoboja vs Amuda***<sup>6</sup> the Supreme Court per Olatawura JSC held as follows:

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<sup>5</sup> (1990) 5 SCNJ 93 at 130

<sup>6</sup> (1992) 6 NWLR (pt 250) 690 at 709

“The long time spent before justice is done is better than the harm done in a shorter period and perpetuated forever. We should not sacrifice justice for speedy trial.”

From the foregoing, it is manifest that a Magistrate is expected to afford equal treatment and opportunity to litigants. A magistrate must be careful not to be interested in a case which he is handling. A magistrate should not adjudicate on a matter in which he is interested. A magistrate should not be partial in his adjudicatory function. A magistrate must be interested to hear both parties to a case. A magistrate should not sacrifice justice for speed, especially where the desire to hear a matter speedily is lopsided.

#### *IMPARTIALITY OF ADJUDICATOR*

It is another important precondition for due administration of justice and the real enthronement of rule of law that a magistrate must be an impartial adjudicator. As earlier stated, a magistrate should in keeping with the requirements of the provisions of section 36 of the 1999 constitution avoid being partial. A magistrate should not put himself in an embarrassing position of being partial to one of the parties before him to the detriment of the other.

In the case of ***Balogun vs Adejobi***<sup>7</sup> the court defined privies to include all those who are related to the parties by blood, interest and title of the subject matter.

It must be stressed that the test of impartiality is an objective one and never subjective nor in accordance with the Magistrate's or enlightened members of the public perspective. This is because it is not merely of some importance but is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to have been done.

In the case of **Chief (Alhaji) Moshood Kasimawo Olawale Abiola vs Federal Republic of Nigeria**<sup>7</sup> the Supreme Court held that a magistrate should not hear a case if he is suspected of partiality because of consanguinity, affinity, friendship or enmity with a party, or because of his subordinate status towards a party or because he was or had been a party's advocate. Natural justice demands, not only that those whose interest may be directly affected by an act or decision should be given prior notice and adequate opportunity to be heard, but also that the tribunal should be disinterested and impartial.

One cannot but agree with J. D. Ogundere in his book<sup>8</sup> the late justice of the Court of appeal opined thus:

***"In his relationship with relatives and friends, he may be appraised of matters which are subjects of pending litigation or which subsequently become one. If such a matter comes before him, he should advise himself if he is a Chief Magistrate, or if he is a magistrate, decline to take the case in a note to his Chief Magistrate, on the grounds of previous knowledge of it or simply personal grounds."***

It is our submission that the admonition applies to Area Court Magistrates and members with equal force.

### *JUSTICE ACCORDING TO LAW*

A Magistrate has a peremptory duty to ensure that justice is dispensed to parties in accordance with the law. Accordingly his yardstick for determining cases brought before him should be the law and not the whims or caprice of the magistrate nor some consideration outside of the law.

It flows from the foregoing that the primary duty of the Court is to ascertain the law. After the ascertainment of the law applicable to a given matter, the magistrate should then proceed to apply the law to the fact demonstrated before him by

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<sup>7</sup> (1995) 7 NWLR (pt 405) 1 at 22-23

<sup>8</sup> Op Cit Page 154

evidence. It also follows that a magistrate must maintain his position of an umpire and should realise that he is not conducting an investigation. He should appreciate that there is a marked difference between conduct of investigation which belongs to some other realm of human endeavours and adjudication which is regulated by law.

The renowned **Master of Rolls, Lord Denning** put the matter succinctly thus in his book the **Due Process of Law**<sup>9</sup> he wrote thus:

***"Nevertheless, we are quite clear that the interventions taken together, were far more than they should have been. In the systems of trial which we have evolved in this country, the magistrate sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large as happens we believe in some foreign countries. Even in England, however a magistrate is not a mere umpire to answer the questions How's that? His object, above all is to find the truth and to do justice according to law; and in the daily pursuit of it the advocate plays an honourable and necessary role".***

A magistrate should equally be wary in carrying out his adjudicatory function, such that he does not usurp legislative function which is by the constitution and the accepted doctrine of separation of powers vested in the legislature. A magistrate should bear in mind, that he is being called upon to adjudicate between parties in accordance with the law as it stands. The court, it must be borne in mind is not expected to incurse into the legislative realm under the guise of interpreting a law. In the case of **Kalu vs The State**<sup>10</sup>, the court warned against the practice by which a court would legislate on settled and unambiguous provisions of the law. In the same case Iguh JSC at page 597 of the report observed thus:

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<sup>9</sup> Pages 60, 61 and 62

<sup>10</sup> (1998) 13 NWLR (Pt 583) 531 at 594

***"Although the argument against capital punishment, may be proper basis for legislative abolition of the death penalty, the authority for any action abolishing the death penalty is clearly not a matter for the law courts. Nor have I found myself able to hold that this court is entitled to repeal or revoke laws ostensibly based upon notions of public policy or sanction simply because such laws, for one reason or the other are said to be unacceptable to a group of persons or a section of society. Such repeal or revocation is within the exclusive jurisdiction of the legislature except of course such laws are attacked by due process of law on grounds such as unconstitutionality, illegality or the like."***

**Belgore JSC** in his concurring judgment observed at page 606 of the report thus:

***".....At any rate in this country, due to our constitution, it is not the function of courts of law to abolish the sentence of death, the responsibility is on the legislative body."***

What remains to be added on the need for a magistrate to dispense justice according to law is that a magistrate should be careful to prevent the introduction of sentiments into judicial deliberations.

It would appear that there is universality of the concept of justice according to law in the Common Law and Shariah. It is a cardinal principle of shariah that an adjudicator must first understand the case brought before him, he must be conversant with the applicable law or rule before he enters upon the duty of adjudication.

The Court of Appeal Shariah division made the point clearly in the case of ***Bulama vs Bulama***<sup>11</sup> per Muhammad J. C. A.

A magistrate should therefore try to ascertain what the position of law on an issue before him is and should proceed to apply the law to the facts and circumstances of the case. A magistrate must continuously be mindful of the fact that in adjudicating, he is not

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<sup>11</sup> (2000) 6 NWLR (pt 659) 131 at137,138.

conducting an investigation. He should also bear in mind, that for a successful operation of the rule of law and its attendant benefits to the society, judicial officers should not be concerned with whether or not, law is good nor conform with their subjective perspective of justice.

A magistrate would do well to recognise that there is a world of difference between law and sentiments and to endeavour at all times to divorce one from the other so that the task of the court would be made lighter and more beneficial to litigants and indeed the generality of the society

## PROMPT JUSTICE

It is a fundamental constitutional requirement provided for in section 36 (1) of the 1999 constitution that every litigant shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law.

The importance of prompt dispensation of justice cannot be over emphasised. A magistrate must therefore ensure that everything is done to give effect to this all important provision of the constitution. It is axiomatic that justice delayed is justice denied. This saying is of utmost relevance in Nigeria, having regard to the general social, political and economic trends which could have far reaching effect on the outcome of litigation. A magistrate should therefore accord priority attention to prompt dispensation of justice.

We shall endeavour to proffer some suggestions on how a magistrate could accomplish the target of prompt justice. On the part of the magistrate, he must ensure that he sits regularly.

It does not speak well of a magistrate not to sit on working and juridical days. The magistrate should equally ensure that, he sits promptly to conduct the business of the court. The accepted view in Nigeria is that law courts begin their business at 9 am.

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This is also not to suggest that a case must go on willy-nilly once same is fixed for hearing, notwithstanding the reason advanced for applying for an adjournment by an absent litigant or his counsel. See for this ***Ayua vs Gbaka***.<sup>12</sup>

A magistrate should strive to acquire the reputation of sitting at 9:00am. This does not only bring honour to the court but put both counsel and litigants on their toes. A magistrate should not in deserving cases hesitate to impose sanction in form of striking out cases for want of diligent prosecution and cost against erring litigants in other cases. A magistrate should equally devote the time of the court to the serious business of adjudication. A court room is seen as the sanctuary of justice. The magistrate should strive to sustain this belief. A court room should not be turned into a cinema, where comedies are viewed. This is not in the least to suggest that a magistrate should make the atmosphere in the court room to be charged. Far from it, what is been advised is that serious judicial responsibilities should be transacted in the court room daily.

A magistrate should also prevent unnecessary application for adjournments. It is accepted that one of the many notorious factors accounting for delayed justice is frivolous applications for adjournment. Except in deserving and meritorious cases, a magistrate should not condone unwarranted application for adjournment. Fortunately, a decision on an application for adjournment is one that is absolutely at the magistrate's discretion which discretion is sparingly interfered with by superior courts. The only ***caveat*** here is that a magistrate should exercise his discretion judicially and judiciously. That is, the magistrate should exercise the discretion in the overall interest of justice. Once a magistrate acquires reputation for disallowing unwarranted applications for adjournment both counsel and litigants will sit up and this in turn will lead to speedy administration of justice. Confidence in the judicial system will be

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<sup>12</sup> (1997) 7 NWLR (pt 514) 659 at 672

greatly restored if this is done. Where a matter is adjourned in the absence of either of or both parties, the court should, unsolicited order the issuance and service of hearing notices on litigants and on their counsel where they are represented by Counsel.

A magistrate also has a duty to ensure that the business of court at all times is properly prioritized. For example, it may not be out of place to start a day's business with **ex-parte** applications and other non-contentious matters before delving into highly contentious matters. It is also our submission that a magistrate should give priority attention to part heard matters rather than opening new matter which the magistrate may not be able to conclude either before transfer or other imminent factor.

It is our further submission that a magistrate should bear in mind that under the constitution, there is a time frame for delivery of judgment. He must therefore strive to comply with this constitutional stipulation as contained in section 294 (1) of the 1999 Constitution. The Magistrate should also by virtue of the enabling provisions of applicable law encourage amicable resolution of disputes by parties. A magistrate should therefore lend a supporting hand to moves at amicable settlement of matters. This we postulate could go a long way in assisting prompt dispensation of justice. Once efforts at an amicable settlement have failed, he must at once set down to hear the case on its merit and in doing this he must discountenance all facts connected with the failed settlement bid.

One must not be understood to say that speed must have priority over substantial justice. Far from it and in deserving cases, courts must make haste slowly with a view to arriving at justice. In the case of **Oshoboja vs Amuda**<sup>13</sup> the Supreme Court stated thus in connection with speedy trial, per **Olatawura JSC**:

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<sup>13</sup> Op Cit Page 709

"The Magistrates seek the truth so as to know the justice of a case. They apply the law to the facts in order to attain justice. In an attempt to do all or any of these, the courts sometimes err in law or misdirect themselves.

These mistakes and errors are thereafter corrected by appellate courts. If the road to justice is plain and smooth and there will hardly be any need for appellate courts. The rules of court are made to be followed and to avoid what in common parlance is referred to as "arbitrary or jungle justice." Consequently it takes time to know the truth of a case. An error must be corrected so as not to perpetuate injustice. ***The long time spent before justice is done is better than the harm done in a shorter period and perpetuated forever. We should not sacrifice justice for speedy trial.***"

#### *COMMENDABLE CONDUCT IN THE COURT ROOM*

The common man and indeed the entire Nigerian populace expect a Magistrate to provide a conducive atmosphere in his court room, so that judicial duties could be dispensed in a friendly and fearless atmosphere. Both litigants and Counsel should not feel intimidated by the Magistrate's conduct or behaviour. It has become a notorious fact, especially of late that some lower Courts including Magistrate Court have turned themselves into instruments of intimidation being used to settle economic, social and personal scores. This trend is an unfortunate one and is not in accord with the dictates of Rule of Law and constitutional order.

On what should be the attributes of a good magistrate, that ancient Greek philosopher, **Socrates** said:

"Four things belong to a judge , to hear courteously, to answer wisely, to consider soberly and to decide impartially".

A magistrate should behave in a dignified manner and be patient. He should not in appropriate cases hesitate to seek advice from the learned.

He should not be bad tempered, he should be friendly in court and warm though not clownish, he should be modest though not weak or subservient. He must preserve his self-respect diligently and must avoid things that will bring him into disrepute. A magistrate should equally be mindful of his utterances in court, lest the impression of partiality be given. The magistrate should especially watch the behaviour of court officials to ensure that they do not cause inconvenience on innocent persons or bring the Court into disrepute through unbecoming behaviour.

A magistrate should sit regularly and promptly. Where a magistrate will not sit on schedule or at all, counsel and litigants appearing in court must be so advised in good time in advance so that their precious time is not unjustifiably wasted. Where a magistrate comes late to court, he should at the time of commencement of sitting apologize to both counsel and litigants. He should repay for his lateness by extending the court's sitting for that day so that no litigant or counsel would have been deprived of hearing on account of the late sitting of the court. A Magistrate should use honourable and dignified language on both counsel and litigants. He must do well to bear in mind at all times, that respect is reciprocal and that what counsel respect most times is not the person of the magistrate but the state's authority which he personified. A magistrate in overruling a counsel should not use derogatory remarks. Refine and courteous language must be used to convey disagreement with a counsel's request or application. Correction should be made in the most refined ways so that it is well taken by counsel.

A magistrate must demonstrate exemplary character while sitting in Court. He should be patient, good mannered, humble, wise, understanding and be imbued with capacity to present his decision in a manner which will make it acceptable and legitimate to all concerned. He should afford litigants and their counsel the

opportunity to receive copies of his ruling and judgment immediately after delivery or soon afterwards. A magistrate should not demonstrate unnecessary interest in the outcome of an appeal against his decision, lest he engages in unconventional practice to sabotage the appeal process. He should not unless in deserving cases have recourse to his power to punish for contempt of court

A discussion on the conduct expected of a magistrate in the courtroom will be incomplete without a consideration of the power of a magistrate to punish for contempt. We shall accordingly proceed to treat same.

### *CONTEMPT OF COURT*

Contempt of court is any act or conduct which interferes with the course of justice and tends to bring the authority and administration of law in to disrespect. The twin elements of contempt of court are therefore interference and disrespect. There are two types of contempt namely:

- (a) contempt committed in the face of the court otherwise known as "***in facie curiae***" or "***coram judice***" and
- (b) Contempt committed outside of the court otherwise called "***ex facie curiae***" or "***coram non judice***".

A common feature of the two types of contempt is that it is aimed at bringing the administration of justice into disrepute. All courts of law have right to punish for contempt of court.

### *"CONTEMPT IN FACIE CURIAE"*

For this kind of contempt the offender is present in court where the contempt was committed. The necessity of calling witnesses, issuing warrants and other things are unnecessary. There is equally no need to frame a formal charge against the alleged contemnor. Punishment is instantly effected by the court and accordingly executed.

Some conduct which can amount to contempt ***ex-facie curie*** are making noise to disturb proceedings, to openly accuse the

magistrate in court of bias, fighting in the Court and other conduct that can disturb the ordinary work of the Court or impede same.

### "CONTEMPT EX-FACIE CURIAE"

This is the contempt that is committed outside of the precincts of the court. This kind of contempt is not usually punished summarily. The contempt consists in the disobedience of legitimate order of the court or any other act done outside of the court whose aim is to bring the process of administration of justice into disrepute. In this kind of contempt, the magistrate entertaining an application for contempt, must try to keep his head and mind completely out of the sentiments and sensitiveness of the matter at all times. The magistrate should keep himself away from the arena of the alleged disobeying conduct and allow the applicant to prove the contempt as legally required. On no account should the magistrate take up the matter as a personal attack on his person, for the reason that the contempt is physically addressed to his person. This is because the rules of natural justice will be against that position. He should approach the matter as any other matter coming before him with utmost neutrality and disinterestedness. It is only then that the magistrate can dispense real justice in the circumstances. See ***Okoya vs Santili***<sup>14</sup>

It must be borne in mind that the power of the court to punish for contempt is not retained for the personal aggrandizement of the magistrate or whoever mans the court, the powers are created, maintained and retained for the purpose of preserving the honour and the dignity of the court and so the magistrate holds the power on behalf of the court and by the tradition of his office, he should eschew any type of temperamental outburst as would let

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<sup>14</sup>(1991) 7 NWLR (pt 206) 753 at 767.

him lose his self control and his appreciation of the correct method or procedure. See: ***Fawehinmi vs State***<sup>15</sup>

To disregard this admonition is to fall into the unfortunate situation as exemplified in the following case.

In the case of ***Candide Johnson vs Edigin***<sup>16</sup> the following is extracted from the judgment of the Court at pages 671-672 of the report.

***"Apparently, when tempers rose rather meteorically, the respondent, exacerbated by the situation, unleashed this incisive question".***

***"When did you leave the law school?" The response, going by the record, was equally unrelenting.***

***"I will refuse to answer that question in the rudest manner."***

***It was the refusal to answer this question according to the record, that broke the camel's back, and led to the detention of the appellant for contempt of court. It was unfortunate, to say the least, for the respondent, according to records, to have taken leave of her exalted bench, invited counsel to extra-judicial dialogue and thereafter descend into the arena of vituperative conflict with him."***

The court went further at page 673 of the report to hold that the invocation of the power of contempt in the circumstances bordered on abuse of judicial authority. The court went further to hold that the exercise was improper and will expose the administration of justice to ridicule, if a magistrate or a presiding officer of an inferior court were invested with such extra-ordinary powers to provoke unnecessary extra-judicial verbal exchange with counsel or a member of the public and yet invoke against him the lethal and drastic power to punish for contempt. Such behaviour it was held amounted to trampling on the rights of the concerned counsel or member of the public.

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<sup>15</sup> (1990) 5 NWLR (pt 148) 42 at 90-91.

<sup>16</sup> (1990) 1 NWLR (pt 129) 659

We may now advert to the case of ***Joseph Orakwue Izuora vs The Queen***<sup>17</sup>

In the case, the appellant, a lawyer, on 4<sup>th</sup> September, 1951 at the conclusion of the hearing of a divorce case in which he represented the respondent, and in which judgment was adjourned till the following day, that is 5<sup>th</sup> September, 1951 sought permission to be absent from court at the delivery of judgment which permission was granted. Counsel to the petitioner thereafter also sought permission to be absent and the court resented it on the ground that the court would not want to proceed in the absence of both counsel. The appellant thereafter waived his permission and offered to be in court the next day. The appellant was however unable to attend the court and there was no explanation to the court, though the petitioner's counsel was in court. The magistrate ordered that the appellant be summoned to attend the court to show cause why he should not be committed for contempt. A summons was accordingly issued and the contempt was his failure without leave of the court to attend the court sitting on 5<sup>th</sup> September, 1951 for the matter in which he was a counsel to the respondent and in defiance and disobedience to the court order of 4<sup>th</sup> September, 1951 directing counsel to the parties to be present at the resumed hearing on 5<sup>th</sup> September, 1951.

The appellant responded to the summons and attended the court on 18<sup>th</sup> September, 1951 and was also represented by counsel. The appellant was fined Ten pounds or 2 months imprisonment in default of payment. His appeal to the West African Court of Appeal was struck out on procedural grounds. The Privy Council allowed the appeal and held that it is not all act of discourtesy to the court by counsel that amounts to contempt of court and breach of professional duty owed a client by a counsel is not also the same-thing as a contempt of court. One cannot but conclude the issue of contempt by saying that the power to punish for

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<sup>17</sup> 13 WACA 13 also reported in Gani Fawehinmi's Law of Contempt in Nigeria case Book pages 188-195.

contempt appears to be rough justice and contrary to natural justice. This being so, the power should be sparingly invoked, unless the ends of justice demands it.

Finally, a magistrate is expected to record accurately and honestly the events which transpired in his court. A great deal of God fearing and honesty is needed in this wise.

The statement of Achike JCA (as he then was) in ***Candide-Johnson vs Edigin***<sup>18</sup> at 675 is very apt in this wise. His Lordship said:

***"It is in the interest of justice that all that is said or raised in court during hearing be taken down in writing, that is be properly recorded. When this is not done and it is through the affidavits of parties that the true records of what transpired during hearing could be known, questions will usually be asked why the court adopted such a procedure."***

See also ***Otapo vs Summonu***<sup>19</sup> where similar statement of the law was made by the court.

Lord Denning while summing up the various highlighted qualities in his work: ***The Family Story***<sup>20</sup> said:

***"When a judge sits to try a case,.... He is himself is on trial before his fellow countrymen. It is on his behaviour that they will form their opinion of our system of justice. He must be robed in the scarlet of the Red magistrate - so as to show that he represents the majesty of the law. He must be dignified so as to earn the respect of all who appear before him. He must be alert - to earn the respect of all to follow all that goes on. He must be understanding to show that he is aware of the temptations that beset everyone. He must be merciful so as to show that he too has the quality which droppeth as the gentle rain from Heaven."***

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<sup>18</sup> Supra

<sup>19</sup> (1987) 2 NWLR (pt 58) 624

<sup>20</sup> At Page 162.

### *INCORRUPTIBLE ADJUDICATOR*

For a successful operation of the rule of law, and the dispensation of justice, a magistrate is expected to be incorruptible. A corrupt judicial officer is one who dishonestly uses his position as a magistrate to gain some unmerited advantage.

The advantage could be monetary, promotion, sexual or in any other form. A corrupt magistrate is a morally bankrupt magistrate. He is a dishonest magistrate and an indecent creature of the Almighty God. It should be borne in mind that upon appointment, an oath is administered on a magistrate by which he covenants with the State and indeed the Almighty God that his actions and decisions on the bench will not be informed by affection or ill will or any other kind of consideration. This is what is called the judicial oath. Corruption, unfortunately, signals the commencement of a gradual breach of the oath taken by a judicial officer. This is because corruption leads a magistrate to perpetrating injustice. His vision becomes blurred and impaired and he is momentarily inclined to tilt the scale of justice in favour of the person or authority who has induced or participated in any way in the process of getting the magistrate corrupted. A magistrate is expected to observe to the letter the code of conduct for magistrates.

It should be noted that magistrates of superior Courts of record are regulated by a code of conduct. They are equally expected to subscribe to judicial oath set out in the constitution. Accordingly the judicial officer are expected to subscribe to the judicial oath set out under schedule 7 of 1999 Constitution of the Federal Republic of Nigeria. By virtue of section 318(1) (b) of the 1999 Constitution, all members of staff of Magistrate Court are deemed to be public officers in the public service of the State. It follows therefore that Magistrates are expected to observe the code of conduct for public officers which is set out under part I of the Fifth schedule to the Constitution of Federal Republic of Nigeria 1999. For purpose of clarity, a Magistrate is not expected to put himself in a position where his personal interest conflicts with his duties and responsibilities. He is especially expected not to ask

for or accept property or benefits of any kind for himself or any other person on account of anything done or omitted to be done by him in the discharge of his duties. See paragraph 6 sub (1) of part I of the fifth schedule 1999 Constitution. By virtue of paragraphs 8 and 9 of the same schedule, no person shall offer a public officer any property, gift or benefit of any kind as an inducement or bribe for the granting of any favour or the discharge in his favour of the public officer's duties. The public officer is equally under a duty not to do or direct to be done, in abuse of his office, any arbitrary act, prejudicial to the right of any other person, knowing that such act is unlawful or contrary to any government policy. The breach of the Code of Conduct is referable to the Code of Conduct Bureau for proper action.

It is apparent from the foregoing that a Magistrate is not expected to be corrupt otherwise, he would be operating contrary to the tenets of the calling of his office.

One cannot but quote with approval the erudite word of **Justice M. M. A. Akanbi**, former president, of the Court of Appeal, in his book: "**Judiciary and Challenges of Justice**"<sup>21</sup> where his Lordship said:

***"Let me say that where a judge with little or no adequate knowledge of the law, may be consider a nuisance, and his lack of understanding and appreciation of the law may constitute an obstacle in the path of justice, yet, he is still, more tolerable than a corrupt magistrate. For a corrupt magistrate is not only a dangerous obstacle, he is an anathema and a disgrace to the profession or the institution to which he does not deserve to belong."***

Therefore, a Magistrate who grants bail based on receipt of bribe whether in cash or kind, who grants and vacates interlocutory orders, and the one who gives judgment to the highest "bidders" is not deserving of staying a day longer on the bench.

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<sup>21</sup> Page 36

He ought to be flushed out, because he is a disgrace to his peers and a “black-sheep,” indeed there is a corresponding duty on both the litigant’s counsel and fellow judicial officers to ensure that he is exposed and made to face the full wrath of the law. For justice being a sacred thing is not meant to be sold.

Therefore, it is the expectation of the common man that judicial officers would be free from corruption, so that his confidence in the operation of rule of law and indeed in civil government would be kept intact. A corrupt judicial officer going by the texts of the holy books is doomed into eternal suffering and discomfiture in the hereafter.

A magistrate should never accept gifts from litigants, their friends or relations before, or after he has tried their case because a magistrate’s habit can never be hidden. The character of a corrupt Magistrate according to J. D. Ogundere in his book earlier referred to at page 154 thereof, is like sulfur smoke that pollute the foundation of justice and lays waste flowers and vegetation in its wake. According to Sir Francis Bacon:<sup>22</sup>

***“Above all things, integrity is their portion and proper virtue. Cursed (saith the law) is he that removeth the land- mark. The mislayer of a mere stone is to blame. But it is the unjust Magistrate that is the capital remover of the land-marks, when he defineth amiss of land and property. One foul sentence doth more hurt than many foul example. For these do not corrupt the stream; the other corrupt the fountain.”***

## **DEEP KNOWLEDGE OF THE ADJUDICATOR**

It is expected of an adjudicator to be knowledgeable, since that is the instrument through which he is expected to dispense justice. Accordingly, a Magistrate is expected to be versed in the kind of law he is expected to administer. For the Magistrate, he is expected to be learned in the law applicable within his sphere of jurisdiction. Because of the complexity and completeness, a

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<sup>22</sup> Quoted:- Land-marks in the law by Lord Denning. Pages 33- 34. Also quoted in The Nigeria Magistrate and his Courts Op Cit page 155.

Magistrate cannot be expected to know all especially at the time of his appointment as a Magistrate. He will however do well by continuing to learn on the job. He must be prepared to do this as a matter of challenge and necessity.

The Magistrate must master the panel laws, the provisions of the Evidence Act, the applicable procedure to his court and the rules of common law. Little knowledge will be a disservice to a magistrate no matter the grade. Learned counsel of various post call experience will appear before him and he must be prepared intellectually to meet the expectation of all. To borrow the words of **Hon; Justice Akanbi** earlier referred to:

***"A judge with little or no adequate knowledge of the law, may be considered a nuisance, and his lack of understanding and appreciation of the law may constitute an obstacle in the path of justice."***

According to Honourable Justice A. O. Obaseki in his paper "***The art and science of Judging: style and creativity***"

***"The judgment seat in any court of law cannot be allowed to be occupied by any anyone not versed in the art and science of judging. The resolution of any dispute between two persons even in the simplest of societies is not allowed to be undertaken by any person or tribunal ignorant of or untutored in the norms or rules and custom regulating the relationship and dealing among members of the society. Judging is a science in that it is governed by laws, rules and regulation with which it must comply in order to be acceptable in the society. It is an art in that its arrangement is dictated by logical reasoning in a legal climate and environment....."***

It is not in the least to be suggested that any human being is perfect so as to adjudicate perfectly. Far from it, all mortals including Magistrates are fallible, which is a reflection of the imperfections, inherent in human nature.

## *INDEPENDENCE OF THE ADJUDICATOR*

The adjudicator is expected to be independent. By this it is meant that the magistrate decides cases before him in line with this own understanding governed by his conscience.

It should be borne in mind that the constitution of Federal Republic of Nigeria, 1999 in clear terms vest judicial power of the Federation and the States in Courts established under the Constitution. See for this section 6 of the 1999 Constitution. It would therefore portend a dangerous trend for a magistrate to fail to utilize fully this constitutional provision.

A magistrate should therefore ensure that he is neither blackmailed, coerced, intimidated or in any other way influenced to decide in a particular way or the other. Both the individual citizen, non-citizens and indeed government and authorities should have no influence over the Court's decision. A magistrate will do well to bear in mind in the discharge of his functions that, what must be of paramount importance to him at all times is the law governing a particular transaction or case before him, the cold facts as presented before him and his conscience. He should be less concerned with alleged events that transpired outside of the precinct of the Courtroom.

A dangerous trend seems to have penetrated the judiciary in recent times. The sad trend if not quickly checkmated has the tendency of eroding confidence in the judicial system. This unfortunate trend is the practice where discretion is unduly fettered or judgment influenced because of perceived "state's interest in a case". This has manifested itself more in bail applications before lower Courts including Magistrate courts. On such occasions, bail is often refused so that the executive arm of the state or indeed a few highly placed citizens would feel satisfied that bail has been refused in politically motivated offences, which are ordinarily bailable under our laws.

It must be emphasised that to secure the independence of the adjudicator is a collective task that requires the involvement of

the other tiers of government, that is the executive and the legislature. These arms of government must ensure compliance with constitutional and other statutory provisions dealing with the autonomy of the judiciary. It is hoped that financial independence of the judiciary will aid the independence of adjudicators at all levels of Courts. This it is submitted will enable Magistrates to meet up to the expectation of their independence in keeping with the spirits of separation of powers and rule of law.

We should now address some of the factors that engender delay in the administration of justice before the Magistrate courts.

## **CAUSES/FACTORS FOR DELAY IN THE DISPENSATION OF JUSTICE**

### **WELFARE OF MAGISTRATES**

You can only get the best service out of a man that is satisfied, contented and happy about his state of life. Magistrates are human after all. From my investigation, the welfare of our magistrates leaves much to be attended to. Official quarters are becoming a rarity, official vehicles were things of the past, minimum security have been forgotten, the pay is left to the whims and caprice of the respective state governments. This has resulted in some chief magistrates in some states earning what magistrate grade II earns in some states. There are inadequate court rooms and libraries are virtually non-existent. Unfortunately, while there is marked improvement in the welfare of the magistrates of the superior courts at least since about 2000, the converse is the position with our magistrates. This lack of basic welfare package not only drive away potential good materials but has led to frustration for those who accepted the call to serve. A person that is not motivated cannot give his best.

### ***INADEQUATE FUNDING***

A visit to many of the court rooms that serve as magistrate courts will reveal the state of dilapidation of the system. Court

rooms are inadequate, stationeries where available are rationed, record books are no more available and basic needs to make the system function are not available. In many states, magistrates sit in shifts. No one seems to care that most of the criminal cases that found their ways into the court end up at the magistrate courts. The materials with which to do a thorough and quick work are lacking. Like in the High Courts, proceedings are taken in long hand in very hot and humid atmosphere. There are no proper places to keep court records and exhibits.

### *THE LAWYERS*

The ethics of the profession enjoins lawyers to assist the court in the attainment of efficient and quick justice. In most instances, the rules are observed in the breach. Lawyers that perceive that they have a bad case, rather than advise their clients properly, resort to foul is fair tactics including asking for unnecessary adjournments. A lot of unwholesome practice go on among lawyers before the magistrates courts. The hard economic environment has added to the malaise. Touting and outright chicanery are very common feature of the practice of many lawyers before the magistrates courts.

### *INAPPROPRIATE APPOINTMENTS*

The down turn in our economy has led to a situation where some persons accepted to be magistrates not because they desire to make a carrier of it but out of exigency of no other thing to do.

It is also apparent now many people who find themselves in the magistrate courts lack many of the basic qualities of an adjudicator, like deep knowledge of the law, patience, independence and impartiality. In the days of old, many magistrates believed that they had automatic ticket to the high court bench but thanks to the stringiest rules laid out by the National Judicial Council now for elevation from the magistracy to the high court bench.

### *LITIGANTS*

Many Nigerians still believe that the laying of criminal allegations against others is a weapon to score political or other points. Many people, make allegations that are neither sustainable nor factual. In such instances, cases that ought not to get to the magistrate courts are pushed there and for years are pending. In some instances, the complainant who is the star witness for the prosecution may just vanish into thin air or just decide to abandon the complaints for various reasons. Our family structure plays a part in this. Many a time, the complainant is pressured to drop the complaint but rather than inform the prosecution, he may just decide to abandon attendance in the court.

### *ARCHAIC LAWS AND RULES*

There are some of the provisions in our laws and rules in the magistrates court that are obsolete and they stand in the way of expeditious determination of cases. The problem of holding charges is still with us. The use of first information report in the states of the North engenders some delay in criminal trials.

We have tried to identify some of the factors responsible for delay in the administration of justice in the Magistrates Courts. We must quickly acknowledge that these factors are by no means exhaustive. It is therefore necessary to attempt to proffer solutions to these problems.

## ***SOLUTION TO THE PROBLEMS OF DELAY IN THE ADMINISTRATION OF JUSTICE***

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### *PROPER AND ADEQUATE FUNDING*

The various states governments must as a matter of national urgency, fund the magistrate courts properly and adequately. It is suggested that the funding may be taken up by the National Judicial Council to make for uniformity or each state government should devote not less than 5% of its annual budget to the court. There should be adequate and quality court rooms, provision of basic working tools, like stationeries and well furnished chambers are ***sine qua non*** for efficient delivery of justice by the court.

There is the need for those in charge of the funds if and when made available, that there is judicious use of the resources. The needs of the court should be prioritized and attended to.

A work force that is not properly motivated cannot give its best. The provision of good official cars, furnished accommodation, adequate security and conducive environment for magistrates is not out of place. The hazardous nature of the job with the attendant risk to lives and property are compelling enough, to make the government to make adequate arrangement for the well being and welfare of the magistrates. One advantage of paying the magistrates well, is the fact that it will remove the temptation of corruption and unwholesome practices, apart from promoting prompt and efficient delivery of justice.

#### *LAW REFORM TO ENSURE UNIFORMITY OF THE MAGISTRATE COURT LAWS AND CIVIL PROCEDURE RULES*

The various states governments should urgently embark on the reform of all laws and rules that deal with the magistrate courts. Uniformity of laws and rules will ensure that the lawyers are at home with the practice and procedure of the court, regardless of the jurisdiction. Also the laws need to be updated in terms of punishment. The introduction of suspended sentence and its full implementation is long over due. There should be other methods of penal punishment other than imprisonment. It is not out of place, to create large farm settlements, where convicts can be sentenced to, to do forced labour for specified period. Each convict will be paid a percentage of the money realized from the harvest of whatever he sows on the farms.

#### *THE MEDIA*

The media has a big role to play by properly informing the people of the happenings in the hallowed chambers of the courts. Selective and sensational reporting of serious court matters, especially criminal cases, is a disservice to the cause of justice. Media trial of suspects is against the norms of the rule of law. Law is a technical field and only those that have knowledge of the field should report on it. A person who does not know the **ratio**

***dencidendi*** of a case, will not likely report accurately the decision of the court. Anyone who wants to cover the activities of the court for the media, must be very familiar with the nuances of law and procedure.

#### ***PROFESSIONALIZATION OF MAGISTRACY***

The job of a Magistrate should be professionalize in the sense of training and ensuring that the office of a Magistrate can be chosen as career path to be occupied by the occupants until they retire. This may not seem like an attractive idea but it will go a long way in promoting efficiency if implemented. Productivity will definitely be affected if people join the Magistracy only to mark time till they can apply to go to the High Court Bench.

#### ***REVISION OF QUALIFICATION FOR MAGISTRACY***

The qualification for appointment to the Magistracy should be pegged at, at least, 3 to 5 years post call. This will ensure that appointees have a minimum experience in the practice and procedure of the court. This will be unlike appointees who are fresh out of the law school and who cannot discern their left from right.

#### ***PROSECUTION OF MATTERS SHOULD BE BY LAWYERS***

The prosecution of matters before Magistrates should be restricted to lawyers alone. When both the adjudicator and the judex are on the same page as to law and procedure, delay in administration of justice will be reduced to a minimum. The antics of the stations brought into the court by laymen police officers have contributed in a large way to the delay in the administration of justice.

#### ***DIGITARIZATION OF COURTS***

Digitarization of courts will in no little way bring the courts up to date in the administration of justice. Writing in long hand, which still obtains in our courts, has contributed largely to delay in the trial of cases before our courts.

## *TRANSPARENCY OF APPOINTMENT AND DISCIPLINARY PROCEDURE*

Keeping the appointment procedure transparent will ensure the appointment of individuals with merit. Putting merit in the backburner in the appointment procedure will do nothing but breed mediocrity in the Magistracy. The same thing goes for the disciplinary procedure. As the saying goes, 'what is good for the goose is good for the gander'. The same rules should apply to every member of the Magistracy.

## *SETTING UP OF EVALUATION COMMITTEE*

Just like is the practice with superior courts, where the National Judicial Commission has set up an Evaluation Committee to appraise the performance of Judges from time to time, the Chief Judge of each state should set up similar committees to do the same for Magistrates. This will put them on their toes and ensure speedy dispensation of justice.

## *JURISDICTION*

The laws should also be reformed to increase the monetary value of jurisdiction of magistrates, both in criminal and civil matters. This will be more in line with present day reality. If this is not done, the volume of cases going to the high court will be increased, considering the rise in the value of money in the country at present. Inevitably then, there will delay in the administration of justice, though at the high courts.

## *THE PUBLIC*

Members of the public either as complainant or witness or bystander should appreciate the essence of justice and fair play. Unfounded and unsubstantiated allegations of bias and corruption, should not be made against a Magistrate. We should always remember that Magistrates can only be seen, they cannot be heard. We should appreciate that in any legal duel, one party will win and the other lose. All the parties to litigation cannot win in the same cause. We should appreciate that adjudication is an imperfect human attempt at attaining justice.

## **Conclusion**

In this paper, we have tried to call attention to the qualities expected of any adjudicator in any court. These qualities have direct bearing and relevance to magistrates. The sheer volume of the number of cases that get decided in the Magistrates courts, make it imperative that those who sit as magistrates in the courts should imbibe the identified qualities of a **judex**.

We also tried to ex-ray some of the factors that engender delay in the administration of justice in the Magistrates courts.

Inadequate funding, dilapidated infrastructure, lack of proper welfare for Magistrates, attitude of lawyers and litigants, poor quality of prosecution and a host of other factors were identified.

We also attempted to proffer solutions to the identified factors that promote delay in the magistrates courts. We made appeal for adequate funding, the welfare of the Magistrates, change of attitude by lawyers, the need for only legally trained persons to serve as prosecutors in the magistrates courts and the need for the media to assist in the work of the court.

The suggestions made in this paper are not expected to be the **talisman** to end all the troubles of the delay in the dispensation of justice in the magistrates courts but rather they will form the basis for more robust discussions, from which eventual solutions may be harvested.

Once more, I express my gratitude to the organizers for the honour of inviting me to share my thoughts with this distinguished audience, on this very important topic. Hope you are not too bored.

Thank you and God Bless.

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