

# DELAY IN THE ADMINISTRATION OF JUSTICE AT THE MAGISTRATE COURT- FACTORS RESPONSIBLE AND SOLUTION

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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 emperical 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. 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<sup>1</sup> 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 create Magistrate courts by implication 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.

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 overemphasized. 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.

Offences like stealing or theft, house breaking or burglary, most offences that have to do with road traffic, most offences that deal with the administration of justice, are just a few of the matters that come before the magistrate courts. One can say from the above that more than 80% of criminal cases that get to court, end up before the Magistrate courts. The above fact underscores the reason why we must all be concerned with any delay in the system. It is axiomatic that justice delayed is justice denied, as it is also a truism that rushed justice may lead to injustice.

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 have 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.

### **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 Judge & His Court* by J. D. N is superior to the other. The best way a judge could do this is to affirm the twin maxim of **Nemo judex in causa sua** and **AudiAlteram patem**.

By **Nemo judex in causa sua** it is meant that a Judge should not adjudicate on a matter in which he is interested. In other words, a Judge should decline to hear and determine a case in which he is personally interested. The acceptable stand now is that the judge 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 Judge 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.

Judges 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 patem** 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 judex 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:

*"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 Judge is expected to afford equal treatment and opportunity to litigants. A judge must be careful not to be interested in a case which he is handling. A judge should not adjudicate on a matter in which he is interested. A judge should not be partial in his adjudicatory function. A judge must be interested to hear both parties to a case. A judge 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 judge must be an impartial adjudicator. As earlier stated, a judge should in keeping with the requirements of the provisions of section 36 of the 1999

constitution avoid being partial. A judge 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 Judge'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 (Aihaji) Moshood Kasimawo Olawale Ablola vs Federal Republic of Nigeria*<sup>6</sup> the Supreme Court held that a judge 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.

The Court went further to hold that from the provision of section 33(1) of the 1979 Constitution, the independence and impartiality of a court are part of the attributes of fair hearing. The requirement of impartiality is intended to prohibit a person from deciding a matter in which he has either pecuniary or any type of interest. Such other interest may arise from his personal relationship with one of the parties to the case or may be inferred from his conduct or utterances during the hearing of the matter. Because of its importance to the issue at hand it is expedient, albeit briefly, to restate the facts of the case of **Abiola vs Federal Republic of Nigeria.**"

The applicant, Chief M. K. O. Abiola was arraigned before the Federal High Court, Abuja on **14<sup>th</sup> day of July, 1994** for the offence of forming an intention to remove or overawe otherwise than by constitutional means **General Sanni Abacha**, the Head of State and Commander-in-Chief of the Federal Republic of Nigeria and forming an intention to levy war against Nigeria or part of it by force and for conspiring to and proclaiming himself president and commander-in-chief of the Armed forces of the Federal Republic of Nigeria contrary to the provisions of section 412(1) (a) (i), 412 (1) (b) and 97 of the Penal Code chapter 345 laws of the Federation 1990. The offences were alleged to have been committed in Epetedo area of Lagos Island, Lagos.

After the charge was read to the applicant, an oral application for bail was made by his

counsel which was opposed by the prosecution and which opposition was sustained by the trial Federal High Court. The applicant appealed against the said ruling successfully to the Court of Appeal. The Respondent (prosecution) was dissatisfied with the ruling of the Court of Appeal granting bail to the applicant and appealed against same to the Supreme Court and filed an application for stay of execution in the Court of Appeal. The Court of Appeal eventually granted the stay of execution sought by the prosecution. There were then pending before the Supreme Court applications filed by both parties. Of interest to this paper was the application filed by **Chiefs O. K. Ajayi SAN** on behalf of **Chief M. K. O. Abiola** that seven Justices of the Supreme Court including the then Chief Justice of Nigeria, **Honourable Justice Mohammed Bello** should exclude themselves from hearing and determining all matters involving his client (Chief Abiola) on the ground of likelihood of bias because each of the seven Justices of the Supreme Court was at the material time maintaining an action in libel against *Concord Press Nigeria Limited*, of which the applicant was the Chairman, Publisher and held majority shareholding interest on account of alleged libelous publications contained in an issue of ***Weekend Concord***.

In the penultimate paragraph of the affidavit in support of the application, it was deposed that:

*“It will be in the best interests of the administration of justice in Nigeria if the Justices of the Supreme Court who have sued the respondent (the applicant) to court for substantial damages which, if awarded will erode the respondent’s financial viability are not placed in a position to decide issues relating to his personal liberty.”*

The Supreme Court as earlier stated, in a unanimous ruling granted the application and disqualified the concerned Justices of the Supreme Court from hearing all matters affecting **Chief M. K. O. Abiola**. Unfortunate as the application was because of its implication on the applicant’s freedom, the Supreme Court was courageous and acted in accord with all known rules of fair hearing in civilized societies. The lesson to be learnt from this ruling of the Supreme Court is that the Supreme Court did not adopt a subjective test and did not exhibit any trait of desperation in wanting to adjudicate on the matters at all cost. This would be better appreciated if it is recalled that as the highest Court of the land, any contrary decision would have been final and binding on all parties.

Equally important is the fact that the Supreme Court did not tenaciously hold

unto corporate veil and distinction between Chief M. K. O. Abiola and Concord Press Limited to vest itself with jurisdiction. All other Courts therefore have a great deal of lesson to learn from this all important ruling of the apex Court. One cannot but agree with J. D. Ogundere *In his book<sup>10</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 Judge, or if he is a judge, decline to take the case in a note to his Chief Judge, on the grounds of previous knowledge of it or simply personal grounds.”

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

### **JUSTICE ACCORDING TO LAW**

A Judge 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 judge 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 judge should then proceed to apply the law to the fact demonstrated before him by evidence. It also follows that a judge 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>11</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 judge 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 judge 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 if the advocate plays an honourable and necessary role".*

A judge 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 judge 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>12</sup>, the court warned against the practice by which a court would legislate on settled and unam provisions of the law in the same case JSC at page 597 in the report observed thus:

*"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 entitle to repeal or revoke laws ostensibly based upon notion 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 ff 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 this 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 judge to dispense justice according to law is that a judge should be careful to prevent the introduction of sentiments into judicial deliberations. In the case of **State vs Bassey**.<sup>13</sup> Onu JSC commented as follows on the relationship between law and sentiments.

*“Sentiment command no place in judicial deliberations, for if it did the task of the courts would be infinitely more difficult and less beneficial to society.”*

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 per Muhammad J. C. A.**

A judge 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 judge must continuously be mindful of the fact that in adjudicating, he is not 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 judge 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 judge 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 judge should therefore accord priority attention to prompt dispensation of justice. We shall endeavour to proffer some suggestions on how a judge could accomplish the target of prompt justice. On the part of the judge, he must ensure that he sits regularly. It does not speak well of a judge not to sit on working and juridical days. The judge 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 9am.

A judge 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 judge 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 judge 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 judge 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 judge 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 judge 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 judge should not condone unwarranted application for adjournment. Fortunately, a decision on an application for adjournment is one that is absolutely at the judge's discretion which discretion is sparingly interfered with by superior courts. The only *caveat* here is that a judge should exercise his discretion judicially and judiciously. That is, the judge should exercise the discretion in the overall interest of justice. Once a judge 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 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. 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>15</sup> A judge 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 judge should give priority attention to part heard matters rather than opening new matter which the judge may not be able to conclude either before transfer or other imminent factor.

It is our further submission that a judge should bear in mind that under the constitution, there is a timeframe for delivery of judgment. He must therefore strive to comply with this constitutional stipulation as contained in section 294 (1) of the 199 Constitution. The Judge should also by virtue of the enabling provisions of applicable law encourage amicable resolution of disputes by parties. A judge 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>16</sup> the Supreme Court stated thus in connection with speedy trial, per **Olatawura JSC:**

*"The Judges 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 p/am 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”***

See also *Obeta vs Okpe*<sup>17</sup> where points to the same effect were made by the Court.

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

The common man and indeed the entire Nigerian populace expect a Judge 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 Judge'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 judge, 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 judge 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 judge should equally be mindful of his utterances in court, lest the impression of partiality be given. The judge 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 judge should sit regularly and promptly. Where a judge 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 judge come 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 sifting of the court. A Judge 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 judge but the state's authority which he personified. A judge 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 judge 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 judge 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 judge in the courtroom will be incomplete without a consideration of the power of a judge 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:

\* contempt committed in the face of the court otherwise known as "*in fade curiae*" or "*coramjudice*" and

\* Contempt committed outside of the court otherwise called "*ex fade 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 judge 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 judge 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 judge 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 judge 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 judge can dispense real justice in the circumstances. See *Okoya vs. Santili*<sup>18</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 judge 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 judge 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 him loose his self control and his appreciation of the correct method or procedure. See: *Fawehinmi vs State*<sup>19</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>20</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 extraordinary 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.*

We may now advert to the case of ***Joseph Orakwue Izuora vs The Queen***<sup>21</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 judge 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 55 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 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 judge 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>22</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 property 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>23</sup> where similar statement of the law were made by the court.

Lord Denning while summing up the various highlighted qualities in his work: **The Family Story**<sup>24</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 judge - 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.”

## **INCORRUPTIBLE ADJUDICATOR**

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

The advantage could be monetary, promotion, sexual or in any other form. A corrupt judge is a morally bankrupt judge. He is a dishonest judge and an indecent creature of the Almighty God.

It should be borne in mind that upon appointment, an oath is administered on a judge 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 judge 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 judge corrupted. A judge is expected to observe to the letter the code of conduct for judges. It should be noted that judges 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

*Delay in the Administration of Justice at the Magistrate Court* 36 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** " where his Lordship said: <sup>25</sup>

*"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 judge. For a corrupt judge 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.”*

Speaking at the Court of Appeal annual conference on **16<sup>th</sup> December, 1993, Honourable Justice Okay Achike**, Justice of the Court of Appeal (as he then was and of blessed memory) delivering a paper on the topic **“Administration of Justice under the Military”** commented as follows concerning a corrupt judge:

*“.....while an incompetent judge is a misfit, a corrupt judge is a disgrace to his peers and a curse to our noble profession.”*

Therefore, a Judge 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. 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 judge should never accept gifts from litigants, their friends or relations before, or *after* he has tried their case because a judge’s habit *can* never be hidden. The character of a corrupt Judge 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>26</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 Judge 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 Judge 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 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 judge 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 Judges 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 judge decides cases before him in line with his own understanding governed by his conscience. It should be borne in mind that the constitution of Federal Republic of Nigeria, 1999 in clear terms vests 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 judge to fail to utilize fully this constitutional provision. A judge 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 judge 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 Court room.

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 judges 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 courtrooms that serve as magistrate courts will reveal the state of dilapidation of the system. Courtrooms 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.

## **COMPLAINTS/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 play 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.

## **INEFFICIENT PROSECUTION**

Various calls had been made that only legally qualified persons should be allowed to prosecute cases before the magistrate courts.

Many policemen that prosecute before these courts, are not versed in procedure with the attendant problem of delays and loss of otherwise good cases. The prevalent allegations of corruption against these non lawyer prosecutors is also a source of worry.

## **LAW ENFORCMENT AGENTS**

One sour area of our administration of justice is the inefficient and corrupt prone Law enforcement agencies. There is apparent lack of the will power to do that which is right in most cases by these agents. Matters that ought not to be subject of criminal investigations, are pursued and pushed to the magistrate courts. It takes undue long time for case files to be duplicated and when it is done, it is another battle sending same to the Director of Public Prosecution for advice. Sometime, when the advice is sent, it may be suppressed if it does not accord with the pre-determined expectation of the agency. Many a time, these agencies are used to settle personal scores and in the process, the magistrate courts are inundated with frivolous charges.

We must advert to the issue of lack of the wherewithal with which the agencies are to conduct investigations even in deserving cases. Most complainants will attest to the fact that,



if these agents have to travel in the course of an investigation, the complainant will have to provide means of transportation. When you interact with these agencies, you will appreciate that many of the investigators need comprehensive training on investigation. The many unresolved serious criminal cases that are in the news, attest to this lack of proper investigative ability. The situation is not helped by the apathy of the citizens borne out of fear or non challenge.

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**

### **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 courtrooms, 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.

### **WELFARE OF THE MAGISTRATES**

A work force that is not properly motivated cannot give its best. The provisions of good official cars, furnished accommodation, adequate security and conducive environment, for magistrates are 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. Given the present day reality

of our economy and high rate of inflation, the least paid magistrate should not earn less than ***N150,000.00 per month***, tax free. 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**

The various states governments should urgently embark on the reform of all laws and rules that deal with the magistrate courts. 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.

## **EFFICIENT PROSECUTION**

It is strongly canvassed that prosecution in the magistrates courts should be undertaken by only legally trained persons. From available statistics, we now have enough lawyers in the country to make this a success, if implemented. This will not only promote better delivery of justice, the unwholesome practices associated with non lawyer prosecutors will be eradicated because a lawyer will be well aware that the profession will discipline him for unethical practices.

This is an appropriate point to appeal to lawyers to see themselves as true officers of the court and not as partisans. The unnecessary delays caused by asking for frivolous adjournments, especially in criminal matters has done more harm to the negative perception of the law and justice by the common man. We all have the duty and responsibility to make law serve the society, in order to enable the society continue to respect not only the law but our profession.

## 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 decidendi* 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.

## 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 judges 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 complainants, 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.