THE NIGERIAN JUDICIARY AS THE PROTECTOR OF DEMOCRACY:

BEING A PAPER PRESENTED

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INTRODUCTION

Nigeria has had a chequered history of democracy. For a country that, one way or the other, began having encounters with elections since 1922, it is somewhat ironic or paradoxical that we should still be agonizing over democratic praxis, especially the modalities of selecting our public office holders, the extent and powers of each arm of government, the strict observance of the rule of law, protection of fundamental rights and the operation and interpretation of the constitution. Accordingly, we should not stop trying to reform or improve the democratic values and principles in respect of which we seem to have demonstrated a rather steep learning curve. Besides, as apologists of our inadequacies would be quick to remind us, Rome was not built in a day, more so as there is not even one universally applicable democratic model. Our answer to that is that it did not take a life time either to build Rome.

Nonetheless, we have to admit that the long incursion by the military into the political landscape has left an indelible imprint on our national consciousness, so much so that, we seem to have developed reflexes symptomatic of a high tolerance level for arbitrariness and misuse of power by those in control of state apparatus. This has contributed, in no small measure, to the emasculation of our democracy and retarded the growth and development of the democratic ideal in this country. The only nationally acknowledged formidable force sustaining our nascent democracy from total collapse and irretrievable disintegration remains the Judiciary.

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It is a fact that democracy and judiciary, as political concepts, have assumed such notorious popularity and wide acceptability that one is tempted not to bother with definition of same, as it could be safely assumed that everybody understands what they connote. However, for their centrality to the topic of discussion and in order to put this paper in proper perspective, it is imperative to give a brief idea of the two major concepts of discussion and the relationship between them.

CONCEPT OF DEMOCRACY

Like all other legal concepts, it is difficult to come to a zero sum definition of a legal concept because words have meanings within the context of their usage. In Law, there is no definition to end all definitions. Definitions are results of prejudice, bias, and world view of concerned authors. Notwithstanding the imperfections, we must at least attempt to define the concept and conceptualize our discussion.

Generally speaking, democracy is a form of government in which citizens in a state have political investment of political participation and trust. **Zach-Williams**[2] posits that democracy has to do with ability of the people to control decision making process. It is a form of government that is responsive, responsible and guarantees to the citizens, the inalienable rights of freedom of choice, freedom of association, right to shelter, freedom from discrimination, right to clothing and unqualified respect for the rule of Law. This is a form of government that connotes collective participation and anti thesis to despotism, tyranny and totalitarianism. On the whole, democracy according to **Abraham Lincoln** is the government of the people, by the people, and for the people.[3]

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[2]Zack-Williams, A.B. (2001) "No Democracy, No Development: Reflections on Democracy & Development in Africa". Review of African Political Economy Vol. 28 (88), pp. 213-223.

Abraham Lincoln's definition appears to be widely acceptable, being a form of government of the people, by the people and for the people in which all citizens have equal say in the decisions that affect their lives. Ideally, this includes equal (and more or less direct) participation in the proposal, development and passage of legislation into law. It can also encompass social, economic and cultural conditions that enable the free and equal practice of political self-determination. The term dates back to the middle of the 5th-4th century BC to denote the political systems then existing in some Greek city-states, notably Athens following a popular uprising in 508 BC. It comes from the Greek word: (dēmokratía) "rule of the people", which was coined from (dêmos) "people" and (Kratos) "power".[4]

THE JUDICIARY

The word **"Judiciary"** has been defined as the court system of a country. It is the branch of Government vested with the judicial powers. It is generally regarded as the third arm of government. The function of the judiciary is the interpretation of the laws enacted by the legislature. While the legislature is responsible for making laws and the executive is charged with the implementation of such law, the judiciary is responsible for the interpretation of such laws in accordance with the provisions of the constitution. In line with the doctrine of separation of powers, which is a cardinal feature of a democratic system, the Nigerian Constitution guarantees the independence of the judiciary. By virtue of Section 6(6) of the Constitution of the Federal Republic of Nigeria, 1999, (as amended), the Judiciary is vested with the power, authority and jurisdiction to adjudicate on all matters between citizens inter se, citizens and government and government against government.

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[3]Wahab Egbewole:" Election Petitions and Peaceful Resolution of Electoral Disputes in Nigeria: Prospects and Challenges" delivered at the International Conference of the Society for Peace Studies and Practice, held in Minna, Niger State, between 29-31" March 2010.
[4]Wikipedia Entry: Democracy

This responsibility Is daunting and awesome. Judges hold justice in trust for God Who is the ultimate Judge. Justice is so central to man as well as to democratic norms and governance.

Pursuant to the above provision, of our Constitution, the Courts recognized as constituting the judiciary are the Supreme Court, the Court of Appeal, the Federal High Court, the High Court of the Federal Capital Territory Abuja, the Customary Court of Appeal, Abuja, the States High Courts, the Sharia Court of Appeal of the States, National Industrial Court, and the Customary Court of Appeal of the states. These courts are vested with the functions or duties of dispensing justice, in accordance with jurisdiction vested in them."

JUDICIARY AND DEMOCRACY

From the inception of the Yaradua/Jonathan administration Nigerians have begun to reap some of the benefits associated with the democratic process, such as the true meaning of separation of powers and respect for the rule of law. The recent amicable resolution of the "Ettegate" scandal by the National assembly without outside interference and the unrestrained enforcement of judicial decisions is a case in point. Hopefully, Nigerians will come to the realisation that political positions are not family heirlooms and the judiciary is not an appendage of either the executive or Legislative arms of government.

As one of the biggest beneficiaries of the return of democracy in Nigeria, the courts, armed with a presidential declaration to respect the independence of the other arms of government (a promise which the administration has so far largely honoured),[6] have unleashed their powers especially on the political sector.

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[5]It should be noted that the establishment of a Sharia Court of Appeal or Customary Court of Appeal by a state is optional.

In the last few years, the courts have launched a giant stride and stabilized the Nigerian democracy by delivering some landmark decisions on the election petitions enthroning new regimes. Some years back, this would have been unimaginable for Nigeria; a country plagued by corruption in all sectors and at all levels of government, where politicians paraded mediocre and neophytes as experts and take absolute delight in what appears to be a self induced coma. So far, the decisions that have emanated from the courts, with respect to the penultimate general elections and its outcome, have taken many by surprise. No doubt, these decisions have had profound effects on the people's psyche and are likely to reverberate for years to come.

As time went by, the people anxiously awaited the day of reckoning which came in an unexpected fashion, as the courts, including the electoral tribunals gradually woke up.

Today, the people's faiths in some of Nigeria's institutions, not just the courts, are being restored. Confidence is slowly being ingrained while apathy turns to hope; thanks in large to a vibrant judiciary. So far the courts' decisions convey the semblance of fairness, impartiality and independence as is expected of this branch of government. Now, most Nigerians can unequivocally say that justice is blind and a respecter of no one. If this trend continues, the people are more likely to feel connected to their country and participate in its affairs, including the electoral process. On the other hand politicians and political leaders will be disinclined to ridiculing the system.

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[6]Osa lyinbo; “the judiciary and Democracy in Nigeria: Unfettered Power” http://findarticles.com.

THE JUDICIARY'S PROTECTIVE ROLE IN NIGERIA'S DEMOCRACY

An independent judiciary is universally acknowledged as one of the most defining and definitive features of a functional democracy. Many, in fact, see it as an essential bulwark against abuse of power, authoritarianism and arbitrariness. How it functions as well as how the various stakeholders in a democratic government appropriate its interventions and role in the polity, are critical indicators of the health or otherwise of a democracy. There seems to be nowhere in the world presently, where this reality is more apt as it is in Nigeria, one of the world's largest democracies with a population of over 160 million people. A big thanks to the judiciary, the last hope of the common man, and democracy in Nigeria is taking a strong foothold.

Nurturing Electioneering Process

Nigeria has had its own fair share of elections and electioneering since its independence on 1st October 1960, including the 1964 federal elections and the western region parliamentary elections of 1965. The elections were characterized by a number of irregularities, as a result of which the judiciary was unwittingly drawn into the political arena, as can be deduced from the expression of Hon. Justice Oyemade:

"I will not allow myself to be intimidated into sending innocent persons to jail. Even if this means losing my job, I am sure of leading a decent life. The only thing we have now in this country is judiciary. We have seen politicians changing from one policy to another, but the only protection the ordinary people have against all these inconsistencies is a fearless and upright judiciary"

The fourth republic has been stable for about Twelve years now. The credit for this stability is as a result of the resilience of Nigerians and the noble role of the judiciary in resolving some of the volatile disputes arising from the electoral process. It has been acknowledged that the Nigerian judiciary took up the challenge of saving our nascent democracy from collapse, by reasons of unbridled attacks unleashed on it by undemocratic forces.

The judiciary came to the limelight as a major force to reckon with for the protection and stabilisation of democracy ever since the first major hotly contested election petition in Nigeria, in the celebrated case of **Awolowo VS Shagari**[8], where Chief Obafemi Awolowo, who lost out at the general election held on 11th August 1979, filed a petition against Alh. Shehu Shagari, who was declared the winner of that election. The main issue in contention in that case was the correct interpretation of section 34(2) of Electoral Act 1977 to the effect that before a person can be declared as haven won an election he must have "not less than one-quarter of all the votes cast at the election in each of at least two-third of all of the states within the federation".

The majority decision of the Supreme Court upheld the election of Alh. Shehu Shagari has having won in 12 2/3 of 19 states as against the argument of Chief Obafemi Awolowo that Alh. Shagari, to be elected, must win in 13 states of the Federation. Though the decision of the Supreme Court generated a lot of criticism and comments, some complimentary, some adverse, even bordering on sarcasm and emotional expressions of diffidence on the integrity of the judicial system[9]. Whatever is said about that decision, it is to the credit of the judiciary that stabilised the polity by making it possible for the transition from the protracted military imbroglio to the civilian rule which was much awaited and fought for at that time. It also saved the country of the possibility of conducting a fresh election, with the attendant financial and material costs and which would have portrayed Nigeria as unserious in the international area.

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[7]See Egbewole, supra note 3 at page 6.
[8](1979) 12 NSCC 87

Furthermore it is to the credit of the judiciary that the petition was concluded before the swearing-in of the president, which appears to be the main challenge to election petitions in Nigeria today. The judiciary was again the saving grace in restoring peace to the polity during the Akin **Omoboriowo vs. Ajasin**[10] imbroglio in the then Ondo State. Chief Akin Omoboriowo was a Nigerian lawyer and politician who was Deputy Governor of Ondo State, later, switching parties, he contested the gubernatorial election in Ondo State and was declared the Governor of Ondo State by the then Federal Electoral Commission during the Nigerian Second Republic. The announcement of Omoboriowo as the winner on **16 August 1983** sparked massive riots. His election was challenged before the election tribunal and again it took the uprightness of the judiciary in the face of daunting political challenges to nullify Omoboriowo's return and declared Ajasin as the rightful winner of that election.

Most recently, the judiciary recorded a major triumph when the Supreme Court gave a momentous judgement where it affirmed that the gubernatorial candidate voted for by the electorates, in the oil rich Rivers State in the Niger Delta region during the last general elections, was Hon. Rotimi Amaechi, former Speaker of the State House of Assembly and not Sir Celestine Omehia. It further directed that Amaechi "be sworn in immediately"[11].

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[9]Dr George Inyang; "Nigerian Democracy and The test of Her Judiciary's Independence", http://www.nigerdeltacongress.com

[10] (1984) 1 SCLNR 108

After many decades of ruinous and, by many accounts, the most rapacious military rule in modern history, Nigeria witnessed a transition to civil rule in 1999. Arguably it was well stage-managed to favour the overbearing interests of the retreating military establishment, given that it resulted in the emergence of Chief Olusegun Obasanjo, himself a former military dictator, as the new president via an electoral process that had all the trappings of a high level military manoeuvrings. Thus began in earnest Nigeria's third attempt at full blown constitutional democratic experiment, following the botched experiences of 1966 and 1983, all by the military.

However, with a combination of an agitated local populace, that has also become evidently disenchanted and disillusioned with military rule, as well as an international system that seems more predisposed to the spread, institutionalization and nurturing of democratic values across the world (following the collapse of communism), Nigeria's latest attempt at democratic rule was destined, as it seems, to endure and grow by any means necessary.

However, of the three arms of government in post military rule Nigeria, the one that looks more "institutionalized" to carry the tottering weight of the other two, almost made incapable by years of military rule, is the judiciary. Though, it too had been a victim of the systemic and systematic abuse, orchestrated by the military in the Nigerian polity. This however did not vitiate the fact that as at 1999, the judiciary, as weakened and disenabled as it was, had more capacity to function in the emerging democratic Nigeria. Many commentators and analysts on Nigeria since 1999, have had to express an almost unanimous view that the actions, posturings and predilections of not a few Nigerian political office holders have been anything but democratic. There was also an overwhelming optimism in some quarters that democracy being a process and journey and not

[11](2008) 5 NWLR (pt. 1080) 227

necessarily a destination, its continued experimentation would likely result to some semblance of perfection and orderliness. But, as optimistic as many have been, Nigerian politicians seem more distinct for their peculiar enthusiasm to subvert known democratic principles and values.

As it were, the expectations of many a Nigerian, were that the only institution well primed and positioned to save the Nigerian political class from committing hara-kiri that could endanger the democratic experiment was the judiciary. Expectedly, this is what the judiciary has just being doing especially since after the last 2007 General Elections. The first judicial intervention post 2007 elections was the judgement on Anambra State. The shambolic election of Andy Uba, was nullified on the ground that there was no need for an election ab initio, given the tenure of Peter Obi. He was sworn in as governor in 2006 after a protracted legal battle to claim his mandate from Chris Ngige, and that he had not exhausted his four years tenure as at the time it was held[12]. With that judgement, ended what many averred was the greatest rape on democracy in Nigeria where an individual was practically assured of electoral victory even before the vote was cast.

The judiciary has variously played protective role in Nigeria's democracy through declaration of landmark judgements that tended to put aright, the many undoing and undemocratic actions of Nigerian politicians as well as go a long way in reassuring the citizens of the prospects and sustainability of democracy in the country.

[12] See the case of Ngige vs Obi (2009) 14 NWLR (pt. 999) 1

So far, beside the nullification of the election of Celestine Omehia in Rivers State by the apex court, election petition tribunals across the country have set aside the election of two governors in Kogi state on the premise that the electoral body, INEC unconstitutionally and illegally barred the opposing candidate from contesting the elections [13]. In voiding the election in the state, the judiciary displayed steely courage, wisdom and fair play. Earlier, it had, through the Supreme Court, declared as illegal and invalid the substitution and replacement of Senator Ifeanyi Ararume as the governorship candidate of the Peoples Democratic Party in Imo state [14].

Of particular note and equal importance was the manifestations of judicial activism exhibited by the judiciary in its protective role of democracy in the case **Fayemi vs. Oni**[15] where, in spite of all the frustrating shenanigans of the incumbent governor to retain power by all means, as demonstrated by the various forms of electoral malpractices that bedevilled the re-run election initially ordered by the court. The forcing of the Ekiti State electoral commissioner to announce the concocted re-run election result which she had initially declined to announce. The judiciary had remained steadfast and focused in ensuring that justice was also done in consonance with the wishes and aspirations of the people in the face of serious temptations and pressures from various quarters. Similar scenarios played themselves out in the cases of **Agagu vs. Mimiko**[16] and **Oshiomole vs. INEC**[17] and justice done against all odds. This has by no small measure consolidated the people's hope in the judiciary as a bastion of hope and the mainframe upon which the Nigerian emerging democracy stands.

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[13] See the case of Idris vs ANPP (2008) 8 NWLR (pt. 1088) 1
[14] Ararume vs INEC (2007) 9 NWLR (pt. 1038) 127
[15](2009) ALL FWLR (pt. 493) 1254, (2010) 17 NWLR (pt. 1222) 326
[16]Agagu vs Mimiko (2009) 7 NWLR (pt. 1140)
[17]INEC vs Oshiomale (2009) 4 NWLR (pt. 1132) 607

UPHOLDING RULE OF LAW

The centrality of the judiciary in the scheme of democracy is manifestly acknowledged where and when there is a deeply ingrained tradition of fidelity to the rule of law. Even decisions of inferior courts remain the law until set aside by a higher court. Where and when there is a consensus on the rule of law, everyone quite easily comes to terms with the vibrant role of the judiciary. Failure by misguided elements to pay credence to the overarching role of the courts, more often than not, leads to a state of anarchy or lawlessness, with cataclysmic consequences for the entire polity. The reason for this is obvious: rule of law is the glue that holds society together and when this fact is ignored, the tendency is for a reversion to the state of nature.

Yet, it hardly needs emphasis that the interests of a developing country, such as ours, are better served by untrammelled and unwavering commitment to the rule of law. General acceptance of the strictures of due process rather than a descent into arbitrariness and self-help. The more people avail themselves of the judicial process, the brighter the prospects for democratic governance, social stability and general well-being of the polity.

Obaseki, JSC seemed to have been peeved, by our penchant to abuse the rule of law, when he said:

"In the area where rule of law operates, the rule of self help by force is abandoned. Nigeria being one of the countries in the world even in the third world which proclaim loudly to follow the rule of law, there is no room for the rule of self help by force to operate. Once a dispute has arisen between a person and the government or authority and the dispute has been brought before the court, thereby invoking the judicial powers of the state, it is the duty of the government to allow the law to take its course or allow the legal and judicial process to run its full course. The action the Lagos State Government took can have no other interpretation than the show of intention to pre-empt the decision of the court.

The courts expect the utmost respect of the law from the government itself which rule by law."

In **Obeya Memorial Hospital v. Attorney General of the Federation & Ors.**[18], the Supreme Court pointedly and roundly stood up in defence of the rule of law. The court held, inter alia:

"... the seizure of the hospital buildings by heavily armed army and air force personnel from unarmed law abiding citizens should not be encouraged or applauded in a democratic society such as ours where the Rule of Law reigns. It is more honourable to follow the due process of law. It is also more respectful and more rewarding to follow such a course ..."

PROTECTION OF FUNDAMENTAL RIGHTS

Another notable feature of democracy is the protection and preservation of fundamental human rights. Happilly, the judiciary plays a more important role than any other form of individual, group or arm of government in this connection. In a line of authorities which include **Ogugu v. State[19], Oshevire v. British Caledonian Airways Ltd. [20], Kuti v. A_G Federation[21], Agbakoba v. Director SS5[22], Director of SSS v. Agbakoba[23], Fawehinmi v. Abacha[24], Abacha v. Fawehinmi[25], Umoh v. The State [26],** the Judiciary has demonstrated its resolve to enthrone democratic values in the system.

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[18](1987) 10 NWLR (pt. 60) 325 @ 343.
[19](1994) 9 NWLR (pt. 336) 20

The judiciary is not resting. Recently in **AG Abia v. AG Federation**[27], the Supreme Court, per Musdapher JSC graphically summarized the functions, duties, powers and jurisdiction of the judiciary in a democratic setup like ours, where the Executive is always inclined to act brashly, arbitrarily and in a self-seeking manner as follows:

"The judiciary especially the Supreme Court in particular, is an essential integral arm in the governance of the nation. It is the guardian of the Constitution charged with the sacred responsibility of dispensing justice for the purposes of safe guarding and protecting the Constitution and its goals. The judiciary, when properly invoked, has a fundamental role to play in the structure of governance by checking the activities of the other organs of government and thereby promoting good governance, respect for individual rights and fundamental liberties and also ensuring the achievement of the goals of the Constitution and not allow the defeat of such good goals and intendments. It is the duty of the Court to keep the government faithful to the goals of democracy, good governance for the benefit of the citizens as demanded by the Constitution.

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[20] (1990) 7 NWLR (pt. 63) 507
[21] (1985) 6 SC 246
[22](1993) 7 NWLR (pt. 305) 353
[23] (1999) 3 NWLR (pt. 595) 314
[24] (1996) 7 NWLR (pt. 475) 710
[25] (2000) 16 NWLR (pt. 660) 228
[26] (2001) 6 WRN 48
[27] (2006) 16 NWLR (pt. 1005) 265 at 454

The Supreme Court has the sacred duty to translate into actuality the noble ideas expressed in the basic law, give flesh and blood, in fact life, to the abstract concepts of freedom, liberty, transparency, a society free from corruption, abuse of power and all the noble goals articulated and reiterated in the Constitution."

It is noteworthy that the Nigerian judiciary is at the vanguard of our dream renaissance. As the harbinger of hope and repository of trust and confidence, the judiciary, through the judex, has worked assiduously in ensuring that Nigeria's nascent democracy is rooted in the rule of law. In short, the apex court's pronouncements on the anti-corruption case recently has demonstrated that the judiciary, as an arm of government, is indeed sensitive to the issue of corruption. In that case, **AG Ondo State v. AG Federation & 35 Ors.**[28], the apex court, per Katsina-Alu, JSC opined thus:

"Corrupt practices and abuse of power spread across and eat into every segment of the society. These vices are not limited only to certain sections of the society. It is lame argument to say that private individuals or persons do not corrupt officials or get them to abuse their powers. It is good sense that everyone involved in corrupt practices and abuse of power should be made to face the law in our effort to eradicate this cankerworm."

[28] (2002) 9 NWLR (pt772) 222 at 364

At pages 337-339, Ogwuegbu, JSC stated that:

"Corrupt practices and abuse of power can, if not checked, threaten the peace, order and good government of the federation or any part thereof I must also point out that all Nigerians, except perhaps those who benefit from it, are unhappy with the level of corruption in the country. The main opposition to the ICPC Act is, I believe, borne out of fear and suspicion."

On his part, Mohammed, JSC opined thus:

"It is quite plain that the issue of corruption in Nigerian Society has gone beyond our borders. It is no more a local affair. It is a national malaise which must be tackled by the Government of the Federal Republic. The disastrous consequences of the evil practice of corruption have taken this nation into the list of the most corrupt nations on earth."

Equally, our courts have been applauded in their decisions in array of cases notably, **A-G Abia State & Ors. v. A-G Federation** [29] (popularly known as the tenure of local governments' case), **A-G Federation v. A G Abia State & Ors**[30], (popularly known as the Resource Control case) etc.

These cases have demonstrated, in no uncertain terms, that in so far as the interpretation of the constitution and all laws in the land is concerned, the courts have the final say. See also **A-G Lagos v. A-G Federation**[31] (otherwise known as the Statutory Allocation case).

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[29](2002) 6 NWLR (pt 763) 264
[30](2002) 6 NWLR (674) 755

Of all the three arms of government, the judiciary in Nigeria has remained the most disciplined, sober, reflective, diligent, patriotic, committed to the goal of democracy and, indeed, it is the glue that is holding Nigeria together. It has always agitated peoples' mind whether politicians are indeed interested in democracy or in nurturing it, as a result of their peculiar behavioural pattern, nuances, mischief and misdemeanour, all of which, more often than not, oscillate between the sublime and the ridiculous. But thank God for the judiciary that has stood on guard for Nigeria and Nigerians on one hand and the preservation of Nigeria's nascent democracy on the other hand.

The pre-eminence of the judiciary in the protection of democratic values is further illustrated by reference to the mad spate of impeachment of Chief Executives at State level that took place under the Presidency of Chief that was Obasanjo characterized by the brazen show of legislating lawlessness. Governors Rashidi Ladoja of Oyo State, Joshua Dariye of Plateau State and Peter Obi of Anambra State were removed from office in flagrant and arrogant breach of the clear provisions of the Constitution, as contained in Section 188 to the effect that certain mandatory and peremptory conditions must be fulfilled by the Legislature before a Governor can be impeached/removed. Hitherto, there was this understandable constitutional position being parroted by lawyers all over the country that impeachment of a Governor or any Chief Executive of a State is a political matter constituting a no-go-area to Judges, wrongly citing the case of **Balarabe Musa v. Hamza[32].**

[31](2004) 18 NWLR (pt. 904) 1

Fortunately enough, the ghost of that decision, which has wrongly haunted our legal system since 1982 has now been crushed in the recent decisions in **Adeleke v. O.S.H.A**[33]. and **Balonwu v. Obi**[34]. See also **Inakoju v. Adelekes**[35] where the Supreme Court affirmed the decision of the Court of Appeal which set aside the laughable impeachment of Governor Rashidi Ladoja. The illuminating contribution of Musdapher JSC at pages 669-670 in relation to how the Judiciary must inquire into impeachment proceedings and procedure which patently and latently are outside the confines, stipulations and expectations of the constitution is worth reproducing:

"The principle of separation of powers under the Constitution is meant to guarantee good governance and development and to prevent abuse of power. A writer, Montesquieu once said, 'political liberty is to be found only when there is no abuse of power. But constant experience shows every man invested with powers is liable to abuse it, and carry his authority as far as it will go.' In this wise, impeachment has come to be recognized as one of the legitimate means by which a Governor or Deputy Governor, President or Vice President can be removed from office for an impeachable offence. The meaning of 'gross misconduct' as contained in the Constitution in relation to impeachment proceedings is whatever the legislature deems 'gross misconduct'. This clearly, is very nebulous, fluid and subject to potentially gross abuse and is also potentially dangerous at this point of our national or political life. That is why the legislature should strictly comply with all the other provisions as contained under section 188. Failure to comply with any one of them will render the whole exercise unconstitutional, null and void and any purported impeachment or removal will be declared improper by the courts.

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[32](1982) 3 NCLR 229. See also Wole Olanipekun; The Role of Judiciary in the Sustenance of democracy in
Nigeria, http://www.naijaplus.com
[33](2006) 16 NWLR (pt. 1006) 608
[34](2007) 3 NWLR (pt. 1028) 488
[35](2007) 3 NWLR (pt. 1025) 423

As mentioned above, whether 'gross misconduct' is sufficient to warrant the removal of a Governor is apparently a political question and what tantamount to it is within the discretion of the legislature. In their legislative functions, including deciding whether a conduct amounts to an impeachable offence, the legislature is bound by the other provisions of the Constitution. In my view, the legislature must act in a responsible and civilized manner, whenever it considers whether a conduct amounts to 'gross misconduct'. The offending conduct must be in my view at least breach of the code of conduct contained in the Constitution. It is not every conduct that the legislature deems impeachable that is impeachable, the courts have the jurisdiction to examine whether a conduct amounts to gross misconduct or there is indeed a breach of the Constitution.

In any event, even if one concedes that the question of what is tantamount to 'gross misconduct', and whether such 'gross misconduct' is sufficient to warrant the removal of an elected Governor or Deputy Governor, is 'a political question, because the constitution expressly commits to the legislature the prerogative of determining that question, all the same, this does not justify complete denial of judicial review in respect of the entire impeachment or removal process."

Earlier on in the lead judgment, Niki Tobi, JSC has succinctly put forth what Legislators are and what a Legislative House is, when the Noble Law Lord held thus:

"In Akintola v. Aderemi (1962) ALL NLR 442 at 443, (1962)2 SCNLR 139, it was held that anything done outside the House of Assembly to remove the Governor of the old Western Region was/is a nullity. The Governor is elected by the people the electorate. The procedure and the proceedings leading to his removal should be available to any willing eyes. And this, the public will see watching from the gallery. It should not be a hidden affair in a hotel room.
A legislature is not a secret organization or a secret cult or fraternity where things are done in utmost secrecy in the recess of a hotel. On the contrary, a Legislature is a public institution, built mostly on public property to the glare and visibility of the public.

As a democratic Institution, operating in a democracy, the actions and inactions of a House of Assembly are subject to public judgment and public opinion. The public nature and content off the Legislature is emphasized by the gallery whose members of the public sit to watch the proceedings... I do not think proceedlings for the removal of a Governor should be hidden from the public."

The Court of Appeal in the **Obi and Dariye's cases** followed their earlier decision in the **Inakoju case** as affirmed by the Supreme Court. But what fascinates one more in the judgment of the Court of Appeal in **Balonwu v. Obi**[36] is the admonition of Denton-West, JCA on pages 561-562 on the attributes of good leadership which can sustain a democracy. Hear what the Appellate Justice said:

"We lack good leadership in our body politic. A good leader is someone who is able to lead and has the ability to influence his people positively to attain and achieve greater heights for the good of humanity. A good leader is selfless and has only the interest of the people he is leading at heart. A leader's action always has a rippling effect on the society. The leadership's wrong actions can destroy the society and bring it to naught, whilst the acts of a good and seasoned leader could catapult our country Nigeria to the country we all dream about. It is great men and great leaders like Indira Ghandi, Roosevelt, Mrs. Thatcher, the Kennedys, the Nkrummahs, Nelson Mandela that have made their country the pride with which we all adorn their country.

[36](20007) 5 NWLR (p.1028) 488

These men were all people of great standing who acquired the moral right to lead their people and as much as possible they kept to this moral right and immediately a leader loses this moral right, he ceases to be a leader. A good leader should adhere to law and observe same.
Leaders cannot exist without followership and so everyone must observe the Constitution and obey State authorities, because no authority exists without God's permission, and the existing authorities have been put in place by God who had allowed them to swear to an oath to uphold the Constitution. Therefore the followership should endeavour not to oppose the existing authority for whoever opposes them unduly has himself to face the wrath of the law. Therefore I enjoin the followership to love their leaders and pray for them to do good and they the followership should refrain from acts that is calculated to stop the smooth running of the affairs of government, so that together and in love with their leaders, a very strong and Indivisible State shall henceforth emerge where the 1999 Constitution of the Federal Republic of Nigeria shall be adhered to."

Much recently, the judiciary lived up to the expectation of Nigerians by resolving the constitutional crisis heaped on Nigeria by the former President, when he unilaterally and arbitrarily tried to attempted to remove the Vice president from office and stripped him of all rights, privileges and perquisites accruing to him by virtue of his position.
Peeved by this show of naked power and abuse of position, the then Vice President, invoked the original jurisdiction of the Court of Appeal under and by virtue of Section 239 of the Constitution to ventilate his grievance, asking the Court to make specific pronouncements on whether or not the President has any power whatsoever to remove a Vice President who was elected by Nigerians as with the President to serve a specific or definite term.

He also asked the court to pronounce on the legality or otherwise of the action of the President in attempting to arbitrarily remove him from office. In a landmark judgment delivered in that case, **Alhaji Atiku Abubakar v. Attorney General of the Federation**[37], the Court of Appeal held that a Vice President upon being elected into office by the electorate cannot be removed from office at will by the President. In the leading judgment of the Court which was read by the President of the Court of Appeal, Abdullahi, PCA, it was categorically stated at page 641 as follows:

"The President and the Vice President of the Federal Republic of Nigeria are jointly elected at a general election and the relationship between them is not that of a master and servant. In other words, the Vice President is not an employee of the President or of the political parties on whose platform they are both elected. In the instant case, the plaintiff not being an employee of the President or the political party on whose platform he was elected, he cannot be impliedly or constructively removed by either of them".

Expectedly, the Supreme Court unanimously affirmed the decision of the Court of Appeal and authenticated, with a seal of correctness, the lower court's stance that the office of the Vice President, being a creation of the Constitution, the holder of the office can only be removed in accordance with the Constitution and not at the whims or behest of a single individual, no matter how highly placed.

Happily, it is not only the appellate courts that have appreciated the pivotal role(s) played or expected of the Judiciary in enthroning or cementing democratic culture in our polity. Our various High Courts, Federal or State, have also delivered landmark judgments or rulings which in no uncertain terms have reinforced the important place of the Judiciary as a bastion of our democracy.

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[37](2007)3 NWLR (1022) 601

RECOMMENDATIONS

For the Judiciary to further function effectively and to harness its potential to the fullest, the courts must be brought to par with the dictates of modern society, equipped with both the human and material resource needed for them to function effectively. For instance, the fact that judges still write in long hand and conduct their own research is ridiculous. While the solutions may seem far-fetched and unattainable, they are not insurmountable. The government must take the initiative and look into uplifting our judicial system and its ancillary agencies from the manual to mechanical or electronic age. But as a note of caution, the government must not attempt to tackle all the problems all at once provide a one-size-fit all solution to the problems besetting this arm of government.

It is generally accepted that the courts have enormous powers, however, they are not without bounds. They are constrained to work within the framework of the Constitution and the relevant laws. While advocating for judicial independence and the provision of the necessary infrastructure that will enable it perform effectively, on their part, the courts must exercise some restraint in flexing their "newly found" powers. The Supreme Court in particular, which is often reluctant to reverse itself, must ensure that its decisions are reached, not based on expediency or judicial "activism", but on the rule of law as applied to the facts. While courts' activism are sometimes a welcome development, though some may frown at it, it should however be exercised without prejudice to legality.

As this new wave of judicial "activism" focuses on the political process, one hopes that it tricycle down to other facets of judicial determinations, including those that affect the "regular" folks. The decisions of the lower courts, the people's gateway to justice, should reflect the same independence, fairness and impartiality currently exhibited by the Nigerian Supreme Court. The courts' decision should be swift without sacrificing its major attributes of fairness and impartiality, justice should be blind to the dictates of the big and mighty, it should equally tilt in favour of those who actually deserve it, based on adherence to due process. Should this happen, the judiciary will further solidify its enviable position as the bastion of common folks and the absolute force in the protection of democracy.

We must caution that the judiciary should be wary of dancing to popular sentiment in its adjudicatory function. Trial by the media should not be condoned. Decisions of the courts must be in accordance with the facts and law.

CONCLUSION

One cannot but salute the courage, boldness and character demonstrated by the Judiciary so far, while expecting that our Judges, in all strata of the court system would continue to build upon this, with a view to churning out justice to all manner of people, irrespective of age, sex, religion, creed, ethnic or political affiliation, professional leaning or calling, etc. This should and ought to be a commandment which our Judges must keep and guard jealously. This is so because justice is not only priceless and inestimable, but also a sine-qua-non to the sustenance of democracy. After all, as posited by learned Justice Hand and quoted with approval by the late Honourable Justice Fatayi-Williams, CJN in **Senator Abraham Adesanya v. President of Nigeria**[38]:

"If we are to keep our democracy there must be one commandment: thou shall not ration justice".

The point I have struggled to make is that in its role of preserving the tenets of democracy and Rule of Law, the Judiciary must jealously guard and guide its coveted position in the scheme of things and that so far, our Judges have fared well. I still trust that in its role of checking acts of violation, breach and indiscretions on the part of the politicians, the Judiciary will continue to do more and do better.

Interestingly, even from within the walls of the souls of other arms of government, commendations, exhortations and exultations have continued to pour out to the Judiciary for its role in what we continue to describe as "our nascent democracy". For example, while swearing in four new Judges of the Delta State High Court, the former Governor of the State, Chief James

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[38](1981) 2 NCLR 358 at 373

Onanefe Ibori was quoted in the Saturday Independent newspaper of January 13, 2007 as saying that:

"The State Judiciary has proved that it is a dependable custodian and defender of our constitution. It has demonstrated that it is a strong and reliable servant of our democracy."

Arising from the foregoing, and, for what has been said in this paper, is the inescapable fact that for our democracy to survive and endure, the Judiciary must be up and doing, perform its constitutional and statutory duties without let or hindrance, either from the Executive or Legislature and must also be imbued with men and women of impeccable integrity, who command an unquestionable loyalty to the cause of justice and constitutionalism. The Judicial personnel must also possess sufficiency of learning in law and other subjects, while at the same time exercising and displaying unparalleled maturity and restraint, even in the face of provocation.

The Judiciary must be supported by a virile, learned, dutiful, courageous, diligent, articulate, honest, dogged and professional Bar which in and out of season, will be prepared to defend the Judiciary against the assaults of politicians and their ilk. The Bar must at all times call for total obedience to the judgments and orders of courts and should not collaborate or conspire with those who disobey court orders and treat them with impunity.

Against this backdrop, there is a spreading feeling of ecstasy by Nigerians that the judiciary is assuming its rightful position as the bastion of democracy in the country, the absence of which would have created a room for the continued reign of tyranny of the strong, rich and mighty. At no time in Nigeria's political history are the citizens' optimism and belief in democracy so high as now because the judiciary seems awakened to its role to, among others, checkmate the arbitrariness of politicians, highhandedness of those in power and the illegalities and brazenness of a few privileged individuals.

It incontrovertible that the appreciative and commendable protective role being played by the Judiciary has increased its relevance as a potent force in the entrenchment of democratic principles in Nigeria.

Need we say more?

Thank you all for the attention.