

CORRUPTION IN THE JUDICIARY; THE DISCIPLINARY ROLE OF THE NATIONAL JUDICIARY COUNCIL VIS-À-VIS THE LAW ENFORCEMENT AGENCIES¹

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1.1 INTRODUCTION

The current “war against corruption” has again brought up the issue of corruption in the judiciary in the fore front. The Judiciary has come under increased criticism from many Nigerians. Worthy of note is the criticism by President Muhammadu Buhari, Vice President Yemi Osibanjo(SAN), the acting chairman of the EFCC, Mr. Ibrahim Magu among others. The media war and the raid of judge’s homes have created a belief that the corruption in the judiciary is systemic and that corruption is built into the fabric of the courts system in Nigeria.

Under common law, the king himself was the first common law judge². He was the sole dispenser of justice and people revered him³. The common law principle of "rex non potest peccare," meaning "the king can do no wrong" therefore provided a complete shield against any liability against the king⁴. The king could not be said to be corrupt. After the king delegated his judicial functions to common law judges⁵, the concept of judicial immunity was birthed. This immunity under common law is however limited.

The current reality is that the king does not exercise judicial functions personally. Men and women drawn from the society exercise judicial function on behalf of the State. The judges are not kings and can therefore do wrong. The process of appointment and discipline of judges are provided for in national constitutions. Such constitutions also provide the principles that aid in the dispensation of justice. Some of these principles include qualified immunity for judges, creation of a supervisory body for judges and protection of the independence of the judiciary. The Nigerian Constitution has all these wonderful principles.

The present reality also is that the king’s powers are separated between the legislature, the judiciary and the executive. This is the principle embedded in the concept of separation of powers associated with Baron De Montesquieu, propounded in Book XI of the "Spirit of the Laws"⁶. This concept of separation of powers also admit the idea that all the arms of government have the responsibility of checking each other against excesses or abuse of power. These checks must be done in accordance with the rule of law.

The National Judicial Council (NJC) created by the Constitution has the responsibility of disciplining judges. Other law enforcement agencies have their various functions as prescribed

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²E. Malemi, *The Nigeria Legal System* (3rd Edition Princeton Publishing Co. 2009) p. 38

³E. Malemi, *The Nigeria Legal System* (3rd Edition Princeton Publishing Co. 2009) P. 38

⁴ G. W. Pugh ‘Historical Approach to the Doctrine of Sovereign Immunity’ *Louisiana Law Review* (Volume 13 Number 3 March 1953 Louisiana State University) accessed from

<http://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?article=2013&context=lalrev> on 29/04/17

⁵ It is believed that King Henry II of England systematized this legal customs through the 1166 - Assize of Clarendon. See J.P.Sommerville *Henry II and Common Law* accessed on 29/04/17 from <https://faculty.history.wisc.edu/sommerville/123/123%20104%20Common%20Law.htm>

⁶ C. V. Maduekwe *et al* ‘Judiciary And The Theory Of Separation of Powers in Achieving Sustainable Democracy in Nigeria (The Fourth Republic)’ *British Journal of Education* (Vol.4, No.8, pp.84-104, August 2016 Published by European Centre for Research Training and Development UK (www.eajournals.org)

by the Constitution or their enabling laws. These bodies are bodies under the executive arm of government. The arguments and counter arguments on the recent arrests of judges by the State Security Service have shown that it may be logical to say that the role of the NJC and other law enforcement agencies intertwine and may conflict.⁷

This presentation therefore examines:

- a. Corruption in Nigeria;
- b. Corruption in the judiciary;
- c. The role of the NJC, its functions and powers;
- d. The role and powers of some other law enforcement like the police, the Economic and Financial Crimes Commission(EFCC), the Independent Corrupt Practices Commission(ICPC) and the Department of States Security(DSS).
- e. Judicial immunity; and
- f. Analysis of the power to discipline judicial officers.

The presentation answers the constitutional question using the opinion of judges, authors, data and the practice in other jurisdictions.

1.2.CORRUPTION IN NIGERIA

Corruption is a term used to describe acts that are considered immoral, such as fraud, graft, bribery, stealing, perjury, lying, dishonesty, indiscipline, and debased act like sexual immorality or perversion. It is defined as “the non-violent criminal and illicit activity committed with objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration.”⁸

According to Transparency International, “Corruption is the abuse of entrusted power for private gain. It can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.”⁹. Grand corruption is said to destroy the operation of state for the benefit of leaders at the expense of the public¹⁰. Petty corruption is the abuse of power by low and middle level officials in dealing with the public while political corruption is “manipulation of policies, institutions and rules of procedures in the allocation of resources by decision makers who abuse their position to sustain their power, status and wealth”¹¹. Corruption is defined and perceived across a spectrum of illegal payments and transactions such as bribes, embezzlement, and money laundering among others¹².

⁷ See ‘Outrage over DSS crackdown on judges’ in *Vanguard Newspaper* of October 10, 2016 accessed from <http://www.vanguardngr.com/2016/10/outrage-over-dss-crackdown-on-judges/> on 29/04/17

⁸ D. O. Iyanda ‘Corruption: Definitions, Theories And Concepts’ *Arabian Journal of Business and Management Review (OMAN Chapter)* Vol. 2, No.4, Nov. 2012 37

⁹ Transparency International <http://www.transparency.org/what-is-corruption/#define> accessed on 29/04/17

¹⁰ Transparency International <http://www.transparency.org/what-is-corruption/#define> accessed on 29/04/17

¹¹ Transparency International <http://www.transparency.org/what-is-corruption/#define> accessed on 29/04/17

¹² *Impact of Corruption on Nigeria's Economy* <https://www.pwc.com/ng/en/assets/pdf/impact-of-corruption-on-nigerias-economy.pdf> accessed on 29/04/17

Corruption is said to be Nigeria's biggest challenge¹³. It is said to be worse than armed robbery¹⁴. Governor Ajimobi of Oyo State was quoted to have said, "Every Nigerian is corrupt"¹⁵.

An International Monetary Fund (IMF) study estimates that the impact of 1 point change in the 3 corruption index results in a 1.2 percentage point change in economic growth per annum¹⁶. In 2012 Nigeria was ranked 37th most corrupt out of 176 countries surveyed.¹⁷ In 2013, Nigeria ranked 144 out of 177 surveyed countries in terms of transparency.¹⁸ The score made Nigeria 33rd most corrupt country in the world that year. In the 2014 rating, Nigeria is ranked 136 out of 174 surveyed countries¹⁹. Nigeria was the 38th most corrupt country in the world in 2014. In the year 2015, out of the 168 countries surveyed, Nigeria was number 136²⁰. This implies that Nigeria was the 32nd most corrupt country in the world in 2015. In the 2016 rating, Nigeria is ranked 136 out of 176 surveyed countries²¹. Nigeria was the 38th most corrupt country in the world in 2014.²²

It is therefore not in doubt that there is corruption in the Nigerian system. Some researchers have attributed the high rate of corruption in Nigeria to the abundance of natural resources in the country²³.

1.3 CORRUPTION IN THE JUDICIARY

According to Justice Ayo Salami "The problem with the Nigerian judiciary is that some dishonourable people not cut out to be judges got into the system and after that made it to the highest level of their judicial careers."²⁴ Corruption in the judiciary erodes trust in the courts' impartiality, harming all the core judicial functions, such as dispute resolution, law enforcement, protection of property rights and contract enforcement.

The Olusegun Obasanjo, former Nigerian President and, Abubakar Malami(SAN), the Honourable Attorney General of the Federation had at an event in Abuja recently asked for judicial cleansing if the current war against corruption is to be won.²⁵

¹³See 'Corruption Nigerias Worst Problem –Buhari' in *The Punch Newspaper* of 12/01/17 accessed from <http://punchng.com/corruption-nigerias-worst-problem-buhari/> 12/01/17 accessed on 29/04/17

¹⁴ See 'Corrupt Government Worse than Armed Robbery – Buhari' in *Daily Post* of 19/03/2015 <http://dailypost.ng/2015/03/19/corrupt-government-worse-than-armed-robbery-buhari/> accessed on 29/04/17

¹⁵See 'Every Nigerian is Corrupt -Gov. Ajimobi' in *Sunnewsonline* of 4/08/2016 <http://sunnewsonline.com/every-nigerian-is-corrupt-gov-ajimobi/>, accessed on 29/04/17

¹⁶ *Impact of Corruption on Nigeria's Economy* <https://www.pwc.com/ng/en/assets/pdf/impact-of-corruption-on-nigerias-economy.pdf> accessed on 29/04/17

¹⁷ Transparency International accessed from <https://www.transparency.org/cpi2012/results> on 29/04/17

¹⁸ Transparency International accessed from <https://www.transparency.org/cpi2013/results> on 29/04/17

¹⁹ Transparency International accessed from <https://www.transparency.org/cpi2014/press> on 29/04/17

²⁰ Transparency International accessed from <https://www.transparency.org/cpi2015/> on 29/04/17

²¹ Transparency International accessed from <https://www.transparency.org/cpi2014/press> on 29/04/17

²² Transparency International accessed from

http://www.transparency.org/news/feature/corruption_perceptions_index_2016 on 29/04/17

²³ *Impact of Corruption on Nigeria's Economy* <https://www.pwc.com/ng/en/assets/pdf/impact-of-corruption-on-nigerias-economy.pdf> accessed on 29/04/17

²⁴See Justice Isa Ayo Salami 'Eradicating Corruption in Nigerian Judiciary' in *Sahara Reporters* <http://saharareporters.com/2015/12/04/eradicating-corruption-nigerian-judiciary-justice-isa-ayo-salami> accessed on 29/04/17

²⁵See 'Anti-Corruption War Obasanjo, Magu, Malami Others Call For Judicial Cleansing' *Nigerian Lawyer* of July 12, 2016 accessed from <http://thenigerialawyer.com/anti-corruption-war-obasanjo-magu-malami-others-call-for-judicial-cleansing/> on 29/04/17.

Governor Fayose of Ekiti State reportedly said that the judiciary is not only corrupt, but immensely compromised.²⁶ He was reported to have said this at a Church service to usher in 2015/2016 legal year in Ekiti state.²⁷ An event attended by the whole Bar and Bench in Ekiti State.

Ibrahim Magu, the acting Chairman of EFCC was reported to have said that

Nigeria's Biggest Corruption is in the Judiciary... The biggest form of corruption is not the ones you find in government offices or banks; it is not the ones that is plaguing the oil industry or pension administration. The biggest, most virulent form of corruption that ever existed is the one that has eaten deep into the fabric of the Temple of Justice.²⁸

Mr. Magu made this statement following a row between the EFCC and senior lawyers and judges where the EFCC rolled out allegations of corruption and bribery against judges.²⁹

Before the Supreme Court's decision in *Buhari v INEC & Ors*³⁰, an online news reporter Sahara Reports, published a damning story where they accused the Supreme Court Justices of collecting bribes for their decision³¹. After the judgment,³² Sahara Reporters published another story saying members of the panel who did not agree with the majority decision were the justices who could not be influenced.³³

The Bar and Bench seem to agree with some of these assertions or at least agrees that there are corrupt judges in the Nigerian Judiciary. There has been other incidences where judges are accused, rightly or wrongly of being bribed for judgments.³⁴

Fidel Albert, a legal practitioner was quoted to have said that "Corruption in the Nigerian judiciary is as filthy as the Augean stables".³⁵

²⁶See Guardian of October 25, 2015 accessed from <http://guardian.ng/news/judiciary-is-corrupt-says-fayose/> on 29/04/17

²⁷ Ibid

²⁸Corruption is Not in The Government, it is Here – Magu Reveals See <http://www.herald.ng/the-biggest-corruption-is-not-in-the-government-it-is-here-magu> assessed on accessed on 29/04/17

²⁹ See Punch Newspaper of February 19, 2016 accessed from <http://punchng.com/rickey-tarfa-bribed-judge-n225000-efcc-alleges/> on 29/04/17, See Punch Newspaper of March 3, 2016 accessed from <http://punchng.com/efcc-accuses-another-san-of-bribing-judge/> on 29/04/17, See Vanguard News of March 4, 2016 accessed from <http://www.vanguardngr.com/2016/03/efcc-alleges-tarfa-bribed-another-judge/> on 29/04/17, See The Nation of July 18, 2016 accessed from <http://www.thenationonlineng.net/fired-justice-yinusa-njc/> on 29/04/17

³⁰(2008)12SCM(Pt. 2) pp 264

³¹ See Sahara Reporters of March 24, 2008 accessed from <http://saharareporters.com/2008/03/24/aondoakaa-indispensable-yaradua-plots-influence-supreme-court-panel-elections-petition> on 29/04/17 See also Sahara Reporters of October 13, 2008 accessed on <http://saharareporters.com/2008/10/13/shock-supreme-court-decides-uphold-yar%E2%80%99adua-%E2%80%98s-election> accessed on 29/04/17

³² where the majority of panellists in the Supreme Court panel dismissed the appeal in that case

³³ See Sahara Reporters of March 09, 2009 accessed from <http://saharareporters.com/2011/03/09/faces-shame-bench-supreme-court-bribe-takers> accessed on 29/04/17

³⁴See Sahara Reporters of February 18, 2010 accessed from <http://saharareporters.com/2010/02/18/court-appeal-benin-city-delays-ruling-uduaghan-election-judges-bicker-over-bribe>, accessed on 29/04/17 See Sahara Reporters of January 23, 2012 accessed from <http://saharareporters.com/2012/01/23/furor-within-judiciary-andy-uba-bribes-justices-senate-seat> accessed on 29/04/17

³⁵ See The News Nigeria of October 12, 2016 accessed from <http://thenewsnigeria.com.ng/2016/10/judges-can-be-arrested/> accessed on 29/04/17. Augeas, the mythical king of Elis, kept great stables that held 3,000 oxen and had not been cleaned for thirty years - until Hercules was assigned the job. Hercules

Justice Nurudeen Sagir, the Chief Judge of Kano State, recently condemned the corruption in the judiciary during a working visit by an anti-corruption group to his office.³⁶

Augustine Alegeh, SAN, the immediate past Nigerian Bar Association President at the special session of the Supreme Court to mark the commencement of the 2015-2016 legal year and the swearing-in of newly conferred Senior Advocates of Nigeria accused some judges of rendering judgments for a fee³⁷. Alegeh said: "It is indeed very worrisome that certain judicial officers still engage in rendering judgments for a fee. Instances abound where judicial officers have resorted to turning the law on its head and making pronouncements which are at variance with the provisions of the law."³⁸

Justice Aloma Mariam Mukhtar, the former Chief Justice of the Federation, had in the Judicial Reforms Conference co-organised by the Nigerian Bar Association on 7 July 2014 held in Abuja, also lamented that many lawyers were quick to accuse the judiciary of being corrupt, yet refused to report judges who they knew to be corrupt to the NJC³⁹. My lord said; "You (lawyers) all know those judges that are corrupt, but you won't report. However, you will be the one who will raise the issue that the judiciary is corrupt. You will not do your part."⁴⁰

The reality however is that the judiciary is not the most corrupt institution in Nigeria. The Global Corruption Barometer shows that people's perceptions on corruption in Nigeria vary by institutions⁴¹. The study shows that the Judiciary perceived as the 2nd least corrupt institution in Nigeria⁴². According to the study, the legislature is the worse corrupt institution in Nigeria followed by the police, political parties and the military⁴³. It must therefore be sounded that some of the allegations of corruption against the judiciary are made without good faith, either to blackmail or intimidate the judiciary. Litigants who lose sometimes make some of these allegations. Commentators have said that about 80% of the allegations made against judges are not substantiated.⁴⁴ Faceless persons make some of those allegations⁴⁵. The National Judicial

accomplished this task by causing two rivers to run through the stables. The word *Augean* is sometimes used by itself, too - it has come to mean "extremely difficult and usually distasteful." See <https://www.merriam-webster.com/dictionary/Augean%20stable> accessed on 29/04/17. This was one of the 12 Labours of Hercules "feats so difficult that they seemed impossible" see <http://www.perseus.tufts.edu/Herakles/labors.html> accessed on 29/04/17

³⁶See Authority Newspaper of September 10, 2016 accessed from <http://www.authorityngr.com/2016/09/Kano-Chief-Judge-laments-corruption-in-the-judiciary/> accessed on 29/04/17

³⁷ See As Bench Bar Tango Over Judicial Corruption see Nigerian Lawyer of October 28, 2015 <http://thenigerialawyer.com/as-bench-bar-tango-over-judicial-corruption/> accessed on 29/04/17

³⁸See As Bench Bar Tango Over Judicial Corruption see Nigerian Lawyer of October 28, 2015 <http://thenigerialawyer.com/as-bench-bar-tango-over-judicial-corruption/> accessed on 29/04/17

³⁹See As Bench Bar Tango Over Judicial Corruption see Nigerian Lawyer of October 28, 2015 <http://thenigerialawyer.com/as-bench-bar-tango-over-judicial-corruption/> accessed on 29/04/17

⁴⁰See As Bench Bar Tango Over Judicial Corruption see Nigerian Lawyer of October 28, 2015 <http://thenigerialawyer.com/as-bench-bar-tango-over-judicial-corruption/> accessed on 29/04/17

⁴¹ *Impact of Corruption on Nigeria's Economy* <https://www.pwc.com/ng/en/assets/pdf/impact-of-corruption-on-nigerias-economy.pdf> accessed on 29/04/17

⁴² *Impact of Corruption on Nigeria's Economy* <https://www.pwc.com/ng/en/assets/pdf/impact-of-corruption-on-nigerias-economy.pdf> accessed on 29/04/17

⁴³ *Impact of Corruption on Nigeria's Economy* <https://www.pwc.com/ng/en/assets/pdf/impact-of-corruption-on-nigerias-economy.pdf> accessed on 29/04/17 p. 7

⁴⁴Hon. Justice A.A.I. Banjoko Corruption in the Judicial Process: Myth or Reality being a paper delivered at National Workshop for Judicial Officers on Judicial Ethics, Anti-corruption and Performance Evaluation 25th to 26th May 2015.

⁴⁵Hon. Justice A.A.I. Banjoko Corruption in the Judicial Process: Myth or Reality being a paper delivered at National Workshop for Judicial Officers on Judicial Ethics, Anti-corruption and Performance Evaluation 25th to 26th May 2015.

Council (NJC) warned lawyers against writing frivolous petitions to the body recently⁴⁶. The NJC specifically warned against lawyers who write petitions and thereafter apply to the NJC to withdraw the petition after investigations have started. Lawyers, politicians, other persons engage in making bad-faith allegations. The example of these speeches and comments made in bad faith and those made recklessly are all in the media. There are several other examples of this kind of bad faith or reckless speeches by litigants and lawyers alike in our courts and there is no need boring you with more examples.

The Supreme Court in *Buhari v INEC & Ors*⁴⁷ condemned this hypocrisy and stated, “When they come to judges and judges in their professional minds give judgement, they call them all sorts of names. To the party who wins the case, the judiciary is the best place and real common hope of the common man. To the person who losses, the judiciary is bad. Even when a person losses a case because of serious blunder of counsel, it is the judge who is blamed.”⁴⁸

Examples of cases lost because of the incompetence conduct of counsel abound. In *Federal Republic of Nigeria v James Ibori & Ors*⁴⁹, Justice Marcel Awokulehin, of the Federal High Court explained thus:

There is no witness statement in the proof of evidence from any of the EFCC officers who purportedly investigated the case. There is also no interim or final report of the investigation carried out by the EFCC which are basic requirements in proof of evidence for criminal trials. There are four EFCC officers listed in the proof of evidence as identified by the Learned Senior Counsel for the Accused/Applicants in the written address, namely Bello Yahaya, Amusan Adesola, John Etim and Sanusi Mohammed – Strangely however, there is no statement from any of those EFCC officers in the proof of evidence.

The Supreme Court in *Buhari v INEC & Ors*⁵⁰ had this to say:

The judge who has given judgement in the light of the law, should not be castigated in the ways it is done in this country. That is a primitive conduct and I condemn it. It is a conduct that does not help the promotion of the administration of justice. It is rather a conduct that is likely to affect adversely the administration of justice in this country. I feel strongly that Nigerian Judges should be allowed to perform their judicial functions to the best of their ability. I should also say that no amount of bad name calling will deter Nigerian judges from performing their constitutional-functions of deciding cases between two or more competing parties.⁵¹

The Supreme Court in *Buhari v INEC & Ors*⁵² did not let the earlier mentioned online publication⁵³ accusing them of corruption⁵⁴ deter them from giving judgement in that case. The jurist said:

⁴⁶ In a circular sent to all branch Chairman of the Nigerian Bar Association with Ref. No. NJC/12/01/200 dated September 5, 2016.

⁴⁷(2008)12SCM(Pt. 2) pp 264

⁴⁸(2008)12SCM(Pt. 2) pp 264 per Niki Tobi (JSC) at 349

⁴⁹ Unreported charge no. CHARGE NO.: FHC/ASB/IC/09 delivered on 17/12/2009

⁵⁰(2008)12SCM(Pt. 2) pp 264

⁵¹(2008)12SCM(Pt. 2) pp 264

⁵² (2008)12SCM(Pt. 2) pp 264

⁵³See Sahara Reporters of March 24, 2008 accessed on <http://saharareporters.com/2008/03/24/aondoakaa-indispensable-yaradua-plots-influence-supreme-court-panel-elections-petition> accessed on 29/04/17

⁵⁴See also Sahara Reporters of October 13, 2008 accessed on <http://saharareporters.com/2008/10/13/shock-supreme-court-decides-uphold-yaradua-election> accessed on 29/04/17

It is sad that so much has been said in the newspaper of this country on the case. The new technology of internet reporting has added to the comments, some of them doubting our integrity to do justice according to law. I regard them as blackmail and I will not succumb to such blackmail...Nigerians should realise that some public officers should be trusted to do the right thing. Why not judges!⁵⁵

Some other judges have been forced to withdraw from cases due to some of these allegations. Owing to allegation that N2billion bribe was traced to his bank account, Justice Abdul Kafarati of the Federal High Court sitting in Abuja disqualified himself and refused to deliver a ready judgement in a suit seeking to stop an ongoing trial of the Senate President, Dr. Olubukola Saraki, before the Code of Conduct Tribunal, CCT.⁵⁶

The judge was reported to have said:

It is unfortunate that we do not have the appropriate laws to take care of this. As it stands, I am caught between two devils, if the judgment goes in favour of Saraki now they will say that I have been compromised, on the other hand, if it goes against him they will say I have been intimidated. In light of the allegation, the right and appropriate thing to do is to disqualify myself and return the case-file to the Chief Judge for re-assignment to another Judge⁵⁷

This scenario also occurred in the criminal trial of Gabriel Suswan.⁵⁸ It took the intervention of the Chief Judge of the Federal High Court who refused to reassign these cases before they could go on⁵⁹.

The reality therefore is that sometimes, allegations of corruption is an effective tool to intimidate judges. When this is backed by force, as was done recently by operatives of DSS, it becomes easier to be more sympathetic to the judges or believe the story of state intimidation of the judiciary.

1.4 NATIONAL JUDICIAL COUNCIL(NJC)

The National Judicial Council is one of the Federal Executive Bodies created by virtue of Section 153 of the 1999 Constitution of the Federal Republic of Nigeria. It is primarily charged with the function of disciplining judges, recommending judges for appointment or recommending judges for dismissal. In exercise of its powers to make appointment or to exercise disciplinary control over persons, the National Judicial Council is not subject to the direction or control of any other authority or person.⁶⁰ The NJC has the power, with the

⁵⁵*Buhari v INEC & Ors* (2008)12SCM(Pt. 2) pp 264per Niki Tobi (JSC) at 349

⁵⁶See Vanguard Newspaper of March 22, 2016 accessed from <http://www.vanguardngr.com/2016/03/breaking-cct-trial-judge-hands-off-sarakis-suit-alleged-n2bn-bribe/> accessed on 29/04/17

⁵⁷See Vanguard Newspaper of March 22, 2016 accessed from <http://www.vanguardngr.com/2016/03/breaking-cct-trial-judge-hands-off-sarakis-suit-alleged-n2bn-bribe/> accessed on 29/04/17

⁵⁸See 'Judge Recuses Self From Ex-Governor's Trial Over Sahara Reporters Bribe Allegation' in *Sunnewsonline Newspaper* of June 6, 2016 accessed from <http://sunnewsonline.com/judge-recuses-self-from-ex-governors-trial-over-sahara-reporters-bribe-allegation/> accessed on 29/04/17

⁵⁹See 'CJ Directs Judge Handling Sarakis Case to Deliver Judgment' in *This Day* of April 13, 2016 accessed from <http://www.thisdaylive.com/index.php/2016/04/13/cj-directs-judge-handling-sarakis-case-to-deliver-judgment/>, on accessed on 29/04/17.

See 'Suswan-CJ Overrules Judge, Asks Him to Continue With N3.1Billion Fraud Trial' Accessed from <https://efccnigeria.org/efcc/index.php/news/2031-suswan-cj-overrules-judge-asks-him-to-continue-with-n3-1bn-fraud-trial> on accessed on 29/04/17

⁶⁰ 158 Constitution. See also *Opene v NJC & Ors.* (2011) LPELR-4795(CA)

approval of the President to make rules of procedure or impose duties on any officer or authority for the purpose of discharging its functions.

Although the NJC is a ‘federal executive body’ and carries out executive functions, it is mostly composed of members of the judiciary. The composition of the NJC has led some to tag it a ‘judicial body’⁶¹. By the provision of Paragraph 20 of Part One of the Third Schedule to the 1999 Constitution of the Federal Republic of Nigeria, The National Judicial Council comprises of the following Members: -

1. The Chief Justice of Nigeria, who shall be the Chairman;
2. The next most senior Justice of the supreme Court who shall be the Deputy Chairman;
3. The President of the Court of Appeal;
4. Five retired Justices selected by the Chief Justice of Nigeria from the Supreme Court or Court of Appeal;
5. The chief Judge of the Federal High Court;
6. The President, National Industrial Court;
7. Five Chief Judges of State to be appointed by the Chief Justice of Nigeria from among the Chief Judges of the States and of the High Court of the Federal Territory, Abuja in rotation to serve for two years;
8. One Grand Kadi to be appointed by the Chief Justice of Nigeria from among Grand Kadis of the Sharia Courts of Appeal to serve in rotation for two years;
9. One President of the Customary Court of Appeal to be appointed by the Chief Justice of Nigeria from among the Presidents of the Customary Courts of Appeal to serve in rotation for two years;
10. Five members of the Nigerian Bar Association who have been qualified to practice for a period of not less than fifteen years, at least one of whom shall be a Senior Advocate of Nigeria, appointed by the Chief Justice of Nigeria on the recommendation of the National Executive Committee of the Nigerian Bar Association to serve for two years and subject to re-appointment: Provided that the five members shall sit in the Council only for the purposes of considering the names of persons for appointment to the superior courts of record; and
11. Two person not being Legal Practitioners, who in the opinion of the Chief Justice of Nigeria, are of unquestionable integrity

The duties and role of the NJC are also provided for by the provision of Paragraph 21 of Part One of the Third Schedule to the 1999 Constitution of the Federal Republic of Nigeria; which provides that;

The National Judicial Council shall have the power to:

- a. Recommend to the President from among the list of persons submitted to it by –
 - i. the Federal Judicial Service Commission, persons for appointment to the Offices of the Chief Justice of Nigeria, the Justices of the Supreme Court, the President and Justices of the Court of Appeal, the Chief Judge and Judges of the Federal High Court, the President and Judges of the National Industrial Court; and⁶²
 - ii. the Judicial Service Committee of the Federal Capital Territory, Abuja, persons for appointment to the Offices of the Chief Judge and Judges of the High Court of the Federal Capital Territory, Abuja, the Grand Kadi and Kadis of the Sharia Court of Appeal of the

⁶¹ See ‘Real Reasons DSS and NJC are at war’ in *Nigerian Bar* accessed from <http://www.nigeriabar.com/2016/10/real-reasons-dss-njc-are-at-war#.WQX45NLyu00> accessed on 29/04/17

⁶² See also Sections 231, 238, 250 of the Constitution

- Federal Capital Territory, Abuja and the President and Judges of the Customary Court of Appeal of the Federal Capital Territory, Abuja⁶³;
- b. recommend to the President the removal from office of the Judicial Officers specified in sub-paragraph (a) of this paragraph, and to exercise disciplinary control over such Officers;⁶⁴
 - c. recommend to the Governors from among the list of persons submitted to it by the State Judicial Service Commissions persons for appointments to the Offices of the Chief Judges of the States and Judges of the High Courts of the States, the Grand Kadis and Kadis of the Sharia Courts of Appeal of the States; and President and Judges of the Customary Courts of Appeal of the States;⁶⁵
 - d. recommend to the Governors the removal from office of the Judicial Officers specified in sub-paragraph (c) of this paragraph, and to exercise disciplinary control over such officers;⁶⁶
 - e. collect, control and disburse all moneys, capital and recurrent, for the judiciary;
 - f. advise the President and Governors in any matter pertaining to the judiciary as may be referred to the Council by the President or the Governors;
 - g. appoint, dismiss and exercise disciplinary control over Members and staff of the Council;
 - h. control and disburse all monies, capital and recurrent, for the services of the Council; and
 - i. deal with all other matters relating to broad issues of policy and administration.

Section 292. of the Constitution provides thus:

(1) A judicial officer shall not be removed from his office or appointment before his age of retirement except in the following circumstances –

(a) in the case of –

(i) Chief Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court, Chief Judge of the High Court of the Federal Capital Territory, Abuja, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and President, Customary Court of Appeal of the Federal Capital Territory, Abuja, by the President acting on an address supported by two-thirds majority of the Senate.

(ii) Chief Judge of a State, Grand Kadi of a Sharia Court of Appeal or President of a Customary Court of Appeal of a State, by the Governor acting on an address supported by two-thirds majority of the House of Assembly of the State, Praying that he be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct;

(b) in any case, other than those to which paragraph (a) of this subsection applies, by the President or, as the case may be, the Governor acting on the recommendation of the National Judicial Council that the judicial officer be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct.

In *Hon. Justice E.I. Isuama v. Governor of Ebonyi State of Nigeria & Ors* the Court of Appeal explained that “The National Judicial Council has a unique role to play in the affairs of the Judiciary of this country, in respect of the appointment, discipline and removal of justices or

⁶³ See also Sections 256, 261, 266 of the Constitution

⁶⁴ Sec 292(1)(a)(i) of the Constitution

⁶⁵ See also Sections 271, 276, 281 of the Constitution

⁶⁶ Sec 292(1)(a)(ii) of the Constitution

judges. It is empowered to play this role by the Constitution to both Federal government and State government judiciary alike.”⁶⁷

The court in *Kayode Bamisile v. National Judicial Council & Ors.* ⁶⁸ explained thus:

The power of the 1st respondent(NJC) is limited to recommending to the Governor persons for appointment to the judicial offices specified in paragraph 21(c), exercising disciplinary over judicial officers and recommending to the Governor, in appropriate circumstances, their removal from office for reasons stated in paragraph 21(d) of Part 1 of the Third Schedule to the 1999 Constitution

There are no decisions or clear authorities stating that the NJC has exclusive authority to carry out disciplinary actions against judicial officers. There is also no known authority stating that judges cannot be investigated by other governmental bodies except with the authority of the NJC.

The courts have however explained that courts cannot be called upon to substitute the decision of the NJC because of the constitutional provisions setting out the functions of the NJC. The court in *Hon. Justice Garba Abdullahi v. The Executive Governor of Kano State & Ors*⁶⁹ explained thus:

It is crystal clear that the 4th Respondent(NJC) derived its powers to discipline the Appellant and all within his category from the Constitution of the Federal Republic of Nigeria, 1999. The moment it has exercised its constitutional power the only role the Court will play is to ascertain whether the manner in which the power was exercised conformed with fundamental principles of law but not whether the decision was wrong or right as the court has no jurisdiction to substitute its own opinion for that of the 4th Respondent. In *Opene v. National Judicial Council & Ors.* (2011) LPELR-4795(CA), Galinge, J.C.A., stated that the responsibility to recommend to the President, the removal of such officers is given to the National Judicial Council. If the Constitution intended that such misconduct must be subject to trial by Court, it would have said so. It would have said for example, that any Judicial Officer convicted by the Court shall be removed from office by the President on the recommendation of the NJC. The Constitution did not make such provision. Rather the Constitution that gave the Court the power to try criminal offences also gave the NJC the power to investigate allegation of misconduct against Judicial Officers and make recommendation for their removal.

In *National Judicial Council & Ors. v Hon. Mr. Justice C.P.N. Senlong & Ors.* ⁷⁰ the court stated thus:

In the exercise of its disciplinary authority over judicial officers, the National Judicial Council or Committee on behalf of the Council must observe the Rules of Natural Justice. Not only must it not be biased against the judicial officer whose conduct is being questioned but also it must not place itself in a position in which it may appear that there is a real likelihood of bias. These rules of natural justice apply to both judicial and administrative determinations. They are not limited to judicial decisions.

⁶⁷(2005) LPELR-7505(CA) see also *Nwaogwugwu v President F.R.N.* (2007) ALL FWLR (Pt. 358) 1327 at 1356, paras D - F (CA)

⁶⁸ (2012) LPELR-8381(CA)

⁶⁹ (2014) LPELR-23079(CA)

⁷⁰ (2010) LPELR-4582(CA)

The Court further held that in taking a decision the NJC must observe the dictates of justice. The court explained that “the dictates of justice demand that the legal principles of audi alteram partem and that of Nemo iudex in causa sua must be obeyed no matter how cumbersome and inconvenient it may appear to the council”

The functions of the NJC can therefore not be performed as it pleases the body. Allegations against judges must be proved according to the laid down rules of fair hearing. Important procedure must be followed in making allegations and proving such allegations before the NJC can make a decision about a judge.

In exercise of its powers to discipline judicial officers, the NJC has formulated the 2014 National Judicial Council Judicial Discipline Regulations. The regulation governs allegation and complaints of misconduct against judicial officers. The guideline defines misconduct to include “conduct prejudicial to the effect and expeditious administration of the business of the courts or any conduct described as misconduct in the Constitution and Code of Conduct for Judicial Officers of Superior Courts.”⁷¹

The NJC has power over all allegation of misconduct or any other allegation made against a judicial officer in the performance of his duties. NJC also has the powers to investigate and decide on the action it will take with respect to a matter before it.

1.5 OTHER LAW ENFORCEMENT AGENCIES

Law enforcement agencies in Nigeria include the Nigerian Police Force, the Economic and Financial Crimes Commission, the Independent Corrupt Practices Commission (ICPC) and the State Security Service. The functions, role and powers of these law enforcement bodies are spelt out in the Constitution and their various enabling laws

A. NIGERIAN POLICE FORCE

Section 214 created the Nigerian Police Force. Section 214(2)(b) of the Constitution provides that “the members of the Nigeria Police Force shall have such powers and duties as may be conferred upon them by law”. Some of these duties are stated in the Police Act. The Police Act provides for the organization, discipline, powers and duties of the Police in Nigeria.

The general duties of the Police include⁷²:

- Prevention and detection of crime
- Apprehension of offenders
- Preservation of law and order
- Protection of life and property
- Due enforcement of all laws and regulations with which they are directly charged
- Performance of such military duties within or outside Nigeria as may be required of them by the Police Act or any other Act.⁷³

The Police in Nigeria has more specific powers which include:

- Conducting prosecutions before any court of law in Nigeria⁷⁴.

⁷¹ See paragraph 3 2014 National Judicial Council Disciplinary Rule

⁷² Section 4 Police Act

⁷³ Generally see *Emonena & Anor v. IGP & Ors* (2016) LPELR-41489(CA), *IGP & Anor v Ubah & Ors* (2014) LPELR-23968(CA), *Christlieb Plc & Ors v Majekodunmi & Ors* (2008) LPELR-8453(CA)

⁷⁴ Sec. 23 Police Act

- Arresting, without warrant, any person who is found by the police to be committing any felony, misdemeanour or simple offence; or who the police reasonably suspects of having committed those offences or being about to commit such offences. The Police may also arrest without warrant, a person who is charged by another person with the commission of an offence⁷⁵. It should be noted that where a specific offence provides that a person charged with that offence should be arrested with a warrant, then such alleged offender cannot be arrested without warrant.
-
- The Police also has the power to search persons, premises and belongings. On search of persons, where a police officer reasonably suspects any person of having in his possession or carrying in any form, anything which he has reason to believe has been stolen or is unlawfully obtained, the police officer may detain and search such a person.⁷⁶
-
- The police has the power to take and record measurements, photographs, and fingerprints of people who are in lawful custody from time to time. This is for the purpose of identification.⁷⁷

B. ECONOMIC AND FINANCIAL CRIMES COMMISSION(EFCC)⁷⁸

In the case of *Nyame v. Federal Republic of Nigeria (F.R.N.)*⁷⁹, the Supreme Court held in the lead judgment of Adekeye, J.S.C., (Rtd) that-

The Federal Government created the Economic and Financial Crimes Commission by an Act of the National Assembly in 2004. Section 6 of the Act provides that the Economic and Financial Crimes Commission shall be responsible for- (1) Enforcement and due administration of the provisions of the Act. (2) The investigation of all financial crimes including advanced fee fraud, money laundering, counterfeiting, illegal charge transfers future market fraud, fraudulent encashment of negotiating instruments, computer credit card fraud, contract scam etc.'

The EFCC has the general function of coordination for enforcement of all Economic and financial crimes in Nigeria.⁸⁰ Economic and Financial Crimes is defined by the Act as “the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc.”⁸¹

The powers of the EFCC are as stated in section 7 of the EFCC Act. The Act provides thus:

⁷⁵ Sec. 24 & 25 Police Act

⁷⁶ Sec. 28 & 29 Police Act

⁷⁷ Sec. 30 Police Act

⁷⁸ *Obiorah v. FRN* (2016) LPELR-40965(CA), *Orji Uzor Kalu V. Federal Republic Of Nigeria & Ors* 18th day of March, 2016 SC. 215/2012

⁷⁹ (2010) 4SCM, 61

⁸⁰ *Ibori v. Federal Republic of Nigeria* (2008) LPELR-8370(CA)

⁸¹ Section 45 EFCC Act

7.-(1) The Commission has power to-

(a) cause investigations to be conducted as to whether any person, corporate body or organisation has committed an offence under this Act or other law relating to economic and financial crimes; .

(b) cause investigations to be conducted into the properties of any person if it appears to the Commission that the person's life style and extent of the properties are not justified by his source of income.

(2) In addition to the powers conferred on the Commission by this Act, the Commission shall be the co-ordinating agency for the enforcement of the provisions of-

(a) the Money Laundering Act 2004; 2003 No.7. 1995 No. 13 ;

(b) the Advance Fee Fraud and Other Related Offences Act 1995 ;

(c) the Failed Banks (Recovery of Debt and Financial Mal-practices in Banks) Act, as amended;

(d) the Banks and Other Financial Institutions Act 1991, as amended:

(e) Miscellaneous Offences Act; and

(f) any other law or regulation relating to economic and financial crimes, including the Criminal Code and Penal Code.

In *Oluese v. FRN & Anor*⁸² the court explained that Section 6(m) of the EFCC Act enables EFCC to prosecute 'all' offences connected with or relating to economic and financial crimes.

C. THE INDEPENDENT CORRUPT PRACTICES COMMISSION(ICPC)

Section 6 (a-f) of the ICPC Act 2000 sets out the duties of the Commission as paraphrased below:

- To receive and investigate complaints from members of the public on allegations of corrupt practices and in appropriate cases, prosecute the offenders.
- To examine the practices, systems and procedures of public bodies and where such systems aid corruption, to direct and supervise their review.
- To instruct, advice and assist any officer, agency, or parastatal on ways by which fraud or corruption may be eliminated or minimized by them.
- To advise heads of public bodies of any changes in practice, systems or procedures compatible with the effective discharge of the duties of public bodies to reduce the likelihood or incidence of bribery, corruption and related offences.
- To educate the public on and against bribery, corruption and related offences.
- To enlist and foster public support in combating corruption.

In *Ladoja v. FRN & Anor*⁸³ the court had this to say:

Anti-corruption Legislation is always construed to ensure that society is adequately protected against the canker-worm of corruption with its attendant destructive effect on the body polity of society. See *Alhaji Sani Dododo v. E.F.C.C. and Ors.* (2013) 1 NWLR (Pt. 1336) 468 at 511 per Nwodo, J.C.A., as follows- "The EFCC Act and the ICPC Act are enactments towards achieving the goal of abolishing corruption. The drive to abolish corrupt practices by established enactment and statutory provisions must not be extinguished in construction of the statutes. The intendment of the legislation must be conveyed and its provisions complied too.

⁸² (2013) LPELR-22016(CA)

⁸³ (2014) LPELR-22432(CA)

Therefore, these agencies established to fight corruption or crime in the society are not intended to destroy institutions established by the Constitution and other laws. The intention is that these agencies will collaborate with existing agencies for the enforcement of laws in Nigeria.

D. THE STATE SECURITY SERVICE:

Section 2(3) of the National Security Agencies Act ⁸⁴ provides for the functions of the State Security Agency. The section provides thus

The State Security Service shall be charged with responsibility for-

- (a) the prevention and detection within Nigeria of any crime against the internal security of Nigeria;
- (b) the protection and preservation of all non-military classified matters concerning the internal security of Nigeria; and
- (c) such other responsibilities affecting internal security within Nigeria as the National Assembly or the President, as the case may be, may deem necessary.
- (4) The provisions of subsections (1), (2) and (3) of this section shall have effect notwithstanding the provisions of any other law to the contrary, or any matter therein mentioned.

“classified matter” means any information or thing which, under any system of security classification, from time to time, in use by any branch of the government, is not to be disclosed to the public and of which the disclosure to the public would be prejudicial to the security of Nigeria⁸⁵

The Court have given a wide interpretation to the powers given to the State Security Service. In *Gbadamosi Ebenezer v. The State*⁸⁶ the Court of Appeal held that Section 2 (1) (i) and (g) of Instrument No. SSS1 of 23rd May 1999, a subsidiary legislation made pursuant to National Security Agencies Act, Laws of the Federation of Nigeria 1990 gives the SSS the power to investigate kidnapping or any threat to human life. The law provides as follows:

"2(1) The State Security Service shall in pursuance of its objectives set out in Section 1 of this instrument perform the following functions:-

- (i) Prevention, detection and investigation of
- (g) Threats to law and order"

Apart from its legitimate powers on prevention, detection and investigation of ‘threats to law and order’, the courts will not allow the SSS carry out illegal actions or issue punishments on their own. This was the decision in *Director of State Security Service & Anor. v Olisa Agbakoba*.⁸⁷

All these law enforcement bodies therefore have different roles they play in eradicating corruption in Nigeria. All government agencies must however operate within the law and cannot go on its whims to carry out functions outside its mandate.

1.6 JUDICIAL IMMUNITY

One of the questions that has bothered the mind of many legal experts in the past months is whether judges have immunity against investigations or prosecution by these law enforcement agencies.

⁸⁴ Cap N74 LFN 2004

⁸⁵ Sec. 5 National Security Agencies Act

⁸⁶ (2014) LPELR-23791(CA)

⁸⁷ (1999) LPELR-954(SC)

Judicial immunity is the immunity granted to those who perform judicial or quasi-judicial functions to shield them against liabilities that may emanate from the exercise of their powers and performance of their duties. The immunity is to embolden them to dispense justice, independently, without “without fear or favour, affection or ill will”⁸⁸. This immunity does not extend to disciplinary sanctions and does not include a shield against criminal trial for criminal conduct of judges.⁸⁹ Chapter 14 of the Criminal Code Act provides for offences of corruption and abuse of office involving public officers including judicial officers.

Karibi-Whyte, J.S.C explained judicial immunity properly in *Egbe v. Adefarasin & Anor.*⁹⁰ The learned jurist said:

The most recent statement of the position is in *Sirros v. Moore* (1974) 3 All E. R. 781 - 782, in this case Denning MR, said, "Ever since the year 1613, if not before, it has been accepted in our law that no action is maintainable against a Judge for anything said or done by him in the exercise of a jurisdiction which belongs to him. The words which he speaks are protected by an absolute privilege. The orders which he gives, and the sentences which he imposes cannot be made the subject of civil proceedings against him. No matter that the Judge was under some gross error or ignorance, or actuated by envy or hatred and malice and all uncharitableness, he is not liable to an action. The remedy of the party aggrieved is to appeal to a Court of Appeal or to apply for habeas corpus, or a writ of error or certiorari or take some such step to reverse his ruling. Of course, if the Judge has accepted bribes or been in the least degree corrupt, or has perverted the course of justice, he can be punished in the criminal Courts. That apart, however, a Judge is not liable to an action for damages."⁹¹

In *The Secretary, Iwo Central L. G. v. Adio*⁹² the Supreme Court observed thus:

“de fide et officio judicis non recipitur quaestio, sed de scientia, sive sit error juris, sive facti, ” the honesty and integrity of a Judge cannot be questioned, but his decision may be impugned for error, either of law or of fact. In England as in this country, Nigeria, the reason for judicial immunity is found on public policy because of the need to protect Judges and indeed all judicial officers whether of superior court of record or not, from wanton attack in their capacity as Judges. It is necessary for the free and impartial administration of justice, that the person administering it should be uninfluenced by fear or unbiased by hope... The protection in regard to the superior courts is absolute and universal; with respect to the inferior (courts) it is only when they act within their jurisdiction.⁹³

The court in *SBM Services (Nigeria) Ltd. & Ors v Okon & Ors*⁹⁴ explained thus: “From the above authorities, it is crystal clear that the scope of judicial immunity is absolute, universal and unqualified and so long as the Judge is acting or performing in his judicial capacity, he is protected.”⁹⁵

⁸⁸ J. Ogunye ‘Forgery of Senate Standing Orders: The Difference Between Immunity and Impunity’ June 22, 2016 accessed from <http://jimidisu.com/forgery-of-senate-standing-orders-the-difference-between-immunity-and-impunity-by-jiti-ogunye/>, on 29/04/17

⁸⁹ Cap C38, Vol. 4, LFN, 2004

⁹⁰ (1985) LPELR-1031(SC)

⁹¹ (1985) LPELR-1031(SC) Pp.18-19, paras.F-D

⁹² (2000) 8 NWLR (Pt. 667) 115

⁹³ Cited by the Court of Appeal in *SBM Services (Nigeria) Ltd. & Ors v Okon & Ors* (2003) LPELR-7292(CA)

⁹⁴ (2003) LPELR-7292(CA)

⁹⁵ Per Ekpe, J.C.A. (Pp. 30-33, paras. B-A)

Like earlier said, judges are no kings and judges can do wrong. The judge as a human being in the society is subject to the general law. A judge can for example be charged with murder, traffic offences and other general crimes. Hon. Justice Garba Abdullahi was arraigned on a three count Charge⁹⁶ by the Independent Corrupt Practices and Other Related Offences Commission. He was tried but was eventually discharged and acquitted⁹⁷. This trial took place while he was a judge of the Kano State High Court.

1.7 ANY CONFLICT WITH THE NJC FUNCTIONS AND THE FUNCTION OF LAW ENFORCEMENT?

The 1999 Constitution adopts the principles of separation of powers and checks and balances as fundamental constitutional principle which spells the roles and duties of the three arms of the government. Section 5 of the Constitution vests executive powers on the President and the Governors of States. Legislative powers are vested on the National Assembly and the State Houses of Assembly while judicial powers are vested on the courts established by the Constitution⁹⁸.

The Nigerian Constitution also admits the principles of checks and balances and these principles are shown in various constitutional provisions. Some examples of this principle in the Constitution include:

- A. The Executive arm of government appoints, disciplines or removes judges in the judiciary arm with the input of the Legislature.⁹⁹
- B. Section 4(8) of the Constitution makes exercise of legislative powers subject to the jurisdiction of courts of law and of judicial tribunals established by law.
- C. Section 58(1) of the Constitution makes the Assent of the Executive a requirement for passing a legislation.
- D. Executive actions are subject to review and interpretation by the judiciary.

The NJC is an executive body made up of members of the judiciary. The NJC is independent of all authorities in the exercise of its functions. The NJC is therefore the agency that guarantees the enforcement of the principle of separation of powers between the judiciary and the executive. The importance of the NJC is to the extent that the Presidency does not intimidate the judges who dispense justice in our courts.¹⁰⁰ Hon. Justice Ayo Salami, the former President of the Court of Appeal explained, “The only time the Presidency has a role to play in the discipline of a judicial officer is when he is found guilty of misconduct, and he is to be removed.”¹⁰¹

Salami praised Honourable Justice Uwais, the former Chief Justice of Nigeria for rejecting an order by Olusegun Obasanjo the former President of Nigeria setting up a different committee to investigate judges accused of corruption¹⁰². He quoted Honourable Justice Uwais to have

⁹⁶ No. K/ANTC/CR3/2002

⁹⁷ See *Hon. Justice Garba Abdullahi V. The Executive Governor Of Kano State & Ors* (2014) LPELR-23079(CA)

⁹⁸ Section 4 and 6 of the Constitution.

⁹⁹ See Section 231, 238, 250, 256, 261, 266, 271, 281 and 292 of the Constitution.

¹⁰⁰ See Justice Isa Ayo Salami ‘Eradicating Corruption in Nigerian Judiciary’ in *Sahara Reporters* <http://saharareporters.com/2015/12/04/eradicating-corruption-nigerian-judiciary-justice-isa-ayo-salami> accessed on 29/04/17

¹⁰¹ See Justice Isa Ayo Salami ‘Eradicating Corruption in Nigerian Judiciary’ in *Sahara Reporters* <http://saharareporters.com/2015/12/04/eradicating-corruption-nigerian-judiciary-justice-isa-ayo-salami> accessed on 29/04/17

¹⁰² See Justice Isa Ayo Salami ‘Eradicating Corruption in Nigerian Judiciary’ in *Sahara Reporters* <http://saharareporters.com/2015/12/04/eradicating-corruption-nigerian-judiciary-justice-isa-ayo-salami> accessed on 29/04/17

responded that, “allegation against the justices could only be investigated by the National Judicial Council under the Constitution and not by a committee of Chief Justice of Nigeria and the Honourable Attorney General of the Federation as constituted by President Obasanjo.”¹⁰³

The NJC is the only body that can carry out this function of disciplining judicial officers without seemingly intimidating judges on behalf of the executive because the NJC is independent¹⁰⁴. This is the intention of the framers of the Constitution. Other law enforcement agencies take directions from the presidency (the executive)¹⁰⁵. The President carries out the appointment and dismissal of members such bodies. The Presidency or the Executive arm is not supposed to have any power to use against the judiciary whatsoever. This is the only intention of the Constitution and this is the idea behind the establishment of the NJC. Discipline of judges without going through the constitutional powers of the NJC rubbishes this idea of non-interference with judicial functions.

The best any other body or agency can do is to investigate and revert to the NJC for further action¹⁰⁶. This does not remove the powers of such agencies to prosecute crimes. The NJC has in appropriate instances recommended judicial officers for criminal prosecution. For example, the National Judicial Council, under the Chairmanship of the Hon. Justice Mahmud Mohammed(Rtd) at its 78th Meeting which was held on 29th September, 2016 recommended that Hon. Justice Kabiru M. Auta be handed over to the Assistant Inspector-General of Police, Zone 1, Kano, for prosecution.¹⁰⁷

Also, in countries where we praise their manner of fight against corruption, the process is to investigate corrupt judicial officers and revert to their judicial regulatory agency for proper action¹⁰⁸. In Ghana after a two years undercover investigative journalism by a Ghanaian Journalist, Mr. Anas Aremyau, there were documents, audio and video evidence supporting the allegations of corruption and bribery against some Ghanaian Magistrates and Judges¹⁰⁹. The evidence was given to the Ghanaian Judicial Council, equivalent of the NJC. The Ghanaian Judicial Council handled the allegations of corrupt practices and professional misconduct against the High Court Judges through appropriate impeachment Committee¹¹⁰.

In United States of America, a federal judge can be removed for “high crimes and misdemeanours”. The discipline of the judges is done by Circuit Judicial Council. The Circuit Judicial

¹⁰³See Justice Isa Ayo Salami ‘Eradicating Corruption in Nigerian Judiciary’ in *Sahara Reporters* <http://saharareporters.com/2015/12/04/eradicating-corruption-nigerian-judiciary-justice-isa-ayo-salami> accessed on 29/04/17

¹⁰⁴ Section 158 Constitution

¹⁰⁵ Section 43 EFCC Act, Section 3 National Security Agencies Act, Section 9(4)(5) of the Police Act.

¹⁰⁶ See ‘NJC More Than Ready to Discharge its Constitutional Functions’ in *Vanguard Newspaper* of 12/12/2009 accessed from <http://www.vanguardngr.com/2009/12/njc-more-than-ready-to-discharge-its-constitutional-functions/> accessed on 27/09/16

¹⁰⁷ See NJC’s press statement of 30th September, 2016 after its 78th meeting announcing the sack of some judges accessed from <http://www.njcgov.org/Press/NationalJudicialCouncil?name=presseptember30th.pdf> accessed on 29/04/17

¹⁰⁸ ‘Outrage over DSS crackdown on judges’ See *Vanguard Newspaper* of October 10, 2016 accessed from <http://www.vanguardngr.com/2016/10/outrage-over-dss-crackdown-on-judges/> on 29/04/17

¹⁰⁹ ‘Full Text of National Judicial Council on Recent Arrest of Judicial Officer By DSS’

See *This Day Newspaper* of 19/10/2016 accessed from <https://www.thisdaylive.com/index.php/2016/10/19/full-text-of-national-judicial-council-on-recent-arrest-of-judicial-officer-by-dss/> accessed on 29/04/17

¹¹⁰ ‘Full Text of National Judicial Council on Recent Arrest of Judicial Officer By DSS’

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Council can recommend a judge for removal. This body is independent of the legislature or the executive.¹¹¹

In addition, the Eso Panel Report on corrupt judges in 1993 was handed over to the NJC in 2000 for enforcement. NJC reviewed the Eso Report and made recommendations for appropriate action against the corrupt judges.¹¹²

1.8 CONCLUSION

The general agreement is that corruption must be rooted out of Nigeria. Corruption must especially be removed from the judiciary and corrupt judges must be expelled and prosecuted. The manner of confronting the allegations against judges must adhere to the rule of law. Without such adherence, the fight against corruption will mean nothing. The fight against corruption can also not be used to destroy the fabrics of our democracy and constitutionalism. The principles of separation of powers must be obeyed and sanctity of the judiciary respected. Justice must not only be done, but to be seen to have been done.¹¹³

Agencies created by law cannot be lawbreakers. They must work together to achieve the intendment of their establishment. The NJC handles all allegations against judicial officers. Nothing stops the other law enforcement agencies from investigating crimes committed by judicial officers and reporting to the NJC. NJC must also be proactive to deal with reported cases of corruption with dispatch. Overzealousness and infighting by operatives of different agencies will do more harm than good in the fight against corruption. Proper advice must always be sought and obtained before performing any act to avoid breach of the Constitution and other laws.

¹¹¹ 'Judicial Conduct and Discipline in the United States of America's Federal Courts' accessed from <http://krim.dk/undersider/straffesager/straffepoces/47-judicial-cunduct-and-discipline-usa-2010.pdf> on 29/04/17

¹¹² 'Full Text of National Judicial Council on Recent Arrest Of Judicial Officer By DSS'

See of 19/10/2016 accessed from <https://www.thisdaylive.com/index.php/2016/10/19/full-text-of-national-judicial-council-on-recent-arrest-of-judicial-officer-by-dss/> accessed on 29/04/17

¹¹³ *R. v Sussex Justices, ex parte McCarthy* (1924) 1 KB 256, at P 259 cited in *Deduwa & ors v Okorodudu* (1974) LPELR-935(SC)