

AN APPRAISAL OF THE CONSTITUTIONAL SAFEGUARDS FOR THE INDEPENDENCE OF THE JUDICIARY AND ITS APPLICABILITY IN NIGERIA

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Abstract

The independence of the Judiciary, often a resounding phrase alluding to the imbued character of the judicial arm of government to interpretation of statutes and adjudication on matters before it devoid of adverse external influence from either the Executive and legislative arms of government, or influential members of the society and organizations. The safeguards are copiously enshrined in the Constitution of the Federal Republic of Nigeria (CFRN) 1999 as amended and given relevance by Courts in Nigeria. This study appraises the Constitutional safeguards in order to espouse the extent of its applicability in the Nigerian judicial landscape. The doctrinal research approach is adopted in this study and primary and secondary legislative sources are heavily depended upon. Findings reveal that there are veritable and vivid Constitutional provisions to ensure the independence of the judiciary in Nigeria, though inadequate, the independence is scuttled by the Executive and Legislative arms of government through threats, denials and other unconstitutional means in a bid to have total political control of Nigeria. More so, such social vices as corruption and undue political pressure are also found to be endemic challenges undermining judicial independence in Nigeria. It is recommended therefore that structural reforms and socio-cultural shifts that supports the judicial role as a guardian of democracy and human rights in Nigeria be encouraged to achieve a truly independent judiciary.

Keywords: *Judiciary, Judicial, Independence, Autonomy, Court, Judicature*

1. Introduction

In Nigeria, the Judiciary is the third among the three arms of government.¹ Although the word 'Judiciary' is not used anywhere in the Constitution of the Federal Republic of Nigeria, (CFRN) 1999 (as amended), not even in its interpretation section.² However, the phrases 'Judicial powers' and 'judicial officers' are used in section 6(1) and (2), CFRN vesting judicial powers in the courts as may be authorized to exercise jurisdiction under an Act of the National Assembly or Laws enacted by the House of Assembly of a State.

The pronouncement in *Anozie v. A.G Lagos State*,³ judicially explained the word 'Judiciary' as 'the branch of government popularly known as the third Arm of government that is constitutionally responsible for interpreting the law and administering justice.' The court further stated that the word 'Judiciary' may also be called 'judicature,' which refers to the act of judging or administering justice based on the principles of the rule of law through courts duly constituted. In other words, the Judiciary plays the roles of interpreting laws enacted by the Legislature and determines the validity and nullity of Executive actions while adjudicating on matters brought before it by the citizens. It is explicit therefore to note that the office of a Judge is *Judicis est jus dicere non dare*.⁴ The validation of this principle of law was manifest through the Supreme Court in *Okumagba v. Egba*, where the attitude of a Chief Magistrate who replaced the words "another candidate" with "any candidate" and created for himself, an avenue to punish the appellant, was frowned at. The Apex Court made it clear that it was wrong for the lower court to go in for judicial legislation because the judicial role is to state the law and not to give it. In simple terms, the interpretation of law, adjudication of disputes relating to individuals and ensuring the supremacy of the law remains the uncompromising role of the judiciary⁵.

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¹ The Constitution of The Federal Republic of Nigeria, (CFRN) 1999 (as amended) Ss 4, 5, 6

² Ibid s 318 (1)

³ (2010) 15 NWLR (Pt. 1216) 207 @ 237 CA

⁴ The Latin maxim means that it is for a judge to declare the existing law and not to make one.

⁵ Afe Babalola, 'Role of a Strong and Independent Judiciary in a Nation' <<https://www.abuad.edu.ng/role-of-a-strong-and-independent-nation>> accessed on 10 Dec 2024

To further explain the judiciary, The Black's Law Dictionary⁶ defines 'judiciary' as 'a system of courts..., a body of judges'. This definition presupposes that the court institution and the body of judges therein make up the judiciary and are empowered to interpret the law and administer justice.⁷ This is a tasking role especially when the judiciary stoops at the foot of two political giants. (Executive and Legislature). The instinctive survival strategy of the judiciary in the circumstance is to invoke its constitutionally guaranteed independence or autonomy from other arms of government and power wielding entities in governance. Otherwise it will remain a puppet in the scheme of governance.

1.1. History of the Independence of the Judiciary in Nigeria

The independence of the judiciary stems from the age long principle of Separation of Powers in government made popular by John Locke, a British Philosopher and Baron de Montesquieu, a French Philosopher. The doctrine requires that the functions of government be separated and carried out by different institutions and personnel. The struggle for power between the British Parliament and the Monarch within 1642 and 1660 gave rise to the doctrine of separation of powers in order to curb the excesses of any arm of government. The principle ensures that none of the arms of government exercises overriding influence over the other.⁸ Montesquieu⁹ explained that, from experience, '...every man invested with power is likely to abuse it and carry his authority as far as it will go....' He suggested that such an abuse is preventable when one power checks the excesses of another. In other words, if the legislative and executive powers, for instance, resides in the same person or body, liberty is thrown to the winds.¹⁰ It therefore will be senseless to reside the power of making laws, its interpretation and execution in the same body. Otherwise, the power holders will place themselves above the law and renege from obeying the laws at the detriment of government and society.¹¹ The principle of separation of powers in government is widely accepted and practiced in civilized governments of the world including Nigeria.

The mainstay of Nigeria's democracy like other democratic governments of the world is dependent on the independence of her judiciary. It is the platform upon which the rule of law operates as a safeguard against the misuse of power. The historical development of Nigeria through colonial rule posed a challenge to her judicial system. The judiciary under the British colonial rule was a mere tool for the enforcement of imperialist laws and suppression of local customs. This gave room for political upheavals, authoritarian rule and military regimes that inhibited the rule of law and occasioned public distrust. Nonetheless, it offered opportunities for a broader socio-political changes and the ongoing struggle for genuine independence of the judiciary.¹²

The political landscape of Nigeria in 1960, heralded a polity characterized by military coups and civil unrest with associated security challenges that affected the political foundation, stability and development¹³ of Nigeria. Nevertheless, The Judiciary survived the military regime, having not been abolished during the military junta even though its independence was greatly undermined by

⁶(11th Edition) 1013

⁷BO Nwabueze, *Judicialism in Common Wealth Africa* (London: C. Hurst & Company, 1977) 265

⁸K Beetseh and A Echikwonye, 'Separation of Powers and Sustainable Democracy in Nigeria: A Challenge' (2011) *Journal of Social science and Public Policy*, 3

⁹Charles de Secondat, Baron de Montesquieu, *The Spirit of the Law* (New York: Hafner Pub. Co., 1949)

¹⁰ibid

¹¹U Otobasi, 'The Legislative Arm in the third Tier of Government Framework: Functions and Inter relations' in BI Ugwuanyi and AA Oruebuo, 'Effective Checks and Balances of Power in the Local Government system of in Nigeria: A critical discourse on the experience and the implication of good governance' (2015) *Journal of Policy and Development Studies* 9(5) 11-23

¹²Daniel Egiegba Agbiboa, 'The Evolution of Democratic Politics and Current Security Challenges in Nigeria: Retrospect and Prospect' <https://www.researchgate.net/publication/254259037_The_Evolution_of_Democratic_Politic_and_Current_Security_Challenges_in_Nigeria_Retrospect_and_Prospect> accessed on 13 Dec 2024

¹³ibid

the introduction of military tribunals with draconian laws. The promulgation of section 6 of Decree no. 1 1984,¹⁴ restricted the judiciary (courts) from inquiring into the validity of the decrees and ensured that the rule of law was undermined.¹⁵ This ultimately whittled down the legitimacy of judicial powers at the expense of the civilians.

Consequently, these developmental challenges and transition to democratic rule has helped to reshape the judicial system in Nigeria and emphasizing the role of the judiciary in addressing past injustices and restoring public confidence in governance.¹⁶ Eagle eyes of citizens are now focused on the critical roles the judiciary play in upholding constitutionalism and human rights abuses,¹⁷ in order to foster justice and uphold the rule of law within the legal frame work of contemporary Nigeria.

1.2 The Independence of the Judiciary in Nigeria

The sing-song of the independence of the Judiciary often creates a conception of biases amongst non-legal practitioners and raises such questions as independence for whom, from whom and for what¹⁸ The above question translates conceptually, to probing into the kind of independence the judiciary needs and normatively, the degree of independence needed.¹⁹ The simple and already handy answer would be an independence from undue influence²⁰ of other arms of government and power wielding entities in society so that a judge could consciously decide cases fairly, impartially and in accordance to the facts and law and not subject to the whim, prejudice, or fear of the dictates of the legislature or executive, or the latest opinion poll²¹

It is instructive to state that the independence of the judiciary does not mean Judges being above the law and disregarding applicable rules and judicial precedents in the discharge of their judicial functions, rather their independence lay within the framework of the Constitution and the law in such a way that no judge can function outside the confines of the Constitution and the law under the pretence of judicial independence.²² It is to be noted that judicial officers are not sacred before the law and so are susceptible to prosecution²³ whenever they are in breach of the law. Recently, the National Judicial Council (NJC)²⁴ suspended Hon. Justice G.C. Aguma of the High Court of Rivers State from judicial functions for one year without pay for misconduct. She was also placed on watch list for two years thereafter. In the same vein, Hon. Justice A. O. Nwabunike of Anambra State High Court was also suspended for one year without pay for the breach of Rule 3.1 of the Revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria. The reason was that he failed to adhere to the principles of *stare decisis*. Also, Hon. Justice T. E. Chukwuemeka Chikeka, Chief Judge of Imo State

¹⁴ Constitution (Suspension and Modification) Decree, 1984

¹⁵ Afe Babalola (n 4)

¹⁶ Hakeem Yusuf, 'Calling the Judiciary to Account for the Past: Transitional Justice and Judicial Accountability in Nigeria' <https://www.pure.qub.uk/en/publications/calling-the-judiciary-to-account-for-the-past-transitional-justice> accessed on 10 Dec 2024

¹⁷ Rhoda E. Howard-Hassmann, 'Evaluating Human Rights in Africa: Some Problems of Implicit Comparisons' <https://www.scholars.wlu.ca/poli_faculty/18/> accessed on 10 Dec 2024

¹⁸ WFB Kelly, 'An Independent Judiciary: The Core of the Rule of Law'. Being a summary of paper written whilst at the International Centre for Criminal Reform and Criminal Justice Policy in Vancouver, 2002

¹⁹ David S Law, 'Judicial Independence' Encyclopedia Britannica (2024) <https://www.britannica.com/topic/judicial-independence> accessed on 10 Nov 2024.

²⁰ Undue influence is defined by the Nigerian Law Dictionary (3rd Ed.) as "Any form of influence that prevents a person from freely and objectively exercising an independent judgment with respect to any transaction"

²¹ SS Abrahamson, 'Thorny Issues and Slippery Slopes: Perspective on Judicial Independence' (2003) 64 *Ohio st. L.J.* 3

²² Rule 3.1 Code of Conduct for Judicial Officers of the Federal Republic of Nigeria

²³ *Nganjiwa v FRN* [2018] 4 NWLR (Pt. 1609) 301, at p. 348 paras B-E

²⁴ National Judicial Council, 107th Meeting of 13 & 14 November 2024 <https://www.njc.gov.ng/69/news-details> accessed 11 Dec 2024

was recommended to the Governor of Imo State for compulsory retirement with effect from October 27, 2021 for falsification of age. She is also to refund all salaries and allowances received in excess from October 27, 2021 till date while his counterpart, Hon. Kadi Babagara Mahdi, the Grand Khadi of Yobe State was also recommended to the Yobe State Governor for compulsory retirement for falsification of his date of birth in breach of Rule 02908 (i) & (ii), Public Service Rules 2021. He is also to refund all salaries and allowances received for the past twelve years. The list is unending just to buttress the point that the independence of the judiciary does not include judicial officers being above the law.

An independent judiciary assures that justice is not only done but is seen to be done. The role of the judiciary goes beyond mere adjudication. It embraces and encapsulates the protection of the rights of citizens to upholding constitutional mandates hinged on the ability of judicial officers, including other personnel in the justice delivery system to carry out their duties without any undue interference from other arms of government, including private entities²⁵ as a means to curbing illegal and unjust treatment of individuals and less privileged in society. The achievement of it would absolve players in the justice system from biases in the dispensation of justice.²⁶

In Nigeria, the idea of the independence of the judiciary is fraught with challenges. The root of these challenges is traceable to the age-long political interference and corruption. Despite constitutional and statutory safeguards on judicial functions, incessant political pressures and inadequate funding amongst others have often undermined these safeguards. Consequently, the efficacy of an independent judiciary in Nigeria is often seen as a farce, raising concerns about its ability to provide impartial justice. This article explores the Constitutional and legal safeguards on judicial independence in Nigeria and its applicability and highlighting the implications for governance and the need for reforms to strengthen the judiciary's autonomy and credibility.

This article is divided into five segments: introduction; the Constitutional and legal safeguards for the independence of the judiciary in Nigeria; importance of the independence of the judiciary; applicability of the Independence of the Judiciary in Nigeria; conclusion and recommendations.

2. The Constitutional and Legal safeguards for the independence of the Judiciary in Nigeria

It is paramount to clear the biases of the independence of the judiciary by stating that it is adorned with statutory and judicial flavours. The inherent powers and sanctions of the court of law in Nigeria is clearly enshrined under section 6(6) (a) (CFRN) 1999 as amended, notwithstanding anything to the contrary in the constitution. In other words, nothing can rid the court of law in Nigeria of its powers and sanctions in adjudicating matters between persons, or between governments or authority and to all actions and proceedings relating thereto, for determination of any question as to civil rights and obligations of persons in Nigeria.

The Court, in *Olubukola v. Gov. of Lagos State*²⁷ (2006) held in support of the independence of the judiciary and its powers, that 'Courts are always conferred jurisdiction by the statutes or law and that courts in this country derive their jurisdiction from any of the following sources: i) the constitution; ii) the enabling statutes which contain random provisions conferring jurisdiction on them or lack of jurisdiction of certain courts in cases'. This pronouncement arises from an earlier Supreme Court decision in *Ifeajuna v. Ifeajuna*,²⁸ that the jurisdiction of a court is donated by statute including the

²⁵SS Abrahamson (n 16)

²⁶*Ibid*

²⁷(2006) 16 NWLR (Pt 1006) 276

²⁸(2000) 9 NWLR (Pt. 671)248 at 277

constitution and a court – cannot add or subtract from the provisions of a statute. Abrahamson,²⁹ summarized an independent judiciary as a circumstance where a judge is not robbed of the powers of deciding cases before the court fairly, impartially, and based on the facts and law. To attain this height, judges are by law, training, expectations and judicial culture anticipated to uphold their independence. This is because judicial culture and judicial education is seen to inherently stomach intellectual honesty, fairness and principled decisions far above partisanship and politics.³⁰

The Constitutional and legal safeguards of the independence of the Judiciary in Nigeria are listed and discussed hereunder:

i. Appointment of Judicial officers

The appointment of judicial officers are governed by Sections 271(1) and (2); paragraphs 21(c) of Part I of the Third Schedule, and paragraph 6(a)(i)-(vi) of Part II of the Third Schedule to the CFRN 1999 (as amended). The operational federal system of government in Nigeria determines the procedure for appointment of judges. That is, whether the appointment is for the Federal or State Courts.

As it relates to State High Court, a combined reading of section 271(1) and (2); paragraphs 21(c) of Part I of the Third Schedule, and paragraph 6(a)(i)-(vi) of Part II of the Third Schedule to the CFRN 1999 (as amended), the appointment process of judicial officers of a State involves the judiciary (the State Judicial Service Commission and the National Judicial Service Commission (NJSC)); the Executive (Governor); and in the case of appointment of the Chief Judge of the State, the Legislature. As a duty, the 'appointment' of a judicial officer, is performed by the Governor. The appointment cannot be made without the recommendation of the National Judicial Council relying on the advice of the State Judicial Service Commission on suitable candidates nominated for the office of the Chief Judge of the State High Court or President of the Customary Court of Appeal of the State.

It is evident that at the State level, appointment of judicial officers is a shared responsibility among the three organs of government in the case of appointment of the Chief Judge of the State, and between the Judiciary and Executive respecting the appointment of other judicial officers. The idea is to ensure checks and balances and avoid arbitrariness and abuse of power. The apex Court made it clearer in *Elelu-Habeeb v. A-G, Federation*,³¹ that the National Judicial Council is armed with the power and responsibility of recommending to the Governor a suitable person for appointment to the office of Chief Judge and other judicial officers and that the delineation of power under the Constitution is designed to ensure transparency and observance of the rule of law.

As regards Appointment to federal judicial officers on the other hand, it tows the above stated pattern. A community reading of sections 231(1) & (2); 238(1) & (2); 250(1)&(2); 254B(1) & (2); 256(1)&(2) and paragraphs 21(a)(i)&(ii) of the Third Schedule, Part I to the 1999 Constitution (as amended) reveals that appointment of a person to the office of Chief Justice of Nigeria, Justice of the Supreme Court, President and Justice of the Court of Appeal, Chief Judge and Judge of the Federal High Court, President and Judge of the National Industrial Court and Chief Judge and Judge of the High Court of the Federal Capital Territory shall be made by the President on the recommendation of the National Judicial Council, relying on the advice of the Federal Judicial Service Commission recommending a suitable person for appointment.

²⁹SS Abrahamson, 'Thorny Issues and Slippery Slopes: Perspectives on Judicial Independence' (2003) 64 *Ohio st. LJ*.3

³⁰Ibid

³¹(2012) 13 *NWLR* (Pt. 1318) 422 @ 492-493.

ii. Security of tenure of judicial officers.

The security of tenure of a judicial officer is detailed under section 291(1) CFRN 1999 as amended by Section 2 of the CFRN, 1999 (Fifth Alteration (No. 37) Act, 2023). The section puts the retirement age of an appointed judicial officer of a superior court of record in Nigeria as contained in the CFRN 1999 (as amended) at sixty five years and shall compulsorily cease to hold office at attaining the age of seventy years.

This means that all superior court judges in Nigeria have a secured tenure of office on a uniform age of seventy (70) years to honourably retire from office except on other inevitable conditions.

iii. Removal or Dismissal from Office.

Section 292 (1) (a) (i) & (ii), and (b) of the CFRN, 1999 as amended, provides the procedure for the removal of judicial officers. By this provision, a judicial officer shall not be removed from 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, President of the National Industrial 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 a 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.

A combined reading of the above provisions with paragraphs 21(b) and (d), and paragraph 13(6) of Part I of the Third Schedule and paragraph 6(6) of Part II of the Third Schedule of the Constitution, it is clear that the Executive (the President or Governor as the case may be) can only rely on the recommendation of the National Judicial Council to remove a judicial officer from office or his appointment. The President or Governor must rely on the recommendation of the National Judicial Council being the basis of the address of either the Senate or the House of Assembly in praying for the removal of the judicial officer from office in accordance with section 292 (1) (a) (i) and (ii) of the Constitution. It is instructive to note that in the removal procedure, the Federal Judicial Service Commission or State Judicial Service Commission must initiate the process of removing a judicial officer and follow it up to the National Judicial Council as a judicial internal arrangement.

Therefore, any purported removal of a judicial officer by the Executive without the prior recommendation of the National Judicial Council based on a conclusive disciplinary proceeding will be of no effect. The removal of a judicial officer is therefore shielded from political manipulation. The apex court aptly captured the essence in *Elelu-Habeeb v. A-G., Federation*,³² when it held that the Kwara State Governor in collaboration with the House of Assembly of the State had no absolute

³²*Ibid*

power under the CFRN, 1999 to remove the Chief Judge of the State from his office or appointment before the age of retirement without the recommendation of the National Judicial Council.³³

It is obvious from the extant constitutional safeguard discussed above, that the discipline and removal of judicial officers is a matter within the province of the judiciary as a measure to protect its independence. It is thus, the position of this study, that neither the executive nor the legislature can employ discipline or removal of judicial officers as a tool to control, direct, or dominate the judiciary.

iv. Discipline of Judicial Officers:

The discipline of judicial officers follows the above stated constitutional provisions and is clearly reinforced in *F. R. N. v. Nganjiwa*.³⁴ The National Judicial Council (NJC) has the primary responsibility to exercise disciplinary control over all judicial officers. It will therefore be an aberration of the rule of law if the NJC was not involved in any form of exercise of disciplinary control, including criminal prosecution of judicial officers. This is in consonance with the doctrine of separation of powers enshrined in the CFRN, 1999 as amended, where executive, the legislature, or the judiciary, cannot invade the enclave of the other to interfere with their affairs.

The court clarified further that without the sanction of the NJC, a serving judicial officer cannot be prosecuted for allegations of crimes, which also bother on judicial misconduct, unless the allegations are first subjected to disciplinary sanctions of the NJC, as a condition precedent for the initiation of criminal proceedings.

v. Financial autonomy.

The independence of the judiciary cannot be complete without mentioning financial autonomy. The judiciary must be seen to be financially independent of the executive in such a way that judicial officers do not go cap in hand begging for payment of remuneration, salaries, and allowances including its recurrent expenditures.

Admittedly, the CFRN 1999, as amended, guarantees the financing of the judiciary as first-line charge. Section 81 (3) (c), CFRN (as amended) provides for the direct payment of any amount standing to the credit of the Judiciary in the Consolidated Revenue Fund of the Federation to the National Judicial Council for disbursement to the heads of the courts established for the Federation and the State under section 6 of the Constitution.

In the same vein, section 121 (3) (c), CFRN compels the payment of any amount standing to the credit of the judiciary of a State in the Consolidated Revenue Fund of the State to the heads of the concerned Courts. Furthermore, item 21(c) of the Third Schedule to the Constitution, empowers the NJC to collect, control, and disburse all moneys, capital, and recurrent, for the judiciary.

More so, the payment of judicial officer's salaries, and allowances as specified under Section 84(1), CFRN 1999 (as amended) shall be depended on the prescription made by the National Assembly and such remunerations above shall be charged upon the Consolidated Revenue Fund of the Federation as provided under section 84(2), CFRN. Section 84(3), CFRN 1999, makes it mandatory that all remuneration payable to judicial officers, excluding their allowances shall not be altered to the disadvantage of judicial officers after their appointment.³⁵ Also, under section 84(7), CFRN, the recurrent expenditure of judicial officers of the Federation including their salaries and allowances are chargeable upon the Consolidated Revenue Fund of the Federation.

³³*Tokode v. NJC (2021) LPELR – 55916 (CA) 1 @ 35-41; Otutu v. President, Federal Republic of Nigeria & Ors (2022) LPELR – 57091 (CA) 1 @ 88; Openev v. NJC (2003) LPELR – 60656 (CA) 1 @ 24-25.*

³⁴*(2022) 17 NWLR (Pt. 1860) 467 @ 460.*

³⁵*(No. 2) [2002] 6 NWLR (Pt. 764) 542 @ 688-899; 760-761; 876-877; A-G. Abia State & Ors v. A-G., Federation (2022) 16 NWLR (Pt. 1856) 205 @ 418-419.*

It is obvious from the above that the judiciary under the CFRN is financially autonomous from the executive. In *A-G., Abia State & Ors v. A-G., Federation*,³⁶ the apex court held that the implication of charging the remuneration, salaries, and allowances of Judicial Officers and their recurrent expenditure upon the Consolidated Revenue Fund is to ensure that such monies and expenditure are not subject to annual debate in the National Assembly. The moment they are fixed by the National Assembly, it cannot appear again on the annual budget estimate of the Appropriation Bill because they are not subject to changes during the term of office of the incumbent office holder. This provision guarantees the fiscal independence of the judiciary.

vi. Administrative independence.

Judicial powers of the Federation are vested in courts established for the federation and on the state, subject to the provisions of the Constitution under Section 6(1) (2) and CFRN 1999 as amended.

viii. Impartial and neutrality. The independence of the judiciary is further safeguarded by statutory and ethical codes which require judicial officers to align to high moral and legal standards and to reclude themselves from sitting on cases in which their impartiality would be questioned.³⁷ The National Judicial Council (NJC) and the courts can discipline judges for violations of these statutory and ethical codes. In *F. R. N. v. Nganjiwa*,³⁸ the Supreme Court held that by the combined provisions of section 17(2)(e) and 36(1) of the 1999 Constitution, as amended, the independence of the judiciary must be respected and protected by all the tiers of government because it is a fundamental pillar holding the rule of law and the principle of separation of powers of the three branches of government enshrined in section 4, 5, and 6 of the Constitution.

Other international instruments from where the independence of the judiciary derives include:

- i. Article 10 of the Universal Declaration of Human rights. (Right of fair hearing by a competent and independent court established by law)
- ii. Article 14 of the International Convention on Civil and Political Rights. (Right to equality before the courts and tribunals)
- iii. Article 7 of African Charter on Human and People's Rights. (Right to a fair trial)

A judge needs courage to resist threats against judicial independence and to actively advocate judicial independence based on the above statutory and ethical framework. Those lacking courage should neither apply nor run for the office. In other words, a judge has limited liberty under the law to behave irresponsibly. A judge is not expected to sit and rise at will or treat counsel and witnesses disdainfully in the guise of judicial independence.³⁹

3. Importance of the independence of the judiciary in Nigeria

Essentially, the independence of the judiciary is the engine that propels the rule of law. It is specifically important in governance in the following ways:

- i. It protects and preserves democracy and the rule of law in Nigeria troubled by political instability and corruption.
- ii. It promotes an environment where fairness, justice and public trust is upheld through ensuring
- . It places check on the powers of the executive and legislative branches of government and an atmosphere of impartiality where citizens can seek justice without fear of retaliation or bias.

³⁶Ibid 431.

³⁷Rule 12.1 (n 22)

³⁸*F.R.N v. Nganjiwa* (n 23)

³⁹Chukwudifu Oputa, 'The Independence of the Judiciary in a Democratic Society – its Needs, its Positive and Negative Aspects' in T. O. Elias and M. I. Jegede, (eds), *Nigerian Essays in Jurisprudence* (M. I. J. Publishes Limited, 1993) 229; Rule 3.2 of the Revised Code of Conduct for Judicial Officers.

- iii ensures that no entity is above the law.
- iv. Judicial independence upholds constitutional rights in Nigeria, promoting accountability and human rights, essential for any thriving democratic society.
- v. Maintains public trust and confidence. An independent judiciary is especially important in a society where public trust in institutions has often been undermined by allegations of corruption and abuse of power.

4. Threats to the Applicability of the Independence of the Judiciary in Nigeria

The constitutional and legal safeguards of the independence of the judiciary is profoundly laid out in segment 2 above. However, there are avoidable endemic threats in the system undermining its applicability and success. These threats are hereunder briefly examined.

- i. The undue interference of the executive arm of government on the judiciary. The executive arm of government would always want to decide how the judicial ace is played to manipulate the political and social arena. The former Chief Justice of Nigeria, Justice Walter Onnoghen,⁴⁰ in despair, lamented over the undue interference of State governors to manipulate the process of judges' appointment. He stated that Governors of states ensure that names of nominees for appointment as judges are not sent to the National Judicial Commission for scrutiny because the Governor's candidate's name is not on the list. The effect of such interference is the flooding of men and women highly deficient in integrity and job performance in the nation's judiciary.

In the same manner, the Body of Senior Advocates of Nigeria (BoSAN) frowned at the way the executive arm of government and politicians interfere in the process of appointing judicial officers. In their view, it is an impediment to the independence of the judiciary and undermines the principle of separation of power.⁴¹ It is further their suggestion that the appointment of judges should first be ratified by Senate or the House of Assembly as the case may be before being appointed by the Executive heads.

Meddling with judges' appointment offer grave consequences to the independence of the judiciary. The reason being that a Judge who lacks learning, industry, and integrity is less likely to be independent no matter the constitutional guarantee.⁴² It is only a judge who is characterized by honesty, incorruptibility, integrity, probity, credibility, sincerity and able to resist pressure, interference, domination, or control from any quarter in the performance of his judicial functions can sustain judicial independence. Ade-Ajayi and Akinseye-George meticulously expressed the latter when eulogizing Hon. Justice Kayode Eso's outstanding performance in judicial office as arising from his personal qualities in learning, character and industry. To say the least therefore, even if a judge is appointed under a devoid constitutional procedure, his charisma and personality including his ability to defend his office is manifest (positively or negatively) in the course of discharging his judicial functions.⁴³

Agreeably, a person lacking the requisite qualities of a judicial officer but appointed under a defective constitutional arrangement will remain a monumental threat to the independence of the judiciary. The defect will always be a recurring decimal. Also, a deficient judicial officer, even if appointed under a non-defective constitutional arrangement will definitely showcase mediocrity in the discharge of his

⁴⁰Judges and Independence of the Judiciary: A myth or Reality', Leadership Newspaper, 16 June 2018 <https://www.leadershipnewspaper.com> accessed 29 November 2024

⁴¹ Alex Enumah, 'Body of SANs Laments Executive, Politicians' Interference with Appointment of Judges' <<https://www.thisdaylive.com/index.php/2020/10/05/body-of-sans-laments-executive-politicians-interference-with-appointment-of-judges>> accessed 18 Dec 2024

⁴²Z. Adangor, 'Depoliticising the Appointment of the Chief Judge of a State in Nigeria: Lessons from the Crisis over the Appointment of the Chief Judge of Rivers State of Nigeria' (2015) 44 *Journal of Law, Policy and Globalization*, 62 @ 75.

⁴³J.F. Ade-Ajayi and Yemi Akinseye-George, *Kayode Eso: The Making of a Judge* (Abuja: Spectrum Books Limited, 2002) 136.

function. Thus, *nemo dat quod, non habet* applies. Conversely, a person who possesses the qualities of a judicial officer, even if appointed under a defective constitutional arrangement has the high likelihood of exhibiting excellence in judicial service. One therefore agrees that the personality of a judge is fundamental to his independence in addition to the legal framework on the subject.

Also, the intermittent and open gifts of vehicles, housing and huge sums of money by the executive to judicial officers is a subtle but glaring rape of the independence of the judiciary and negates the constitutionally guaranteed financial autonomy of the judiciary.⁴⁴ “He who pays the piper dictates the tune”, they say. The gifts by the executives has an undertone otherwise, it should be legislated upon and fixed by the National Assembly so that it does not appear again on the annual budget estimate or the Appropriation Bill and not subject to changes during the term of office of the incumbent office holder.⁴⁵ Such monies should be treated as other remunerations due to the judiciary and charged upon the Consolidated Revenue Fund and payable directly to the respective heads of court for their appropriate needs. The executive arm of government should desist from treating judicial officers as political appointees.

Furthermore, the procedure for the removal of judicial officers under, S. 292 (1) (a) (i) & (ii), and (b) of the Constitution is crystal clear. However, the executive with the connivance of the legislature tend to hide under the misinterpretation of the constitution to unduly remove judicial officers from office. It should be put on record that a community consideration of relevant constitutional provisions,⁴⁶ judicial pronouncements⁴⁷ and state practices suggests that the only valid manner to remove a judicial officer who is a head of court from service is by the recommendation of the NJC and a 2/3 majority resolution of the either the Senate or the State House of Assembly as the case may be.⁴⁸ Emphatically, removal of a judicial officer on the 2/3 majority vote of the Senate or State House of Assembly without the recommendation of NJC or on the ex- parte order of the Code of Conduct Tribunal is unconstitutional, illegal and burrows deep to scuttle the foundation of the independence of the judiciary. The case of the former Chief Justice of Nigeria, Walter Onnoghen who was suspended from office upon an Ex Parte Order⁴⁹ of the Code of Conduct Tribunal on alleged non-declaration of assets quickly comes to mind. The Code of Conduct Tribunal went on to try the former CJN even when a court of higher jurisdiction ordered a halt of the proceedings. This trial led to the eventual removal of the CJN from office. It is to be noted that the then President of Nigeria (Mohammadu Buhari) was determined to remove the CJN from office at all cost and in breach of the independence of the judiciary.⁵⁰ He succeeded.

Also, in *Elelu-Habeeb v AGF*⁵¹ the House of Assembly of Kwara State, through a letter, invited the Chief Judge of the State to appear at its plenary session to answer to various allegations of misconduct. Without opportunity of the Chief Judge to defend herself, she was unceremoniously removed from office. The notice of her removal as Chief Judge was not communicated to her at all.⁵²

⁴⁴CFRN 1999 (as amended) ss 81(3) and 121(3)(b)

⁴⁵A-G. Abia State & Ors v. A-G., Federation (2022) 16 NWLR (Pt. 1856)205 @ 418-419.

⁴⁶CFRN 1999 (as amended) ss 17 (2) (e), 36 (1), 291 (1) 292 (1) (a) (i) (ii) (b), articles 13 (a) and 21 (a) (i) (ii) (b) and (d) Part 1, Third Schedule.

⁴⁷Elelu-Habeeb v. A.G Federation (2012) 13 NWLR (Pt. 1318)422 @ 492-493, F.R.N. v. Nganjiwa (2022)17 NWLR (Pt. 1860) 467@460

⁴⁸Elelu-Habeeb v. A.G Federation (2012) 13 NWLR (Pt. 1318)422 @ 492-493, F.R.N. v. Nganjiwa (2022)17 NWLR (Pt. 1860) 467@460

⁴⁹CCT/ABJ/01/19 FRN v Hon. Justice Walter Samuel Nkanu Onnoghen

⁵⁰Temilola Adewusi, 'Court Judgment in Nigeria and the Independence of the Judiciary'

<<https://www.mondaq.com/nigeria/court/procedure/1455698/court-judgment-in-nigeria-and-the-independence-of-the-judiciary> > accessed on 14 Dec 2024

⁵²*Ibid* at p. 427

⁵¹[2012] 13 NWLR (pt 1318) 423

Also, it would still be fresh in our minds, when the former Governor of Kogi State attempted to remove the Chief Judge of the State, Justice Nasir Ajanah, with the assistance of the State House of Assembly without the recommendation of NJC. The State High Court ruled that it was unconstitutional.⁵³ In frustration, the Governor withheld the salary of the State Judiciary workers for several months. In Kebbi State, the former State Governor, Atiku Baguda refused to confirm the acting Chief Judge, Esther Asabe Karatu and she petitioned NJC. In a twist of event, the Kebbi State House of Assembly confirmed Mrs. Karatu as substantive Chief Judge of the State on the 17th day of January 2019. The Governor refused to acknowledge the Assembly's confirmation.⁵⁴

Despite all attempts by the other arms of government to scuttle the independence of the judiciary, it is settled that any purported removal of a judicial officer by the Executive without the prior recommendation of the National Judicial Council following a conclusive disciplinary proceeding will be null and void. In this way, the removal of a judicial officer is insulated from political interference or manipulation. The disciplinary control including criminal prosecution of all judicial officers lays within the confines of the National Judicial Council,⁵⁵ otherwise would be a negation of the rule of law. It was also held in *Elelu-Habeeb v. A-G., Federation*,⁵⁶ that the 1999 Constitution does not give the Governor of Kwara State acting in conjunction with the House of Assembly of Kwara State absolute power to remove the Chief Judge of the State from office or appointment before the age of retirement without the recommendation of the National Judicial Council.⁵⁷

Admittedly, judicial officers do not have immunity from prosecution⁵⁸ just as time does not run against the state in matters of crime and its prosecution, yet judges are being removed from office hastily and unceremoniously without due process of law.⁵⁹ It is subtly recommended that constitutional provisions relating to the discipline and removal of judges should be excised from the Executive and Legislative arms of government and retained, exclusively and absolutely within the confines of the NJC.

ii. Inadequate Constitutional Provisions:

Another grey area deserving of attention is thus: who determines a judge's inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body)? This poser is imperative, according to Hon. Justice Uchechukwu Onyemenam PJCA,⁶⁰ the law appears to have left the determination of this all important medical issue to the conjecture of either the political class or NJC, meanwhile when the removal of a governor is involved on health grounds, the constitution clearly provides for a Medical Panel which shall "...comprise five medical practitioners in Nigeria-(a) one of whom shall be the personal physician of the holder of the office concerned; and (b) four other medical practitioners who have, ...attained a high degree of eminence in the field of medicine relative to the nature of the examination to be conducted..."⁶¹

⁵²*Ibid* at p. 427

⁵³Sahara Reporters, 'Yahaya Bello, Kogi House of Assembly cannot remove Chief Judge-High Court', June 18, 2019 <<https://www.saharareporters.com>> accessed 24 Nov 2024

⁵⁴Wale Odunsi, 'Kebbi acting Chief Judge Petitions NJC over Baguda's alleged refusal to confirm her for 'being Christian' Daily Post, 17 June 2019. <<https://www.dailypost.ng>> accessed 24 Nov 2024

⁵⁵(2022) 17 NWLR (Pt. 1860) 467 @ 460.

⁵⁶*Elelu-Habeeb v. A-G Federation (supra)* @ 494-495, 497

⁵⁷See also *Tokode v. NJC* (2021) LPELR – 55916 (CA) 1 @ 35-41; *Ototu v. President, Federal Republic of Nigeria & Ors* (2022) LPELR – 57091 (CA) 1 @ 88; *Opene v. NJC* (2003) LPELR – 60656 (CA) 1 @ 24-25).

⁵⁸*Nganjiwa v FRN* [2018] 4 NWLR (Pt. 1609) 301, at p. 348 paras B-E

⁵⁹CA Igwe and BO Igwenyi, 'Protecting Judicial Independence, Autonomy and Accountability in the States of the Federation' *Redeemer's University Nigeria, Journal of Jurisprudence & International Law (RUNJJIL)* (2023) 3(1)

⁶⁰Uchechukwu Onyemenam, Being Comments On a Text of a Paper Titled 'Judicial Independence' Presented by His Excellency, Nyesom Ezenwo Wike, CON, GSSRS, Life Benchers, The Honourable Minister of Federal Capital Territory on the Occasion of the Court of Appeal Annual End-Of-Year Conference Holden from 9th – 12th December, 2024, at the Court of Appeal Headquarters, Abuja.

⁶¹CFRN 1999 (as amended) s189 (1) (b) (4) (a) (b) and s144 (1) (b) (4) (a) (b) for President

Regrettably, no mandatory constitutional provision for a Medical Panel to determine the issue of inability of a judicial officer to discharge his judicial functions whether arising from infirmity of mind or body. It is therefore proposed that what happens in the Executive should extend to the Judiciary, such that the resolutions of the Senate/House of Assembly on the removal of a judge should be tailored towards the recommendation of the NJC following the outcome of the Medical Panel to be constituted by the NJC which should include the personal physician of the judicial officer involved.⁶² It is therefore suggested in agreement with the poser above, that there is need to harmonize the constitutional procedures for the removal of heads of courts in Nigeria by slightly amending section 292 (1) (a) (i) of the Constitution to read thus:

292 (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, President of the National Industrial 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 of the Customary Court of Appeal of the Federal Capital Territory, Abuja by the President *relying on the recommendation of NJC and* acting on an address supported by two thirds majority of the Senate.

If section 292 of the Constitution is amended as suggested above, the tumult and political maneuvering respecting the removal of heads of superior courts of record in Nigeria would have been settled.⁶³

iii. Corruption.

The endemic corruption in the judiciary and public institutions in Nigeria raises questions about fair and just dispensation of justice. The trending prevalence of judicial corruption leaves much to be desired. Judges giving undeserving judgments for personal gain is an affront to the independence of the judiciary and a backlash to the rule of law.

iv. Political pressure/influence.

There is a manifest manipulation of court proceedings by influential political actors seeking to achieve personal or partisan objectives. Judges are bent-over and compromised by pressure especially from those who were instrumental to their elevation to the higher bench. This phenomenon not only create an impartial judge but also an inconsistent dispensation of justice in favour of the powerful at the expense of the vulnerable. Ultimately, the combination of political meddling and systemic corruption stifles the rule of law, making it exceedingly challenging to uphold the fundamental human rights that are supposed to guide development efforts within the nation

v. Lack of resources/inadequate funding.

It is pitiable that most of the court rooms in Nigeria are dilapidated with inadequate facilities and tools to work with as a result of underfunding. This situation jeopardizes the independence of the judiciary as heads of courts may be seen going to the executive to solicit for additional financial assistance outside their budgetary allocation. The resultant effect is the striking of a deal. “You rub my back, I rub yours”

⁶² Onyemenam (n 60)

⁶³ Ibid

vi. Delayed appointments.

It is seen that courts are overwhelmed with cases due to inadequate number of appointed judicial officers to handle them. The few appointed judges are overburdened with cases and for the fact that they have to make quarterly return of cases to the NJC, they are under pressure to make ends meet. In such circumstance, the executive arm may deliberately delay the appointment of more judges in order to use it achieve unmerited favour. This will expose judges to executive intimidation, uncertainty, insecurity and the smooth functioning of the judicial system

vii. Influence of colonialism

The Nigerian colonial background still hold influences on judiciary's modes of operation today. The inherited colonial judicial system lacked consistency and depth and has left the Nigerian judiciary struggling with unclear standards for assessing the legality of laws and actions, leading to subjective interpretations and contradictory rulings on related matters.

5. Conclusion and Recommendations

The independence of the judiciary goes to the root of the rule of law and the principles of checks and balances necessary to avert the excesses of any arm of government. In reflecting upon the state of the Nigerian judiciary, it is clear that the sustainability of democratic governance hinges on the intersection of institutional accountability and applicability of the rule of law. The autonomy and effectiveness of the judiciary is scuttled by multifaceted challenges discussed in segment four (4) of this article. Independence and accountability in the justice system is therefore imperative for promoting justice and restoring public trust in democratic Nigeria.

It is ultimately recommended that both structural reforms and cultural shifts (devoid of mediocrity and nepotism) that reinforce the judiciary's role as a guardian of democracy and human rights in Nigeria be encouraged to foster a truly effective and efficient independent judiciary.