

JUDICIAL INDISCIPLINE: THE BANE OF DEMOCRATIC INSTABILITY IN NIGERIA*

Abstract

The judicial branch of government has the solemn duty to protect citizens' rights and liberties, acting as a bulwark against any form of injustice or violation of the rule of law. It is for this reason that judges are enjoined to be disciplined in and out of the court. They should make decisions objectively, without letting personal feelings or prejudices influence them. Unfortunately, Nigeria's democracy and indeed her democratic institutions have been weakened and are currently at the verge of collapse and most scholars blame judges for failing in their constitutional mandate to safeguard the Constitution and other laws. The Nigeria's judiciary has for long time been perceived to be open to political bias and undue influence, bribery and open for executive manipulation. This article is aimed at evaluating the nexus between judicial indiscipline and democratic instability in Nigeria and to recommend ways of remedying it. The doctrinal method of legal research was employed and materials were collected from primary, secondary and internet sources. We found that the manifest indiscipline of the present day Nigeria's judiciary as epitomized in some of the illustrated cases is directly and indirectly responsible for the weakness of our institutions and democratic instability in Nigeria. We recommend inter alia that a body to be known as 'the Bar and Bench Joint Judicial Integrity Committee' be set in each state of the federation and the Federal Capital Territory, Abuja, to act as a watch dog on the integrity of lawyers and judges and to, often make confidential recommendations either to the National Judicial Council or to the Nigerian Bar Association whenever necessary. By this, the integrity of individual judges on the one hand and that of the judicial system on the other hand would be strengthened.

Keywords: Judicial Indiscipline, Democratic Stability, Judicial Accountability, Judicial Function, Nigeria

1. Introduction

Judicial officers are not ordinary people; they have massive responsibility on their shoulders.¹ They are the cornerstone of the legal system, and their decisions can alter the lives of the people involved in the cases they preside over.² Their duties involve hearing evidence, overseeing trials, and making rulings based on the evidence and the law. The exercise of these powers has consequential effects on the lives and fortunes of citizens. Therefore, fairness, equality, and the rule of law are key principles that every judicial officer must uphold and they must be impartial; meaning that, they can't favour one party over another. They should make decisions objectively, without letting personal feelings or prejudices influence them.³ Judicial officers are vital players in any legal system. They're more than just figures in black robes.⁴ They are the champions of justice, bearing the responsibility of ensuring fair treatment, protecting rights, and maintaining the rule of law.⁵ Their roles demand not just expertise in law but also integrity, impartiality, and a deep commitment to justice.⁶ Judicial officers who exercise judicial powers and authority granted to courts by the Constitution and other laws to interpret and decide, should endeavour to do so, and based on sound legal principles and utmost integrity.⁷ It must be emphasized, that the judicial branch of government has the solemn duty to protect citizens' rights and liberties, acting as a bulwark against any form of injustice or violation of the rule of law. It is for this reason that judges are enjoined to be disciplined in and out of the court.⁸ Judicial discipline entails that the personality and behaviour of a judge, should be such that no one in and outside the court feels uncomfortable and every one comes to the court with the hope that justice shall be properly delivered.⁹ Katyayan¹⁰ has mentioned the following qualities of a good judge, namely: Restraint; Impartial; Steadfast; God fearing; Free from ego; and leading the righteous life.¹¹ The judge should sit at the dais, with a view to emanate ray of hope in every one's life. Only a judge, disciplined in all the vocations of life, can do so.¹² Essentially, the duty of the judge is to do justice to the parties with affable mind and only a disciplined judge can do so.¹³

Nigeria's democracy and indeed her democratic institutions have been weakened and are currently at the verge of collapse and most scholars blame judges for failing in their constitutional mandate to safeguard the Constitution and other laws.¹⁴ It is undeniable that Nigeria's judiciary has for long time been perceived to be open to political bias and

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¹ M M Ahmad, 'Responsibilities of A Judicial Officer' available at <<http://dx.doi.org/10.2139/ssrn.1913690>> accessed 19th March, 2024.

²Ibid.

³ S Goldman, 'Judicial Selection and the Qualities that Make a Good Judge' available at <<https://www.jstor.org/stable>> accessed 19th March, 2024.

⁴ R A Kessler, 'The Psychological Effects of The Judicial Robe' available at: <<https://www.jstor.org/stable>> accessed 19th March, 2024.

⁵Ibid.

⁶Ibid.

⁷S Conrad, 'What is Judicial Power—Definition/Meaning/Example' available at: <<https://www.myaccountingcourse.com>> accessed 19th March, 2024.

⁸ E Edosa, The Judiciary as an Organ of Government, *African Research Review* Vol. 8 (3) 2014. 93- 98.

⁹Ibid.

¹⁰ A Katyayan 'Qualities of a Good Judge' available at: <<https://blogs.uoregon.edu/qualities>> accessed 29/2/2024.

¹¹Ibid.

¹²Ibid.

¹³Ibid.

¹⁴R O Maduagwu 'The Role of the Judiciary in the Sustenance of Democracy in Nigeria' available at <<https://journals.ezenwaohaetorc.org>> accessed 11th April, 2025.

undue influence, bribery and open for executive manipulation.¹⁵ This article is designed to evaluate the nexus between judicial indiscipline and democratic instability in Nigeria on the one hand and on the other hand, call for judicial discipline and accountability as a panacea for democratic cum institutional stability in Nigeria.

2. Intricacies of Judicial Indiscipline in Nigeria

Cleveland and Masimore studied disciplinary procedure involving judicial officers in Nigeria and maintained that an independent and honorable judiciary is indispensable to justice in any society; thus, a judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards, so that the integrity and independence of the judiciary will be preserved.¹⁶ According to them, a judge, must expect to be the subject of constant public scrutiny.¹⁷ A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so, freely and willingly.¹⁸ Mahesh on his part stated that, a judicial officer is required to maintain judicial etiquette, which includes professional behaviour; good manners and courtesies required of a holder of such esteemed office and further bound by the constitution, the laws and code of conduct guiding the judge's function.¹⁹ Accordingly, judges must conduct themselves with probity and integrity in accordance with their office, thereby enhancing public confidence in the judiciary.²⁰ Kourliset stated that, effective judicial discipline is an important part of a trusted and trustworthy court system.²¹ According to him, the public must know that judicial ethics and violations of the Code of Judicial Conduct are taken seriously.²² Kourliset maintain that absent that assurance, the system appears self-serving, protectionist, and even potentially corrupt and it is not just the reality of the existence of effective systems that matters; it is also the appearance.²³ He further state that a wholly effective system with no transparency and no public confidence will not suffice.²⁴ Shetreet opines that judges are humans, and it is their humanity that allows them to pass judgment on the complexities of fact and law in cases before them.²⁵ Further, their humanity also means, they are subject to the usual gamut of human frailties.²⁶ Though, failing to acknowledge and address it has the potential to damage the integrity of the courts and undermine the ability of individual judge.²⁷ Tembeckjian acknowledged that, as in any profession, there will always be some judges who engage in unethical behaviour.²⁸ Tembeckjian argued that disciplining such judges is important governmental business that should be transacted publicly, once the responsible enforcement authorities have concluded their investigation and determined that formal charges are appropriate.²⁹ Citizens have a right to know when a judge's integrity has been seriously questioned, and opening the process to public scrutiny would help to ensure that the process is and appears to be honest, which is a special concern whenever a profession polices itself.³⁰

For Martineau, the ultimate reason for any type of judicial discipline is to maintain public confidence in the judiciary.³¹ The logic behind this principle is simple; a legal system can function only as long as the public accepts and abides by decisions rendered by the courts; the public will accept and abide by these decisions only if it is convinced that the judges are fair and impartial; anything that tends to weaken that conviction should be avoided. In other words, justice must not only be done, but it must also appear to be done.³² Martineau argues that it is for this reason, that judges are commanded to avoid not only actual impropriety but also the appearance of impropriety in all of their activities.³³ He further state that the types of discipline that may be imposed upon a judge are generally prescribed by constitution, statute or rules made thereunder, which usually provide a range of sanctions, which may include, the sanction of removal from office, retirement, suspension, public reprimand or censure, private reprimand or censure, imposition of conditions or limitations on the performance of judicial duties, imposition of a fine, or any combination of the above.³⁴ According to Peskoe, the judiciary, which has been given the last word in our three branched system, is most vulnerable to criticism where it has failed to scrutinize the conduct of its members, to compel conformity to appropriate standards,

¹⁵ Ibid.

¹⁶ D Cleveland and J Masimore, 'Disciplinary Proceedings Involving Judges, Attorney-Magistrates, and Other Judicial Figures, 14 *Geo. J. Legal Ethics* (2001)1037, available at: <http://scholar.valpo.edu/law_facpubs> accessed 26th March, 2024.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ G V Mahesh 'Etiquette and Conduct of Judicial Officers' available at: <<https://ssrn.com/abstract=3597379>> accessed 26th March, 2024.

²⁰ Ibid.

²¹ R L Kourliset *al* 'Judicial Discipline Systems' available at: <<https://iaals.du.edu/sites/default/files/documents/>> accessed 26th March, 2024.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ S Shetreet, *Judges on Trial: A Study of the Appointment and Accountability of the English Judiciary* (North-Holland Publishing, 1976) 3–5.

²⁶ Ibid.

²⁷ Ibid.

²⁸ R H Tembeckjian, 'Judicial Conduct and Ethics' *The Justice System Journal* Vol. 28, No. 3, (2007), 419-425.

²⁹ Ibid.

³⁰ Ibid.

³¹ R J Martineau, 'Disciplining Judges for Nonofficial Conduct: A Survey and Critique of the Law' *University of Baltimore Law Review: Vol. 10: Iss. 2, Article 2* (1981) available at: <<https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1263&context=ublr>> accessed 26th March, 2024.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

and to impose discipline for the protection of the public.³⁵ Peskoe contend that the reason for this, is because, the public has an indisputable interest in those who preside in its courtrooms.³⁶ In his view, they also have suspicions about courts and judges which will not be allayed by judicial reluctance to submit to visible disciplinary proceedings.³⁷ He further reasoned that it is for these reasons, that most state judiciaries have already taken the initiative in developing judicial disciplinary systems and it is important that these systems achieve maximum effectiveness.³⁸ It is also important in the interest of maintaining judge morale and public credibility, that there be minimal disparity among the systems.³⁹ Schoenbaum studied the history of judicial indiscipline and state that discipline process is concerned with a person's ability to serve as judge and with public confidence in the judicial process.⁴⁰ According to Schoenbaum both of these factors are affected by a judge's conduct, whether it occurs on or off the bench and before or after the assumption of judicial office.⁴¹ He further asserts that, although the sanction to be imposed may be affected by when the conduct occurred, the power of the disciplinary body to scrutinize such conduct is not affected.⁴² Schoenbaum argued that this approach would appear to be sound in view of the purpose of the judicial discipline process, but it must be kept in mind, however, that the standard of conduct to which a judge may be held should be the standard corresponding to the status or position that he held at the time of the acts under review.⁴³ Thus, a judge who is alleged to have engaged in improper conduct while a lawyer must be judged by the standard of conduct then applicable to lawyers and not the standard applicable to judges.⁴⁴ To do otherwise Schoenbaum insist, would put future judges in the impossible position of having to comply with standards of conduct for positions, they do not yet hold and in fact may never hold.⁴⁵ Similarly, when higher standards of conduct for judges are adopted, a judge's conduct should be measured against the standard in effect when the conduct occurred, rather than the standard in effect at the time of the disciplinary proceeding.⁴⁶

Alexander Hamilton wrote that the judiciary has neither a sword to enforce its will, nor the purse to fund its mandates.⁴⁷ Their power derives from the integrity of its judgments. He argued that public confidence in that integrity and in the principle that the litigant will get a fair shake from an impartial Magistrate is essential to the rule of law.⁴⁸ For him, confidence in the courts is what encourages people to come to the courts, rather than resort to the streets, to resolve their disputes.⁴⁹ Gray studied the practice of judicial discipline and holds the view, that delicate balance would more likely be upset, rather than protected by a system that put the judges interest in his or her reputation, above the citizen's right to know that the judge's integrity was in issue; that shielded the public scrutiny the very judges who must safeguard the right to a public trial for everyone else and that encouraged skeptics to argue that in a self-policing system, judges and lawyers would protect their own.⁵⁰ He further state that, it would also disrepute the appointing and budgeting authorities of an important tool, to measure the *bona fides* of the disciplinary enforcers themselves.⁵¹

Stone argued that although punishment plays an undeniable role in judicial discipline, protecting the public, not sanctioning judges, is the primary purpose of the judicial disciplinary system.⁵² In the words of John Stone:

...One way to protect the public is to remove the offending judge from office... another way to protect the public is to keep it informed of judicial transgression and their consequences, so that it knows, that its government actively investigates allegations of judicial misconduct and takes appropriate action when these allegations are proved.

According to the report of the California Commission on Judicial Performance, judicial discipline protects the public, by fostering public confidence in the integrity of a self-policing judicial system.⁵³ In addition, sanctions deter further misconduct by the disciplined judge and other judges.⁵⁴ The Commission further states that, today's disciplinary systems seek to protect the public and the integrity of judicial proceedings, deter future misconduct, and promote public confidence in the judicial system and the discipline process is not and cannot be another means of appealing an outcome

³⁵Florence R. Peskoe, Procedures for Judicial Discipline: Type of Commission, Due Process and Right to Counsel, 54 *Chi.-Kent L. Rev.* 147 (1977), available at: <<https://scholarship.kentlaw.iit.edu/cklawreview/vol54/iss1/9>> accessed 31st March, 2024.

³⁶*Ibid.*

³⁷*Ibid.*

³⁸*Ibid.*

³⁹*Ibid.*

⁴⁰ E J Schoenbaum, A Historical Look at Judicial Discipline, 54 *Chi.-Kent L. Rev.* 1 (1977) 4-8.

⁴¹*Ibid.*

⁴²*Ibid.*

⁴³*Ibid.*

⁴⁴*Ibid.*

⁴⁵*Ibid.*

⁴⁶*Ibid.*

⁴⁷ A Hamilton 'Judiciary: Federalist No. 78' available at: <<https://www.cliffsnotes.com>> accessed 27th March, 2024.

⁴⁸*Ibid.*

⁴⁹*Ibid.*

⁵⁰ C Gray, 'How Judicial Conduct Commissions work' available at: <www.ajs.org/ethics/pdfs/> accessed 5th March, 2024.

⁵¹*Ibid.*

⁵²J Rosenbaum, 'When A High Court Justice is charged with Misconduct' *Judicial Conduct Reporter* vol.16 available at: <<http://www.bis.state.mn.us/>> accessed 5th March, 2024.

⁵³California Commission of Judicial Performance, '2016 Annual Report. San Francisco: California Commission on Judicial Performance' available at: <<http://www.ncscJudicialethicsblog.org>> accessed 29th February, 2024.

⁵⁴*Ibid.*

in a case.⁵⁵ Thus, judges need to be able to make judicial decisions without fear of administrative or substantive interference, and the appellate process is in place to correct legal errors.⁵⁶

Gillis did a comparison of judicial discipline and opined that disciplinary proceedings have been variously characterized as administrative, civil, and quasi-penal in nature.⁵⁷ He further state that, some view judicial disciplinary proceedings as *sui generis*, neither civil nor criminal nor administrative.⁵⁸ Iloh attributed the incessant cases of misconduct among judicial officers to bias. According to him, allegation of bias by litigants generally and legal practitioners in particular is a very serious attack on the person and integrity of a judge. This is because; allegation of bias impugns the judge's sense of fair hearing.⁵⁹ Bias generally, is that instinct which causes the mind to incline toward a particular object or course.⁶⁰ In his view, when a judge appears to give more favour or consideration to one of the utterances, attention or actions, which is capable of perverting the cause of justice, or where fair hearing cannot be said to take place, all in favour of the party he supports covertly or overtly, then allegation of bias against him, can be grounded.⁶¹ According to Oko, the first, and by far the most debilitating problem of the judiciary, is corruption.⁶² Oko states that honest and impartial decision making, which is so vital to the credibility and effectiveness of the judiciary, is palpably absent in Nigeria.⁶³ He maintains that the judiciary, which should exemplify the nation's best and most just virtues, now reflects the worst aspects of moral decadence in Nigeria.⁶⁴ He explained that some judges have succumbed to the despicable belief that amassing wealth matters more than anything else, including honour and integrity.⁶⁵ These dishonest judges subordinate their commitment to justice, to the desire to amass wealth.⁶⁶ For Nnaemeka-Agu, the Nigerian judiciary that admirably discharged its duties during the early post-independence years now shows signs of weakness, inadequacy and corruption.⁶⁷ Thus:

Because of the mutual benefits of corruption, the corrupt judge and the bribe giver have no interest in reporting the crime. Corruption only gets to the surface when one of the parties feels cheated or chooses to display an uncommon sense of duty and comes forward to report on corruption. It is therefore difficult to estimate the actual extent of judicial corruption. My familiarity with the Nigerian scene, discussions with my colleagues, and newspaper accounts all indicate that judicial corruption is endemic and pervasive.

Maduagwu attributes the prevalence of corruption in Nigeria, to the prevailing culture that condones and even encourages corruption: corruption thrives in Nigeria, because the society sanctions it.⁶⁸ According to him, no Nigerian official would be ashamed, let alone condemned by his people, because he or she is accused of being corrupt.⁶⁹ The same applies to outright stealing of government or public money or property.⁷⁰ Maduagwu contend that, on the contrary, the official will be hailed as being smart.⁷¹ He would be adored as having made it; he is a successful man; and any government official or politician who is in a position to enrich himself corruptly, who failed to do so will, in fact, be ostracised by his people upon leaving office. He would be regarded as a fool, or selfish, or both.⁷² According to him:

Trials often turn into charades where powerful litigants, aided by unethical lawyers and faithless judges, manipulate the judicial process to achieve preordained outcomes. Citizens, lawyers and even eminent jurists now openly acknowledge that the judicial system is no longer a realistic forum for obtaining justice, especially for citizens who lack the resources and social connections to influence the outcome of judicial proceedings. In a system festooned with corruption, justice is often determined by the depth of a party's willingness to take advantage of his or her status in the society. A corrupt judge is driven by the desire to amass wealth and is willing to bend the law to accommodate complaining parties who grease his palm.⁷³

Niki Tobi aptly described the mindset and modus operandi of a corrupt judge, as follows:

⁵⁵Ibid.

⁵⁶Ibid.

⁵⁷ M Gillis, 'Unitary System of Judicial Discipline: A Comparison with Illinois' Two-Tier Approach' *Chi.-Kent L. Rev.* 117, 54 (1977) 132-35.

⁵⁸Ibid.

⁵⁹F O Iloh, 'When the Judge is Judged: An Assessment of Proof of Judicial Bias,' *EBSU Journal of International Law and Juridical Review* Vol. 2013, 254.

⁶⁰Ibid.

⁶¹Ibid.

⁶²O Oko, 'Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria' *Brooklyn Journal of International Law Volume 31*|Issue 1, Article 1 (2005).

⁶³Ibid.

⁶⁴Ibid.

⁶⁵Ibid.

⁶⁶Ibid.

⁶⁷Philip Nnaemeka-Agu, 'The Role of the National Judicial Council in the Administration of Justice Under the 1999 Constitution,' Paper presented to All Nigeria Judges' Conference 6 (Dec. 8-13, 2003).

⁶⁸M O Maduagwu, 'Nigeria in Search of Political Culture: The Political Class, Corruption and Democratization' available at: <<https://www.academia.edu>> accessed 26th March, 2024.

⁶⁹Ibid.

⁷⁰Ibid.

⁷¹Ibid.

⁷²Ibid.

⁷³Ibid.

A judge who is corrupt is the greatest enemy of the judicial process. A corrupt judge is blind to the truth. He is incapable of searching for the truth in the judicial process. His mind is diseased and he is incapable of doing justice in the matter before him. He likes the party who has given him the bribe. He hates the party who has not given him the bribe. He therefore, gives judgment to the party he likes and gives judgment against the party he hates.⁷⁴

According to Abonyi⁷⁵ an allegation of receiving gift or benefits in kind or accepting property or benefit by a judicial officer, in the discharge of his duties, is not only a breach of his code of conduct as a public officer, but also a misconduct in the eyes of the law which no doubt attracts sanctions.⁷⁶ By Section 98 (a) and (b) & section 99 of Criminal Code⁷⁷ it is criminal offence to give or receive bribes, as well as any form of invitation of bribes by a public officer. Same goes to taking, asking, accepting or soliciting for reward by a public officer beyond his pay or emoluments. Under section 98 (d) of the Criminal Code⁷⁸ public officer is defined to include judicial officers. In the words of Sagay, the corruption among the judges in Nigeria is the handiwork of senior lawyers. The dominant view in Nigeria is that senior lawyers corrupt the judges by playing middleman role in the bribery deal, between the judges and litigants, including politicians and corrupt official of different agencies and parastatals of government.⁷⁹ Obele opined that the weakness of the court and of justice has led to high rate of corruption in the judiciary, and indeed in Nigerian society. 'Our court is weak and justice is laughable and people now prefer to adopt the Law of Moses than go to courts to resolve their matters. Perversion of justice in our courts is rampant and those with cash at hands and those having deeper pockets bribe the sense of the judges'.⁸⁰ Cynthia Gray posed some questions: what are the sacks of money found in the houses of the judges doing there, what is the income of the judges to guarantee their ownership of the properties traced to their names at choice areas in Nigeria, can the judges justify why some of them have not touched or spent their salaries for months.⁸¹ According to Falana, there is also a wide criticism from few Nigerians, that the Nigerian Bar Association which is supposed to be in the forefront in the fight against corruption in the judiciary, shield corrupt judges from prosecution. In the words of Femi Falana:

The Nigerian Bar Association which has information on all corrupt judges and lawyers in the country has continued to shield them to the embarrassment of incorruptible members of the bar and bench. The few lawyers that have plucked the courage to expose the corrupt judges and lawyers have been stigmatized and treated as lepers by their colleagues. However, it is a matter of grave concern that the legal profession has allowed the denigration of the hallowed temple of justice because of the corruption of a few corrupt judges.⁸²

Swain observed that, in dealing with judicial indiscipline, there is an inherent conflict between the necessity of maintaining the independence of judges, and the necessity of having a public which accepts individual judicial determinations as legitimate.⁸³ According to him, judges are in a unique position in our political system.⁸⁴ They are required to be apolitical yet they must, at times, make political decisions which may be contrary to the will of the majority. The problem becomes one of maintaining the confidence in the decision-making process as a whole, while keeping the independence of the judiciary intact, by shielding it from external pressure.⁸⁵ He further state that this need for a proper balance cannot be underscored enough, if emphasis were given only to maintaining legitimacy at the cost of independence, only reputation, not honesty in fact, would be at issue.⁸⁶ For him, these two terms, though not mutually exclusive, do not necessarily coexist. On the other hand, to stress complete independence in its purest state, would risk the loss of public acceptance of the system's legitimacy, upon which the effectiveness of the system depends.⁸⁷ The goal, therefore, is a system which strikes a balance between independence and the need for achieving honesty and a good reputation in fact.⁸⁸ Swain insists that the system cannot be overly subject to political control, nor can it be overly subject to judicial control. It must strive to strike a balance between the two, while the pitfalls of a system which is run by non-

⁷⁴Niki Tobi, 'Code of Conduct and Professional Ethics for Judicial Officers in Nigeria, in *Judicial Excellence: Essays in Honor of Hon. Justice Anthony I. Iguh* 37, 82–83 (J. O. Irukwu & I. A. Umezulike eds., 2004). 30.

⁷⁵A U Abonyi, 'An Appraisal of the Powers of Economic and Financial Crimes Commission and Department for State Security Service to Prosecute Serving Judicial Officers under the Nigerian Law' being a Paper Presented at the 2018 Bar Dinner of Nigerian Bar Association Nnewi Branch on the 28th June, 2018.

⁷⁶S. 292(1)(b) of CFRN 1999 (as amended).

⁷⁷Cap C38, 2004.

⁷⁸Criminal Code Act Cap. C38, 2004.

⁷⁹C Ndujihe, 'Crackdown on Judges: Judges are Corrupted by Senior Lawyers-Sagay' available at: <www.vanguardngr.com> accessed 26th February 2024.

⁸⁰C Obele, 'Reacts to Arrest of Judges by DSS Operatives' Available at: <vanguardonlinenewscomments.com> accessed 27th February 2024.

⁸¹C Gray 'The Line between Legal Error and Judicial Misconduct: Balancing Judicial Independence and Accountability' available at: <https://scholarlycommons.law.hofstra.edu> accessed 26/2/2024.

⁸²F Falana, 'Blame NJC for-Corrupt-Judges' available at: <http://www.Vanguard.Com>. Accessed 27th February 2024.

⁸³J T Swain, *The Procedures of Judicial Discipline*, 59 *Marq. L. Rev.* 190 (1976), available at: <https://scholarship.law.marquette.edu/mulr/vol59/iss1/6> accessed 25/3/2024.

⁸⁴*Ibid.*

⁸⁵*Ibid.*

⁸⁶*Ibid.*

⁸⁷*Ibid.*

⁸⁸*Ibid.*

judicial appointees are obvious; there is also an inherent illegitimacy in the public's mind of a system of judicial self-scrutiny.⁸⁹

Satterthwaite holds the view that disciplinary proceedings against judges, must be based on the rule of law and carried out in accordance with certain basic principles, aimed at safeguarding judicial independence.⁹⁰ He argued that international standards and the jurisprudence stipulates that: (a) the disciplinary procedure should be established by law; (b) the behaviour that may give rise to disciplinary liability, should be expressly defined by law; (c) disciplinary proceedings should be adjudicated by an independent authority or a court; (d) the disciplinary procedure, should afford adequate procedural guarantees to the accused judge, and the decision of the disciplinary authority should be motivated and subject to review by a higher judicial authority; and (e) sanctions should be previously established by law and their imposition should be subject to the principle of proportionality.⁹¹ Similarly, in order to safeguard the independence of the judiciary and shield judges from prosecution or vexatious civil claims, international standards provide that judges should enjoy a certain degree of immunity from civil or criminal jurisdiction.⁹² Such immunity is not general; it relates only to activities undertaken in good faith, in the exercise of judicial functions.⁹³

Naïs *et al* acknowledged that generally, disciplinary systems within the realm of the judiciary, guarantee the professional conduct of individual judges.⁹⁴ However, not every failure to observe professional conduct will lead to the initiation of disciplinary procedure, thus, only flagrantly serious behaviour that is likely to jeopardize the reputation of the judiciary and potentially harmful to those subject to trial, justifies disciplinary proceedings.⁹⁵ According to them, Codes of conduct, and the principles underlying them, shall guide actions of judges, and aim to prevent misconduct.⁹⁶ Such codes need to be distinguished from disciplinary rules, which aim to sanction actions and misconduct that have already taken place, although they may serve as authoritative source for interpretation for unethical or unprofessional behaviour leading to disciplinary sanctions.⁹⁷ They further state that, disciplinary proceedings should also be distinguished from criminal proceedings.⁹⁸ At the same time, a particular act may be serious enough to constitute a disciplinary offence and a criminal offence at the same time.⁹⁹ On the whole, however, both types of liability should be used sparingly, so as not to create a dangerous effect within the judiciary.¹⁰⁰ To them, seeing to it that, the need for judges to be disciplined and sanctioned for wrongdoing, happens in a way that does not unduly impinge, on the independent and impartial manner of their work is very important.¹⁰¹ To ensure inviolability of the judiciary, avoid undue interference from executive and subordination to political exigencies, as well as address dangers of corporatism, disciplinary matter should be dealt by independent institutions with a balanced composition.¹⁰² The manner in which such bodies are established and composed has direct consequences for their independence.¹⁰³ Independent bodies or disciplinary courts should have a decisive influence in disciplinary proceedings, with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanctions.¹⁰⁴

Smaliuk and Mykhailo expressed the view that improving the procedure for bringing judges to disciplinary responsibility is one of the important elements of judicial reform and strengthening the independence, professionalism and integrity of the judiciary.¹⁰⁵ According to them, an integral element of effective procedure largely depends on judicial control over the decisions of the disciplinary body of judges.¹⁰⁶

The disciplinary liability of judges corresponds to the basic legal ideas of freedom, justice and stability which require the consistency of all legal institutions.¹⁰⁷ They insist that there should be clear criteria for the liability of judges, a

⁸⁹*Ibid.*

⁹⁰M Satterthwaite 'Disciplinary Measures against Judges and the Use of 'Disguised Sanctions' A Report by the United Nations Special Rapporteur on the Independence of Judges and Lawyers Delivered To: General Assembly at its 75th Session; available at: <<https://www.ohchr.org/en/documents/thematic-reports/a75172>> accessed 31st March, 2024.

⁹¹ *Ibid.*

⁹²*Ibid.*

⁹³*Ibid.*

⁹⁴A Naïs *et al*, 'A Comparative Analysis of Disciplinary Systems for European Judges and Prosecutors, prepared for the 7th edition of the European Judicial Training Network's (Themis Competition, 2012) 2-3.

⁹⁵*Ibid.*

⁹⁶*Ibid.*

⁹⁷*Ibid.*

⁹⁸ *Ibid.*

⁹⁹*Ibid.*

¹⁰⁰*Ibid.*

¹⁰¹*Ibid.*

¹⁰²*Ibid.*

¹⁰³*Ibid.*

¹⁰⁴*Ibid.*

¹⁰⁵R Smaliuk and K Mykhailo, 'General Characteristics of Decisions within the Disciplinary Proceedings against a Judge as a Subject of Judicial Appeal' *Visegrad Journal on Human Rights*, December 2023; available at: <<https://www.researchgate.net/publication/376960497>> accessed 31st March, 2024.

¹⁰⁶*Ibid.*

¹⁰⁷S Oleg *et al*, 'Conditions and Procedures for Imposing Disciplinary Liability on A Judge' In E. V Toropova *et al* (Eds.), *Man, Society, Communication*, vol 108. *European Proceedings of Social and Behavioural Sciences* (European Publisher, 2021) 1865-1872; available at: <<https://doi.org/10.15405/epsbs>> accessed 31st March, 2024.

clearer procedure for bringing judges to justice¹⁰⁸ and the study of the socio-legal conditions and procedures for imposing disciplinary liability on judges is based on a number of factors:

1. The social and legal significance of the judicial power and the special status of the judge;
2. The authority and stability of this power;
3. The established guarantees of the independence of the court;
4. The observance of the high moral, ethical and professional qualities of the judge.¹⁰⁹

Ivan maintains that, disciplinary penalties can be applied to judges only on the basis of existing law and in accordance with clearly defined procedures; every procedure of penalty, suspension or dismissal of a judge must be determined in accordance with the rules and standards of judicial conduct.¹¹⁰ John McLaren asserts that the creation of a separate complaints-handling body is an important normative statement.¹¹¹ It indicates to the public that the system acknowledges the fallibility of the judiciary and provides a serious avenue of recourse and redress.¹¹² For him, simply dealing with complaints in-house by the head of jurisdiction is insufficient to send this message.¹¹³ He argued that if part of the role of a complaints system is to enhance public confidence in the judiciary, the creation of a separate complaints-handling body must be the first step.¹¹⁴ Thomas Braithwaite maintains that, a credible internal complaint procedure can be viewed as essential to maintaining the institutional independence of the courts.¹¹⁵ According to him, if judges cannot or will not keep their own house in order, pressures from the public and legislature might result in withdrawal of needed financial support or in the creation of investigatory mechanisms outside the judicial branch which, to a greater degree, would threaten judicial independence.¹¹⁶ For Halland, the public policy which renders a judge acting in a judicial capacity in a court proceeding immune from civil liability for damages, must apply with equal force to a disciplinary proceeding if the judiciary is to maintain its independence.¹¹⁷

With regard to the criminal liability of a judicial officer, Aguda states that there are three key points.¹¹⁸ First, a judicial officer cannot be liable for issues that arise with respect to anything said or done by him in the exercise of a jurisdiction which belongs to him.¹¹⁹ Second, where a crime is alleged against a judicial officer, and such is committed within the scope of the performance of his official function, and amounts to a misconduct as envisaged in the Code of Conduct for judicial officers the NJC has the power to investigate such allegations of misconduct and if found to be true make recommendations for their removal.¹²⁰ It is only when the NJC has given a verdict and handed over such judicial officer to the prosecuting authority that he may then be investigated and prosecuted by the appropriate security agencies.¹²¹ Third is where a judicial officer commits a crime outside the scope of the performance of his official functions. In such situations he may without recourse to the NJC be interrogated and prosecuted by the state directly.¹²² Obidimma argues that, when a judicial officer is acting or performing in judicial capacity, he has absolute immunity and cannot be proceeded against.¹²³ However, outside the exercise of judicial function, a judicial officer is criminally liable like any other citizen for his criminal actions.¹²⁴ Thus the general laws on criminal prosecution will be applicable to a judicial officer who commits a crime outside the performance of his judicial functions in judicial capacity.¹²⁵ According to Aka, the freedom of the judiciary from the influence of the other branches of government is essential to the achievement and proper functioning of a free, just and democratic society based on the principles of constitutionalism and the rule of law.¹²⁶ For Dauda, the criminal trial of judges may or may not mar the independence of the judiciary.¹²⁷ That is to say that judicial officers may irrespective of the position they occupy still be held criminally accountable, for offences committed by them in their position as judicial officers or even in their personal and private lives.¹²⁸

¹⁰⁸*Ibid.*

¹⁰⁹*Ibid.*

¹¹⁰M Ivan, 'Disciplinary Responsibility of Judges in Terms of Unity of Their Status' Available at: <<https://old.vkksu.gov.ua/ua/about/visnik-vishoi-kvalifikatsiynoi-komisii-suddiv-ukraini/disciplinary-responsibility-of-judges-in-terms-of-unity-of-their-status/>> accessed 31st March, 2024.

¹¹¹ John McLaren, *Bothered and Bewildered: British Colonial Judges on Trial, 1800–1900* (University of Toronto Press, 2011) 11.

¹¹²*Ibid.*

¹¹³*Ibid.*

¹¹⁴*Ibid.*

¹¹⁵William Thomas Braithwaite, 'Who Judges the Judges? A Study of Procedures for Removal and Retirement' *American Bar Foundation*, (1971) 8–9.

¹¹⁶*Ibid.*

¹¹⁷Brian Holland, 'The Code of Judicial Conduct and the Model Rules of Professional Conduct: A Comparison of Ethical Codes for Judges and Lawyers' *Geo. J. Legal Ethics* 2 (1989) 725-733.

¹¹⁸T A Aguda, *The Judiciary in the Government of Nigeria*, (Ibadan: New Horn Press, 1983) 34.

¹¹⁹*Ibid.*

¹²⁰*Ibid.*

¹²¹*Ibid.*

¹²²*Ibid.*

¹²³A Obidimma 'Investigation and Prosecution of Judicial Officers in Nigeria: Effects on the Independence of the Judiciary and Judicial Immunity' *Intl. Journal of Comparative Law and Legal Philosophy (IJOCLLEP)* vol 1, No. 2 (2019) 2.

¹²⁴*Ibid.*

¹²⁵*Ibid.*

¹²⁶P C Aka, 'Judicial Independence under Nigeria's Fourth Republic: Problems and Prospects' *California Western International Law Journal Vol. 45 Fall.* (2014) No. 1.

¹²⁷J B Dauda, 'The Independence of the Nigerian Judiciary in the Light of Emerging Socio-Political and Security Challenges' A Key Note Speech available at: <<http://www.nba.org.ns/web/>> accessed 2nd April, 2024.

¹²⁸*Ibid.*

Abdullahi contend that the need to hold judicial officers accountable criminally, must be juxtaposed with the need to ensure judicial independence.¹²⁹ This is so because, a judicial tribunal's independence breathes life into the liberties guaranteed for citizens in the Constitution, and promotes human rights.¹³⁰ Anushiem and Mbanugo are of the view that criminal trial of judges, without observing the due process by law would undermine the rule of law.¹³¹ For them, undermining the judiciary also undermined the rule of law as judges are the ultimate guardians of it.¹³² They further state that the rule of law together with democracy is one of the two pillars on which our society is based, and therefore if, without good reason, the executive or anyone else undermines the judiciary, that would amount to undermining our society.¹³³ If judges are unjustly humiliated by trying them for alleged offences and being dragged into the forum of court trial, without due process, should be viewed as something that diminishes public confidence in their independence.¹³⁴ The result will be that courts cannot be trusted with power, and must do as they are told.¹³⁵ On the other hand, judicial discipline and accountability are necessary if public confidence in the administration of justice can be maintained and for the citizens to trust their fate on the court, to adjudicate over disputes between them and the state and between them, inter-self.

3. Instances of Cases of Judicial Indiscipline in Nigeria

Instances of judicial indiscipline in Nigeria include bribery, corruption, mediocrity in judicial appointments and promotion, delays in court proceedings, among others, all of which undermine public confidence in the justice system. In the year 1993 under General Sani Abacha, a body popularly dubbed The Eso Panel was established and tasked to probe the conduct of judges across the country and to recommend solutions directed to the causes of the decline in ethical conduct.¹³⁶ The Panel found thirty-one magistrates and some judges of superior courts culpable for various offences. Its recommendations were accepted in 1994, but only acted upon when the National Judicial Council (NJC) was inaugurated in 2000. The delay left the erring magistrates and judges in office without any form of accountability for their ethical breaches. When the Eso Report was eventually implemented, only six judicial officers were recommended and ultimately removed from office by compulsory retirement, others were exonerated.¹³⁷

Up till now, judicial indiscipline has continued to raise its ugly head against the Nigerian state by the day, as demonstrated by a number of cases. The National Judicial Council at its 87th Meeting which was held on 3rd October 2018, recommended the removal by dismissal from office, of Hon. Justice R. N. Ofili-Ajumogobia of the Federal High Court and Hon. Justice James T. Agbadu-Fishim of the National Industrial Court of Nigeria.¹³⁸ Hon. Justice R. N. Ofili-Ajumogobia was recommended to the Presidency for removal by dismissal from office pursuant to the findings by the NJC on the allegations of judicial corruption.¹³⁹ The NJC found during investigation that several personalities, individuals, government officials and business partners lodged funds into various accounts belonging to the Hon. Judge; and there was an *ex-parte* communication between the Hon. Judge and Mr. Godwin Oblah, SAN, during the pendency of his matter before the His Lordship.¹⁴⁰ It was found that, Hon. Justice James T. Agbadu-Fishim of the National Industrial Court of Nigeria received various sums of money from litigants and lawyers that had cases before him, and some influential Nigerians, under the pretence that he was bereaved or that there was delay in the payment of his salary.¹⁴¹

Flowing from the above, the NJC in exercise of its disciplinary powers suspended Hon. Justices R. N. Ofili-Ajumogobia and James T. Agbadu-Fishim with immediate effect pending their removal from office by the President of the Federal Republic of Nigeria.¹⁴² The NJC rejected the letter of voluntary retirement, purported to be with effect from the 1st of October 2018, submitted to it by Hon. Justice Joshua E. Ikede of the Delta State High Court. This followed the findings on an allegation of falsification of age against the said judge. The NJC found that the Hon. Judge ought to have retired since 1st October 2016. Consequently, it backdated his retirement to 2016 and recommended to the Government of Delta State to deduct from the retirement benefits of the judge, all salaries received by him from October, 2016 till the date of the decision and remit it to the NJC.¹⁴³ The NJC also issued a letter of advice to Hon. Justice K. C. Nwakpa of

¹²⁹I Abdullahi, 'Independence of the judiciary in Nigeria: A myth or Reality?' *International Journal of Public Administration and Management Research* (2014) 56.

¹³⁰*Ibid.*

¹³¹M I Anushiem and O Mbanugo, 'Criminal Trial of Judges and Imperatives for Judicial Independence' *AFJCLJ* 2 (2017) 113.

¹³²*Ibid.*

¹³³*Ibid.*

¹³⁴*Ibid.*

¹³⁵*Ibid.*

¹³⁶N Garoupa and T Ginsburg, 'Guarding the Guardians: Judicial Councils and Judicial Independence' available at <<https://ssrn.com/abstract=35619692>> accessed 10th May, 2024.

¹³⁷Nigeria Civil Society Situation Room, 'The Position of the NJC on the Recent Invasion of the Residences and Arrest of Judicial Officers by the Department of State Services (DSS)' (14 October 2016) available at <https://www.placng.org/situation_room/sr/the-position-of-the-national-judicial-council-on-the-recent-invasion-of-the-residences-and-arrest-of-judicial-officers-by-the-department-of-state-services-dss/> accessed 10th May, 2024.

¹³⁸NJC 'NJC Recommends the Dismissal of Two Judges' available at <<https://njc.gov.ng/news/ngnews-details>> accessed 27th August, 2024.

¹³⁹*Ibid.*

¹⁴⁰*Ibid.*

¹⁴¹*Ibid.*

¹⁴²E Okakwu, 'NJC Recommends Sack of two Corrupt Nigerian Judges' available at <<https://www.premiumtime.com/news/headlines/288310->>> accessed 10th May, 2024.

¹⁴³*Ibid.*

High Court of Abia State to guard against unwarranted utterances in matters before him.¹⁴⁴ Similarly, the National Judicial Council at its 78th meeting which was held on 29th September, 2016 recommended compulsory retirement from office of Hon. Justice Mohammed Ladan Tsamiya, Presiding Justice, Court of Appeal, Ilorin Division, Hon. Justice I. A. Umezulike, OFR, Chief Judge, Enugu State and the dismissal from service of Hon. Justice Kabiru M. Auta of the High Court of Justice, Kano State with immediate effect. In the case of Hon. Justice Kabiru M. Auta, he is to be handed over to the Assistant Inspector-General of Police, Zone 1, Kano, for prosecution.¹⁴⁵ Hon. Justice Mohammed Ladan Tsamiya of the Court of Appeal was recommended to the Presidency for compulsory retirement. This was done pursuant to the findings of the Council following allegations contained in the petition against him and Hon. Justices Hussein Muktar, F. O. Akinbami and J. Y. Tukur, all Justices of Court of Appeal who sat on Election Appeal Panel in the Owerri Division of the court during the 2015 general elections. The petition among others, bothers on corruption, malice and vindictiveness in *Chief Dr. David Ogba Onuoha Bourdax v Hon. Mao Onuabunwa & Anor*¹⁴⁶; *Dr. Orji Uzor Kalu & Anor v Hon. Mao Onuabunwa & Ors*¹⁴⁷ and *Nnamdi Iro Oji v Nkole Uko Ndukwe & 16 Ors*

Late Hon. Justice I. A. Umezulike, Chief Judge, Enugu State was recommended to the Governor of Enugu State, for compulsory retirement sequel to the findings by the Council following allegations bothering on judicial corruption. Council found that the Hon. Chief Judge failed to deliver judgment in Suit No E/13/2008: *Ajogwu v Nigerian Bottling Company Limited* in which final addresses was adopted on 23rd October, 2014. The judgment was however delivered on 9th March, 2015, about 126 days after addresses were adopted, contrary to constitutional provisions that judgment should be delivered within a period of 90 days.¹⁴⁸ Also, Hon. Justice Umezulike, OFR, in Suit No E/159M/2014, *Ezeuko v Probate Registrar, High Court of Enugu State and 3 Ors* ordered the arrest of Mr. Peter Eze by police and be brought before his court after the matter was amicably resolved and judgment entered on terms of Settlement.¹⁴⁹ Further, at the time of the book launch of the Hon. Chief Judge, donation of #10 million was made by Prince Arthur Eze during the pendency of the two cases in His Lordship's Court, both of which Prince Arthur Eze had vested interest.¹⁵⁰ Council found that there have been many instances of abuse of judicial powers, by the Chief Judge, particularly against the two defendants in Suits Nos. E/6/2013 and E/88/2016. The Chief Judge clung to these two suits to remain in his court, despite all genuine efforts made by the defendants to get the suits transferred to another court. That the Chief Judge sitting at a vantage position of senior judicial officer and head of court for that matter, should not have allowed his emotions to dictate his judicial functions to the detriment of the defendants in both suits.¹⁵¹

In the case of Hon. Justice Kabiru Auta of the High Court of Justice, Kano State, he was recommended to the Kano State Governor, for dismissal and be handed over to the police for prosecution following the findings of the Council on the allegations leveled against him bothering on judicial Corruption.¹⁵² Meanwhile, the National Judicial Council, in the exercise of its disciplinary powers suspended Hon. Justice Mohammed Ladan Tsamiya, Presiding Justice of the Court of Appeal, Ilorin Division, Hon. Justice I. A. Umezulike, Chief Judge of Enugu State and Hon. Justice Kabiru Auta of Kano State High Court from office with immediate effect, pending the approval of the recommendations of the Council for their compulsory retirement and dismissal respectively, from office by the President of the Federal Republic of Nigeria; Governor of Enugu State and Governor of Kano State, respectively.¹⁵³ In a related development, the National Judicial Council at her 105th plenary meeting, held on May 15th and 16th, 2024 disclosed that stern warnings were issued to Hon Justice Inyang Ekwo for abuse of discretionary powers of a judge by wrongly granting an *ex parte* order in *Juliet Ebere Nwadi Gbaka & 2 Ors v Seplat Energy Plc & 12 Ors*¹⁵⁴ and also barred from being elevated to a higher bench for a period of two years. Hon. Justice G. B. Brikins-Okolosi of Delta State High Court was also issued a warning for failure to deliver judgment within the stipulated period in *Joseph Anene Okafor v Skye Bank*¹⁵⁵, after parties had filed and adopted their Final Written Addresses and will also not be elevated to a higher Bench for three years.¹⁵⁶ The NJC further cautioned Hon. Justice Amina Shehu of Yobe State High Court for issuing writ of possession conferring title on the defendant in a case¹⁵⁷, when there was no subsisting judgment of any court to enable His Lordship issue the writ.

Other indices of judicial indiscipline shroud with corruption can be found in the process of nominating judicial officers to the National Judicial Council for appointment as state and federal judges has been embroiled in bribery and corruption, for example, just recently, a Magistrate in Abia State allegedly collapsed and died for not making the list

¹⁴⁴ Ibid.

¹⁴⁵ S. Oye, NJC Explains why it sacked Enugu Chief Judge, Justice I. A. Umezulike, others' available at <<https://www.sharareporters.com/njc/>> accessed 11th May, 2024.

¹⁴⁶ Appeal No CA/OW/EPT/SN/50/2015.

¹⁴⁷ Appeal No CA/OW/EPT/SN/47/2015.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² The above allegations against the three judicial officers constitute misconduct contrary to Section 292 (1) (b) of the 1999 Constitution of the Federal Republic of Nigeria, as amended and the 2016 Revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.

¹⁵³ Ibid.

¹⁵⁴ Suit No FHC/ABJ/C/626/2023.

¹⁵⁵ Suit No A/94/2010.

¹⁵⁶ Ibid.

¹⁵⁷ Suit No YBS/HC/NNR/1CV/2020.

despite paying fifteen million naira bribe she raised by mortgaging her family house.¹⁵⁸ The deceased Magistrate was said to have mortgaged their family house to enable her raise the sum of #15,000.000.00 which she paid to members of the Abia State Judicial Service Commission to influence her nomination to the National Judicial Council for subsequent appointment as a High Court Judge but couldn't stand the shock of not making the list eventually.¹⁵⁹ Ikoni is of the considered view that, the manner in which judges are appointed and subsequently promoted has consequential effect on the independence of the judiciary.¹⁶⁰ When men and women are appointed to the bench on the premise of extraneous factors such as god-fatherism, political connections, religion, federal character, immodest considerations, monetary inducements or other political reasons (without due regard for merit and competence), then the ultimate victim will be justice itself.¹⁶¹

Judicial indiscipline also manifests in judicial decisions, judgment and rulings. In *Adio v Attorney-General of Oyo State*¹⁶² Onu JSC stated that the present case is unique and appears distinguishable because this is about the first time in the annals of our judicial and legal history that a high court judge is being accused of sitting to consider an instrument in which her husband was the governor who signed it. According to the jurist, the learned trial judge erred in law not disqualifying herself from trying this case on grounds of interest or bias or likelihood of bias as she is the lawful wife of Chief Bola Ige, the then chief executive of Oyo State and the substantive 1st defendant in this case.¹⁶³ A lot of concerns have been expressed by lawyers and other stakeholders over the spate of some questionable judicial pronouncements, especially with the granting of conflicting *ex-parte* injunctions by some judicial officers in courts of coordinate jurisdiction. For example, several orders and counter orders were issued against the Independent National Electoral Commission (INEC), particularly, as it related to the November 6th, 2021 governorship election in Anambra State. On one occasion, the court had ordered the electoral umpire to recognize a particular aspirant as the candidate of a political party and within a short while, another order of court of equal jurisdiction had directed INEC to drop that person and, in his stead, fill in another person.¹⁶⁴ By reason of the conflicting orders it was difficult to say between the present governor, Chukwuma Soludo and Chukwuma Umeoji, who was the legitimate flag bearer of the ruling party in Anambra, the All Progressives Grand Alliance save for the intervention of the Supreme Court.¹⁶⁵ Similarly, the current leadership tussle as per the throne of the Emir of Kano has witnessed a number of injunctive orders and counter-orders from courts of coordinate or equal jurisdiction.

Although this is not the first time the intervention of the courts has threatened the nation's democracy and the yearning of the masses, this instance has generated real worries about the future of the country's democracy. Justice Bassey Ikpeme of the Abuja Division of the Federal High Court attempted to truncate Nigeria's democracy, when on June 10, 1993; he issued a restraining order on the then electoral umpire from going ahead with the scheduled June 12, 1993 presidential election. The judge had granted the order despite clear provisions of Decree number 13, which stated that no court of law could interfere with conduct of the election. The restraining order was sequel to an *ex-parte* application by a shadow organisation, the Association of Better Nigeria (ABN), led by a disqualified presidential aspirant in the person of Arthur Nzeribe, now late.¹⁶⁶ The National Election Commission (NEC) had though defied the order and went ahead to conduct the presidential election as scheduled on June 12, 1993, the Commission was however restrained from going ahead to release the results of the election. But, while the candidate of the defunct Social Democratic Party (SDP), Chief Moshood Abiola, was already on the cusp of victory after leading in 15 states where election results were announced, Justice Saleh had in a ruling on an *ex-parte* application on June 15, 1993 stopped NEC from further announcement of the election results. And due to the actions of the court, Abiola till his death never became president as the former Military President, General Ibrahim Babangida, annulled the election adjudged the freest and fairest at the time in Africa.¹⁶⁷

In this fourth democracy, the intervention of the court also made somebody, Rotimi Amaechi, who did not contest an election in 2007 to be Governor of Rivers State.¹⁶⁸ The court had hinged its decision on the grounds that it was a political party that contested election and not an individual.¹⁶⁹ Although the court has found a way of correcting itself, after it later held in another case that for a candidate to be declared winner, he must participate in all the processes of an

¹⁵⁸C Unini, 'Recruitment Scandal: Abia State JSC Members Allegedly Demanded #15,000.000.00 from Applicants for High Court Bench' available at <<https://www.thenigerialawyer.com>> accessed 11th May, 2024.

¹⁵⁹ Ibid.

¹⁶⁰ U D Ikoni, *Demystifying the Autonomy Challenges of the Judiciary in Nigeria*, (Wisdom Books and Publishing Co Nig Ltd, 2021) 157.

¹⁶¹ Ibid.

¹⁶² (1990) NWLR (Pt 163) 5 S.C.

¹⁶³ Ibid.

¹⁶⁴T Amodu, 'Anambra 2021: INEC, IPAC Decry Conflicting Court Orders' available at <<https://www.tribuneonline.ng/anambra/2021>> accessed 11th May, 2024.

¹⁶⁵I Opara, 'The Supreme Court Confirmed Chukwuma Soludo as the Governorship Candidate of the All Progressive Grand Alliance (APGA) in Anambra Election' available at <<https://www.icimigeria.org/anambra/2021>> accessed 11th May, 2024.

¹⁶⁶Washington Post, 'Nigerian Court Orders Election to be Canceled' available at <<https://www.washingtonpost.com/archive/politics/1993/06/11/nigerian-court-orders-election-to-be-canceled/ba96f2-cdc0-494f-b624-11e83b77fc8/>> accessed 11th May, 2024.

¹⁶⁷C Unini, 'June 12: The Judges and Litigation' available at <<https://www.thenigerialawyer.com/June-12-the-judges-and-litigations/>> accessed 11th May, 2024.

¹⁶⁸ *Amaechi v INEC* (2008) 5 NWLR (Pt 1080) 227 at 315.

¹⁶⁹Ibid.

election.¹⁷⁰ Thirty years after the first attempt, some judges are still in the habit of doing the biddings of money bags against the interest of the country, legal profession and even the oath of office they swore to. These developments have since put the nation's judiciary in a big mess. Before the suspension and return to office orders on the PDP National Chairman, Uche Secondus, by three High Courts in Rivers, Kebbi and Cross River States, former National Chairman of the All Progressives Congress (APC), Comrade Adams Oshiomhole, was also in the year 2020 before his sack by the APC National Working Committee (NWC) restrained and later ordered back to office by High Courts in FCT, Abuja, Benin and Kano respectively.¹⁷¹ Court order are now so cheap that they now worth less than the paper they are written on. Black market injunctions are dished out on a daily basis to the highest bidder. The courts no longer dispense justice. They merely dish out orders to whoever can afford them. It is obvious that the menace of indiscriminate issuance of injunctions and orders, which it reckoned if not checked could derail the country's hard-earned democracy, especially now that the judiciary is fast losing its grip. Recently, the judgment of the Supreme Court of Nigeria has taken the root of embarrassment, rather than strengthening public confidence in the judiciary.¹⁷² Some of the recent decisions of the Nigerian Supreme Court have generated public outcry and rejection.¹⁷³ These are clear cases of unethical behaviour on the part of judicial officers, wherein judges took advantage of their vantage positions, allowing emotions to overwhelm their faculty of reasoning and bringing disrepute to the Nigerian judiciary.

4. Dimensions of Judicial Discipline and Accountability

Judicial discipline and accountability are guaranteed by the decision-making process being transparent. Every public authority including judicial officers has a duty to account to the people, for the actions it takes and the duties it performs. The level of accountability varies depending on the task completed and the duties carried out by the public body. Similarly, the judiciary, as a branch of the government, must also be held accountable of a degree which is different from that of the executive and their legislative counterparts.¹⁷⁴ Thus, regulating the behaviour of a judge in a way, so that he or she can do justice without any bias or prejudice is an important aspect that every legal system must take seriously.¹⁷⁵ Judicial discipline can be discussed under the following heads; Personal discipline; family discipline; social discipline; professional discipline; and ethical discipline.¹⁷⁶

Personal discipline: According to Brand, if a person has maintained the personal discipline, it will be the guarantee of all other types of discipline with some extra precautions.¹⁷⁷ The personal discipline means a person is very humble, liberal for oneself and has regulated his behaviour for himself to move on a righteous path and to do justice to himself.¹⁷⁸ The personal discipline requirement includes the good speaking habits in a sweet language, proper attire and occupant of moral values. For proper attire, it is not necessary that he is dressed with costly dress material but affordable and sober garments.

Social Discipline: While serving or maintaining the family or social relations, a judge should never compromise the fair and unbiased functioning of the court.¹⁷⁹ A clear distinction has to be made in family functioning and the functioning of the court. With the functioning of the court, the family members or any close relations (social relations) should not have any concern.¹⁸⁰

Professional discipline: For the professional discipline, it is the responsibility of the judge to maintain such an atmosphere so that every litigant can address his grievances freely and without any fear in open court.¹⁸¹ It is the duty of every judge to listen to both of the parties on facts.¹⁸² Unwarranted comments on arguments should be avoided, because it may lead to the friction and whenever there is any friction it always derails the judge from proper judicial functioning.¹⁸³ So, in the interest of justice, it is necessary to maintain cordial and peaceful atmosphere in the court and it is only possible when a judge is disciplined in professional issues.¹⁸⁴

¹⁷⁰See the cases of *CPC and Anor v Omgbugadu and Anor* (2013) LPELR – 21007(SC); *Ngige v Akunyuli* (2012) 15 NWLR (Pt 1323) 343; *Nwankwo and Anor v INEC and Ors* (2019) LPELR-48862 (CA); and *Haruna v APC and Ors* (2019) LPELR- 47777 (CA).

¹⁷¹J Alechenu *et al*, 'Govs Plan NEC meeting to Replace Oshiomhole as Court Suspends APC Chair' available at <<https://www.punchng.com>> accessed 11th May, 2024.

¹⁷²See Senator Hope Uzodinma and Anor v Rt. Hon. Emeka Ihedioha and Ors (2020) JELR SC.

¹⁷³See *Rivers State House of Assembly and Others v Rivers State Government and Nine Others* SC/CV/1175/2024; *Rivers State House of Assembly and others v Rivers State Independent Electoral Commission (RIEC) and Nine others* SC/CV/1176/2024 and *Rivers State House of Assembly and others v Accountant General of Rivers State* SC/CV/1177/2024.

¹⁷⁴ *Ibid*.

¹⁷⁵R J McKoski 'Judicial Discipline and the Appearance of Impropriety' available at: <<https://scholarship.law.umn.edu>> accessed 20th March, 2024.

¹⁷⁶ *Ibid*.

¹⁷⁷ G E Brand 'The Discipline of Judges', *American Bar Association Journal* Vol 46, No. 12 (1960) 1315-1317.

¹⁷⁸ *Ibid*.

¹⁷⁹ C Gray 'An Ethics Guide for Judges and Their Families' available at: <<https://www.ncsc.org/assets>> accessed 29/2/2024.

¹⁸⁰ *Ibid*.

¹⁸¹ J M Levy 'The Judges Role in the Enforcement of Ethics' available at: <<https://scholarship.law.com/services>> accessed 29/2/2024.

¹⁸² *Ibid*.

¹⁸³ *Ibid*.

¹⁸⁴ *Ibid*.

Ethical discipline: It is the quality of a judge that he should be God fearing and modest in all his dealings.¹⁸⁵ Ethically, a judge should lead a life of a saint.¹⁸⁶ The saint is a person who is discipline in all the vocations of life.¹⁸⁷ The saint may be recognized by activities of mouth, what he speaks or eats and same should apply to a judge.¹⁸⁸

5. Conclusion and Recommendations

It is acknowledged that the judiciary plays significant and indispensable roles in sustaining democracy in Nigeria. The judiciary is the cornerstone of any democratic system, serving as the guardian of the rule of law and the protector of citizen's rights. In Nigeria, the judiciary plays a critical role in upholding democratic principles, maintaining checks and balances on governmental powers and ensuring justice prevails in society. It is therefore important that while justice is said to be blind, it is up to the judges to decide how to administer it while keeping in mind that each and every citizen of the country should receive justice, it is only by doing so that democratic stability would be enhanced. Since the judges' decisions determine the fate of the parties engaged in a case being heard by the court, it is necessary to hold them responsible for their decisions. Any democratic country is said to require accountability in order to uphold the rights granted to its citizens and administer justice that is intended to be equal for all, this is so because every judicial decision has consequential impact on the lives and fortunes of parties before it. Therefore, this article submits that the manifest indiscipline of the present day Nigeria's judiciary as epitomized in some of the illustrated cases is directly and indirectly responsible for the weakness of our institutions and democratic instability in Nigeria. It is hoped that the following recommendations, if implemented, will change the narrative, strengthen public confidence in the judiciary and promote democratic stability.

1. This article is proposing a thorough sanitization of the Nigeria's judiciary, corruptible members fished out and shown the exit direction to save the image of the judiciary and restore public confidence in the administration of justice in Nigeria. To achieve a sanitized judiciary, we recommend that the NJC should set up a committee akin to the Eso panel of the past, to look into the perennial problems confronting the sector and recommend for immediate removal or retirement of judicial officers whose conduct and antecedents do not merit continuing in office, as doing so, will do great damage to the Nigerian society. This measure will signal to all, especially members of the Bar who would eventually climb to the Bench, who are inclined to corrupt tendencies, that it is no longer business as usual. Thus, whoever ascend a judicial office/stool ought to be reminded that his ultimate priority is to serve the end of justice and not for personal aggrandizement, nor for other collateral or material considerations.
2. It is recommended that a body to be known as 'the Bar and Bench Joint Judicial Integrity Committee' be set in each state of the federation and the Federal Capital Territory, Abuja, to act as a watch dog on the integrity of lawyers and judges and to, often make confidential recommendations either to the National Judicial Council or to the Nigerian Bar Association whenever necessary. By this, the integrity of the justice system would be strengthened, this is so because, the character and activities of each judge or that of a lawyer, to a reasonable extent is known by the branch of the NBA he or she practices or preside, as the case may be.
3. It is recommended that henceforth, the appointment, promotion and discipline of judges in Nigeria should be driven by merit, competence, integrity and need. The current practice of using judicial office to compensate politicians and consolidate political structure is unhealthy for the society, therefore, merit and honesty should be the consideration for occupying judicial stool.
4. This article further recommends an amendment of the 1999 Constitution of Nigeria to make provisions for the State Judicial Service Commission and the Judicial Service Committee of the Federal Capital Territory, Abuja, to exercise disciplinary powers over judicial officers in their respective jurisdictions in line with the ideals of federalism.

¹⁸⁵ E J Maitrepierre 'Ethics, Dentology, Discipline of Judges and Prosecutors' available at: <[https:// www.unafei.or.jp>pdf](https://www.unafei.or.jp>pdf)> accessed 29/2/2024.

¹⁸⁶ G Glenn 'St. Thomas More As Judge and Lawyer' available at: <<https://ir.lawnet.fordham.edu>> accessed 20th March, 2024.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*