

Abstract

The enforcement of human rights is, indeed, the bedrock of any constitutional democracy, in which league of affairs Nigeria belongs. In Nigeria, the courts play a vital role in safeguarding human rights through the exercise of judicial powers. This paper examines these roles of the court in enforcing human rights through the exercise of judicial powers in Nigeria. In achieving this purpose, the paper adopts the thematic and doctrinal methods of research. The paper adopts the analytical, critical and expository methodologies, with copious reference to the Constitution of the Federal Republic of Nigeria (CFRN) 1999; Textbooks on Constitutional and Administrative Law and Human Rights Law; Statute books; Law Reports (Case Laws); National Assembly Gazettes, Local and International Journals as primary and secondary sources of material on the subject matter.

Keywords: Courts, Human Rights, Justice, Enforcement, Nigeria

1. Introduction

The protection and enforcement of human rights is the bedrock of modern constitutional democracies of the world.¹ This is predicated on social contract notion to guarantee human dignity, equality, and social justice. The existence of these human rights in constitutions of countries and international treaties does not automatically guarantee their enjoyment, enforcement mechanisms have to be put in place to actualize and realize them. For human rights to have real meaning, they must be giving life to by judicial interpretation and invocation. This the vital role of the courts in the exercise of their judicial functions. Through the exercise of judicial powers, ranging from constitutional interpretation and judicial review to adjudication of individual grievances, the courts interpret these in-text human rights into living principles that confer these rights, shape governance and daily living. This paper explores the roles on the courts in Nigeria, in ensuring the enforcement of human rights through the exercise of regular judicial functions and powers. The paper highlights the court's roles expansively interpreting human rights provisions and other enabling provisions, providing procedural fairness, pronouncing effective judicial remedies, and maintaining institutional independence of the judiciary – which is a basic component of rule of law. The exposition in this paper demonstrates the vital role the courts play in ensuring that human rights are not merely aspirational statements in statute books, but enforceable guarantees that protect individuals and strengthen democratic governance.

2. The Concept of Human Rights

'Human right' according to the *Black's Law Dictionary*,² is 'the freedoms, immunities and benefits that, according to modern values, all human beings should be able to claim as a matter of right in the society in which the live.' Human rights are those universally inalienable rights which every human being is entitled to and liable to enjoy by virtue of being human.³ These rights are those rights which are inherent in the human being.⁴ They are inborn in man, hence natural and innate to man. These are rights to be enjoyed by all human beings all over the world and not a gift, privilege to be given and withdrawn at will.⁵ Human rights are not created by positive law; rather they are only made fundamental by virtue of their finding expression in positive laws like the Constitution of countries.⁶ These rights are enjoyable by human being including persons accused of a crime and are standing trial. The equality and dignity of man are supported by the biblical story of Genesis concerning the common ancestry of humankind and the 'fatherhood' of God to all men.⁷ Since these rights are implied from our common humanity, they are thus adjudged inalienable and inures to all humans irrespective of age, sex, nationality, race or whatever. Human rights are rights against the society, and this explains why the government owes every human (citizen or not) protection from his neighbour and proffer legal remedies against violators of human rights and the mechanism for the enforcement of such rights and remedies.⁸ In *Ransome Kuti v Attorney-General of the Federation*,⁹ the most learned Law Lord, Kayode Eso, JSC (of blessed memory) described human right: 'a right which stands above the ordinary Laws of the land and which in fact is antecedent to political society itself. It is a primary condition to a civilised existence.'

One of the earliest instances of the application/observation of human rights is recorded in the book of Genesis 3:9-13; 16-19,¹⁰ out of which the principle of natural justice¹¹ is said to be derived. It is said that the principle of natural justice has its foundation

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¹Inter-Parliamentary Union for Democracy for Everyone and Office of the United Nations High Commissioner for Human Rights, *Human Rights: Handbook for Parliamentarians (No. 26)* (2016) Available online at <https://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf> accessed on 22 November 2024.

²BA Garner (ed), *Black's Law Dictionary* (8th edn, St. Paul, Minn.: West Publishing Company 2004) 858.

³CR M Dlamini, *Human Rights in Africa: Which Way South Africa?* (Durban: Butterworths 1995) 3 – 4.

⁴United Nations, 'Human Rights: A Basic Handbook for UN Staff Office of the High Commission for Human Rights' 1.

⁵ON Ogbu, *Human Rights Law and Practice in Nigeria* (2nd edn, Enugu: Snaap Press Ltd 2013) 4.

⁶*Ransome-Kuti v A-G Federation* (1985) 2 NWLR (Pt 6) 211.

⁷Genesis 1: 26-27; 2:7 (New King James Version).

⁸Uba Nnabue, *Rights of the Child in Nigeria* (Owerri: Bon Publications 2002) 8 – 9.

⁹*Ransome-Kuti* (n 5).

¹⁰The New King James Version.

¹¹The principle of natural justice is expressed in it twin pillars, namely *audi alterem partem*, which means 'hear the other side', and *nemo iudex in causa sua*, which means 'no one should be a judge in his own cause.' These principles of fair hearing, are of course fundamental and

from where the Scripture reports that Lord God did not condemn Adam & Eve without first giving them an opportunity of being heard.¹² The present-day international law of human rights evolved over the last four (4) decades and it traced its basis in the proclamation of the Universal Declaration of Human Rights on 10 December 1948.¹³ It is keeping with this obligation that Countries of the Universe have come to recognise these rights and give them expression in their domestic law. To this effect, a distinction is drawn between human rights as a generic term and fundamental rights as a special class of rights.¹⁴

Fundamental rights in Nigeria are enshrined in Chapter IV of the Constitution of Nigeria of the Federal Republic of Nigeria (CFRN) 1999, and these rights take pre-eminence owing to their status as fundamental rights. It is however imperative to clarify that the mere fact that some set of rights have been domestically elevated to the status of 'fundamental rights,' that is not to say that they are the only rights that are justiciable and enforceable by the domestic courts.¹⁵ There are other categories of economic, social, cultural and political rights, which find expression in various other Regional¹⁶ and International¹⁷ Bills of Rights, but are only recognized domestically under the 'Fundamental Objectives and Directive Principles of State Policy'¹⁸ and labelled as non-justiciable.¹⁹ These rights do not rank the same in status as the fundamental rights enshrined under Chapter IV of the CFRN 1999, however, by the authority of *Abacha & Ors v Fawehinmi*,²⁰ where any of these rights are contained in an international treaty which has been ratified and domesticated by Nigeria,²¹ they may as well be justiciable and thus enforceable.²²

3. Source of the Powers of the Court to Enforce Human Rights.

When we talk of the 'Bench,' we talk of judicial officers who sit as judges/magistrates in our courts. The Bench represents the exalted seat the judge/magistrate, who sit court as an arbiter in adjudication.²³ In essence, reference to the power of the bench is reference to the power of the Courts. The Courts are creations of Constitution and other statutes and their powers are usually derived from the Constitution or those statutes creating these courts. In *Braithwaite v Grassroots Democratic Party & Ors*,²⁴ the Court of Appeal pontificated that: 'The Courts in this country derive their jurisdiction from the Constitution and other statutory enactments establishing the Courts. A court cannot without an enabling law empowering it, exercise any jurisdiction.' The general powers of the Courts to protect and enforce human rights is derived from sections 6 of the CFRN 1999, but the special original jurisdiction is granted to the High Court to enforce and proffer redress in cases of violation of fundamental rights that are contained in Chapter IV of the CFRN 1999.²⁵ One interesting feature of this jurisdiction is that it is not limited geographically. In *Denton-West v Jack*²⁶ the Supreme Court noted that:

By virtue of section 46 of the 1999 Constitution (as amended), any person who alleges that any of the provisions of Chapter Four of the Constitution has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in the State for redress. It makes no difference where the contravention or threat of contravention is coming from. No person or body of persons, natural or legal, or institution is exempt from the provisions. The High Court does not lose its special jurisdiction to deal with enforcement of fundamental rights because it is the person the redress is sought against.

The meaning of 'High Court' under section 46 of the CFRN 1999 has been effectively clarified by the Supreme Court in *Ihim v Maduagwu & Anor*,²⁷ to mean to mean the Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory, Abuja. To aid the High Courts in effectively carrying out its functions and exercise its special jurisdiction in the protection and enforcement of fundamental rights, the CFRN 1999 also empowers the Chief Justice of Nigeria (CJN) to make rules of practice procedure for the purposes of giving effect to the special jurisdiction of the High Court.²⁸ It is pursuant to the power that the Fundamental Rights (Enforcement Procedure) Rules 2009²⁹ was made. The core objective of the FREP Rules 2009 as stated in its 'Preamble' are to advance and not to restrict the protection and enforcement of fundamental rights, ensure enhanced access to justice to all classes of litigants and encourage public interest litigation.³⁰ It is rather elementary to state that fundamental right proceedings are *sui generis*.

bedrock of adjudication or administrative inquiry. See *Judicial Service Commission of Cross Rivers State v Young* [2013] 11 NWLR (Pt 1364) 1.

¹²Kayode Eso, *Thoughts on Human Rights & Education* (Ibadan: St. Paul's Publishing House 2008) 267.

¹³Nnabue, (n 7) 9.

¹⁴*Uzoukwu & Ors v Ezeonu II & Ors* (1991) 6 NWLR (Pt. 200) 798.

¹⁵*Abacha & Ors v Fawehinmi* (2000) 6 NWLR (Pt 660) 228.

¹⁶African Charter on Human and Peoples' Rights 1981.

¹⁷Universal Declaration of Human Rights 1948; International Covenant on Civil and Political Rights 1966 and International Convention on Economic, Social and Cultural Rights 1976.

¹⁸Constitution of the Federal Republic of Nigeria (CFRN) 1999, Chapter Two.

¹⁹*ibid*, s 6 (6) (c).

²⁰*Abacha v Fawehinmi* (n 14).

²¹The African Charter on Human and Peoples Rights 1981, which has been ratified and domesticated in Nigeria vide the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act 1983.

²²See also *Centre for Oil Pollution Watch v NNPC* (2019) 5 NWLR (Pt 1666) 518, 598, paras. B-C.

²³*Agbabiaka v First Bank of Nigeria PLC* (2007) 6 NWLR (Pt 1029) 25.

²⁴(1998) 7 NWLR (Pt 557) 307, 332, para E.

²⁵CFRN 1999, s 46 (2).

²⁶(2013) 15 NWLR (Pt 1377) 205, 222-223, paras G-A.

²⁷(2021) 5 NWLR (Pt 1770) 584, 621, para G.

²⁸CFRN 1999, s 46 (3).

²⁹Herein after, 'FREP Rule 2009.'

³⁰*Ogheneovo v Gov., Delta State* (2023) 2 NWLR (Pt 1868) 275.

4. The Roles and Duties of the Courts in Enforcing Human Rights

It is no doubt that the Courts are established for the basic purpose of administration of justice, under which comes the enforcement of human rights. The Courts dispense justice according to the laws of the land and the Court is indeed the last hope of the common man. It must be emphasized and as posited by Galadima, JCA in *Daily Times Nigeria PLC & Ors v Magoro*³¹ that, justice is not a one-way traffic, justice is done once it is in accordance with the law. To ensure that the judicial powers of the court in the enforcement and protection of human rights enjoy a maximum degree of efficacy, the judicial powers as vested in the Court by the Constitution extend, notwithstanding anything to the contrary in the Constitution, to all inherent powers and sanctions of a court of law.³² These powers of the Courts also extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of all persons.³³ This is made so to ensure total compliance and submission by all persons and all authorities to the judicial powers of the Court. With such enormous powers vested in the Court, one is left without doubt that, if human rights justice is to be pursued for a safe society, the Courts have critical judicial role to play in terms of carrying out its judicial responsibilities in a manner that it meets the end of justice.

Duty on Courts to Protect and Maintain Rule of Law and by Extension Human Rights

Rule of law means the observation of the supremacy of civilized law and the absence of arbitrary action. The opposite of rule of law, therefore, are rule by force, arbitrariness, despotism, dictatorship, tyranny and ultimately, anarchy and chaos.³⁴ According to John Locke,³⁵ 'Freedom of men under government is to have a standing rule to live by, common to everyone of that society and made by legislative powers created in it, and not to be subjected to the inconstant, unknown arbitrary will of another man.' Rule of law consists of a wide range of concepts which are not only limited to 'supremacy of the law' and 'equality before the law,' but extends to 'dispensation of justice by the courts,' 'respect for the decision of the courts,' 'government according to civil law' and 'respect for human rights.'³⁶ The ultimate and supreme function of the Court is the maintenance of law and order through the settlement of disputes between individuals and authorities.³⁷ The Courts have a duty not to unwittingly shirk its sacred duty to the Nation to maintain and uphold the rule of law.³⁸ By this means, the Courts are duty bound to check lawlessness and curtail impunity by any individual or government.³⁹

The court is a creation of the Constitution and it should not be seen giving its aid under any guise, to a violation of any provision of the Constitution, which gave it life. Judges must, at all times and under all circumstances, strive to honour their oath of office to defend and protect the Constitution.⁴⁰ It is by ensuring that the rule of law strives that society can be sane, human and progressive, otherwise, the system of administration of justice would lose its purpose. Part of this duty of the Court to protect and uphold the provisions of the Constitution extends to the duty of Court to protect human rights.⁴¹ In *Ezennaka v. COP, Cross River State*,⁴² the Supreme Court expressed the view that: 'The court must seek always to do justice at all cost, especially where it has to do with the liberty of an individual. The court must assume a more robust role in affairs of the fundamental rights of an individual as in the instant appeal.'

This sacred duty of the Court in protecting Human Rights even dictates that the Court should also endeavour those human rights should not be sacrificed on the altar of public policy. To submerge human rights on the altar of public policy would be counter-productive and unhealthy for our democracy.⁴³

Duty on the Courts to act as an Impartial Arbiter in the Administration of Justice.

It is well established without the need to cite authorities that the main role of the Court is that of an umpire. This responsibility is a corollary of the Courts' ultimate purpose of settlement of disputes to ensure a safe, sane and secured society. In order to ensure that this duty is effectually carried out, a responsibility is also bestowed on the Courts to be impartial in the discharge of its duties.⁴⁴ It was in *Okoduwa v State*⁴⁵ that the Supreme Court noted that there are certain fundamental norms in the system of administration of justice we operate. The Supreme Court reemphasized that this system is the adversary system, where parties with their counsel and the judge have their respective roles to play. Basically, it is the role of the judge to hold the balance between the contending parties and to decide any case before the Court on the evidence brought by both sides. The Apex Court admonished that under no circumstance must a judge under our adversarial system do anything which can give the impression

³¹(2000) 15 NWLR (Pt 692) 855; (2002) LPELR-8176(CA).

³²CFRN 1999, s. 6 (6) (a).

³³ibid, 6 (6) (b).

³⁴Ese Malemi, *Administrative law* (3rd Edn, Ikeja: Princeton Publishing 2008) 74.

³⁵John Locke, *Essays on the True Extent and End of Civil Government*, 1860.

³⁶Malami (n 34) 74 – 80.

³⁷*Adesanya v President, Federal Republic of Nigeria & Anor* (1981) All NLR 1, (1981) 5 SC 69; *Bello v Gombe State* (2016) 8 NWLR (Pt 1514) 219.

³⁸*Attorney-General of Ondo State v Tene & Ors* (2015) LPELR-25730(CA).

³⁹*Governor of Lagos State v Ojukwu* (1986) 1 NWLR (Pt 18) 621.

⁴⁰*Ogboru v President, Court of Appeal* (No.2) [2005] 18 NWLR (Pt 956) 80.

⁴¹*Statmak v COP* (2020) 9 NWLR (Pt 1728) 176, 209, paras F-H.

⁴²(2022) 18 NWLR (Pt 1862) 369, 403 - 404, paras H-A.

⁴³*Onyirioha v IGP* (2009) 3 NWLR (Pt 1128) 342, 377, paras. C-D.

⁴⁴*Addah v Ubandawaki* (2015) 7 NWLR (Pt 1458) 325.

⁴⁵(1988) NWLR (Pt 76) 333; (1988) LPELR-2457(SC).

the he has descended into the arena, as this would obscure the sense of justice. The Supreme Court restated the position in *Bayol v Ahemba*⁴⁶ when Achike, JSC (of blessed memory) posited that:

The law remains inviolate that the judgment of a court must continue its inquiry entirely to the determination of issues properly raised and canvassed by the parties before it. The court... must be wary to enter into the arena in the controversy between the parties by projecting the case of one of the parties rather than maintaining the equilibrium of impartiality as arbiter. Such an appearance in the arena by the court is direct signal and invitation to miscarriage of justice.

The need for this is to retain and maintain the confidence in the Court, for if public confidence in the judiciary is eroded and not assured, the society will resort to self-help and there will be lawlessness and anarchy which will no doubt do the society no good. In the words of Abiru, J.C.A. in *Mbas Motel Ltd. v WEMA Bank PLC*:⁴⁷

We must not lose sight of the fact that justice is rooted in public confidence and it is essential to social order and security it is the bond of the society and the cornerstone of human togetherness... The moment members of the society lose confidence in the system of administration of justice, a descent to anarchy begins.

Part of ensuring that the court remains an impartial arbiter is for the Court to shun corruption and avoid being compromised. As Hon Justice Odemwengie Uwaifo JSC (Rtd.)⁴⁸ once stated:

A corrupt judge is more harmful to the society than a man who runs amock (*sic*) with a dagger in a crowded street. He can be restrained physically. But a corrupt judge deliberately destroys the moral foundation of society and causes incalculable distress to individuals through abusing his office, while still being referred to as Honourable.

Duty on the Courts to Uphold Equality of Everybody before the Law⁴⁹

Equality of all human persons before the law is a basic idea of human rights.⁵⁰ It was Pats-Acholonu, JSC (of blessed memory) in the case of *Nwolisah v Nwabufoh*,⁵¹ that counseled that Courts in its quest to do justice, should at all times endeavour to find means to do justice to all manner of men based on a living and dynamic law. As part of its duty to be an impartial arbiter in the administration of justice, the Courts owe it a duty to the society to treat every man as equal before the law. This is in keeping with the equality-before-the-law component of the rule of law and the human rights tenets that all humans are born equal. Equality ensures a level play field for litigants who submit themselves to the Courts as an impartial arbiter. It is only when the Courts treat everyone equally before the law that it can retain its role as an impartial arbiter. The case of *Dada v Dosunmu*⁵² warned that: '...the Courts will not be performing its role as an independent umpire if it bends backward to do justice to one of the other parties. Justice should be evenly distributed.' Human rights requires that everyone is given equal opportunity and no one is conferred with an undue advantage. This is another surest way of ensuring that people willingly submit to the judicial powers of the Court without having recourse to self-help that may bred anarchy in the society.

Duty on the Courts to do Substantial Justice and to Avoid Technical Justice

Justice, substantial justice is the basis of the system of administration of justice. Substantial justice no doubt brings valuable dividends in any legal system anchored or predicated on the rule of law, which is the life-blood of democracy.⁵³ In countless cases, the Courts have reemphasized that there is a shift away from technical justice to substantial justice. The primary duty of the Court therefore, in taking any decision, is to do substantial justice. This is because the wheel of justice can no long be allowed to be clogged with technicalities.⁵⁴ To ensure an end to justice, the Courts have a duty to avoid technical justice;⁵⁵ and a corollary duty to ensure that substantial justice is entrenched.⁵⁶ The duty on court to do substantial justice also requires the adoption procedure that is aimed at attaining the end of justice.⁵⁷ It is an essential attribute of the administration of justice that justice must not only be done, it must be manifestly and undoubtedly be seen to be done.⁵⁸ Relating the principle of substantive justice to the cases of enforcement of human rights, the Court of Appeal in *In NPG Properties & Construction Works Ltd. v Zenith Bank PLC*⁵⁹ reiterated that the position of the law that: 'The procedure for enforcing fundamental rights is *'sui generis'* with its own unique rules as provided for under the Constitution of Nigeria. Courts are to display activism and dispatch in the determination of same. They are to shun obstacles to the enforcement of fundamental rights.'

⁴⁶ (1999) 7 S.C. (Pt. 1) 92; (1999) 10 NWLR (Pt. 623) 381

⁴⁷ (2013) LPELR-20736(CA) 26, paras. E-G.

⁴⁸ Hon. Justice Odemwengie Uwaifo, JSC (Rtd), *May the Supreme Court Never Become an Undergrowth* ' being the Valedictory Speech on his retirement as Justice of the Supreme Court on 24 January 2004.

⁴⁹ *Ikechukwu v F.R.N.* (2015) 7 NWLR (Pt 1457) 1.

⁵⁰ CFRN 1999, s 42; African Charter on Human and Peoples Rights 1981, Art 3.

⁵¹ (2004) 9 NWLR (Pt 879) 507.

⁵² (2008) 18 NWLR (Pt 1010) 134.

⁵³ *State v Gwonto* (1983) 1 SCNLR 142.

⁵⁴ *Shuaibu v Nigeria-Arab Bank Ltd.* (1998) 5 NWLR (Pt 551) 582.

⁵⁵ *Waziri v Geidam* (2016) 11 NWLR (Pt 1523) 230.

⁵⁶ *Wassah v Kara* (2015) 4 NWLR (Pt 1449) 374; *Jev & Anor v Iyortom & Ors* (2015) LPELR-24420(SC).

⁵⁷ *Assams v Ararume* (2016) 1 NWLR (Pt 1493) 368.

⁵⁸ See the dictum of Hewart, CJ in *R v Sussex Justices, Ex Parter Macarthy* (1924) 1 K.B. 256. This dictum was quoted with approval by the Supreme Court in *Legal Practitioners Disciplinary Committee v Chief Gani Fawehinmi* (1985) 7 SC. 178; (1985) 2 NWLR (Pt 7) 300.

⁵⁹ (2023) 15 NWLR (Pt 1908) 423, 457, paras. B – D.

The *sui generis* nature of fundamental rights proceedings is such that it does not permit the application of any other Rules of Court (outside the Fundamental Rights (Enforcement Procedure) Rules 2009) which will be an impediment to smooth dispensation of human rights justice. In *Anoliefo v Anoliefo & Ors*,⁶⁰ the Court of Appeal relying on Order IX Rule I of the Fundamental Rights (Enforcement Procedure) Rules 2009, emphasised that in fundamental rights proceedings, failure to do anything in compliance with time and form⁶¹ amounts to mere irregularity which may not nullify the proceedings. To this end, the Court of Appeal further observed that the provisions for payment of default fees for extension of time, under other Rules of Courts is not and will not be applicable in fundamental rights cases. In any court proceedings, be it civil or criminal or labour related, where the question of the application fundamental rights arises, the courts always frown at any form of technicality that will impugn substantial justice.⁶² The obligation of the Courts in eschewing technicalities in fundamental rights suits has brought about the watering down of the strict application of *locus standi*, in public interest litigation.⁶³

Duty on the Courts not to Delay Justice and not to Sacrifice Justice on the Altar of Speed

As the saying goes, ‘justice delayed is justice denied; and justice rushed is justice crushed.’ To ensure that access to justice is worth it while, the Courts are entrusted with a sacred duty to ensure that justice is not delayed.⁶⁴ Delayed justice erodes confidence in the administration of justice and has the propensity to push people to lawlessness which invariably derides the society. To this end, the Courts have an enormous duty to balance the need not to delay justice with a far more fundamental requisite of the administration of justice – non-denial of justice. It was in the case of *CEEKAY Traders Ltd. v General Motor Company Ltd.*⁶⁵ that the Supreme reasoned that: ‘Delay of justice is bad, but denial of justice is worse and outrageous. The denial inflicts pains, grief, suffering and untold hardship on those who rely on impartial administration of justice.’ As much as the Courts are duty-bound to ensure that justice is not delayed; the Courts are admonished in *Impresit Bakolori PLC v AUIMD Ltd*⁶⁶ that there is also a duty placed on the Courts not to rush justice so as sacrifice justice on the altar of speed. ‘Rush’ has been defined in the case of *the People of Lagos State v Umaru*⁶⁷ in to accelerate, expedite, hasten, quicken, the taking of decision on a certain matter without thinking about it carefully. To balance the two contending principles above, there is a constitutional fundamental rights safeguard which dictates that parties before the Court should be afforded adequate time to present their cases.⁶⁸ Notwithstanding this constitutional safeguard, it must be emphasized that fair hearing cannot and should not be permitted by the Courts as a basis for the delay of justice,⁶⁹ especially in fundamental rights proceedings where time is of the essence.

Duty on Courts to Base its Decisions on Law and not on Morality, Instinct or Sentiments

The place of morality in the society cannot be overemphasized, however, in order to arrive at justice according to the law, the Courts are under obligation not to pursue moral issues, but to base its decisions on precincts of the law.⁷⁰ It is a solemn duty of the Courts in its quest to do justice, especially in human rights cases, to at all times, endeavour to find means to do justice to all manner of men based on a living and dynamic law.⁷¹ Justice is considered done once it is according to law.⁷² In the exercise of its judicial discretion, the Courts are enjoined to exercise such discretions within the confines of the law. In keeping within the precincts of the law, there is also a duty placed on the Courts not to act on instinct.⁷³ Further to the above, there is also a duty placed on the Courts not to base its decisions on sentiments.⁷⁴ The Supreme Court has stated over and over that the Courts are for espousing the law and not a place for sentiments, as sentiments commands no place in judicial adjudication.⁷⁵ See It is left to add that the Court has no jurisdiction to consider a relief not claimed by either parties and therefore cannot make any valid order in respect of such relief. Any order so made will infringe the basic and fundamental principles of our administration of justice: namely, notice to the other party and hearing the party to be affected.⁷⁶ This is so more important in fundamental rights proceedings, which are usually presented in very pathetic and touching manner. The Court is enjoined not to be carried away by the touching tales of the Applicant, but to insist on the which requires the Applicant to prove his case.

Duty on the Courts to Ensure that Remedy is Made Available Whenever There is a Wrong

The Latin maxim: *ubi jus ubi remedium* required that there is a remedy for every wrong. The purpose of justice, especially human rights justice, is the protection of individuals from the unjust and/or the unlawful deeds of others. This protection is achieved by means of remedy where necessary; because where there is a wrong, there must be a remedy.⁷⁷ The law is trite that

⁶⁰(2019) LPELR-47247 (CA) 9 – 11, paras E – D.

⁶¹Except form in the mode of commencement of action, which is fundamental.

⁶²*Nnamdi Azikiwe University v Nwafor* (1999) 1 NWLR (Pt 585) 116.

⁶³*Ogheneovo v Gov., Delta State* (2023) 2 NWLR (Pt 1868) 275.

⁶⁴*Danladi v Dangiri* (2015) 2 NWLR (Pt 1442) 124.

⁶⁵(1992) LPELR-834(SC)

⁶⁶(2016) 1 NWLR (Pt. 1492) 27.

⁶⁷(2014) LPELR-22466(SC).

⁶⁸S 36 (1) of the CFRN 1999.

⁶⁹*Obiesie v Obiesie* (2007) 16 NWLR (Pt 1060) 223.

⁷⁰*Seamarine Int'l Ltd v Ayetoro Bay Agency* (2016) 4 NWLR (Pt 1502) 31.

⁷¹*Nwolisah v Nwabufoh* (n 51).

⁷²*Daily Times (Nig.) Plc. V Magoro* (2000) 15 NWLR (Pt 692) 855.

⁷³*Onyekwuluje v Benue State Government* (2015) 16 NWLR (Pt 1484) 40.

⁷⁴*Zubairu v The State* (2015) 16 NWLR (Pt 1486) 504.

⁷⁵*Ezeugo v Ohanyere* (1978) 5-7 SC 171; *Onjah v Onyia* (1989) 1 NWLR (Pt 99) 514; *Mabchu v Anambra-Imo River Basin Development Authority* (2006) 14 NWLR (Pt 1000) 691.

⁷⁶*Akapo v Hakeem-Habeen* (1992) NWLR (Pt 247)266 3. (1992) 7 SCNJ 119.

⁷⁷*Ogbolosingha & Anor v Bayelsa State Independent Electoral Commission & Ors* (2015) 6 NWLR (Pt 1455) 311.

'damages in compensation, legally and naturally follow every act of violation of citizens' fundamental right.'⁷⁸ Once violation of rights is pronounced, damages is inferred.⁷⁹ It is thus the duty of the Court to discourage persons from seeking extra-judicial remedies by ensuring that those wronged by other get adequate remedy to assuage their grievance. This is a sure way of promoting a safe and lawful society by the protection and enforcement of human rights.

5. Conclusion and Recommendations

The enforcement of human rights through the exercise of judicial powers remains a defining feature of constitutional governance and the rule of law. Courts serve as the ultimate guardians of rights, ensuring that state authority is exercised within constitutional boundaries and that individuals have meaningful recourse when their rights or freedoms are threatened or violated. Through judicial review, rights-oriented interpretation, and the provision of effective remedies, the courts interpret these rights into actualisation. The realization of human rights requires more than judicial order and declarations, it requires strong institutions, access to courts, and a tradition of maximum respect for human dignity. Strengthening judicial independence, expanding access to justice, building judicial capacity, and embracing technological and procedural innovations are essential steps toward a more responsive and rights-based justice system. When courts operate with integrity, expertise, and genuine autonomy, they not only resolve disputes but also shape societal values, hold public officials accountable, and reinforce democratic stability. To ensure that the courts continue to live up to their roles in the enforcement of human rights through the exercise of judicial functions, the following recommendations are suggested:

Strengthening Judicial Independence, Accountability and Transparency: The effective enforcement of human rights depends largely on the capability of courts to operate free from political, financial, and institutional pressures. Safeguards such as transparent appointment processes, secure tenure, adequate remuneration, and protections against executive interference should be strengthened to ensure that judges can make decisions grounded solely in law and justice and not on fear or favour. Prompt issuance of judgments, enabling public access to court records, and utilizing digital platforms for live streaming major human rights cases can enhance public trust. Transparent courts are better able to maintain legitimacy and reinforce the rule of law.

Enhancing Access to Justice through Promotion of Judicial Capacity Building: Many a times, rights violations go unchallenged because victims cannot access the courts. Expansion of legal aid schemes, simplifying court procedures, reducing filing fees, and the establishment specialized human rights courts or fast-track mechanisms can further widen access. Adoption of e-filing systems, virtual hearings, case management software, and digital archives can reduce delays, improve efficiency, and make the judicial process more accessible, particularly in rural or underserved areas. Judges, magistrates, and court personnel should regularly receive training on contemporary human rights standards, international treaties, emerging jurisprudence, and best practices and the use of digital technology in justice delivery to enhance the quality and coherence of judicial decisions and improve the courts' responsiveness to evolving human rights challenges.

Robust Law and Judicial Reforms to aid Rights-based Interpretation: The state of the law in Nigeria today is that most human rights find expression in Chapter 2 of the CFRN 1999, which is non-justiciable. There is need for a robust law reform to make these rights in chapter 2 of the CFRN 1999 to be justiciable. Courts on their part should adopt purposive and liberal approach to interpreting constitutional rights provisions, ensuring that human rights are not restricted by narrow technicalities. Judicial review powers must be exercised boldly to invalidate oppressive laws and unconstitutional state actions, thereby reinforcing the supremacy of the constitution.

Strengthening Remedies and Enforcement Mechanisms: It is unfortunate in Nigeria that most court judgments affirming human rights go enforced or even disobeyed by public authorities. These human rights judgments will remain ineffective and useless, unless there is in place strong compliance mechanisms to enforce these judgments. Courts should develop innovative and impactful remedies which will including structural orders, mandatory timelines, supervisory jurisdiction, and compensation frameworks, to ensure that rights violations are meaningfully redressed and enforced. Governments must also create monitoring systems to ensure compliance with judicial orders.

Enhanced Collaboration between Courts and Human Rights Institutions to Promote Public Awareness and Human Rights Literacy: Courts should engage constructively with national human rights commissions, ombudsmen, and relevant civil society groups/organizations. Such collaboration can improve fact-finding, promote alternative dispute resolution for certain rights violations, and facilitate public education on rights enforcement procedures. These Human Rights Institutions' engagements in rights awareness campaigns, school curricula integration, and public legal education can empower citizens to recognize violations and seek judicial remedies. The more informed society, the more strengthened the demand for accountability and this enhances the effectiveness of the courts to enforce human rights.

⁷⁸See Section 35 (6) of the CFRN 1999; *Agu v Okpoko* (2009) LPELR 8286 CA; *Iwununne v. Egbuchulem* (2016) LPELR-40515 (CA) at 37-38, Paras. D-F, per Mbaba. JCA.

⁷⁹*SSS v Incorporated Trustees of the Peace Corps of Nigeria* (2019) LPELR-47274 (CA); *Igweokolo v Akpoyibo & Ors* (2017) LPELR - 41882 (CA) 26-27, Paras D – E.