The judiciary and the Deepening of Democratic Values: The Jonathan Administration 2009 - 2015
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ABSTRACT
Democracy needs to be clearly understood before we can appreciate the roles of the judiciary in its sustenance. It is a form of government that is responsive, responsible and guarantees to the citizens, the inalienable rights of freedom of choice, freedom of association, right to shelter, freedom from discrimination, right to clothing and unqualified respect for the rule of law. This is a form of government that connotes collective participation and despotism, tyranny and totalitarianism is at variance with it. On the whole, democracy according to Abraham Lincoln is the government of the people, by the people, and for the people. For effective administration of justice in a democracy, courts have definite and decisive roles to play. Courts are Government institutions that settle legal disputes and administer justice. The judiciary arm of government, resolves conflicts involving individuals, organizations, government and political parties. It also has the power to review the actions of both the executives and the legislature. Although, lack of judicial independence affects the performance of the judges in Nigeria, when it comes to judicial review and delivering justice. Nevertheless, with numerous constraints facing the institution, it manages to provide fair justice to poor people and powerless individuals. The judiciary arm of government now remains the faith of Nigerians in bringing justice to reign in Nigeria, due to its numerous landmark achievements recorded so far. This paper seeks to examine the role of judiciary in entrenching democratic values in the present day Nigeria. Our focus, however, shall be on the administration of President Goodluck Ebele Jonathan.

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Introduction
That concern for the sustenance of a viable democracy is what prompted individual stakeholders in government to come up with what is today referred to as the separation of powers. In the light of this, they came to the stark reality that some checks and balances must be put in place to ensure that governance is not done sentimentally, mischievously and parochially. Hence, there is the necessity to see governance as squarely the responsibility of the three arms of government with each acting independently and without undue interference in each other's constitutional mandate. While the Executive arm is constitutionally empowered to oversee the governance of the country, it has to seek for the legislative arm's approval for its annual budgets and appointment of some top government operatives like ministers and ambassadors among others. On the other hand, the legislature comprising of the Senate and the House of Representatives is to provide the needed legislation for the good governance of the country as the second arm of government. The Judiciary as the third arm of government is assigned the responsibility of serving as an arbiter, in disputes that may likely arise in the course of governance between and among the other arms, corporate and individual citizens of the country. Nigeria has had a turbulent history of democracy. Nonetheless, we have to admit that the long incursion by the military into the political landscape has left an indelible imprint on our national consciousness, so much so that, we seem to have developed reflexes symptomatic of a high tolerance level for arbitrariness and misuse of power by those in control of state apparatus. This has contributed, in no small measure, to the emasculation of our democracy and retarded the growth and development of the democratic ideal in this country. The only nationally acknowledged formidable force sustaining our nascent democracy from total collapse and irretrievable disintegration remains the Judiciary.

The word “Judiciary” has been defined as the court system of a country. It is the branch of Government vested with the judicial powers. It is the third arm of government. The function of the judiciary is the interpretation of the laws enacted by the legislature. While the legislature is responsible for making laws and the executive is charged with the implementation of such law, the judiciary is responsible for the interpretation of such laws in accordance with the provisions of the constitution. In line with the doctrine of separation of powers, which is a cardinal feature of a democratic system, the Nigerian Constitution guarantees the independence of the judiciary. By virtue of Section 6 (6) of the Constitution of the Federal Republic of Nigeria, 1999, (as amended), the Judiciary is vested with the power/authority and jurisdiction to adjudicate on all matters between citizens inter se, citizens and government and government against government. This responsibility is daunting and awesome. Judges hold justice in trust for God Who is the ultimate Judge. Justice is so central to man as well as to democratic norms and governance.
Pursuant to the above provision, of our Constitution, the Courts recognized as constituting the judiciary are the Supreme Court, the Court of Appeal, the Federal High Court, the High Court of the Federal Capital Territory Abuja, the Customary Court of Appeal, Abuja, the States High Courts, the Sharia Court of Appeal of the States, National Industrial Court, and the Customary Court of Appeal of the states. These courts are vested with the functions or duties of dispensing justice, in accordance with jurisdiction vested in them.

The Evolution of the Judiciary under the Democratic Dispensation

Since Nigeria's return to democratic rule in 1999, the country has witnessed several breaches and violations of the constitution by various administrations. Mostly, the actions, which fall under the ambit of the national assembly to deal with, unfortunately went unchecked. It is regrettable that some state chief executives treated the judiciary as an appendage of the executive arm. While it is true that, in some cases, this is self-inflicted (because of the way some Judges portray themselves), it does not invariably follow that a distinct arm of government should, because of the actions of a few, be treated with disdain. Sadly, the judiciary in several states goes cap in hand to the executive begging for funds.

By section 162 (9) of the Constitution, any amount standing to the credit of the judiciary in the Federation Account is paid directly to the National Judicial Council (NJC) for disbursement to the heads of superior courts, including those at the state level. However, a significant part of the funding requirements of state judiciaries, especially in the area of the provision of infrastructure and welfare of Magistrates and other lower court Judges, remain the responsibilities of states. The plight of the state judiciaries is compounded by the fact that, in spite of the best efforts of the NJC, the processes of appointment and removal of Judges/security of tenure is subject to political interference. We are also conscious of the fact that, as Mackenzie rightly points out:

Without armies to carry out their judgments, courts are dependent on the consent of the governed no less than the other branches (of government)... When the image of the judiciary is tarnished, the moral authority of the courts is critically undermined. The appearance of partiality... is the greatest threat that confronts our Judges. A judiciary that is sufficiently armored with a good reputation for integrity can withstand other threats...

It therefore follows that the authority of the judiciary rests squarely on the public perception of its propriety. Where public confidence in the judicial system is high, the incidence of people taking the law into their own hands will be minimal. The reverse is obviously the case where public confidence in the judiciary is low. Therefore, when some Nigerians resort to jungle justice, judges as well as lawyers, law enforcement agents and other stakeholders in the justice sector must, while deprecating theft conduct, take a look at themselves in the mirror, and make amends, where necessary, Public confidence in the Judge and the judicial system reinforces conviction in the society that no person, institution or government no matter how powerful or wealthy is outside the sphere of legal authority. Conversely, as De Baizac warns, “the lack of public confidence in the judiciary is the beginning of the end of society”.

Therefore, it is a matter of serious concern that prevalent societal currents and iniquities, including the collapse of core values such as integrity, probity, accountability, etc. have also engulfed a significant segment of the judiciary. Restoration of public confidence in the judiciary, however, has been bolstered by enforcing the Code of Conduct for Judicial Officers, the Code of Conduct for Public Officers and other relevant laws and regulations. The Code of Conduct for Judicial Officers should expressly forbid Judges giving extrajudicial advice to other branches of government. Neither should a Judge engage in any other public or private undertakings that could generate public suspicion of impropriety. In the case of the other branches of government, this stance is consistent with the separation of powers. Besides, it is within the province of the ministries of justice and other relevant legal departments to give legal advice to the other branches of government.

More importantly, the issue in respect of which legal advice is extra-judicially sought from a Judge might eventually become the subject of litigation and cause embarrassment not only to the Judge concerned but to the entire system of administration of justice. It is not enough that the Judge in question declines to handle the case because of his/her prior advice. The mere idea of Judges in a romance with the functionaries of the other branches of government, other than in connection with judicial matters, raises suspicion of impropriety. It is not the duty of the Judiciary to antagonize the other branches of government. It is part of the government and it should strive to engender a symbiotic relationship among all the branches of government without sacrificing its standing and propriety on the altar of personal relationships or political expedience.

This is good for the judiciary as an independent arm of government and most importantly for the county's democratic survival. The judicial arm of government at the Federal and State levels have lately shown that they can do a lot of good to the country if they return to the path of honour and the last hope of any aggrieved person who approaches it for justice. Among the landmark judgment of the judiciary was the removal of lawmakers and Governors who occupied positions illegally and undemocratic. The judiciary has been playing pivotal roles in the dispensation of justice, and the public thus expect much from them. A situation whereby a common man will be sentence to life imprisonment or several years in prison for stealing a goat or a little sum of money, while those carting away or embezzling public funds were given bail with the payment of some amount of money would not be tolerated any longer. Justice is expected to be dispense in accordance with the constitution and lay down rules and regulations. Judges are expected not to compromise justice or attach themselves to their judgment. Now that Nigerians believe in the judiciary as their last resort they should strive to bring justice, tears of corrupt leaders in Nigeria for them to dance to the lyrics of the music of the law in order for Nigeria to be sanitized and free from corrupt leaders. The Nigeria Police force and other law enforcement agencies should always protect the lives of judges from anything that could stop them from bringing justice to reign. With the fact that Nigerians are looking on to the judiciary as their last hope, it is advisable for the judiciary not
to fail Nigerians and make sure that those elected illegally and undemocratically in Nigeria are brought to book and put to where they belong. The Nigeria Bar Association should also work hard by ensuring that their members are free from corruption and stop influencing justices. Lawyers should be among the purveyors of good governance, they should work for the progress of Nigeria, strengthen the Fundamental Human Rights and embark on heavy crusade against corruption which is the mother of all crimes in Nigeria. An independent judiciary is universally acknowledged as one of the most defining and definitive features of a functional democracy. Many, in fact, see it as an essential bulwark against abuse of power, authoritarianism and arbitrariness. How it functions as well as how the various stakeholders in a democratic experiment appropriate its interventions and role in the polity are critical indicators of the health or otherwise of a democracy. There seems to be nowhere in the world presently where this reality is more apt as it is in Nigeria, one of the world's largest democracies with a population of over 160 million people. Big thanks to the judiciary; the last hope of the common man, democracy, in Nigeria is taking a strong foothold.

**Judiciary and Democracy**

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

As one of the biggest beneficiaries of the return of democracy in Nigeria, the courts, armed with a presidential declaration to respect the independence of the other arms of government (a promise which the administration has so far largely honoured), have unleashed their powers especially on the political sector. In the last few years, the courts have launched giant strides and stabilized the Nigerian democracy by delivering some landmark decisions on the election petitions enthroning new regimes. Some years back, this would have been unimaginable for Nigeria; a country plagued by corruption in all sectors and at all levels of government, where politicians paraded mediocre and neophytes as experts and took absolute delight in perpetuating anarchy and lawlessness. So far, the decisions that have emanated from the courts, with respect to election petitions and their outcome, have taken many by surprise. No doubt, these decisions have had profound effects on the people’s psyche and are likely to reverberate for years to come. As time went by, the people anxiously awaited the day of reckoning which came in an unexpected fashion, as the courts, including the electoral tribunals gradually woke up.

Between 2009 - 2015 the people's faith in some of Nigeria’s institutions, not just the courts, are being restored. Confidence is slowly being ingrained while apathy turns to hope; thanks in large to a vibrant judiciary. So far the courts’ decisions convey the semblance of fairness, impartiality and independence as is expected of this branch of government. Now, most Nigerians can unequivocally say that justice is blind and a respecter of no one. If this trend continues, the people are more likely to feel connected to their country and participate in its affairs, including the electoral process. On the other hand politicians and political leaders will be disinclined to ridiculing the system of government and using it as a pawn. If this trend continues, the people are more likely to feel connected to their country and participate in its affairs, including the electoral process.

**The Role of the Judiciary in Protecting Nigeria’s Democracy**

An independent judiciary is universally acknowledged as one of the hallmarks and definitive features of a functional democracy. Many, in fact, see it as an essential bulwark against abuse of power, authoritarianism and arbitrariness. How it functions as well as how the various stakeholders in a democratic government appropriate its interventions and role in the polity, are critical indicators of the vibrancy of a nation's democracy. There seems to be nowhere in the world presently, where this reality is more apt as it is in Nigeria, one of the world’s largest democracies with a population of over 160 million people.

**Nurturing Electioneering Process**

Nigeria has, one way or the other, begun having encounters with elections since 1922. Nigeria has had its own fair share of elections and electioneering since its independence on 1st October 1960, including the 1964 federal elections and the Western region parliamentary elections of 1965. The elections were characterized by a number of irregularities, as a result of which the judiciary was unwittingly drawn into the political arena, as can be deduced from the expression of Hon. Justice Oyemade:

“I will not allow myself to be intimidated into sending innocent persons to jail. Even if this means losing my job, I am sure of leading a decent life. The only thing we have now in this country is judiciary. We have seen politicians changing from one policy to another, but the only protection the ordinary people have against all these inconsistencies is a fearless and upright judiciary. The fourth republic has been stable for sixteen years now. This is largely as a result of the resilience of Nigerians and the noble role of the judiciary in resolving some of the volatile disputes arising from the electoral process. It has been acknowledged that the Nigerian judiciary took up the challenge of saving our nascent democracy from collapse, by reasons of unbridled attacks unleashed on it by undemocratic forces. The judiciary came to the limelight as a major force to reckon with for the protection and stabilization of democracy ever since the first major hotly contested election petition in Nigeria, in the celebrated case of Awolowo VS Shagari, where Chief Obafemi Awolowo, who lost out at the general election held on 11th August 1979, filed a petition against Alhaji Shehu Shagari, who was declared the winner of that election. The main issue in contention in that case was the correct interpretation of section 34(2) of Electoral Act 1977 to the effect that before a person can be declared as haven won an election he must have “not less than one quarter of all the votes cast at the election in each of at least two-third of all of the states within the federation”. The majority decision of the Supreme Court upheld the election of Alhaji Shehu Shagari has having won in 122/3 of 19 states as against the argument of Chief Obafemi Awolowo that Alhaji Shagari, to be elected, must win in 13 states of the Federation. Though the decision of the Supreme Court generated a lot of criticism and comments, some complimentary, some adverse, even bordering on sarcasm and emotional expressions of diffidence on the integrity of the judicial system.
Whatever is said about that decision, it is to the credit of the judiciary that stabilized the polity by making it possible for the transition from protracted military rule to the civilian rule which was much anticipated and fought for at that time. It also saved the country of the possibility of conducting a fresh election, with the attendant financial and material costs and which would have put Nigeria in a bad light in the eyes of the international community.

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

Most recently, the judiciary recorded a major triumph when the Supreme Court gave a momentous judgment where it affirmed that the gubernatorial candidate voted for by the electorate, in the oil rich Rivers State in the Niger Delta region during the 2007 general elections, was Hon. Rotimi Amaechi, former Speaker of the State House of Assembly and not Sir Celestine Omehia. It further directed that Amaechi “be sworn in immediately”. After many decades of military rule, Nigeria witnessed a transition to civil rule in 1999. Arguably it was well stage-managed to favour the overbearing interests of the retreating military establishment, given that it resulted in the emergence of Chief Olusegun Obasanjo, himself a former military dictator, as the new president via an electoral process that was marred with high-level military maneuverings. Thus began in earnest Nigeria’s third attempt at democracy, following botched experiences of 1966 and 1983, all by the military. However, with a combination of an agitated and more politically aware local populace, that had increasingly become disenchanted and disillusioned with military rule, as well as an international system that seems more predisposed to the spread, institutionalization and nurturing of democratic values across the world (following the collapse of communism), Nigeria’s latest attempt at democratic rule was destined, as it seems, to last and grow by any means necessary.

However, of the three arms of government in Nigeria’s post military rule, the one that is in a better position to serve as the anchor of the other two, almost made incapable by years of military rule, is the judiciary. Even though the judiciary had been a victim of military abuse and misuse, this however did not vitiate the fact that as at 1999, as weakened and disenabled as it was, had more capacity to function in the emerging democratic Nigeria.

Though many commentators and analysts on Nigeria since 1999 have had to express an almost unanimous view that the actions, posturing and predilections of not a few Nigerian political office holder have been everything but democratic, there was also an overwhelming optimism in some quarters that democracy being a process and journey and not necessarily a destination, its continued experimentation would likely result to some semblance of perfection and orderliness. But, as optimistic as many have been, Nigerian politicians seem more distinct for their peculiar enthusiasm to subvert known democratic principles and values. The greatest evidence of such reality was the events witnessed at the last General Elections conducted in April 2007. The 2007 Nigerian General Elections was remarkable in more ways than one for the country: One, it would mark the first civilian to civilian transition in Nigeria’s chequered political history if successful; two, there were widespread fears that the country could implode if the elections were inconclusive and deadlocked leading to threats to peace and security not just in the West African sub region but the African continent in general given that Nigeria is viewed as a regional superpower. As events, however, turned out, the elections were widely reported by both local and foreign observers as the most fraudulent and flawed in Nigeria's electoral history, a consequence of which was the demand by the opposition and civil society for its outright cancellation. The tell-tale signs for such fraud were all too evident: a partisan electoral body that was as ill-prepared as it was widely regarded of lacking independence, being tied to the apron strings of a vicious executive arm and the ruling party; a corrupt political class that was as desperate for raw power and its associated perks than anything else as it was disingenious in perverting electoral rules; political party structures that did not offer fairness and justice equally to members just as they lacked inbuilt capacity to manage intra party conflicting interests; and a compromised electoral system that favoured the rich and strong as against the poor and weak with impunity. All these resulted eventually in such acts as illegal and unconstitutional substitution of candidates at will by the powers that be at all levels of governance flagrant disregards for rules as well as brazen acts of illegalities by government agencies such as the anti-graft agencies like the Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices Commission (ICPC), and the Police, overtly sympathetic to the party in power at the centre, Peoples Democratic Party (PDP). These agencies brazenly determined which candidate to disqualify or allow to contest elections even when they had crossed their various party hurdles.

However, the Judiciary has remained a stabilizing force in the Nigerian polity. Expectedly, this is what the judiciary has just been doing especially since after the last 2007 General Elections. The first judicial intervention post 2007 elections was the judgment on Anambra State. The shambling election of Andy Uba was nullified on the ground that there was no need for an election ab initio, given the tenure of Peter Obi. He was sworn in as governor in 2006 after a protracted legal battle to claim his mandate from Chris Ngige, and that he had not exhausted his four years tenure as at the time it was held. With that judgment, ended what could be described as the greatest rape on democracy in Nigeria where an individual was practically assured of electoral victory even before the vote was cast. The judiciary has variously played protective role in Nigeria’s democracy through the declaration of landmark judgments that tended to remedy the many anomalies and undemocratic actions of Nigerian politicians as well as go a long way in restoring faith in the nation's democracy. So far, beside the nullification of the election of Celestine Omehia in Rivers State by the apex court, election petition tribunals across the country have set aside the election of two governors in Kogi state on the premise that the electoral body, NEC unconstitutionally and illegally barred the opposing candidate
from contesting the elections. In voiding the election in the state, the judiciary displayed steely courage, wisdom and fair play. Earlier, it had, through the Supreme Court, declared as illegal and void the substitution and replacement of Senator Ifeanyi Ararume as the governorship candidate of the Peoples Democratic Party in Imo state with Chief Charles Ugwu. Ararume protested this decision and approached the courts. Finally, the courts adjudicated and he secured a Supreme Court ruling in his favor following the precedent recorded in Amaechi's case. The party expelled him and chose not to field a candidate, leaving the field open for Ikedir Ohakim of the Progressive Peoples Alliance (PPA) to emerge as governor.

We also have the manifestations of judicial activism exhibited by the judiciary in its protective role of democracy in the case Fayemi vs. Oni where, in spite of all the frustrating shenanigans of the incumbent governor to retain power by all means, as demonstrated by the various forms of electoral malpractices that bedeviled the re-run election initially ordered by the court. The forcing of the Ekiti State electoral commissioner to announce the concocted rerun election result which she had initially declined to announce. The judiciary had remained steadfast and focused in ensuring that justice was also done in consonance with the wishes and aspirations of the people in the face of serious temptations and pressures from various quarters. Similar scenarios played themselves out in the cases of Agagu vs. Mimiko and Oshiomole vs INEC and justice done against all odds.

Consequently, the Edo State Governorship Election Tribunal in 2008 upturned the election of Professor Oserhimen Osunbor as winner of the April gubernatorial election in the state and directed the Independent National Electoral Commission (INEC) to “withdraw the Certificate of Return issued to Osunbor.” It also ordered that the Certificate of Return be issued Comrade Adams Aliu Oshiomhole as Governor of Edo State, having scored a quarter of total votes cast in 12 of the 18 local government areas of the state.

Dissatisfied, Osunbor appealed the decision But the Court of Appeal sitting in Benin endorsed the decision of the Tribunal by declaring Oshiomhole duly elected governor of Edo State. In the judgment, Justice Umar Farouk Abdullahi of the Appeal Court held that the Action Congress (AC) candidate scored highest vote, in the April 14, 2007 governorship poll in Edo State. The court, as a result, dismissed the appeal filed by Osunbor. Other annulments of gubernatorial elections in Ekiti and Osun States as well as 'arrest of judgment' in Sokoto State followed later Interestingly, those decisions, which were mainly against the ruling PDP, were enforced as soon as the courts declare. There were also annulments of election into the parliament at either the federal or state levels. As the judiciary became famous for its interventions, its role in determining who wins election, which was either hailed by those it favoured, or disparaged by those it disfavoured began to be criticized. People started to query the rationale behind the 'judicial usurpation' of peoples' power to determine who they want as their leaders. Infuriated by the development, lawmakers amended the Electoral Act and withdrew the powers of the Tribunals to declare winners of elections. Those who felt offended also approached the judiciary for succour. As a result, Justice Okechukwu Okeke (now retired) of the Federal High Court in Lagos nullified Section 140 (2) of the Electoral Act, 2010 which prevents Election Petition Tribunals from declaring winners of elections.

Section 140 (2) specifically states that: “Where an election tribunal or court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election, the election tribunal or court shall not declare the person with the second highest votes as elected, but shall order a fresh election.”

Delivering judgment in a suit filed by the Action Congress of Nigeria (ACN) challenging the legality of the amendment done to the Electoral Act, 2010 by the immediate past National Assembly, Justice Okeke said the section was null and void and of no effect whatsoever and inconsistent with the constitutional provision which gives powers to the courts to make declarative injunctions. Even though some of those decisions could be contested, there is no doubt that they have made contributions to the development of democracy one way or the other, depending on the assessor. This has by no small measure consolidated the people's hope in the judiciary as a bastion of hope and the mainframe upon which the Nigerian emerging democracy stands.

**Upholding the Rule of Law**

Nigerian judiciary, in the last 16 years, has tremendously helped to shape democracy. As the third arm of the government, it has clearly played its role in deepening democracy with several landmark decisions. The centrality of the judiciary in the scheme of democracy is manifestly acknowledged where and when there is a deeply ingrained tradition of fidelity to the rule of law. Even decisions of inferior courts remain the law until set aside by a higher court, Where and when there is a consensus on the rule of law, everyone quite easily comes to terms with the vibrant role of the judiciary. Failure by misguided elements to pay credence to the overarching role of the courts, more often than not, leads to a state of anarchy or lawlessness, with dire consequences for the entire polity.

The reason for this is obvious: rule of law is the glue that holds society together and when this fact is ignored, the tendency is for a reversion to anarchy. Yet, it hardly needs emphasis that the interests of a developing country, such as ours, are better served by untrammeled and unwavering commitment to the rule of law. The more people avail themselves of the judicial process, the brighter the prospects for democratic governance, social stability and general wellbeing of the polity. Obaseki, JSC seemed to have been peeved, by our penchant to abuse the rule of law, when he said: “In the area where rule of law operates, the rule of self help by force is abandoned Nigeria being one of the countries in the world even in the third world which proclaim loudly to follow the rule of law, there is no room for the rule of self help by force to operate. Once a dispute has arisen between a person and the government or authority and the dispute has been brought before the court, thereby invoking the judicial powers of the state, it is the duty of the government to allow the law to take its course or allow the legal and judicial process to run its fit course. The action the Lagos State Government took can have no other interpretation than the show of intention to pre-empt the decision of the court.

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

**Protection of Fundamental Rights**

Another notable feature of democracy is the protection and preservation of fundamental human rights. The judiciary plays a more important role than any other form of individual, group or arm of government in this connection. In a line of authorities the Judiciary has demonstrated its resolve to
enthrone democratic values in the system. The judiciary is not resting. Recently in AG Abia v. AG Federation, the Supreme Court, per Mustapha JSC graphically summarized the functions, duties, powers and jurisdiction of the judiciary in a democratic set up like ours, where the Executive is always inclined to act rashly, arbitrarily and in a self-seeking manner as follows: “The judiciary especially the Supreme Court in particular, is an essential integral arm in the governance of the nation. It is the guardian of the Constitution charged with the sacred responsibility of dispensing justice for the purposes of safe guarding and protecting the Constitution and its goals. The judiciary, when properly invoked, has a fundamental role to play in the structure of governance by checking the activities of the other organs of government and promoting good governance, respect for individual rights and fundamental liberties and also ensuring the achievement of the goals of the Constitution and not allow the defeat of such good goals and intendments. It is the duty of the Court to keep the government faithful to the goals of democracy, good governance for the benefit of the citizens as demanded by the Constitution. The Supreme Court has the sacred duty to translate into actuality the noble ideas expressed in the basic law, give flesh and blood, in fact life, to the abstract concepts of freedom, liberty, transparency, a society free from corruption, abuse of power and all the noble goals articulated and reiterated in the Constitution.”

It is noteworthy that the Nigerian judiciary is at the vanguard of our quest to attain the ideal democracy. As the harbinger of hope and repository of trust and confidence, has worked assiduously in ensuring that Nigeria’s nascent democracy is rooted in the rule of law. In short, the apex court's pronouncements on the anti-corruption case recently have demonstrated that the judiciary, as an arm of government, is indeed sensitive to the issue of corruption. In that case, AG Ondo State v. AG Federation & 35 Ors, the apex court, per Katsina-Alu, JSC opined thus: “Corrupt practices and abuse of power spread across and eat into every segment of the society. These vices are not limited only to certain sections of the society It is lame argument to say that private individuals or persons do not corrupt officials or get them to abuse their powers. It is good sense that everyone involved in corrupt practices and abuse of power should be made to face the law in our effort to eradicate this cankerworm.”

At pages 337-339, Ogwuegbu, JSC stated that: “Corrupt practices and abuse of power can, if not checked, threaten Court to keep the government faithful to the goals of democracy, good governance for the benefit of the citizens as demanded by the Constitution. The Supreme Court has the sacred duty to translate into actuality the noble ideas expressed in the basic law, give flesh and blood in fact life, to the abstract concepts of freedom, liberty, transparency, a society free from corruption, abuse of power and all the noble goals articulated and reiterated in the Constitution.” It is noteworthy that the Nigerian judiciary is at the vanguard of our dream renaissance.

As the harbinger of hope and repository of trust and confidence, then at pages 337-339, Ogwuegbu, JSC stated that: “... I must also point out that all Nigerians, except perhaps those who benefit from it, are unhappy with the level of corruption in the country. The main opposition to the ICPC Act is, I believe, borne out of fear and suspicion.” On his part, Mohammed, JSC opined thus: “It is quite plain that the issue of corruption in Nigerian Society has gone beyond our borders. It is no more a local affair. It is a national malaise which must be tackled by the Government of the Federal Republic. The disastrous consequences of the evil practice of corruption have taken this nation into the list of the most corrupt nations on earth.” Equally, our courts have been applauded in their decisions in array of cases notably, A-G Abia State & Ors. v. A-G Federation (popularly known as the tenure of local governments’ case), A-G Federation v. A G Abia State & Ors., (popularly known as the Resource Control case) etc. These cases have demonstrated, in no uncertain terms, that in so far as the interpretation of the constitution and all laws in the land is concerned, the courts have the final say. See also A-G Lagos it A-G Federation (otherwise known as the Statutory Allocation case). Of all the three arms of government, the judiciary in Nigeria has remained the most disciplined, sober, reflective, diligent, patriotic, committed to the goal of democracy and, indeed, it is the glue that is holding Nigeria together. The judiciary has stood its ground and stood on guard for Nigeria and Nigerians on one hand and the preservation of Nigeria’s nascent democracy on the other hand.

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

Fortunately enough, the ghost of that decision, which has wrongly haunted our legal system since 1982, has now been crushed in the recent decisions in Adeleke v. O.S.H.A. 33 and Balonwu v. Obi See also Inakoju v. Adeleke 35 where the Supreme Court affirmed the decision of the Court of Appeal which set aside the laughable impeachment of Governor Rashidi Ladoja. The illuminating contribution of Mustapha JSC at pages 669-670 in relation to how the Judiciary must inquire into impeachment proceedings and procedure which patently and latently are outside the confines, stipulations and expectations of the constitution is worth reproducing: “The principle of separation of powers under the Constitution is meant to guarantee good governance and development and to prevent abuse of power. A writer, Montesquieu once said, ‘political liberty is to be found only when there is no abuse of power. But constant experience shows every man invested with powers is liable to abuse it, and carry his authority as far as it will go’.

In this wise, impeachment has come to be recognized as one of the legitimate means by which a Governor or Deputy Governor, President or Vice President can be removed from office for an impeachable offence. The meaning of ‘gross misconduct’ as contained in the Constitution in relation to impeachment proceedings is whatever the legislature deems ‘gross misconduct’. This clearly is very nebulous, fluid and subject to potentially gross abuse and is also potentially dangerous at this point of our national or political life. That is why the legislature should strictly comply with all the other provisions as contained under section 188. Failure to comply with any
one of them will render the whole exercise unconstitutional, null and void and any purported impeachment or removal will be declared improper by the courts. As mentioned above, whether ‘gross misconduct’ is sufficient to warrant the removal of a Governor is apparently a political question and what tantamount to it is within the discretion of the legislature. In their legislative functions, including deciding whether a conduct amounts to an impeachable offence, the legislature is bound by the other provisions of the Constitution. In my view, the legislature must act in a responsible and civilized manner, whenever it considers whether a conduct amounts to ‘gross misconduct.’ The offending conduct must be in my view at least breach of the code of conduct contained in the Constitution. It is not every conduct that the legislature deems impeachable that is impeachable, the courts have the jurisdiction to examine whether a conduct amounts to gross misconduct or there is indeed a breach of the Constitution.

In any event, even if one conceives that the question of what is tantamount to ‘gross misconduct’; and whether such ‘gross misconduct’ is sufficient to warrant the removal of an elected Governor or Deputy Governor, is a ‘political’ question, because the constitution expressly commits to the legislature the prerogative of determining that question, all the same, this does not justify complete denial of judicial review in respect of the entire impeachment or removal process.” Earlier on in the lead judgment, Niki Tobi, JSC has succinctly put forth what Legislators are and what a Legislative House is, when the Noble Law Lord held thus: “In Akintola v. Ademori (1962) ALL NLR 442 at 443, (1962) 2 SCNLGR 139, it was held that anything done outside the House of Assembly to remove the Governor of the old Western Region was/is a nullity. The Governor is elected by the people the electorate. The procedure and the proceedings leading to his removal should be available to any willing eyes. And this, the public will see watching from the gallery. It should not be a hidden affair in a hotel room. A legislature is not a secret organization or a secret cult or fraternity where things are done in utmost secrecy in the recess of a hotel On the contrary, a Legislature is a public institution, built mostly on public property to the glare and visibility of the public. As a democratic institution, operating in a democracy the actions and inactions of a House of Assembly are subject to public judgment and public opinion. The public nature and content of the Legislature is emphasized by the gallery whose members of the public sit to watch the proceedings... I do not think proceedings for the removal of a Governor should be hidden from the public.”

The Court of Appeal in the Obi and Dariye’s cases followed their earlier decision in the Inakoju case as affirmed by the Supreme Court. But what fascinates one more in the judgment of the Court of Appeal in Balowwu v. Obi, is the admonition of Denton-West, JCA on pages 561-562 on the attributes of good leadership which can sustain a democracy. Hear what the Appellate Justice said: “We lack good leadership in our body politic. A good leader is someone who is able to lead and has the ability to influence his people positively to attain and achieve greater heights for the good of humanity. A good leader is selfless and has only the interest of the people he is leading at heart. A leader’s action always has a rippling effect on the society. The leadership’s wrong actions can destroy the society and bring it to naught, whilst the acts of a good and seasoned leader is what we all dream about. It is great men and great leaders like Indira Ghandi, Roosevelt, Mrs. Thatcher, the Kennedys, the Nkrummahs, Nelson Mandela that have made their country the pride with which we all adorn their country. These men were all people of great standing who acquired the moral right to lead their people and as much as possible they kept to this moral right and immediately a leader loses this moral right, he ceases to be a leader. A good leader should adhere to law and observe same. Leaders cannot exist without followership and so everyone must observe the Constitution and obey State authorities, because no authority exists without God’s permission, and the existing authorities have been put in place by God who had allowed them to swear to an oath to uphold the Constitution. Therefore the followership should endeavor not to oppose the existing authority for whoever opposes them unduly has himself to face the wrath of the law. Therefore I enjoin the followership to love their leaders and pray for them to do good and they the followership should refrain from acts that is calculated to stop the smooth running of the affairs of government, so that together and in love with their leaders, a very strong and indivisible State shall henceforth emerge where the 1999 Constitution of the Federal Republic of Nigeria shall be adhered to.”

Much recently, the judiciary lived up to the expectation of Nigerians by resolving the constitutional crisis heaped on Nigeria by the former President, when he unilaterally and arbitrarily tried to, attempted to remove the Vice president from office and stripped him of all rights, privileges and perquisites accruing to him by virtue of his position. Peeved by this brazen show of naked power and abuse of position, the then Vice President, invoked the original jurisdiction of the Court of Appeal under and by virtue of Section 239 of the Constitution to ventilate his grievance, asking the Court to make specific pronouncements on whether or not the President has any power whatsoever to remove a Vice President who was elected by the populace with the President to serve a specific or definite term. He also asked the court to pronounce on the legality or otherwise of the action of the President in attempting to arbitrarily remove him from office. In a landmark judgment delivered in that case, Alhaji Attiku Abubakar v. Attorney General of the Federation, the Court of Appeal held that a Vice President upon being elected into office by the electorate cannot be removed from office at will by the President. In the leading judgment of the Court which was read by the President of the Court of Appeal, Abdullahi, PCA, it was categorically stated at page 641 as follows: “The President and the Vice President of the Federal Republic of Nigeria are jointly elected at a general election and the relationship between them is not that of a master and servant. In other words, the Vice President is not an employee of the President or of the political parties on whose platform they are both elected In the instant case, the plaintiff not being an employee of the President or the political party on whose platform he was elected, he cannot be impliedly or constructively removed by either of them.”

Expectedly, the Supreme Court unanimously affirmed the decision of the Court of Appeal and authenticated, with a seal of correctness, the lower courts stance that the office of the Vice President, being a creation of the Constitution, the holder of the office can only be removed in accordance with the Constitution and not at the whims or behest of a single individual, no matter how highly placed. It is not only the appellate courts that have appreciated the pivotal role(s) played or expected of the Judiciary in enthroning or cementing democratic culture in our polity. Our various High Courts, Federal or State, have also delivered landmark judgments or
rulings which in no uncertain terms have reinforced the important place of the Judiciary as a bastion of our democracy. However, it has not only been accolades for the judiciary. The events surrounding the annulment of elections by Election Tribunals opened a Pandora box in the sector. It was such that accusations of unethical conduct and corruption among the top echelon of the judiciary deeply eroded public confidence in the integrity and impartiality of the judiciary. The then Chief Justice of Nigeria, Justice Aloysius Katsina-Alu and the former President of the Court of Appeal, Ayo Salami laid accusations and counter-accusations against each other, and divided the National Judicial Council (NJC), which initially indicted Salami, urged him to apologize and later cleared him.

It is true that there have been isolated cases of bad eggs within the Judiciary, in terms of corruption, bribe taking, compromise of cases and others, but it is a fact that in every 12, there must be a Judas Iscariot. Such isolated cases have not only been promptly dealt with by the NJC, they have also not succeeded in diminishing or dimming the good work of a vast majority of hardworking judges who have shown exceptional courage and activist orientation in handing down judgments that have deepened democracy, promoted good governance. protected Civil Rights and liberties, shielded the Rule of law from assault and fought corruption in governance.

Apart from that public disagreement and accusation of infractions, there were ridiculous decisions taken by the judiciary that infuriated the public One of them was the acquittal of former governor of Delta State, James Ibori, who was later convicted by a Crown Court in London over the same allegations. Interestingly, the judiciary has also embarked on self-cleansing exercise. Trying very hard to redeem its battered image, the NJC had frowned at some of those ridiculous decisions and wielded the big stick in some cases. One of those affected were Justice Samuel Wilson Egbo-Egbo, over his role in Anambra governorship saga and granting of ex-parte applications. Also, Justice Mohammed Talba of the FCT Judiciary was suspended by the NJC for one year without pay. His offence was that he sentenced a convict, John Yesufu accused of stealing pension fund to the tune of N32b to two years imprisonment or a fine of N750,000. Justice Talba's suspension followed the unprecedented public outcry that greeted this conviction The public outcry was consequent upon the fact that many people saw the sentence as being too light for a man who stole such a staggering sum of money.

Justice Gladys Olotu was compulsorily retired by the NJC too. This Judge's alleged offence was said to be assumption of jurisdiction in a post judgment matter involving garnishee proceedings. Justice U. A Inyang of High Court of Justice of FCT, Abuja also had similar fate as he was found guilty of judicial misconduct and asked to vacate his office,

In the aftermath of the nation's 2015 presidential and gubernatorial elections, the judiciary would definitely be called to duty again and may likely step in after INEC declares the winners. Justice Ibrahim Buba of the Federal High Court, Lagos few days ago said the use of soldiers in an election is undemocratic. The judge as a result granted an order of perpetual injunction restraining the Federal Government and the service chiefs from deploying soldiers for the general elections without the approval of National Assembly.

Delivering judgment in a suit filed by House of Representatives member, Femi Gbajabiamila, he said any election which is militarized through deployment of soldiers where there is no insurrection is “anti-democratic” and not in consonance with constitutional democracy and civil rule, adding that such can only be done through the approval of the national assembly.

Conclusion

There is no doubt that the judiciary has tremendously helped to deepen democracy in Nigeria in the last 16 years, despite its low points and is poised to do even more Nigerian judiciary, in the last 16 years, has tremendously helped to shape democracy. As the third arm of the government, it has clearly played its role in deepening democracy with several landmark decisions. One cannot but salute the courage, boldness and character demonstrated by the Judiciary so far, while expecting that our Judges, in all strata of the court system would continue to build upon this, with a view to churning out justice to all manner of people, irrespective of age, sex, religion, creed, ethnic or political affiliation, professional leaning or calling, etc. This should and ought to be a commandment which our Judges must keep and guard jealously. This is so because justice is not only priceless and inestimable, but also a sine-qua-non to the sustenance of democracy. After all, as posited by learned Justice Hand and quoted with approval by the late Honourable Justice Fatayi-Williams, CJN in Senator Abraham Adesanya v. President of Nigeria “If we are to keep our democracy there must be one commandment: thou shall not ration justice.”

For the judiciary to maintain its role of preserving the tenets of democracy and Rule of Law, it must zealously guard and guide its coveted position in the scheme of things and that so far, our Judges have fared well. In its role of checking acts of violation, breach and indiscretions on the part of the politicians, the Judiciary will continue to do more and do better. Interestingly, even from within the walls of the souls of other arms of government, commendations, exhortations and exultations have continued to pour out to the Judiciary for its role in what we continue to describe as “our nascent democracy”.

For example, while swearing in four new Judges of the Delta State High Court, the former Governor of the State, Chief James Onanefe Ibori was quoted in the Saturday Independent newspaper of January 13, 2007 as saying that: “The State Judiciary has proved that it is a dependable custodian and defender of our constitution. It has demonstrated that it is a strong and reliable servant of our democracy.”

Arising from the foregoing, and, for what has been said in this paper, is the inescapable fact that for our democracy to survive and endure, the Judiciary must be up and doing, perform its constitutional and statutory duties without let or hindrance, either from the Executive or Legislature and must also be imbued with men and women of impeccable integrity, who command an unquestionable loyalty to the cause of justice and constitutionalism.

The Judicial personnel must also possess sufficiency of learning in law and other subjects, while at the same time exercising and displaying unparalleled maturity and restraint, even in the face of provocation. The Judiciary must be supported by a virile, learned, dutiful, courageous, diligent, articulate, honest, dogged and professional Bar which in and out of season, will be prepared to defend the Judiciary against the assaults of politicians and their ilk. The Bar must at all times call for total obedience to the judgments and orders of courts and should not collaborate or conspire with those who disobey court orders and treat them with impunity.

Against this backdrop, there is a spreading feeling of ecstasy by Nigerians that the judiciary is assuming its rightful
position as the bastion of democracy in the country, the absence of which would have created a room for the continued reign of tyranny of the strong, rich and mighty. At no time in Nigeria’s political history are the citizens’ optimism and belief in democracy so high as now because the awakened to its role to, among others, checkmate the arbitrariness of politicians, highhandedness of those in power and the illegalities and brazenness of a few privileged individuals. It is incontrovertible that the appreciative and commendable protective role being played by the Judiciary has increased its relevance as a potent force in the entrenchment of democratic principles in Nigeria.

Recommendations

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

It is generally accepted that the courts have enormous powers; however, they are not without bounds. They are constrained to work within the framework of the Constitution and the relevant laws. While advocating for judicial independence and the provision of the necessary infrastructure that will enable it perform effectively, on their part, the courts must exercise some restraint in flexing their “newly found” powers. The Supreme Court in particular, which is often reluctant to reverse itself, must ensure that its decisions are reached, not based on expediency or judicial “activism”, but after serious deliberation on the rule of law as applied to the facts. While courts’ activism are sometimes a welcome development, though some may frown at it, it should however be exercised without prejudice to legality. As this new wave of judicial “activism” focuses on the political process, one hopes that it tricycle down to other facets of judicial determinations, including those that affect the ordinary people. The decisions of the lower courts, the people’s gateway to justice, should reflect the same independence, fairness and impartiality currently exhibited by the Nigerian Supreme Court. The courts’ decision should be swift without sacrificing its major attributes of fairness and impartiality; justice should be blind to the dictates of the high and mighty, it should equally tilt in favour of those who actually deserve it, and should strictly adhere to due process. Should this happen, the judiciary will further consolidate its enviable position as the bastion of common folks and the absolute force in the protection of democracy.

We must caution that the judiciary should be wary of dancing to popular sentiment in its adjudicatory function. Trial by the media should not be condoned. Decisions of the courts must be in accordance with the facts and law. In the quest towards bolstering the capacity of the bastion of constitutional democracy to discharge its mandate in a manner that is credible and consistent with democratic ethos and in the dream to envision a judicial system that is simple, fast, efficient and responsive to the needs and yearnings of the citizenry, here are some proposals for the Nigerian Judiciary.

Full computerization of the operations of the judiciary

The benefits of computerization and online access are, of course, obvious. In specific terms, it will:

- Ensure efficient and speedy processing of court documents;
- Make it possible for court processes to be filed electronically (e-filing) thereby saving valuable time;
- Simplify and fast track case management;
- Fast track compilation (and transmission) of records of proceedings and other vital documents;
- Make it possible for a Judge, with the click of a mouse, to find out if new processes have been filed and give appropriate directions;
- Enable court registries to post decisions of the courts and other relevant information online;
- Enable Judges, litigants, lawyers, researchers and the general public to have easy access to online legal databases;
- Enable court registries to devise electronic mailing lists through which the larger society is kept abreast, through alerts, of current judicial developments;
- Provide a veritable platform for networking of legal practitioners;
- Engender an informal system of peer review of judicial decisions, given that judges of comparable standing in other jurisdictions can access judgments;
- Provide a platform for comparative jurisprudence.

This will require revision of some of the Rules of Court. To achieve this, the judiciary needs to bolster its own capacity and the capacity of its support staff in ICT, in order to leverage the infinite possibilities of the InfoTech Age. However, to achieve this, there is the need for the political arms of government to address the parlous state of the nation's infrastructure, especially the power sector.

Legislature

There should be a policy thrust to facilitate the creation of a dynamic, constitutionally effective and public responsive legislature that is proactive in its legislative duties and independent but aware of its Constitutional partnership with the Executive and Judicial arms of government. Other policy measures include regular auditing of the activities and publication of annual reports of the national and state legislatures to promote greater transparency and accountability in the use of public funds; promote greater public interest in the scrutiny of legislative actions; and informed public debate. To this end, attention should be paid to human capital development policies, programmes and projects because of government’s belief that investing in human capital development is critical.

References

(1981) 2NCLR 358 at 373.
See the case of Idris vs ANPP (2008) 8 NWLR (pt 1088) 1.
See the case of Ngige vs Obi (2009) 14 NWLR (pt. 999) 1.
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