

The Judiciary as Bulwark of the Rule of Law and Democracy in Nigeria

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Abstract

Democracy, especially constitutional democracy, rests on the rule of law, which rests on the legislature, executive and judiciary tripod. Nigeria has adopted these principles since independence to date, although with military interregnums. The roles of the legislature and executive are often highlighted partly because of electioneering procedures of the manifesto (propaganda), voting, among others. The contrary is the case with the judiciary, which appears to be in the background but plays very pivotal roles in preserving the rule of law and democracy principles. It does not issue manifestoes; it neither campaigns nor seeks election and does not hold constituency meetings. As a result, its roles in engendering the rule of law and democracy in Nigeria are less known. With the aid of decided cases, this work contends that the judiciary is indeed the bulwark of the rule of law and democracy. Therefore, those trampling on the judiciary, especially its independence should be cautious to know that but for the judiciary the minimal progress Nigeria has made in implementing the principles of rule of law and democracy would not have been achieved in the face of the excesses of the legislature and executive. In the same vein, the judiciary must purge itself and be of high moral turpitude to effectively play these sacred roles.

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INTRODUCTION

It is a truism that the judiciary as an institution of government plays a pivotal role in every constitutionally democratic society and Nigeria is no exception (Obilor *et al.*, 2018). No doubt, the Judiciary is also an indispensable article in constitutional democracies and no state can be constitutionally democratic without it. Thus, societies striving to be constitutional democracies must have an independent judiciary as a matter of necessity. The word “Bulwark” according to the American Heritage College Dictionary is defined as a wall or barrier raised as a defensive fortification, a rampart, something serving as a defence or safeguard (American Heritage Dictionary, 2005). Also by definition, bulwark is a fortification or rampant...any means of defence or security; it is to defend or fortify (Saffon & Urbinati, 2013). It is also a strong support and protection. A working definition of a constitutional democracy is a system in which governmental powers are defined in the constitution and the people reserve an effective means under the constitution to control their representatives and hold them accountable for their actions and decisions while in office. It is also a system whereby the people's constitution is the framework for democracy (Sundquist, 2011).

Pivotal Roles Of The Nigerian Judiciary In The Upholding Rule Of Law And Democracy

The Nigerian Judiciary has been the defence, strength and barrier of democracy and its role in the defence and sustenance of democracy cannot be undermined. The strength of constitutional democracy in Nigeria from 1999 till date is unarguably the judiciary (Anweting & Ogar, 2018). The judiciary as the bulwark of democracy in Nigeria has constitutional backing in the Federal Republic of Nigeria (CFRN) 1999 (as amended). Section 6 (1) and (2) of the provides that the powers of the judiciary in the federation and states shall be vested in courts established for the Federation and States of paramount significance is section 6 (6) on judicial powers. Section 6 (6) (a) and (b) provides that judicial powers also extends to all the inherent powers and sanctions of the court of law notwithstanding anything to the contrary and all issues between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating there to. A cursory glance at section 6 (6) (a) and (b) is that in Nigeria, the judiciary is an arbiter and umpire in disputes between individuals, government or authority and to any individual. As an arbiter, the judiciary settles disputes between the executive and legislature and gives flesh to all statutes enacted by the legislature. Thus, in *Hon. Representative Inakoju of Ibadan South East v. Hon. Adeleke, Speaker Oyo State House of Assembly*, the Supreme Court stated that the custodian of the construction or interpretation of the constitution is the judiciary.

The judiciary also sits as an umpire with constitutional crises or constitutional flux. On this, the Constitution of the Federal Republic of Nigeria 1999 in section 232 (1) together with the *Supreme Court (Additional Jurisdictions) Act* grants original jurisdictions to the Supreme Court in disputes between the Federation and State, a State and another, National Assembly and the President, National Assembly and the State House of Assembly, National Assembly and state of the Federation.

Undoubtedly, the court as the bulwark of democracy and the rule of law in Nigeria is also the final hope of the common man, mighty, shakers and movers of democracy. In *Governor Rotimi Chibuke Amaechi v. Judicial Panel of Inquiry on the Sales of Rivers State Government Assets*, the Court per Amadi J. stated *inter alia* that the court is the final hope of the common man and the final hope of the mighty, shakers and movers of democracy.

From all the above in the context of this research work, judicial evidence will show how the judiciary (courts) have directly impacted the Nigerian constitutional democracy from the point of breach of constitutional provisions and procedure, elections, etc. In *Dapianlong v. Dariye*, the Plateau State House of Assembly made of 24 elected members by 25th July 2006 had 14 of the out of the 24 elected members inclusive of the Speaker and Deputy Speaker who cross carpeted from the PDP, the platform under which they were elected into the Assembly in 2003 to ACD consequent upon which the 14 members left their seats by operation of law leaving only 10 members. On the 5th October, 2006, the 1st Respondent, the Governor of Plateau State, was allegedly served a notice of allegation of gross misconduct, thereby initiating an impeachment process. The notice of Allegation was endorsed by eight out of ten existing members.

The Acting Chief Judge set up a panel to investigate the allegation. Afterwards, the panel submitted the report to the House of Assembly, which was adopted on the 13th of November, 2006 resulting in the governor's removal. Consequent upon the above, the 1st Respondent filed an action at the Plateau State High Court challenging his unlawful impeachment and judgment was given in his favour. Dissatisfied, the Appellants appealed to the Court of Appeal which ruled against them. Unsatisfied with the decision of the Court of Appeal, the Appellants appealed to the Supreme Court. The Supreme Court in dismissing the appeal held *inter alia* that by section 188(9) of the 1999 Constitution, the removal of a

Governor or Deputy Governor requires not less than two third support of all the members of the house. Tabia JSC in delivering the judgment stated thus:

I must say without hesitation that I am persuaded to adopt the reasoning and conclusion of the Court of Appeal. Section 188 of the Federal Republic of Nigeria Constitution provides for the removal of a Governor or Deputy Governor of a state. It is a strict, unique and rigorous provision and understandably so...While the 24 Plateau State House of Assembly members collectively have the entire state as their constituency...In my view, the only rational construction is that a Governor of a state can only be removed from office by not less than 2/3 of the full complement of the House of that state. And 2/3 of the total membership of the House of Assembly is 16. In my view, the 1st Respondent can only be removed as the Governor of Plateau state by not less than 16 members under section 188 of the constitution. I think the impeachment was a violation of the provisions of section 188 of the constitution and, therefore null and void.

In *Amaechi v. INEC*, the Appellant came out as the flag bearer of the People's Democratic Party (PDP) in the Rivers State Governorship Primaries pursuant upon which his name was sent by the party to INEC and same was published by INEC. Subsequently, the People's Democratic Party substituted the Appellant's name with Celestine Omehia, the 2nd Respondent and accordingly sent same to the INEC on the basis that the Appellant's name was submitted erroneously. The Appellant challenged his unlawful substitution and both the Trial Court and Appeal Court judgments were not in his favour. Dissatisfied, the Appellant appealed to the Supreme Court which held that the change of the Ist Appellant (Amaechi) for the 2nd (Respondent) as the candidate of the People's Democratic Party was not done in line with Section 34 of the Electoral Act 2006 and the reason adduced by the party in substituting the 1st Appellant was a not cogent and verifiable reason as prescribed by the Act. Accordingly, the Court made a consequential order to the effect that the 1st Appellant be sworn in as the Governor. In the Court's ruling, per Oguntade JSC:

The claim of Amaechi is simply that his substitution by PDP was not in accordance with section 34 of the Electoral Act 2006. The Court has a duty to enforce the provisions of the laws validly made by the National Assembly pursuant to the powers derived from the constitution...The major flaws in the respondents' case throughout this case are the belief held by them that the right of political parties to decide who should contest an election as candidates is superior to the provisions of the constitution. I believe that a political party can control the affairs only to the extent that the exercise of such control does not run against the provisions of the constitution and laws of Nigeria.

It is noteworthy to state that the apex court's decision in *Amaechi v. INEC* has been overturned by the Electoral Act amendment in 2010 to the effect that a candidate who never participated in all the electoral process (primary election inclusive) cannot any way be pronounced the winner of an election.

Furthermore, the judiciary as the bulwark of Nigeria's constitutional democracy was highly demonstrated in *A.G. Federation v. Abubakar* which case the 1st Plaintiff/Respondent, AlhajiAtiku Abubakar instituted an action by an Originating Summons at the Court of Appeal under its original jurisdiction as enshrined in the 1999 Constitution challenging the announcement of President (Obasanjo) through the Special Assistant of Public Affairs that the office of the 1st Plaintiff/Respondent as the Vice President of Nigeria was vacant and that all the constitutional immunities conferred on the 1st Plaintiff/Respondent had been withdrawn. The trial court ruled in favour of the 1st Plaintiff/Respondent. Dissatisfied, the Appellant appealed to the apex court which unanimously dismissed the appeal. In its ruling, the Supreme Court held thus,

Unlike the Ministers, the Vice President cannot be removed by the President. The process of removal of the Vice President is provided for in section 143 of the constitution. It is a process of impeachment which is to be conducted by the National Assembly as set out in that section 143(10) of the constitution...It is clear from the provisions of section 143 of the constitution that the process leading to the removal of the President or Vice President is entirely that of the National Assembly...

In *A.G. Lagos State v. A.G. Federation*, the Plaintiff by an Originating Summons at the Supreme Court under the court's Original jurisdiction challenged the suspension and withholding of statutory allocations due and payable to Lagos State Government under

section 162 of the 1999 Constitution. Defendant also counter-claimed and sought declarations against the new Local Government Areas created by the Plaintiff. The Supreme Court, in upholding the Plaintiff's claim and part of the Defendant's counter claim held that there is no constitutional provision which empowered the President to withhold or suspend the allocation from the Federation Account to Local Government Councils under section 162(3) and (5) of the constitution and that the Lagos State Government breached the provisions of section 8 of the constitution in the creation of new Local Government Areas as the procedures were not complied with.

In *Action Congress (AC) v. INEC*, the Appellants appealed against the disqualification of Alhaji Atiku Abubakar as a candidate or any other candidate for the 2007 election by INEC. The Supreme in giving judgment in favour of the Appellant held *inter alia* that by section 137 of the constitution, there is no provision relating to the Independent National Electoral Commission to disqualify a candidate except paragraph (j) where there is the presentation of a forged certificate by the candidate and that in the instant case, INEC cannot disqualify any candidate including Alhaji Atiku Abubakar with that power.

The Judiciary Under Military Rule In Nigeria

Military Rule globally is a product of a coup and it is a system of government opposed to civil rule (Springborg, 2017). A coup d'état by the Black's Law Dictionary is the sudden and violent change of the government; the seizure of power (Black's Law Dictionary, 1990). It is also an unconstitutional takeover of the government of a country by men of the armed forces whose primary function is the defence of a country's territory. It is a well known fact that upon a successful coup by the military, the entire constitution or sections of it (grundnorm) are usually suspended and military decrees are put in place to supplant the supremacy of the constitution. For example, the Constitution (Suspension and Modification) Decree No. 1 of 1966 in section 1 provided that the provisions of the constitution in schedule 1 of the decree are suspended. Decree No. 1 of 1984, Constitution (Suspension and Modification) also made the 1984 Military decree the fundamental law of the land.

It is most significant to point out that the legislative and executive powers are fused in the military authority thereby curtailing the activities of the judiciary. The limitation on the independence of the judiciary, ouster clauses, disobedience to court orders and executive lawlessness are usually the order of the day.

Lakanmi & Anor v. A.G Western State & Ors is a clear illustration of the supremacy of military decrees over the constitution. In Lakanmi's case, a tribunal which was set up under the Public Officers and Other Persons (Investigations of Assets) Edict made an order vesting the properties and accounts of the appellants in the state government until directed otherwise by the governor. The plaintiff challenged the legality of the Edict in the High Court and sought an order of certiorari to quash the tribunal's order. The court held that the order was not *ultra vires* and the Edict was made validly. The jurisdiction of courts was ousted and the subject matter of the action was validated by the federal government by Decree 45 of 1968. On further appeal to the Federal Supreme Court, the court held in favour of the appellants quashing the order of the tribunal on the ground that Decree 45 of 1968 which named the appellants specifically in its schedule and validated the acts done under the Edict was a legislative judgment and sentence which is an exercise of the judicial powers by the military and therefore null and void. This decision of the Court was overruled by the Supremacy and Enforcement of Powers, Decree No. 208 of 1970, which ousted the powers of courts into inquiry of the validity of any decree or edict.

The judiciary position vis-à-vis the suspension of the constitution was given a judicial pronouncement in *Military Governor of Lagos State v. Ojukwu* per Eso JSC thus, "When the executive which is the military government which blends the executive and legislative

together and which permits the judiciary to co- exist with it in the administration of the country, then it is more serious than imagined. Indeed, what was left was what had been permitted by the Federal Military Government to exist ...”

In a military regime, there is lack of democracy, absence of the rule of law, arbitrariness, and curtailment of the fundamental rights (Malemi, 2010). Thus, it is fundamental to state that the judiciary as an institution of government under the military was not independent as it was constantly being attacked and humiliated. Decree No. 5 of 1972 stated that the Chief Justice henceforth would be appointed and dismissed by the Federal Military Government. The judiciary was powerless to tamper with the might of the military to rule. Some judicial officers served in tribunals under unlearned military officers who had no knowledge of the law. The judiciary's lack of independence was very obvious when Justice Bassey of the High Court, Calabar was sacked and humiliated for the judgment he delivered against the South Eastern State Government.

Kayode Esho (a renowned jurist) noted that with the Military's incursion into governance, no reference was made to the constitution rather it was 'sans trial, sans stated reasons and sans atonement (Eso & Yakubu, 2003). The consequences of this incursion includes: ad hominem legislation, ex post facto legislation and ouster of jurisdiction of Courts. Although the judiciary under the military government was attacked and was not allowed to be independent as an institution of the government, it is worthy to note that some judges stood their ground to oppose the dictates of the military government. The apex court position in the celebrated case of *Lakanmi* and the position of the court in *MinereAmakiri v. Iwowari* are strong evidence to that effect.. Thus, in *Onabanjo v The Special Military Tribunal, Lagos Zone* the Court held per Omotosho, J. that ‘it is very doubtful whether the draftsman, however ingenious can effectively and completely oust the jurisdiction of the Courts.’

Emphasizing on the significance of an autonomous and courageous judiciary to the rule of law and democracy, Justice Oputa stated thus,

Democracy and justice are twin bedfellows, man’s capacity for justice makes democracy possible, but man’s inclination for injustice makes democracy very necessary...Justice seems to be the most acceptable credential of democracy. There seem to be an umbilical cord linking democracy and justice ... (Oputa, 1998, p. 168)

In the same vein, the common man who views the judiciary as the final hope will be in a state of hopelessness and helplessness if the judiciary as his last hope is under the influence and control of the unscrupulous politicians and the affluent in the society.

CONCLUSION

From the plethora of landmark judicial authorities cited above, it is very evident that the judiciary is indisputably the bulwark of rule of law and constitutional democracy in Nigeria. It is no exaggeration that the judiciary as an institution of government remains and performs a fundamental function in the rule of law and that true democracy cannot be attained without an independent judiciary, devoid of interference of other governmental institutions.

It is therefore submitted that an independent judiciary is germane to constitutional democracy which Nigeria practices and the rule of law, separation of powers can only work effectively under a constitutionally guaranteed independent judiciary. In other words, the significant role of the judiciary in the structure of government is no exaggeration and true democracy is impossible without the judiciary being independent. Those who are wittingly or unwittingly frustrating the independence of the Judiciary in Nigeria should bear in mind that it is either they have secured justice through the instrumentality of an independent judiciary or they would need the instrumentality of an independent judiciary to secure justice. Thus, the judiciary as the final hope of the common man, the helpless, weak, hopeless and the

‘strongman’ in the society needs to be independent and be of high moral turpitude for the effective discharge of its sacred functions.

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