

Nganjiwa v. Federal Republic of Nigeria : Between Backdoor Immunity for The Judex And Ensuring Independence of The Judiciary

By

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Abstract

The court of appeal's decision in Hon. Justice Hyeladzira Nganjiwa v. Federal Republic of Nigeria generated and continues to generate mixed reactions among the stakeholders in the judicial system in Nigeria. Many lawyers, authors and commentators have written a wide variety of opinions on the propriety as well as the implication of the holding on the idea of judicial immunity in Nigeria. One major school of thought is that the holding of the court in the case sets the nation back in terms of the fight against corruption especially among judicial officers. These commentators generally begrudge the decision as self serving and frankly an affront of the judiciary which should be seen to be above board. On the other hand, several authors and commentators share another view that the holding is not really introducing Judicial Immunity through the back door but rather strives to ensure that the Judiciary is able to conduct its affairs without fear of being hurdled into conspiracies of criminal activities. According to them, the holding of the court preserves the independence of the judiciary and in their opinion, much like the job of the Military police, the National Judicial Council should be left with the job of disciplining erring judges. This article uses doctrinal methodology to examine the argument of both sides of the divide with a view to finding a middle ground that ensures independence of the judiciary on the one hand and accountability on the other.

Introduction

Many authors have expressed their opinions on the issue of immunity for judicial officers in criminal and corruption cases and the controversial decision of the Court of Appeal in the case of *Hon. Justice Hyeladzira Nganjiwa v. Federal Republic of Nigeria*.¹ This paper wishes to commence from a basic understanding of the concept of immunity.

The Osborne Concise Law Dictionary, 9th Edition defined *immunity* as : “exemption from legal proceeding”. This definition sees immunity as strictly dealing with legal proceedings. The proceedings could be either criminal or civil proceedings or no more. The definition is restrictive and may not be helpful in undertaking a very meaningful discussion on the subject of immunity. However, the Blacks’ Law Dictionary 10th edition, gives a more elaborate definition of the term. The Black’s Law Dictionary gives the meaning as : “any exemption from a duty, liability or service of process ; esp., such an exemption granted to a public official

From the above definitions, it appears the following could be deduced that immunity, at least from the perspective of the editors of both Osborne Concise Dictionary and Black’s Law Dictionary implies an exemption from a court process, a duty and liability, mostly civil liability. The concept of immunity has received judicial interpretation in Nigeria. Although, this interpretation is strictly in respect of the Constitutional immunity granted to the Governor, the Deputy Governor, the President and the Vice President, by the Constitution of Federal Republic of Nigeria 1979, it is

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important to note them in the broader context of immunity generally. According to Karibi-Whyte, JSC ; “It would seem unarguable that apart from the matters excluded in s. 308(2) there is an absolute bar to actions in civil or criminal proceedings against the persons named in section 308(3). Concisely stated, civil or criminal proceedings in a private capacity against the persons named in section 308(3) cannot be initiated during their tenure and if pending before they assumed office shall not be continued.”²

Judicial immunity is that protection granted to persons carrying out judicial functions. This range from judges of superior courts of records to Magistrates and Members of Tribunals. According to De Smith, “judicial immunities from suit are conferred not for the benefit of judges but for the benefit of the administration of justice.” This immunity extends to civil liabilities arising from the performance of judicial duties. But does it extend to criminal cases especially corruption, abuse of office and fraud?

Brief Facts of *Nganjiwa v. FRN*

The Appellant, a judge of the Federal High Court was arraigned before the High Court of Lagos State presided over by Akintoye J. on a 14 Count Information dated 8th June 2017 bothering on unlawful enrichment by a public officer and making of false information contrary to certain sections of the Criminal Code Law of Lagos State.³

Upon his arraignment, the Appellant raised a preliminary objection to the jurisdiction of the Lagos State High Court to try him on the ground that as a judicial officer under the employment of the National Judicial Council (“NJC”), the due process of law was not followed before he was arraigned for criminal prosecution before the Court, therefore that the Court lacked the jurisdiction to try him. The Trial Judge dismissed the objection, holding that he had jurisdiction in the matter. Being dissatisfied with that decision, the Appellant appealed to the Court of Appeal. The Court of Appeal held that the condition precedent for the Appellant to be tried before the lower Court has not been fulfilled hence the High Court lacked jurisdiction to try the Appellant.

According to the Court of Appeal, though there is no Constitutional immunity for judicial officers, where a serving Judge who is under the management, control and disciplinary jurisdiction of the National Judicial Council commits a crime tantamount to a violation of his judicial oath, such a judicial officer can only be tried if and when the NJC had exercised first its powers under the Constitution. In the opinion of the court, this is because the NJC has the power to investigate the alleged breach by the judicial officer and where it finds merit in the allegation against the judicial officer, the officer shall face disciplinary actions and the NJC may recommend the Judicial officer for removal to the appropriate authority which is either the President or the Governor and or take other appropriate actions.

When this is done and accepted by the appropriate authority in accordance with the Constitution, then the relevant law enforcement agent is at liberty to make the judicial officer face the wrath of the law. Any attempt to by-pass the NJC when filing information against a judicial officer will amount to a failure to observe a condition precedent, and a violation of the Constitution. Where, on the other hand, a Judicial officer commits theft, fraud, murder or manslaughter, arson and the

² Edward Kionka, *Torts in A Nutshell* 341(2d ed.1992)

³ (1975) 3 S.C. 33

likes which are offences outside the scope of the performance of his duty, he may be arrested and prosecuted directly by the State without any recourse to the NJC.

Arguments in Favour of The Holding

Independence of the Judiciary and Insulation against Persecution

It is not news that the landscape of Nigeria is not free from incursions into the independence of the judiciary by the other arms of government especially the executive arm who use the powers and instruments of government against the members of the judiciary whose rulings are seen as alienating their interests. For context, the popular raid of the Department of State Services on the premises of sitting members of the judiciary will be brought forth.

In the early hours of October 9, Nigerian judges woke to learn that a number of their colleagues, from the Supreme Court to the High Court, had been arrested on suspicion of having engaged in various acts of corruption. The arrests were made by the State Security Service (SSS), a security agency created in 1986 and charged with:

"the prevention and detection within Nigeria of any crime against the internal security of Nigeria; the protection and preservation of all non-military classified matters concerning the internal security of Nigeria; and such other responsibilities affecting internal security within Nigeria as the National Assembly or the President, as the case may be, may deem necessary."

Some of the arrests involved a certain degree of drama. The Abuja residences of two Supreme Court justices and that of a judge of the Federal High Court were surrounded by SSS personnel and, according to media reports, at least one of the houses visited turned out to be that of a judge who was not under investigation. The front door of the Federal High Court judge's residence was taken off its hinges, following his refusal to allow SSS personnel to enter. In the Rivers State capital, Port Harcourt, the efforts of the SSS to arrest a Federal High Court judge were thwarted by the intervention of the Governor of Rivers State and police officers sent out by the Commissioner of Police (a federal employee) in that state. There has been speculation as to why the chief executive officer of a state should be so concerned by efforts to arrest a member of the federal judiciary.

At the end of the exercise, seven judges were in the custody of the SSS. Two were justices of the Supreme Court, one was from the Court of Appeal, one was from the Federal High Court and three were from state high courts. By the following evening, all seven had reportedly been released on bail. The Federal High Court judge whose arrest was thwarted in Port Harcourt reportedly indicated that he no longer wishes to serve as a judge and his whereabouts remain unclear.

The reaction of the Nigerian Bar Association (NBA) was immediate. The NBA's president condemned the action as a "Gestapo-style operation" and demanded that the SSS release the judges (whom he described as having been abducted), immediately and unconditionally. The Chief Justice of Nigeria, who was due to retire in a few weeks, described the occurrence as saddening and deeply regrettable, distressing, and unfortunate, when announcing that the National Judicial Council would hold an emergency meeting to discuss the development.

Inevitably, given the manner in which the raids were carried out – the SSS has never been known to pay great attention to legal niceties – at least one of the judges in whose homes significant amounts of cash were reportedly found denied that any cash was found. The searches that resulted

in the discovery appear to have been conducted in his absence (he had taken refuge in his bedroom and by the time the SSS personnel forced their way into that room, the search had already been conducted), so the only persons present when the searches were conducted were SSS personnel. In addition, that particular judge has previously issued decisions that the government did not like; he claims that he has been targeted by the government, and by the Attorney General and Minister of Justice of the Federation – with whom he has a history of conflict – as a result.

One fundamental issue to consider is the impact of these arrests on the independence of judiciary. The Nigerian constitution operates on the principle of separation of power, and it clearly vests judicial powers of the Federation in the Nigerian Judiciary.⁴ To ensure that the judicial arm is insulated from the executive and legislative control, the Constitution guarantees the tenure of judges by providing that judges shall not be removed from office until they attained the mandatory retirement age of 65 for High Court and Court of Appeal Judges and 70 for Justices of the Supreme Court.⁵

To further demonstrate judicial independence and accountability, the Constitution establishes a National Judicial Council (NJC) whose membership comprises the Chief Justice of Nigeria together with some judicial officers, the Minister of Justice, representatives of the Bar and non-lawyers among others.⁶ This body carries out supervisory roles in the appointment, discipline, and removal of judges. The Constitution further provides that judges shall not be removed from office except on account of misconduct, violation of the Code of Conduct and incapacity to carry out their functions. While the NJC can suspend a judge, only the President or Governor can remove a judge from office, as the case may be, when same is recommended by NJC. As a corollary to the above, S.36 (1) of the Constitution guarantees the right of every litigant whether in civil or criminal proceedings to a fair trial before an independent and impartial judge. This is the domestication of the globally known right to fair trial as contained in various international instruments.⁷

Having established that the framers of the constitution did intend that judges be insulated from executive control in order to guarantee their independence and impartiality, then, it goes without saying that the arrest and interrogation of judges by agents of the executive arm of government violate the spirit and letters of the Constitution. Admittedly, the Constitution does not grant immunity to judicial officers, it does provide a special procedure to deal with judicial malfeasance by establishing the NJC. This procedure is sacrosanct and aimed at safeguarding judges from any undue influence and intimidation. In *Justice Raliat Elelu-Habeeb v A-G Federation*,⁸ the Supreme Court reinstated a Chief Judge of a State who was removed from office without inputs of the NJC. Similarly, in *Lufadeju v Johnson*,⁹ the apex court frowned at a civil suit against the appellant, a Magistrate, for exercising discretion against granting the respondent bail in a remand proceeding.

Bribery is a crime under the Criminal Code. However, if it is alleged to have taken place in the administration of justice, then, it becomes a breach of the Code of Conduct and also judicial malpractice which the Constitution has made provisions for. Hence, before a judge can be amenable to the usual criminal proceedings, the NJC procedure ought to have been followed to

⁴ s6 1999 Constitution (as amended).

⁵ 1999 Constitution *supra* s291.

⁶ Ibid.

⁷ See Art14 ICCPR for instance.

⁸ 8 (2012) LPELR-SC.281/2010.

⁹ (2007) 8 NWLR (Pt1037) 535.

determine the allegation and possible suspension or removal of the judge. Thereafter, a criminal proceeding can be instituted against him as he had been stripped of that judicial protection. This also appears to be the procedure in many other jurisdictions.¹⁰ It should also be noted that both the SSS and EFCC (Economic and Financial Crimes Commission) are litigants (either as prosecutors or defendants) in the law courts. To allow such litigants have supervisory and investigatory roles over sitting judges violate s.36 (1) of the Constitution. Fair trial and impartiality of judges can no longer be guaranteed. If a litigant could summon a judge as currently being witnessed, then, the mind of the judge is circumscribed and fettered. It will be impracticable to secure independence and impartiality in that circumstance.

Arguments Against The Holding of The Court

The law is and remains crystal clear that judicial officers have no constitutional immunity from criminal prosecution. In fact, it was even conceded by the Appellant in the *Ngajiwa v. FRN*¹¹ that there is no constitutional immunity for judicial officers. However, the decision has radically changed the position of the law on the due process of law or condition precedent to the arrest and prosecution of judicial officers.¹²

Before now, the position of the law on this matter was as provided for under the Criminal Code Act. Under the Act, the procedures for arresting a judicial officer and for initiating proceedings against the judicial officer on charges of judicial corruption were well spelt out. The law is that the judicial officer cannot be arrested without warrant. Further, a judicial officer cannot be proceeded against except on information duly signed by or on behalf of the Attorney General of the Federation or that of the State in appropriate cases.

It would seem from this decision that the current position of the law is that where a judicial officer has been accused or is alleged to have committed a crime, which crime also amounts to a violation of the oath of office of a judicial officer, that is, the conduct also breaches the Code of Conduct for Judicial Officers, the condition precedent for a valid arrest and prosecution, is that the judicial officer is first subjected to the disciplinary jurisdiction of the NJC. The powers of the NJC to investigate the officer and exercise its disciplinary functions cannot be obstructed; it must be done first before any valid trial can be conducted. This new position is aptly captured in the lead Judgment of Osarugue Obaseki-Adejumo JCA, thus:

“The issue is not whether judges possess immunity for non-judicial acts but whether there are laid down procedures to be followed and complied with before arresting and prosecuting a serving Judge”?

Re-echoing the same point, Y. B. Nimpar JCA added in his concurring judgment; “Thus, when the Constitution bestowed upon the NJC the process of carrying out an act of disciplining a judicial officer, the process must first be complied with before any other action is taken in the matter. Though not explicitly stated but by implication NJC must be first point of contact before proceeding against such a judicial officer.”

¹⁰ Clifford W, ‘Resolving Judicial Corruption While Preserving Judicial Independence: Comparative Perspectives’ (1998) 28 California Western International Law Journal 1.

¹¹ Op. cit

¹² See the lead Judgment delivered by Hon. Justice Osarugue Obaseki-Adejumo

It is therefore clear from the above that the decision of the Court of Appeal in this case, is not an authority on judicial immunity but an authority on condition precedent that must be fulfilled before arresting and prosecuting serving judicial officers

By their own holding, the Court of Appeal has redefined the law on even when the prosecutorial agencies even the Attorney General can duly exercise their powers to initiate criminal prosecution. For the authorities concerned, except where the offence is not a violation of the oath of office of a judicial officer as outlined in the Code of Conduct for Judicial Officers made by the NJC, no valid prosecution can be commenced except the NJC has exercised its disciplinary powers.

It must be noted that the attack is on the power of the trial court to assume jurisdiction on the charge preferred against the Appellant and not the right of EFCC to prosecute the appellant, hence an agency attempting to usurp the function and functionality of NJC does not arise for consideration. At any rate High Court of Lagos State is not an agency of government but part of an arm of a government. The above position of the Appellant as adopted by the Court of Appeal therefore is not watertight. Apart from the fact that there is no such provision in the Constitution supporting the conclusion, there is also no such precedent to be followed either locally or internationally. Little wonder no such reference or authorities cited in support of the contention. In the notorious trial of the former Chief Justice of Nigeria, Walter Onnoghen, the NJC was bypassed when it was apparent it was not ready to act as usual. The trial of the number one judicial officer was conducted before the Code of Conduct Tribunal while he was still a judicial officer of the Federal Republic. So, it is not novel that Court must await NJC to be up to its responsibility even where it has shown no interest before a Court can be approached to exercise its constitutional duty.

Furthermore, the conclusion of the learned Justice of the Court of Appeal appears larger than the Constitution itself as there is nowhere in the Constitution where it is clearly set out that the judicial power and jurisdictional space of the judiciary can be eroded upon with impunity by an executive body or any authority than as contained in Section 6(6)(d) of the Constitution¹³. The Constitution guaranteed the sacred doctrine of separation of power and makes it a must observed¹⁴. The above is in tandem with the holding of the Court of Appeal in the case of *Alpha Properties Int'l Ltd Vs. NDIC*¹⁵ where the court held among other things as follows:- "The judicial powers of the Courts are explicit as defined by Section 6(6)(b) of the Constitution of the Federal Republic of Nigeria, 1999, which same reproduced states: "6(6) The judicial powers vested in accordance with the foregoing provisions of this section: (a) (b) shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that persons."

The Constitution being a *grund norm*, no other law, not even its schedules or Revised Code of Conduct of the NJC can wrestle the judicial power of the country with the courts of law. If it does, it shall be void to the level of its inconsistency¹⁶.

¹³ Op cit

¹⁴ AG Federation Vs Guardian Newspaper(1999)LPELR-3162(SC).

¹⁵ (2005) LPELR-7455(CA).

¹⁶ Section 1(3) of the CFRN 1999. Udeogu vs FRN & Ors Unreported Supreme Court decision in Appeal NO sc. 622C/2019 DELIVERED ON THE 8TH May 2020., Maruwa Vs Inyako (2012) LPELR-7837(SC).

The Presiding Justice of the Court admitted that all the counts charge are criminal as they deal with allegations of corruption and unlawful enrichment by a serving judicial officer contrary to the various criminal legislations as charged. The last of the charges has to do with giving of false information during investigation to EFCC officers investigating the alleged crimes. Assuming for the purpose of clarity without conceding that the court is correct on its reliance on the definition of misconduct by Black's Law Dictionary, that all or most of the charges bothers on misconduct, the charge relating to giving of false information levied against the Appellant should have been allowed to stand, because that has nothing to do with corruption as defined by Black's Law Dictionary. It is apparent that the charge of giving of false information was not committed in course of duty of the Appellant as a judicial officer or on the bench. This charge is also outside the scope of the court's definition of misconduct¹⁷. Hence the Lower Court should have been allowed by the appellate court to assume jurisdiction thereon at least to show its impartiality and neutrality. Relying on dictionary definitions where there are clear statutory definitions of crime of corruption in our statutes appears to have ridiculed and belittled the administration of criminal justice the more.

As if all these are not enough, the Learned Jurist without stating the basis, summarily distinguished these alleged criminal infractions as contained in the 14 counts information from cases of theft, fraud, murder or manslaughter, arson and the likes committed by a judicial officer and concluded that the appellant may be arrested, interrogated, and prosecuted accordingly by the State **DIRECTLY** without recourse to the NJC. The Judge failed to see that unlawful enrichment by a honored judicial officer, and giving of false information by a sitting judge among many other criminal breach amount to fraud. Relying on the same dictionary, the word fraud is defined by Black's Law Dictionary to include:

“A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment”¹⁸

With the above definition of the word fraud as defined by the same dictionary employed by the judge in his judgment with which the word misconduct was ballooned, the court would have been better guided in its opinion. The judge would have seen that the charges against the appellant are mainly charges bothering on fraud which in the opinion of the judge as stated above, the respondent has the vires to investigate and prosecute judicial officer directly without recourse to NJC. This means that the charges of giving of false information, unlawful enrichment by judicial officer and host of other counts in the charge sheet of the appellant are what the respondent is enjoined to prosecute without hindrance howsoever. This conclusion of the author is based on the reasoning of the judge in the case under review. Invariably, the judgment of the Court of Appeal under review is somehow erroneous and perverse. How this amount to breach of separation of power was lost in transit in the judgment¹⁹.

Little wonder the appellate court did not cite any law or decided authority in aid of its opinion in the case other than the fact that the court held that the provision of Paragraph 21, Part 1 of the Third Schedule of the Constitution never envisages this.²⁰ This mean by necessary implication

¹⁷ See paragraph 19 Fifth Schedule Part 1 of 1999 Constitution

¹⁸ Bryan A Garner Black Law Dictionary, Eight Edition, page 685.

¹⁹ Ibid.

²⁰ Nganjiwas vs FRN (supra)

“unlawful enrichment” by judicial officer and giving of false information to prosecuting agency is envisaged by the said paragraph of the schedule as a norm for judicial officers to engage in.

Finally, the court opined that it not a case of trying to shield the Appellant from the long hand of the law, but a call for strict observance of rule of law and doctrine of separation of powers as entrenched in the Constitution. Not allowing NJC to carry out its disciplinary control amounts to a violation of the constitutionally guaranteed independence (a fundamental component) of the judiciary as if NJC is an agent or an arm of the judiciary. The Court called in aid the case of *Elelu - Habeeb & Anor v A.G. Federation* in cementing his opinion. The relevance of the said case need to be considered here.

The issue in the case of *Elelu - Habeeb & Anor v A.G. Federation*²¹ had to do with the power of removal of a judge by the Governor of a State and the effect of not allowing the NJC to carry out its Constitutional functions in this respect. The facts in dispute here are radically different from the fact in issue in the case of *Nganjiwa v. FRN* which had to do with right of High Court of Lagos State to assume jurisdiction on a charge preferred against a judicial officer accused of commissioning of corruption related crimes and was prosecuted by EFCC one of the prosecuting authorities statutorily saddled with power to prosecute any person accused of or involved in corruption or other related offences²² before a court of law. Even in *Elelu-Habeeb & Anor v. A.G. Federation*'s case also, the court also treated NJC as a judicial body and not as constitutionally created executive body, hence, the presiding justice lauded the opinion of the court in Elelu's case on separation of powers.

It must however be noted that there was no conflict between the two arms of government in Elelu's case, rather it was an intra-executive arms dispute involving an executive body at national level given constitutional role to perform in aid of the State Governor²³. Therefore, there is no doubt that NJC while discharging its duties under Sections 158, 292 and other sections of the Constitution, its power to discipline, recommend the appointment, suspension and or removal of judicial officer, NJC is performing an executive duty and not judicial one.²⁴ NJC in so doing is acting as an extended arm of the President of Federal Republic of Nigeria and its therefore responsible to the President and no one else²⁵. The confusion that beclouded the courts in the case of *Nganjiwa vs FRN* and Habeeb Elelu's case where NJC was treated as part of a judicial arm has to do with the composition of the NJC. The membership of NJC is substantially judicial officers with an executive function to perform under the Constitution²⁶. The fact that judicial officer(s) are appointed into an executive body and saddled to perform executive function does not make its acts a judicial one. The courts treating NJC as a judicial body in above cited cases has no support in the Constitution and therefore erroneous and unconstitutional

Purport of The Constitutional Roles of NJC in Discipline of Judicial Officers

²¹ (2012) LPELR-15515(SC).

²² Section 12 Economic and Financial Crimes Commission Act Cap E LFN 2015

²³ Ibid.

²⁴ Sections 153 and 158 of CFRN 1999.

²⁵ Section 160(1) CFRN1999.

²⁶ Section 158(1) CFRN1999.

The purport of the disciplinary role of the NJC as empowered by the Constitution is not to oust the power of the judicial arm of the Government from discharging its constitutional duties, perhaps to complement it²⁷. By Section 6(6) (b) of the Constitution²⁸ the judicial power of Country is vested in the courts created under the same section. The Constitution vests on the courts civil and criminal jurisdictions over all citizens except as limited by the Constitution itself. Section 308²⁹ of the Constitution expressly states the four classes of persons that cannot be proceeded against in the individual or personal capacity³⁰ and this expressly excluded the judicial officers generally. Therefore, every other persons and authority³¹ are subject to judicial powers of the court, subject to the Constitutional and peculiar jurisdiction of the affected court³².

The jurisdiction of the High Court of Lagos State to try criminal charge is constitutionally guaranteed and the Court of Appeal has no reason in the first place to compare the roles of these distinct institutions at all, not to talk of asking the court to leave the stage for NJC to dance. But here, the NJC was neither invited nor did it show interested in taking center stage on a mere beckoning of a judicial officer accused of a crime bordering on immorality and illegality styled to be misconduct. There is no doubt that there exists a thin line between crime and misconduct and many a times both do dovetail as seen in both Opene and Nganjiwa's cases. The known practical procedure is to give priority to criminal prosecution over disciplinary control where the sanctity of justice is in issue particularly in advanced democracies. That was the practice in Nigeria even before the case under consideration³³.

It is customary and nearly normal for members of a given profession or circle to watch each other's' back when one is accused of ethical breach, but such a shield should not be extended to cover any allegation of corruption other crime whatsoever and howsoever particularly when such bothers on National integrity as doing so may be costly to the national development and the way the country is seen and addressed in the comity of nations. It is trite that no man is taller and mightier than the law no matter how trivial its provisions are, and no man is too short or small not even a dwarf to be below it, there is no need seeking leave to enforce the law since it is not a favour but a right.³⁴

Conclusion

It is submitted that no matter the opinion of commentators on the holding of the court in *Nganjiwa vs FRN*, the court has laid down a rule barring the prosecution of any judicial officer charged with corruption and this notwithstanding that it has received widespread condemnation as having created a backdoor immunity similar to that of the executive that is constitutional created, remains the law of the land as it stands today.³⁵ This is because of the doctrine of Judicial Precedent that

²⁷ Opene vs NJC & Ors (Supra)

²⁸ CFRN1999 as Amended

²⁹ Ibid.

³⁰ Abacha v. FRN (2014) LPELR-22014 (SC). EFCC Vs Fayose & Anor (2018) LPELR-44131 (CA).

³¹ Usman v. FRN (2015) LPELR-40584 (CA)

³² Osadebey v. AG Bendel (19910 22 (NSCC) (PT1) p 137 @159 Okorodudu Vs FRN (2015(LPELR-26029(CA).

³³ Opene vs NJC & Ors (supra).

³⁴ David J Sachar "Judicial Misconduct and Public confidence in Rule of Law"

www.unodc.org/dohadeclaration/en/news/2019/08/judicial-misconduct-and-public-confidence-in-the-rule-of-law.html accessed on the 11th may 2020.

³⁵ Falana, F. "The Court of Appeal was Palpably Wrong in the Nganjiwa's Case but the Decision Remains the Law". An interview granted in thenigerianlawyers.com (News media) on the 24th of January 2019.

mandates the lower courts to follow the holding of the courts above them. The position of the law is thus sketchy on the subject matter and a definite pronouncement is needed to set the matter to rest one way or another. While recognising the need for the judiciary to be insulated from arbitrary arrest, persecution, and the general need to ensure its independence, there is also a need for the judiciary to be above board in its dealings. It will make no sense for members of the judiciary to be in charge of adjudicating on criminals and deciding conviction and acquittal when they are themselves found wanting in their official and personal lives. Indeed, he who seeks equity must do equity. It is against the backdrop of this quest for clarity that this paper makes the following recommendations.

Recommendations

- (i) The role of the NJC in discipline of judges should exclude corruption. This can be done by an amendment of the provision of the Paragraph 19 of the Fifth Schedule Part 1 of the Constitution to exclude the words corruption, bribery, false declaration of asset so as to remove it from level of misconduct to that of crimes as they are.
- (ii) In the interim, the NJC should be alive to its responsibilities and promptly act on petitions, complaints and make sittings public such that it is not shrouded in secrecy. Indeed, not only must justice be done in the temple of justice, but justice must also be seen to be done.
- (iii) While cognisant of the issue of *locus standi*, there is a need for the holding of the Court of Appeal in the case under review to be subjected to further review by the Supreme Court. If and when given the opportunity, the Supreme Court must set the records straight by reversing the decision of the Court of Appeal. Under no circumstance must the Supreme Court put itself in a position where its integrity can be called to question. This is especially needed in light of the prevalence of corruption. The judiciary must be above board.