

# THE ARREST OF SITTING JUDGES BY LAW ENFORCEMENT AGENTS AND ITS IMPACT ON JUDICIAL INDEPENDENCE IN NIGERIA

## 1.0 INTRODUCTION

It is trite that the independence of the judiciary is a *sine qua non* for effective administration of justice. This presupposes that the judiciary and its machinery should be free from the control of other arms of government and any form of pressure that can hamper fair dispensation of justice. Though, judicial independence is desirable, judicial accountability must also be ensured as it is said that absolute power corrupts absolutely.

In a bid to ensure judicial accountability, several sitting judges were arrested, detained and interrogated by the agents of State Security Service (SSS) and Economic and Financial Crimes Commission (EFCC) in Nigeria recently. This article, therefore, seeks to assess the balance between judicial independence and accountability in Nigeria under the 1999 Constitution. The article shall argue that although judicial officers do not enjoy immunity, a harmonious construction of the Constitution dictates that sitting judges cannot be arrested/interrogated by executive bodies for malpractices arising from judicial conducts even where same fall under the Criminal Code.

## 2.0 JUDICIAL INDEPENDENCE AND ACCOUNTABILITY

On 8th October 2016, seven federal judges, including Justices of the Supreme Court, were raided in the midnight by agents of the SSS on allegation of judicial corruption.<sup>1</sup> The academia and the bar are divided on the legality of the judges' arrest. The pro-SSS commentators allege that only the President and his Vice enjoy immunity under Nigerian law and as such, there is no law preventing the arrest of judicial officers in this circumstance. On the other hand, the anti-SSS argues that the clampdown of judges is an attack on the third arm of government and will undermine the cherished concept of independence of the judiciary.<sup>2</sup>

The Nigerian constitution operates on the principle of separation of power and it clearly vests judicial powers of the Federation in the Nigerian Judiciary.<sup>3</sup> 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

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<sup>1</sup>—, 'Two Supreme court judges, 5 others arrested over alleged corruption', *The Vanguard News* (Lagos 31 October 2016) [www.vanguardngr.com/2016/10/two-supreme-court-judges-5-others-arrested-alleged-corruption/](http://www.vanguardngr.com/2016/10/two-supreme-court-judges-5-others-arrested-alleged-corruption/) accessed 31 October 2016.

<sup>2</sup>—, 'Should arrested judges be suspended by NJC?' *The Punch Newspaper* (Lagos 31 October 2016) <http://punchng.com/arrested-judges-suspended-njc-2/> accessed 31 October 2016.

<sup>3</sup>s6 1999 Constitution (as amended).

removed from office until they attained the mandatory retirement age of 65 or 70 as the case may be.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

### **3.0 THE ARREST/INTERROGATION OF THE JUDGES AND ITS IMPACT ON INDEPENDENCE OF THE JUDICIARY**

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*,<sup>8</sup> 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*,<sup>9</sup> 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.

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<sup>4</sup>1999 Constitution *supra* s291.

<sup>5</sup>*Ibid* Part I3rdSchedule.

<sup>6</sup>*Ibid* s292.

<sup>7</sup> See Art14 ICCPR for instance.

<sup>8</sup>(2012) LPELR-SC.281/2010.

<sup>9</sup>(2007) 8 NWLR (Pt1037) 535.

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 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 jurisdictions.<sup>10</sup>

It should also be noted that both the SSS and EFCC 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,<sup>11</sup> then, the mind of the judge is circumscribed and fettered. It will be impracticable to secure independence and impartiality in that circumstance.

#### **4.0 CONCLUSION/RECOMMENDATION**

The independence and impartiality of judges presuppose that judges are able to dispense justice without fear or favour. This is more important in this instance where such bodies are litigants in court either as prosecutors or defendant in civil suits.

In order to guarantee this independence and impartiality, the Constitution establishes a neutral body to ensure judicial accountability. Hence, it is recommended that the Constitution be amended to make express provisions that any allegation against a judge in respect of the performance of his judicial duty, even if such amounts to civil or criminal wrong, must first be resolved by the NJC.

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<sup>10</sup> Clifford Wallace, 'Resolving Judicial Corruption While Preserving Judicial Independence: Comparative Perspectives' (1998) 28 *California Western International Law Journal* 1.

<sup>11</sup>Wale Odunsi, 'Alleged bribe: More judges report to EFCC' *Dailypost Nigeria* (Lagos 31 October 2016) <http://dailypost.ng/2016/10/20/alleged-bribe-judges-report-efcc/> accessed 31 October 2016.