



DELAY IN THE ADMINISTRATION OF JUSTICE IN THE SUPREME COURT OF NIGERIA: WHAT IS THE WAY FORWARD?

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INTRODUCTION

The famous *“Justice Delayed is Justice Denied”* quote from British statesman, William E Gladstone has formed the basis of numerous legal reform campaigns. The basic principle behind the quote is that it is not sufficient for justice to be served, it must be served promptly. The length of time taken for the determination of a matter affects the quality of justice received by an aggrieved person as delay may cause its benefits to diminish. A well-functioning justice system provides a conducive atmosphere for the development and stability of every great nation. The duty of the judiciary to administer justice is the cornerstone of every democracy.

The Nigerian Justice system, like that of every populous nation, is plagued with delays in the administration and delivery of justice. The Supreme Court as the apex Court is swarming with cases that are yet to be determined and the number increases daily. Unfortunately, the apex Court has turned to another regular Court that handles all matters of appeals rather than appeals of national importance. On this regrettable development, Honourable Justice Helen Ogunwumiju JSC whilst delivering a decision said that *“this court is fast becoming just another higher litigation court rather than the Supreme Court which should be a policy court as*

*envisaged”*². As of the time of writing this article, the Supreme Court has begun assigning dates for the hearing of appeals in 2025 due to the workload on the Court.

There are numerous reasons why the justice delivery system of the Supreme Court is clogged. This paper seeks to examine them and highlight the issues plaguing the Supreme Court before making practical recommendations as to how the issues may be surmounted.

Coincidentally, today marks a two-in-one event, namely, the official commencement of the 2022/2023 legal year and the conferment of the rank of Senior Advocate of Nigeria on deserving practitioners. I congratulate both the Supreme Court and the Learned Senior Advocates on this occasion.

THE ISSUES

The Supreme Court is constituted of the Chief Justice of Nigeria and a maximum of 21 (*twenty-one*) Justices³. As of August 2022, that number dwindled to a meagre though competent 13 (*thirteen*). This number becomes even more alarming upon finding out that at the beginning of 2022, the number was 17 (*seventeen*).

To put the gargantuan burden of the Honorable Justices of the Supreme Court into a clearer perspective, the former Chief Registrar of the Court stated that between the periods of 2007 to 2019 there were over 10,000 (*ten thousand*) appeals pending at the apex Court.⁴ This means that each panel consisting of 5 or 7 Justices as the case may be, is to handle an average of about 3,000 (*three thousand*) cases. Additionally, in his speech at the special session to mark the beginning of the 2017/2018 legal year, Hon. Justice Onnoghen stated that in the 2016/2017 legal year alone, the Court considered 1,362 (*one thousand three hundred and sixty-two*) matters but was only able to deliver 243 (*two hundred and forty-three*) judgments.⁵ That is only about 17% of the cases, with the remainder being carried over to the next legal year.

At the last special session to mark the commencement of the 2021/2022 legal year, Hon. Dr Justice Ibrahim Tanko Muhammad, the former CJN stated that the Supreme Court entertained a total number of 681 cases comprising 412 motions and 269 appeals. A total of 216 judgments were delivered despite the unpleasant events that occurred during the year.⁶ These unsettling statistics compel every citizen, legal practitioner and layman alike, to be inquisitive about the issues that are causing the clog in the Supreme Court's justice system. These issues can be classified into three major categories: (i) the wide jurisdiction of the Court, (ii) the appointment of justices, and (iii) the requirements for SAN applications.

(i) The Wide Jurisdiction of the Court

The Constitution, in sections 232-236 set out the jurisdiction of the Supreme Court as both original and appellate.⁷ The apex Court has the jurisdiction to hear all appealable matters including interlocutory applications in so far as

there is a question of law. This means that the Court has to decide on minor matters such as motions that could have otherwise been concluded at the lower courts. The Supreme Court also has the original jurisdiction to decide matters between the National Assembly and the President, the National Assembly and any state house assembly and the National Assembly and a state of the Federation per the Supreme Court (Additional Jurisdiction) Act.⁸

Additionally, the power to preside over matters concerning elections into the office of the President and Vice-President as well as appeals from gubernatorial election petitions rests solely on the Court. The Supreme Court also has the jurisdiction to hear appeals of pre-election matters. The time-sensitive nature of these pre-election matters requires the Justices of the Court to give them priority in order to conclude them before time runs out. Consequently, other matters are set aside during that time. As a result of this, a considerable number of matters are adjourned and the appeal process takes several years to complete.

(ii) The Appointment of Justices

The process of appointing Justices to the Supreme Court is through appointment by the President on the recommendation of the National Judicial Council, subject to confirmation by the Senate.⁹ The last appointment of Justices to the apex Court was conducted in 2020. However, between 2020 and 2022, 5 (*five*) Justices of the Supreme have retired, 2 (*two*) Justices have passed away and the Former Chief Justice of Nigeria Justice Tanko Muhammad resigned.¹⁰ Furthermore, amongst the 13 remaining justices of the apex Court, Hon. Justice M.D. Muhammad and Hon. Justice A.A. Augie are expected to retire in 2023 while Chief Justice K. Ariwoola is expected to retire in 2024.¹¹ The

former Chief Justice of Nigeria, Hon. Dr Justice Tanko Muhammad called for nominations for Justices to be appointed to the apex Court in 2022 though there is no indication of how much progress has been made in that regard. The more the number of Justices dwindles, the more burden is put on the existing number to handle the substantial number of cases still pending. This means that there will be fewer panels handling more matters and will consequently lead to more adjournments of said matters.

(iii) The Requirements for SAN applications

The guidelines for attaining the rank of SAN requires practitioners to handle 4 (*four*) appeals at the Supreme Court or 3 (*three*) appeals where the practitioner handled the case from the trial to the apex Court.

Although this requirement ensures that legal practitioners who are qualified to attain the rank of SAN have litigated in all Courts in Nigeria, it has multiplied the number of litigations being witnessed in the apex Court as legal practitioners actively revive cases which ought to have been settled in order to pile up their cases for an application.

RECOMMENDATIONS

In view of the foregoing, I make the following recommendations:

(1) Narrowing the jurisdiction of the court

In the United Kingdom and Canada, the jurisdiction of the Supreme Court concentrates on cases of the greatest public and constitutional importance.¹² In the United States as well, the Supreme Court only hears cases it deems of public importance. It only hears about 150 of the 7,000 (*seven thousand*) cases it is asked to review each year.¹³ The

Court does not review cases where the decisions rest on an independent and adequate state law ground ('IASG'). IASG exists if the outcome of the Supreme Court's decision would be the same regardless of how the federal question is decided.

This should be imitated in Nigeria. There should be a constitutional review geared towards streamlining the wide jurisdiction of the Apex Court to only issues of national and constitutional importance. For instance, appeals of interlocutory applications should not be brought to the Supreme Court, such matters should be dealt with and concluded by the lower Courts. The only appeal on an interlocutory matter that should be able to be appealed to the Supreme Court should be one which was made at the Court of Appeal as the Court of first instance. This will ensure that litigants have the right to challenge the decisions of the Court of Appeal where it sits in its original jurisdiction.

Additionally, appeals from gubernatorial election tribunals should be concluded at the Court of Appeal. This will go far in reducing the burden of the Supreme Court and hastening its administration of justice.

(2) Amending the Process of the Appointment of Justices

The common practice is to periodically appoint Justices to the Supreme Court. However, as mentioned above, the last appointment was in 2020. This is despite the fact that the mandatory retirement dates of the Justices in the court are public knowledge and the number is decreasing at a steady pace.

The ideal procedure would be to begin the process of appointment far well ahead of the

retirement date of the earliest retiring Justice. This will ensure the swift replacement of retiring Justices and keep their number at the maximum of 21 (*twenty-one*) at all times.

(3) Amending the Requirements to Attain Silk

The current SAN guidelines that require practitioners to handle 3 - 4 (*three to four*) cases at the Supreme Court should be reviewed. More importance should be placed on the quality and complexity of the appeals and submissions of the practitioners rather than the number of appeals which is the position today. The current guidelines do not place value on the quality of briefs and oral submissions but on the number of cases handled by an Applicant. This has unfortunately led to a situation where potential Applicants file unmeritorious appeals at the Supreme Court. Some potential Applicants have even begun appealing matters on behalf of garnishees, many of which are reputable banks. Despite repeated warnings by the Supreme Court on such practices, no Counsel has ever been penalised for such practices, to the best of my knowledge.

In the United Kingdom where we acquired the concept of Silk, the process of appointing a King's Counsel (the equivalent of SAN) requires a practitioner to handle, ideally, 12 (*twelve*) cases in the Courts of England and Wales which demonstrate in cases of substance, the complexity, particular difficulty or sensitivity of the matters handled by the Applicant.¹⁴ Furthermore, according to the King's Counsel Competition for England and Wales 2022 Competency Framework, 5 (*five*) competencies are required: (i) understanding of the law, (ii) written and oral advocacy, (iii) working with others, (iv) diversity, and (v) Integrity.¹⁵

A similar concept should be adopted in Nigeria to avoid awarding the rank of SAN based on the number of cases a person has handled to the competence of the Applicant. Minimum benchmarks in terms of required cases can be maintained; however, the requirement of 3 – 4 (*three to four*) cases to be handled at the Supreme Court should either be scrapped or reduced if we want to make the Supreme Court a Constitutional and Policy Court.

It is not possible to make the Supreme Court a policy Court that will only hear cases of national importance whilst requiring each Applicant to have handled a minimum of 4 (*four*) cases in that Court. In the United States, for example, a litigation practitioner considers himself lucky to have appeared before the US Supreme Court even once. Emphasis should rather be placed on the complexity of cases handled at the Court of Appeal and the competence of the Applicant. Judgments of the Supreme Court should only be considered an added advantage to Applicants.

This move will ensure that frivolous appeals filed by Practitioners at the Supreme Court are drastically reduced; thus, reducing the delay at the Supreme Court.

CONCLUSION

In conclusion, the reason for the delay in the administration of justice in the Supreme Court is the tremendous workload put on the Honourable Justices. Presently, the number of cases at the Court keeps growing while the number of Justices in the court is decreasing. The three most effective ways to alleviate this are to streamline the nature of matters being handled by the apex court, make the process of appointment of Justices more efficient and

review the SAN guidelines. This will go a long way in quickening the justice delivery system of the Supreme Court.

END NOTES

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² IT of Saint Mulumba, Nigeria v Ekhaton [2022] 15 NWLR (Pt. 1852) 35 Page 67, Para. F

³ Section 230(2)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (hereinafter referred to as “the Constitution”)

⁴ 'With 10,000 Pending Appeals, the Supreme Court is overworked' (2020) <https://www.thisdaylive.com/index.php/2021/08/17/with-10000-pending-appeals-the-supreme-court-is-overworked> Accessed October 15 2022

⁵ ' Speech By The Honorable, The Chief Justice Of Nigeria, Hon. Mr. Justice Walter S. N. Onnoghen, Gcon, At The Special Session Of The Supreme Court Of Nigeria To Mark The Commencement Of The 2017/2018 Legal Year' (2017) http://supreme.supremecourt.gov.ng/speeches_papers/CJN_New_Legal_Year_SAN_2017.pdf Accessed October 15 2022

⁶ Speech By The Honourable, The Chief Justice of Nigeria, Hon. Dr Justice Ibrahim Tanko Muhammad, CFR at the Special Session of the Supreme Court to

Mark the Commencement of the 2021/2022 Legal Year and Swearing-In of Newly Conferred Senior Advocates of Nigeria. (In Footnotes 5 and 6, do we add 'former CJN')

⁸ The Supreme Court (Additional Jurisdiction) Act 2002

⁹ ibid

¹⁰Anthonia ochie 'Attrition of judges in the Supreme Court inimical to justice dispensation' (2022) <https://businessday.ng/news/legal-business/article/attrition-of-judges-in-the-supreme-court-inimical-to-justice-dispensation/> Accessed October 16 2022

¹¹ ibid

¹² 'Role of the Supreme Court' < <https://www.supremecourt.uk/about/role-of-the-supremecourt.html>> Accessed October 16 2022

¹³ 'About the Supreme Court' <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/about> Accessed October 16 2022

¹⁴ <https://kcappointments.org/wp-content/uploads/2022/04/FINAL-Guidance-for-Applicants-2022.pdf> Accessed October 15 2022

¹⁵ <https://kcappointments.org/wp-content/uploads/2022/02/Competency-Framework-2022.pdf> Accessed October 15 2022



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