ISSN 2747-2671 (online)

PINISI
JOURNAL OF ART, HUMANITY & SOCIAL STUDIES
Vol. 2 No. 1, 2022

The Executive and Independence of the Judiciary in Nigeria

Eksekutif dan Independensi Kehakiman di Nigeria

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ABSTRAK

Independensi peradilan adalah elemen intrinsik demokrasi konstitusional dan supremasi hukum. Dengan demikian, konstitusionalisme dan pemisahan kekuasaan hanya dapat berfungsi dengan baik dalam suasana independensi peradilan yang dijamin secara konstitusional. Makalah ini menyoroti bagaimana eksekutif mengeksploitasi perannya dalam tripod pemisahan kekuasaan untuk ikut campur dalam independensi peradilan di Nigeria. Ditemukan bahwa pelanggaran hukum eksekutif, korupsi, kurangnya ketentuan untuk belanja modal yudikatif dalam Konstitusi, penyalahgunaan kekuasaan dalam pemecatan petugas yudisial dan penunjukan petugas yudisial atas loyalitas politik adalah beberapa terobosan. Oleh karena itu, direkomendasikan bahwa ada kebutuhan mendesak untuk lebih lanjut mengamandemen CFRN 1999 (sebagaimana telah diubah) untuk memberlakukan otonomi keuangan peradilan dengan menyediakan belanja modal peradilan dan bahwa dalam proses penunjukan petugas peradilan, kekuasaan Presiden atau Gubernur untuk menunjuk pejabat pengadilan harus dicabut dan diserahkan kepada Dewan Kehakiman Nasional.

Kata Kunci: Eksekutif; Pengadilan; Kemerdekaan; Janji temu; Pemindahan; Belanja modal.

ABSTRACT

Judicial independence is an intrinsic element of constitutional democracy and the rule of law. Thus, constitutionalism and separation of powers can only function properly under the atmosphere of constitutionally guaranteed judicial independence. This paper highlights how the executive exploits its role in the tripod of separation of powers to interfere in the independence of the judiciary in Nigeria. It found that executive lawlessness, corruption, lack of provision for judiciary capital expenditure in the Constitution, abuse of powers in the judicial officers' removal and appointment of judicial officers on political loyalty are some of the inroads. Thus, it is recommended that there is an urgent need to further amend the CFRN 1999 (as amended) to give effect to the financial autonomy of the judiciary by providing for capital expenditure of the judiciary and that in the appointment process of judicial officers, the powers of the President or Governor to appoint a judicial officer should be removed and vested in the National Judicial Council.

Keywords: Executive; Judiciary; Independence; Appointment; Removal; Capital Expenditure.

1. INTRODUCTION

There is no time in the political development of Nigeria that there has been great threat to the independence of the judiciary than now. Nigeria adopted constitutional democracy upon independence in 1960 and although had witnessed military interregnums, continues to lay claim to constitutional democracy (Harisah, et al., 2019). That is, constitutionalism, rule of law and separation of powers. Judicial independence is an intrinsic element of constitutional democracy and the rule of law. Therefore, constitutionalism and separation of powers can only operate and function properly under the atmosphere of a constitutionally guaranteed judicial independence.

The rule of law is the liberty of men under government to have a standing rule to live by common to everyone of that society… freedom to follow ones own will where that rule prescribes not; and not to be subject to the uncertain, inconstant, arbitrary will of another man because 'the rule of law is preferable to the rule of man' (Locke, & Laslett, 1960, p. 75). Under the rule of law, it is the law that guides based on a framework of established rules and principles, not discretion or impulses (Grant, 2017). This is one of the contents of the paradigm which John Locke posited to salvage the ills of the state of nature. Unlike Thomas Hobbes who leaned towards the Leviathan (Civitas) as the custodian of the social contract (LaMothe, 2021), it was Locke's contention that a collegiate structure of government: the Legislative, Executive and Federative would best save it from monopoly of powers, absolute power and corruption (Fisher, 2009). Thus, the Legislative arm makes the laws, Executive arm enforces the laws and the Federative arm interprets the laws, punishes offenders and ensures that each performs its functions in conformity with the laws. Locke's Federative represents the judiciary in modern day conceptualisation. Elucidating on the concept of separation of powers, Nwabueze opined that the very definition of dictatorship is the concentration of the powers of government in the hands of a single person (Nwabueze, 1982). Thus, the Constitution of the Federal Republic of Nigeria 1999(as amended) provides for the separation of powers with legislative powers vested in the National Assembly under section 4, the executive powers vested in the President which powers may be exercised directly by him, his Vice or Ministers appointed by him under section 5, while the powers of the judiciary are vested in the Courts listed in section 6. Whereas, all the arms of government enjoy equal standing, however by virtue of their subordination to each other and in the exercise of their powers of checks and balances, each interferes in the powers of the other. These *lacunae* have been manipulated by the other arms especially the Executive to taint the sacredness and independence of the Judiciary.

Among a plethora of circumstances forming the background to this study are: Firstly, on the Judicial officers' appointment, sometimes it is hijacked by the political class by virtue of the role of a Governor and President under the Constitution in the appointment process. In 2014 the gates into the Rivers State High Court were barricaded and activities in the Court truncated following a dispute between the Executive Governor of Rivers State and the National Judicial Council (NJC) over the appointment of a successor to the then retiring Chief Judge of the State. Each contending party in the imbroglio claimed to derive his powers under the Constitution (Sofiri, 2020). Secondly, on remuneration or welfare, the Judiciary draws its funds from the Federation Account on a first line charge and all judicial officers in the Courts of record are directly paid from the Consolidated Revenue Fund. There are, however, different working conditions and perquisites in different States or jurisdictions being engineered by the head of the Executive arm of government in that State or jurisdiction; For instance, High Court Judges in Rivers State have Legal Assistants attached to their offices whereas their counterparts in some other states do not have even though they may need them. Again, the Rivers State Governor, Nyesom Wike in 2018 commenced and has now completed the building of 'luxury quarters' for judicial officers in the State. Also, the Governors of Akwa Ibom State under Godswill Akpabio and Rivers State under Nyesom Wike and many other Governors have built and donated the Federal High Court complexes in those States (Udemezue, 2021). Thirdly, with regard to elevation of judicial officers to a higher bench, it is the executive that nominates and may manipulate the procedure to guise either their reward for loyalists or remove those who refused to be influenced. This issue resonated in the elevation of Hon Justice Ayo Salami (now Rtd) then President of the Court of Appeal to the Supreme Court.

For the Presidency, his nomination for elevation to the Supreme Court bench was meritorious but Hon Justice A. Salami, Court of Appeal President (as he then was), contended that his nomination for elevation to the Supreme Court bench was punitive having regard to his refusal to influence the ruling of the Governorship Election Petition Tribunals of some States in favour of the People's Democratic Party (PDP, then ruling party) and so rejected the nomination. The *impasse* led to his being recommended by the NJC for compulsory retirement. One of the recent and topical issues in the polity is the arbitrary suspension of the former CJN, Honourable Justice Walter Onnoghen, by President Muhammadu

Buhari and subsequent swearing-in of Justice Mohammed Tanko as the Acting CJN and later confirmed as the CJN. This manifest display of power in different guise is a direct affront on the sacredness and autonomy of the judiciary in Nigeria. It is against this background that this paper examines and highlights the lacunae that facilitate the influence of the other institutions of government on the independence of the judiciary, especially the Executive

1.2. CONCEPTUAL FRAMEWORK

Under this rubric we shall explore the definition/meaning of the concepts: Independence, Judiciary and the phrase 'independence of the judiciary'.

1.2.1 Independence

Independence is defined by the *Black's Law Dictionary* as 'the state or quality of being independent…that is, not subject to the control or influence of another…' (Black, *et al*., 763). It also means a state of being free of the control of some other person…or entity…' In my view, it is the mental and physical maturity of an individual or entity to arrive at prudential judgments without any external influence.

1.2.2. Judiciary

In a governmental system where the powers/functions of government are distributed among its organs, the judiciary is the arm that is saddled with interpreting the law, deciding disputes and applying the constitution (Danmaigauta & Tanko, 2020). In other words, it is the branch vested with the duty to interpret the laws and administer justice. Thus, under the Constitution of Nigeria, the powers of the judiciary are vested in the Courts, Judges, Magistrates and heads of quasi-judicial bodies (Ikpeze, 2015). In the same vein, the judicial powers of the United States government are vested in the Supreme Court and other courts as may be ordained by Congress from time to time (Bamett, 2004).

1.2. 3. Independence of the Judiciary

Judicial autonomy or independence springs from the idea of separation of powers which is the view that the functions of government should be assigned to distinct elements. Aristotle argues that there exist in a constitution three elements of which every serious law-giver must see for what is advantageous to it. For Aristotle, if these are arranged well , the Constitutions are bound to be arranged well and the dichotomy in constitutions are bound to match the dichotomy between each of these elements "…the first deliberative, which discusses everything of common importance, the second, the officials and the third, the judicial element" (Parpworth, 2018, p. 19). Locke who gave the subject a refined restatement in his seminal work observed that clear separation of the powers, giving rise to judicial independence was impracticable but the powers must be vested in separate persons. As he puts it,

> …the *Executive* and *Federative* power of every community be really distinct in themselves yet they are hardly to be separated, and placed, at the same time, in the hands of distinct persons. For both of them requiring the force of the society for their exercise, it is almost impracticable to place the Force of the commonwealth in distinct and not subordinate hands; or that the *Executive* and *Federative* power should be placed in persons that might act separately… (Locke, 1967, p. 68).

However, it is expedient to secure a measure of separateness, because

> …it may be too great a temptation to human frailty apt to grasp at power for the same person who have the power of making laws, to have also in their hand the power to execute them, whereby they may exempt themselves from obedience to the laws they make and suit the laws, both in its making and execution, to their advantage and thereby come to have a distinct interest from the community contrary to the ends of society and government (Locke, 1967, p. 72).

One of Nigeria's foremost Constitutional Lawyer, Nwabueze (1982), states that the import of the independence of the judiciary involves three things:

> It requires that judicial power, defined as power which every sovereign State must possess to decide justifiable disputes between its subjects or between it and a subject, must exist as a power, separate from, and independent of, executive and legislative powers, and must repose in the judicature as a separate organ of government, composed of persons different from, and independent of, those who compose the executive and legislature, and using a procedure different from that for execution and law-making (p. 192).

According to the learned author, the separateness and independence of the judiciary is the foundation upon which the other two factors depend. Therefore, it requires a constitutional vesting of judicial powers in the judicature either by express words or by necessary implication. And the procedure for altering those provisions must be cumbersome to guard its existence. As

a corollary to the above, the Constitution makers must make an express declaration as to the constitution's supremacy and that any other law that is inconsistent is void *pro tanto* as well as an express vesting of jurisdiction in the courts because without jurisdictions, the court cannot proceed in any cause (Roos, 2020). He further contends that judicial independence also concerns the method by which those who exercise judicial powers are to be appointed, remunerated and removed by insulating Judges from political influence.

In the same vein, Wifa et al., (2017), opines that,

> It may thus be said that judicial independence has two attributes, the external and internal. The external attributes involve the erection of sound constitutional structures nurtured by the growth of judicial tradition. The internal attributes involve those qualities of professional competence by which a judge may be said to have integrity. In the exercise of judicial function the judge must not merely be subjected to influence but it must be demonstrably clear to all that he is not so subject

On his part, Kayode Eso, a renowned jurist, views the independence of the judiciary or judicial independence from *de ferenda* (what it ought to be) and states that:

> It would imply courts which are not to be tied to the apron-strings of the Executive, courts which are free from political, ethnic or religious pressures and polarisation; courts which are adequately funded, and funded in a way that does not subject the judiciary to be a beggar institution of the Executive, courts which are manned by the best available brain attracted therein, apart from, patriotism, but by the honour and dignity of the office and also by the prevailing, but tempting and enviable conditions of service, courts which are not made incapable of(for, by or from reasons of ignorance, corruption, favouritism, prejudice, fear or favour) delivering a just verdict (Kayode, 1998, p. 53).

He noted that the independence of the judiciary is sine qua non for the discharge of its role under the Constitution. Accordingly, a judiciary that is autonomous thrives in an atmosphere of 'unadulterated democracy' and rule of law (Wilson, 1992). Consequently, a mere provision of separation of powers in the constitution of a country is not the alpha and omega of independence of the judiciary but regard must be had to the 'method of appointment of the judex, the conditions of service and security of tenure of the judex and the discipline, including the removal from office of the judex' These are coupled with the unwritten criterion of the calibre of the judex who must be above suspicion.

For Fere John (1998), independence of the judiciary has both institutional and normative aspects: From the normative aspect, judicial officers are to be independent moral agents who can be relied upon to dispense their public duties independently devoid of venal or ideological considerations; from the institutional aspect, the judiciary should be insulated from the control/influence of the other arms of government.

Another perspective to judicial autonomy or independence is the view that in the exercise of judicial duties, judges are subject to law rather than to any authority- not their personal desires, nor the pressures of their colleagues (Brinks, 2004). This was contained in the medieval statutes that there should be no messages from the Monarch to a Judge concerning any point in controversy before the Judge.

1.3 PHILOSOPHICAL FOUNDATION FOR INDEPENDENCE OF THE JUDICIARY

The philosophical foundation of judicial independence is that since the aim of the court, as epitome of the judiciary, is to do justice in any matter before it either between two individuals *inte se* and between individuals on the one part and the state on the other part, the Court must not only be but must also be seen to be independent. Any shade of dependence robs the Court of the confidence of the litigants if it is perceived with suspicion. Thus, the realist school of law holds that the law in the statute books are dead and mere skeleton until revived by the pronouncement of the court. The pronouncement of the court gives life, flesh and meaning to the law in the statute book (Wigwe, 2010; Esirah; 2011; Esirah 2019). In other words, the realist theory is interested in the actual working of the law. In *Magit v. University of Agriculture, Makurdi*, the Supreme Court per Pats- JSC stated thus,

> It is said that the function of the Court is to interpret laws. In theory, that is so. But it must equally be admitted that judges are not robots or zombies who have no mind of their own except to follow precedents. They are intrepid by their great learning and training and can distinguish in order to render justice to whom it is due. As the society is internally dynamic and with fast-changing nature of things in the ever-changing world and their

> attendant complexities, the court should empirically speaking, situate its decision on realistic premises, regard being had to the society's construct and understanding of issues that affect the development of jurisprudence (Ojumu, 2021, p. 84).

Similarly, in *Magor & St. Mellons Rural District Council v. New Ports Corporation,* Lord Denning stated thus:

> We do not sit here to pull down the language of Parliament and of Ministers to pieces and make nonsense of it. That is an easy thing to do and it is a thing to which lawyers are too often prone. We sit here to find out the intention of Parliament and Ministers and carry it out, and we do this better by filling the gaps and making sense of the enactments, than by opening it up for destructive analysis.

It is most significant to state that the criticism of this school has been that law will not be based on objectivity but rather interpretations based on the subjective nature of the judge's background. Therefore, in order to clear this doubt, the judiciary must be independent.

1.4 THE CURRENT LEGAL REGIME ON THE INDEPENDENCE OF THE JUDICIARY IN NIGERIA

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) in its frameworks to guarantee the independence of the judiciary and to strengthen democracy and rule of law has made several provisions, regard being had to its nature as the fundamental law, the *fons et origo* of all laws, the discharge of all powers and the root from which all laws, persons and institutions get their powers (Gwunireama, 2022). Section 1(1) of the CFRN 1999 (as amended) provides that the Constitution is supreme and has binding force on all persons and authorities throughout Nigeria. Thus, the Supreme Court in *A. G. Abia State v. A. G. Federation* per Niki Tobi (1979) held that:

> The Constitution is the *fons et origo*, not only of jurisprudence but also of the legal system of a nation. It is the beginning and the end of of the legal system. In Greek language, it is the Alpha and the Omega; it is the barometer with which all statutes are measured. In line with this kingly position of the constitution, all the three arms of government are slaves of the constitution, not in the sense of undergoing servitude or bondage, but in the sense of legal obeisance and loyalty to it (p. 32).

Section 1(3) further states that any law that conflicts with the provisions of the constitution, the constitution shall prevail and that law shall be void to the extent of the inconsistency.

Section 6(1) and (2) provides that the federation and state judicial powers shall be vested in courts created for the federation and those created for the state. Section 6(5)(a-i) CFRN 1999(as amended) lists the superior courts of record as follows:

(a)The Supreme Court of Nigeria
(b)The Court of Appeal
(c) The Federal High Court
(cc)The National Industrial Court
(d)The High Court of the Federal Capital Territory, Abuja
(e)High Court of a State
(f)The Sharia Court of Appeal of the Federal Capital Territory, Abuja
(g)Sharia Court of Appeal of a State
(h) The Customary Court of Appeal of the Federal Capital Territory, Abuja
(i)The Customary Court of Appeal of a State
(j) such other courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which the National Assembly may make laws; and such other courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws

It is most significant to point out that the Constitution of the Federal Republic of Nigeria 1999(as amended) in section 17(1) and (2)(e) stipulates that the autonomy, fairness and integrity of the courts of law shall be secured and maintained . A critical and jurisprudential perusal of section 17(1) and (2)(e) of the Constitution is that the Constitution boldly and unequivocally guarantees judicial autonomy in its Fundamental Objectives and Directive Principles. However, the independence of the judiciary guaranteed under the Constitution falls under Chapter II which is non- justiciable and unenforceable by virtue of section 6(6)(c) of the same Constitution. This however, in *A.G. Ondo State v. A.G. Federation* the Supreme Court held *inter alia* that as to the non-justiciability of the Fundamental Objectives and Directive Principles of State Policy, section 6(6)(c) said so; but while they remain mere declarations, they are unenforceable by legal process but it would be seen as a failure of duty of state organ if they act in clear disregard of them.

The independence of the judiciary is also constitutionally provided for in section 84 (1), (2), (4), (7) and section 121(3) of the CFRN 1999(as amended). By a community

reading of section 84(1),(2) and (4), the salary and allowances of the Chief Justice of Nigeria(CJN), Supreme Court Justices, Court of Appeal President, Court of Appeal Justices, Chief Judge and Judges of the Federal High Court, President and Judges of the National Industrial Court, Chief Judge and Judges of the High Court of the FCT, Grand Kadi and Kadis of the Sharia Court of Appeal of the FCT, President and Judges of the Customary Court of the FCT, and Chief Judges and Judges of the High Court of states is made a charge on Consolidated Revenue Fund. Section 84(7) states that, the recurrent expenditure of judicial officers of the Federation shall be a charge upon the Consolidated Revenue Fund of the Federation while section 121(2) provides that all monies from the State Consolidated Revenue Fund standing to the credit of the Judiciary should be paid to the heads of Court directly. The above, arguably, grants financial autonomy to the judiciary.

One fundamental innovation in the CFRN 1999(as amended) on judicial independence is the role of the National Judicial Council (NJC) in judicial officers' appointments, removal and discipline (Okwor, 2014). The drafters of the Constitution fantastically created an impediment such that the President or Governor cannot remove or appoint a judicial officer without recourse to the National Judicial Council which recommends who is fit and proper to be so appointed (Okwor, 2014). The National Judicial Council is an institution created under section 153(1) and its compositions and powers are provided for in paragraph 21, Part 1, Third Schedule to the CFRN 1999 (as amended). Under the said paragraph 21, the Constitution provides that the NJC shall have the power to recommend to the President or Governor the removal from office of judicial officers and also exercise disciplinary control over such judicial officers. It follows therefore that a judicial officer cannot be removed if there is no NJC recommendation to that effect. Thus, in *Elelu Habeet v. A.G. Federation*, the Governor of Kwara State through the State House of Assembly purportedly removed the Chief Judge and the apex court held that the Governor cannot remove the Chief Judge without reference to the National Judicial Council (Adangor, 2015). The apex Court also stated that by virtue of section 271 and paragraph 21(c) and (e),Part 1, Third Schedule to the CFRN 1999(as amended) , the NJC is vested exclusively with the function of recommending to the Governor of a State qualified persons for appointments as Chief Judges of states and other judicial officers. Delivering the lead judgment, Mahmud Mohammed JSC (as then designated) stated thus,

> It can be seen here again, although the Governor of a State has been vested with the power to appoint the Chief Judge of his own State, that power is not absolute as the Governor has to share the power with the National Judicial Council in recommending suitable persons and the State House of Assembly in confirming the appointment. It is in the spirit of the Constitution in ensuring checks and balances between the three arms of government that the role of the Governor in appointing and exercising disciplinary control over the Chief Judge of his State is subjected to the participation of the National Judicial Council and the House of Assembly…

The CFRN 1999 (as amended) elegantly provides for two grounds for judicial officers' removal to wit: inability to perform the functions of his office due to infirmity of the mind or body and misconduct or breach of the Code of Conduct (Ibekwe & Nweze, 2020). Suffice also to state that a judge may be summarily dismissed for a serious misconduct in his private life. In *A.G. Cross Rivers State* v. *Esin*, the Court held that a serious misconduct in the private life of a judge may warrant his summary dismissal.

On the retirement of judicial officers, the Constitution provides that the Supreme Court and Court of Appeal judicial officers shall not be removed from their offices before retirement. The retirement age for Supreme Court and Court of Appeal justices is seventy years (Uzebu-Imarhiagbe, 2020). However, they may leave office upon attaining sixty-five years. Also, those of all other Courts apart from the two above may retire and leave office at sixty-five years. On the mode of judicial officers' appointment of the courts of records, the NJC is vested exclusively with the *vires* for recommendation to the President or Governor, those persons for the appointment into judicial offices (Oko, 2005). The National Judicial Council's role in the appointment methods in the Constitution, no doubt, can arguably be said to guarantee the autonomy of the judiciary.

Most significantly, the President cannot remove the Chief Justice of Nigeria (CJN), the President of the Court of Appeal, President of the National Industrial Court and the Chief Judge of the Federal High Court, Grand Kadi of the Sharia Court of Appeal, Chief Judge of the High Court Federal Capital Territory, President of the Customary Court of Appeal of the Federal Capital Territory without an address supported by two-third majority of the Senate. Also, the Governor cannot remove the State High Court Chief Judge, Grand Kadi of the Sharia Court of Appeal of the state and Customary Court of Appeal President of the State without a speech ratified by two-third majority of the State House of Assembly

(Ebeku, 1993). The participation of the Senate and the House of Assembly of a state in the removal of the heads of Courts, no doubt, ensures checks and balances and also reduces executive rascality.

From the foregoing, the provisions of sections 17, 84, 121, 153,291, 292, *inter alia,* the tripartite roles of the three institutions of government under the CFRN 1999 and international conventions, arguably, strengthen the autonomy of the judiciary in Nigeria.

1.5 EXECUTIVE INTERFERENCE WITH THE INDEPENDENCE OF THE JUDICIARY IN NIGERIA

It is the contention of this work that the autonomy of the judiciary in Nigeria has been threatened by the interference of the other institutions of government especially the executive. It is imperative to state that this interference is enhanced through the exploitation of their roles in the tripod of separation of powers discussed hereunder:

1.5.1 Procedure of Judicial Officers Appointment and Removal

The judicial officers of the Federation and States, as earlier sated, are appointed by the executive arm. That is, President and Governor, respectively. Two methods can be gleaned from the appointment process under the CFRN 1999(as amended).

1. The first appointment method is by the President or Governor acting on the NJC recommendation and confirmation by Senate or the House of Assembly, respectively.
2. The second method ofappointment is by the President or Governor acting on the recommendation of the NJC.

The appointment procedure may be manipulated to make the appointed judicial officers stooges of the executive. Judicial appointment ironically has become a thing of loyalty and while the executive cannot appoint a person who was not recommended, they can exploit the weakness in the enabling law to thwart the appointment of a person, who though recommended, is not their preference. This was the case in Rivers State when Governor Rotimi Chubuike Amaechi refused to appoint Hon. Justice D. Okocha as Chief Judge of Rivers State. The discretion to appoint judicial officers by the executive is a *lacuna* in the Nigerian body of laws and it has a negative effect on judicial autonomy. An appendage to the appointment of judicial officers is their removal by the executive (Adangor, 2015). The problem with the removal of judicial officers by the executive is that the power has constantly been abused in Nigeria. An attempt was made to remove the Chief Judge of Kwara State by the Governor as enunciated in Elelu-Habib's case above. In 2019, Justice Walter Onnoghen, the Chief Justice of Nigeria was purportedly suspended by the President Buhari-led executive in flagrant disregard for procedure stipulated by law (and he later resigned) (Odigbo & Udalla, 2022).

1.5.2 Administration of Judicial Oath

The last stage in the appointment procedures of a judicial officer in Nigeria is that such an appointee must subscribe to the judicial oath which has often been administered by the President for the Chief Justice of the Federation and Justices of the Supreme Court, President and Justices of the Court of Appeal and heads and Judges of other Federal Courts, among others. The Governor of a state administers such oath on newly appointed Chief Judge and judicial officers of a state. The President or Governor may seize that sacred moment, either in words or demeanour or both, to instil in the psyche of the appointee that his appointment is an act of benevolence conferred by him/her (the President or Governor).

1.5.3 Influence of Low Integrity, Greed, Corruption and Flamboyance of the Executive on Judicial Officers

The low integrity, greed, corruption and flamboyance of the Executive is exerting so much influence on judicial officers who are also not only members of society but critical stakeholders of the social contract that birthed the country. Thus, corruption is one of the inroads being exploited to frustrate the independence of judicial officers in Nigeria. Corruption in the judiciary manifests through some dishonest judicial officers collecting bribes through their employed agents or by themselves, or through Court Registrars, Lawyers collecting money from clients to settle judicial officers or through the generosity of members of the executive arm (Bazuaye & Oriakhogba, (2016). This background therefore, it is very easy for the executive to bait and influence some of these judicial officers to dance to their tunes. How many judicial officers serve meritoriously onto retirement age? Few! The rest either file for voluntary retirement to cover up their tracks or are recommended by the NJC for compulsory retirement as a lighter punishment or are dismissed. It is instructive to note that these issues formed the backgroundthat provoked the 'Sting Operation' by the State Security Service (SSS) which culminated in the unproven charges in *FRN v Ofili-Ajumogobia*& other or, *FRN v Ngwuta*, *FRN* v *Okoro* and *Nganjinwa v FRN* (Mrabure & Awhefeada, 2020)..

1.5.4. Budgetary Provisions Process under the CFRN 1999 (as amended)

The involvement of the Federal and State governments in the budgetary process of the Courts has negatively affected the independence of the judiciary in Nigeria. Although sections 84(2)(4)(7) and 121(3) of the CFRN 1999(as amended) grant financial autonomy to the

judiciary by stipulating that the recurrent expenditure of judicial officers of the Federation and States shall be a charge upon the Federation or State Consolidated Revenue Fund, there is no provision for the capital expenditure of the judiciary (Mohammed, 2016). It is therefore a wanton opportunity for the Executive arm to exploit to compel the judiciary into subservience as may be the case with the 'luxury quarters' in Rivers State earlier stated.

1.5.5. Security of Tenure and Remuneration of Judicial Officers

The CFRN 1999(as amended) has done so well in the security of tenure and remuneration of judicial officers most especially as the remuneration of judicial officers is made a charge on the Federation Consolidated Revenue Fund (Ononye, *et al*., 2020). However, the security of tenure of judicial officers is threatened by the other conditions of service which are determined by the political class, especially the Executive. Thus, a judicial officer who, by law, gives verdict against the Executive has his security of office threatened and this is seen in many cases in Nigeria. Also, the salaries, allowances and other social facilities of judicial officers are poor compared to those of the political class (especially the Executive) who earn higher. These, no doubt, have given rise to corruption in the judiciary as most judicial officers now dance to the tunes of the political class who dangles the carrot and stick.

1.5.6. Executive Lawlessness

Executive lawlessness is a cankerworm that has entered the Nigerian democratic fabric and it is posing a big challenge to judicial autonomy. Executive lawlessness is an abuse of the executive powers. In Nigeria, executive lawlessness ranges from disobedience to court orders, non-compliance with due process of law and resort to self-help. It is trite that the executive is a body responsible for the implementation or execution of policies, laws and orders. The irony is that such body with the constitutional duty of implementation is the body breaching the constitutional provisions and also not giving respect to the pronouncement of courts. The court per Eso JSC in *Military Governor of Lagos State v. Ojukwu* stated thus on executive lawlessness (Adisa, 2016, p. 37):

> It is very a serious matter for anyone to flout a positive order of a Court and proceed to taunt the Court further by seeking a remedy in higher Court while still in contempt of the lower Court. It is more serious when the act of flouting the order of the Court …is by the executive. Executive lawlessness is tantamount to a deliberate violation of the Constitution… the essence of the rule of law it should never operate under the rule of force or fear.

In recent times, Dasuki and Elzakzaki were granted bail by the court but the executive refused to obey. What this means is that the executive only obeys the orders of court that serves its joint or several interest unto the detriment of judicial independence (Taiwo, 2021).

1.5.7 Executive Approval of Policies of the Judiciary

Some policies formulated by the judiciary for effectual delivery of justice are subject to the approval of the President or Governor who is the head of the Executive, before implementation. For instance, the Multi-Door Court by the Rivers State Judiciary was subject to approval of the Governor. This power of approval enables the Executive arm to weigh on the effect(s) of such policies to the Executive and to consider whether or not to approve such policy (ies). This further aids the Executive to interfere on the independence of the judiciary in Nigeria.

1. 6 CONCLUSION

The Nigerian judiciary is not independent because the executive easily manipulates its roles in the tripod of separation of powers to interfere in the judiciary's independence. The executive is emasculating the judiciary through the procedure of appointment, elevation and termination of appointment, disregard for orders of court, providing infrastructure and other welfare benefits, corrupt practices, intimidation and blackmail. In consequence, international conventions and best practices on judicial independence are being eroded (Linzer & Staton, 2015).

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