



# THE FAILURES OF THE JUDICIAL SYSTEM IN NIGERIA

## ABSTRACT

The Judiciary is the arm of government saddled with the responsibility of interpreting and applying the law to deliver justice in society. In essence, the thrust of the Judiciary is to do justice. Therefore, by its very nature, the Judiciary is the last line of defence and hope in a democratic society. It is the line separating constitutionalism from totalitarianism. Therefore, its importance cannot be overemphasized.

Furthermore, the Judiciary is vested with the power to checkmate the other arms of government by compelling the Legislature to act within its constitutional limits in its legislative duties while also ensuring that the Executive remains subject to the Rule of Law. However, the question is, is the Nigerian judiciary succeeding in this role?

This article will examine the failures of the Nigerian Judicial System with the view of identifying the problems within and recommending the way out.

## INTRODUCTION

The judiciary occupies an important position in every society. It is the last bastion of hope for the citizenry. It is, therefore, the desire of the general public that at all times, justice is not only done but must be seen to have been done so that whenever the judiciary fails to play its stabilizing role in a society, the institution of State is threatened.

Flowing from the preceding, this article x-rays the dwindling fortune of the Nigerian judicial system over time. The system is bedeviled with ills from corruption to abuse of power, delay in conclusion of trial owing largely to unnecessary adjournments and unmeritorious appeals. These failures have created a society where only the strong and mighty can survive. This has engendered a lack of trust in the system in the citizenry who now will instead resort to self-help and jungle justice rather than approaching the courts to resolve their disputes.

In this article, I shall examine the failures of the Nigerian judiciary under the following sub-headings: unnecessary delays in administration of justice and poor case flow management.



## 1. UNNECESSARY DELAYS IN THE ADMINISTRATION OF JUSTICE

One of the significant problems with the judicial system in Nigeria bothers on long delays of cases in court, and this has become problematic in the administration of justice in Nigeria. This delay is caused by a myriad of problems ranging from institutional to personnel problems as well as poor facilities, inadequate financial provisions, procedural and constitutional issues which leads to overfilled dockets of the courts.

A recent report has it that the Supreme Court has over 5,000 cases pending in the apex court, many of them which relate to criminal appeals (some of which were brought to the Court cases as far as the year 2005)<sup>1</sup>.

Since the judicial system is bogged down by delay and inefficiency, it has over time lost credibility resulting in fewer and fewer people willing to approach the courts for dispute resolution, as they seek alternatives which often does not augur well for the society as no one ordinarily looks up to a system where the court holds up their cases endlessly for upward 10 to 12 years sometimes at the court of first instance.

Many a times in Nigeria, by the time the court determines a suit, the litigants have lost interest in the outcome of the case as they are given judgment without justice. Some examples of cases which took excessively long time in court can be seen in *Union Bank Nigeria Plc v Ayodara Sons (Nig) limited* (2007) 13 NWLR (pt.1052) 567 which was instituted in 1989 but was not finally disposed by the Supreme Court until 2007- a period of 18 years. *Adisa v Oyinwola* Reported as (2000) 10 NWLR (Pt 674) 116 is another one. Here, the appeal was not determined by the Supreme Court until 2000. In this case, the appeal lasted for 15 years from the Court of Appeal to the Supreme Court!<sup>2</sup> The delay inherent in the Nigerian judicial system can easily be attributed to failings which the judiciary can easily tackle. Some of which are as follows:

<sup>1</sup> Nigerian Justice System: The Ideal, Hope And Reality. Mohammed Isah Shehu, Asso. Prof. Dr. Muhammad Fuad Bin Othman, Dr Nazariah Binti Osman, January 2017, <https://www.Researchgate.net/publication/323547033>.

<sup>2</sup>Punuka: Where Are We in Curbing Delays in Administration of Justice In Nigeria; Joan Monye, Patience Obiagbaoso, Richard Obidegwu, 13th October 2020, [Punuka.Com/Where-Are-We-In-Curbing-Delays-In-Administration-Of-Justice-In-Nigeria](https://Punuka.Com/Where-Are-We-In-Curbing-Delays-In-Administration-Of-Justice-In-Nigeria).



- Unwarranted Objections by Lawyers;

The easiest ways to ensure that cases take as long as possible to conclude is for Counsel to adopt different delay tactics. The most common delay tactic is the raising of preliminary objections challenging the trial court's jurisdiction on mere irregularity, or on the validity of the charge itself based on some perceived defects (sometimes imaginary and illusory.<sup>3</sup> In the case of preliminary objections, the trial court is obligated to deliver its ruling on the objection one way or the other.

- Unmeritorious Appeals;

Another weapon which although meant to ensure justice, but often abused by mischievous Litigants and their counsels to frustrate and delay proceedings is the right to appeal whether substantive or interlocutory. Frivolous appeals are filed and an application for stay of proceedings or execution is filed.

- Unjustified Adjournments of Cases

The law makes provision for the day- to day hearing of cases<sup>4</sup>. However, the abuse of this day- to day hearing procedure is seen in the constant and unwarranted application for adjournment of cases arising from lack of diligent prosecution, poor preparations or non-appearance by counsel. This also creates delay in dispensation of justice and erodes public confidence in the judiciary.

More so, some of the judicial officers clearly show indifference and lack of commitment in the performance of their duties. Some of them sit late and rise early. Worst still, some judicial officers, particularly in the Magistrate courts, only sit a few days a week.

In some other instances, lack of industry and deep knowledge of the law on the part of the judge causes delay in that the court adjourns a suit for a long period of time only to deliver ruling on objections raised on very elementary part of law which the judge is expected to be very conversant with and therefore should deliver a bench ruling there and then.

Finally, it is pertinent to state that the effectiveness of the courts lies not only in their ability to be fair, firm and ultimately neutral, but also for justice to be dispensed timeously. Therefore, a painfully slow judicial system breeds discontent in the society.

<sup>3</sup> Ibid.

<sup>4</sup> Premium times C/JN Onnoghen warns lawyers against delay; 8 October 2018. Premiumtimesng.com/n



## 2. THE PROBLEM OF CASE FLOW MANAGEMENT<sup>5</sup>

The overall objective of the court is timely dispensation of justice, therefore the saying, justice delayed is justice denied. However, to assist the court in this regard, there must be an effective case flow management system which suggests a court system that is open, efficient, easy to understand and accessible.

An effective case flow management processes aids the court in dispensing justice indeed and by this, each judge is expected to manage the cases brought before him in a manner that is devoid of delay in justice delivery due to congestion in his court.

The lack of proper case management accounts as a vital reason for the judiciary's failure in dispensation of justice and loss of confidence by the public in the judiciary. However, with a proper case management system, there will be a speedy dispensation of justice, boosting public confidence in the judicial system.

### WAYS OF CURBING THE FAILURES IN THE JUDICIAL SYSTEM

#### 1. Case management system<sup>6</sup>

A case management system (CMS) is one of the means of reducing delays in courts. The court can make use of manual, paper-based system or adopt the use of software to create an electronic case register. Whether manual or electronic-based system, a CMS is a means of recording information on an individual case (e.g. case number; the name of parties: offence etc.) and tracking the case's Progress through the Court system. The information gathered through the system can then be analyzed for decision-making and policy formulation to improve efficiency and effectiveness in the court's operations.

Therefore, development and implementation of the CMS will enable the courts to:

- Generate information to more effectively track the progress of the cases.
- Identify inefficient processes and bottlenecks in the system and take informed actions to improve court efficiency.
- Provide management information to increase the accountability of the courts on their overall performance (case numbers, disposal rates, etc)<sup>7</sup>

<sup>5</sup> Journal of Law, Policy and Globalization;www.iiste.org ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.26, 2014.

<sup>6,7</sup> Punuka: Where Are We in Curbing Delays in Administration of Justice In Nigeria; Joan Monye, Patience Obiagbaoso, Richard Obidegwu, 13th October 2020, Punuka.Com/Where Are We In Curbing Delays In Administration Of Justice In Nigeria.



## 2. Amendment of Existing Laws to Provide Reasonable, Practicable and Non Extendable Timelines for Doing Virtually Everything in Court<sup>8</sup>.

The existing laws should be amended to provide reasonable, practicable, but non-extendable timelines for doing virtually everything that is done in court, from filing of processes, service of Processes, filing of all responses, filing and hearing of amendments, the conduct of the trial, delivery of judgment, filing of appeal, hearing and determination of appeals up to the Supreme Court.

The words under emphasis are reasonable, practicable, but non extendable timelines. I am of the view that the concept of extension of time should be abolished or made grantable under very stringent conditions that the steps sought to be taken upon extension of time must be taken with an unextendable period of not more than 14 days.

## 3. Provision of the Necessary Facilities.<sup>9</sup>

Information Communication Technology (ICT) should be provided to aid speedy trials in every court. There should be no longhand recording of any proceedings in court. There should be alternative source of power supply, since the power supply is epileptic. Sometimes the discomfort created by the weather, when it gets extremely hot is a very discouraging factor. Court rooms should have cooling system to create a conducive and healthy environment for judges, lawyers and litigants.

## 4. Appointment of More Judges and Necessary Support Staff<sup>10</sup>.

There cannot be the introduction of non-extendable timelines without appointment of more judges and employment of the necessary support staff needed by these judges to aid speedy dispensation of justice.

<sup>8</sup> The Guardian Conscience Nurtured by Truth, Sylvester Udems Udemezue (to stop delay in court justice delivery) 10 January 2022, guardian, ng/opinion/ to stop delay in court justice delivery.

<sup>9</sup> ibib

<sup>10</sup> The Guardian Conscience Nurtured by Truth; Sylvester Udems Udemezue (to stop delay in court justice delivery) 10 January 2022, guardian, ng/opinion/ to stop delay in court justice delivery.



## A BRIEF COMPARATIVE ANALYSIS OF THE JUDICIAL SYSTEM OF OTHER JURISDICTIONS

### The United States of America Judicial System

According to Justice Charles Evans Hughes<sup>11</sup> “you cannot maintain democratic institutions by mere forms of words or by occasional practice vows. You maintain them by making the institutions of our Republic work as they are intended to work”. The United States judiciary like any other judicial system is plagued with myriad of problems. One of the chronic problems of the United States of America federal justice system is the length of the trial. Honourable Herbert Brownell, JR.

The United States Attorney General of 1957, while addressing the issue of delay in the US judicial system, stated that; “It hardly needs to be emphasized before the national conference of judicial council, that because of the congestion and unwarranted delays, many of our state and federal courts are not presently working as they are intended to work. As a result, in all too many cases our citizens are deprived of prompt and effective justice”<sup>12</sup>. The former president of the American Bar Association in his farewell address stated that people “are terrified of going to court” because of the length and expense involved”.<sup>13</sup>

However, to curb the delay, the judicial council held a conference with the particular interest of creating a proper functioning judicial system. The judicial administration concentrated on the methods of reducing the caseloads and speeding up trials proffered and implemented certain policies. The U.S. judiciary has over the years advanced and reduced delays in administration of justice by doing the following:

#### 1 Enactment of Laws to Enhance Speedy Trial<sup>14</sup>;

The Congress enacted the Speedy Trial Act 1974, called the Sixth Amendment right to a speedy trial. The Act sets time standards for two stages in the federal process: 30 days are allowed from arrest to indictment and 70 days from indictment to trial. All the 50 states have the speedy trial laws, which are designed to spare defendants from enduring unnecessary delays especially if they are incarcerated prior to their trials.

<sup>11</sup> Ending Delay in Litigation: Honourable Herbert Brownel, Jr, Attorney General of the United States; National Conference of Judicial Council, May 23, 1957.

<sup>12</sup> Ibib

<sup>13</sup> Ibib

<sup>14</sup> CliffsNotes; Heavy caseloads and Delay; criminal justice. [www.cliffsnotes.com](http://www.cliffsnotes.com)



## 2 Judicial misconduct and its remedies.<sup>15</sup>

There are punitive measures set in place for judicial misconduct. Judicial misconduct includes activities such as bribery, that reduce public confidence in the integrity and impartiality of the judiciary. Most states have a judicial conduct commission that investigates charges of misconduct against state judges. A state supreme court usually decides whether or not to discipline a judge.

About 10 judges are removed each year. Federal judges are impeached and removed if found guilty of treason, bribery or other high crimes and misdemeanors in trial convened in the US Senate. Seven judges have been removed through impeachment in the history of the federal judiciary.

## 3. Judicial independence<sup>16</sup>

The nation's founders made the courts an independent, co-equal branch of government for two reasons. First, making the judiciary a third branch of government would allow it to check overconcentration of power in the executive and legislative branches.

To ensure that judges were truly independent, the framers of the U.S. constitution incorporated the principle of Judicial Independence into the U.S. constitution by granting federal judges life tenure.

Judicial Independence means judges need not fear punishment for using their best judgment to render decisions. An independent judge doesn't have to be afraid of losing his or her job when ruling against overzealous law enforcement or discriminatory policies. Judges who are fearful of being punished for unpopular decisions find it extremely difficult to be neutral arbiters of matters that come before them.

## 4. The Pretrial Process<sup>17</sup>

To reduce congestion, the use of either grand jury review or preliminary hearing method is adopted. In the later, the hearing takes place in public, with the defendant's attorneys for both sides present, the defendant's counsel challenges the prosecution's evidence and introduces evidence on behalf of the accused. This is considered an adversary proceeding. At this stage, a lower court judge reviews the prosecution evidence to see if there is enough evidence to support the criminal charges. The standard of testing evidence is probable cause. If the judge finds that the facts alleged establish probable cause, the judge sets a date for the defendant's first appearance in court and sets the date for trial, if not the case is dead on arrival.

<sup>15</sup> CliffsNotes; Heavy caseloads and Delay; criminal justice. [www.cliffsnotes.com](http://www.cliffsnotes.com)

<sup>16</sup> CliffsNotes; Heavy caseloads and Delay; criminal justice. [www.cliffsnotes.com](http://www.cliffsnotes.com)

<sup>17</sup> Ibib



In the former method, the grand jury review, either the judge or panel of citizens decides if there is enough evidence to have a trial. The Federal Government and half of the state provide for a panel of citizens, known as a grand jury, to decide if there is probable cause for believing that the accused committed the crime he or she is charged with before the accused can stand trial.

More so, ninety percent of criminal cases are disposed of by guilty pleas rather than trials. Most of those guilty pleas result from agreements between prosecutors and defence attorneys. Plea bargaining is a process in which prosecutors make concession to concede, for example, reducing the charges or recommending a lighter sentence) in exchange for the defendants pleading guilty. Even cases that go to trial are sometimes decided before the trial begins.

#### 5. Case Management System policies.<sup>18</sup>

There are policies set in place for effective case management in the U.S. judicial system. Under criminal justice system, the prosecutors formulate various policies that dictate which types of crime to pursue, how much evidence is necessary to file criminal charges and when to plea bargain. There are basically three models of the prosecution policy namely; legal sufficiency model, system efficiency model, and trial sufficiency model. Under the legal sufficiency model, the presence of the minimum legal elements of crime triggers the prosecution of a case. Under this model, a prosecutor's office accepts many cases for prosecution but settles most through plea bargains.

The system efficiency model focus on speeding up the processing of the cases, reducing court backlogs and conserving prosecutorial and court resources.

To accomplish these goals, they screen out the weak cases at the intake and downgrade felonies to misdemeanors in order to dispose of cases through plea- bargaining. Finally, in the trial sufficiency model, prosecutors file charges only in cases in which there is enough evidence to ensure conviction and make only minimal use of plea bargaining. Each model helps to effectively manage the cases and avoid a backlog of cases.

<sup>18</sup> CliffsNotes; Heavy caseloads and Delay; criminal justice. [www.cliffsnotes.com](http://www.cliffsnotes.com)

<sup>18</sup> ibid



## 6. Punishment of Prosecutors and Lawyers for Misconduct<sup>19</sup>

The prosecutor's twofold aim is "the guilty shall not escape or the innocent suffer". It is the prosecutor's duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one. The prosecutors are punished by finding the prosecutor in contempt of court, referring the prosecutor to a Bar Association Grievance Committee, and removing the prosecutor from office.

Ethically, a lawyer can't call a witness whom he or she knows is going to lie. To do so is called suborning perjury. This is considered breach to the right of fair hearing and so not excusable. Punishment ranges from reversing of conviction obtained, ordering of a retrial and even removing of the lawyer for using perjured testimony.

Conclusively, according to a 2007 Princeton study<sup>20</sup>, the average duration of a civil case in the U.S (from the filing to the disposition by the judge, be it at a default, a settlement or a decision) has remained more or less constant from 1940 till the early 2000s at about 12 months. The introduction of section 479 (c) (1) - (3) of the Civil Justice Act, 1990 mandated the introduction of case management systems, in response to the need to cut down delays in the civil litigation process. The underlying principles included, differential treatment of cases in accordance with their complexity, duration and probable length of time they would last; the early involvement of judicial officer in planning the progress of the case and regular communication between the judicial officer and counsel involved during the progress of the case. In criminal matters, case management strategies include, plea- bargaining, and victimoffender mediation, community service, parole, suspended sentencing and alternative dispute resolutions, all geared towards cutting down delays.

Finally, the U.S judiciary system upon recognizing the problems bogging it, has over the years implemented policies to help the judiciary actualize its role in the society, in order to restore the hope and confidence of the public in the system. The problems have not been eradicated in totality, but have been greatly curtailed and reduced significantly.

The judicial system in Nigeria, when compared to this jurisdiction is far behind in terms of the length of time that the court cases take to be completed and with regards to other problems facing the Nigerian judicial system and requires immediate concentrated attention.

<sup>19</sup> CliffsNotes; Heavy caseloads and Delay; criminal justice. [www.cliffsnotes.com](http://www.cliffsnotes.com)

<sup>20</sup> Punuka: Where Are We in Curbing Delays in Administration of Justice In Nigeria; Joan Monye, Patience Obiagbaoso, Richard Obidegwu, 13th October 2020, [Punuka.Com/Where-Are-We-In-Curbing-Delays-In-Administration-Of-Justice-In-Nigeria](http://Punuka.Com/Where-Are-We-In-Curbing-Delays-In-Administration-Of-Justice-In-Nigeria)



## The United Kingdom Judicial System

The United Kingdom (the UK) has three separate legal systems: one each for England and Wales, Scotland and Northern Ireland. This reflects its historical origins. The answers below deal primarily with the judiciary system of England and Wales but makes reference to other parts of the UK where relevant.

The problems that plague the judicial system of England and Wales are tied more to accessibility of laws, rather than implementation of the laws. Accessibility of laws has at least three components: availability, navigability, and clarity. First, availability of the law means that the law needs to be promulgated so that those affected by the law can actually view it. Secondly, navigability is defined as ensuring users are able to find the relevant law without unnecessary difficulty. When the law on a particular subject is scattered through different legislation, this can render it unnecessarily difficult for a user to navigate. Thirdly, clarity requires that the law is not expressed in an unnecessarily complicated or obscure way.<sup>21</sup>

However, the United Kingdom is more efficient in fast dispensation of justice. According to the U.K Ministry of Justice Criminal Court Statistics, for all criminal cases in 2018, it took 157 days between the offences being reported to the completion of the case. Compared to the Nigerian judicial system, the average time a criminal trial proceeding takes prior to the enactment of the Administration of the criminal justice Act, (ACJA) is four to six years. Whereas between 2018-2019, the average time taken to complete magistrate cases in England has risen 6% from 151 to 159 days. Comparing this to Nigeria, in 2011 it took 593 days on average to complete a case in the magistrate courts in Kaduna state.

Furthermore, the U.K county courts in 2017, had 58,500 trials/ hearings for all claims. For small claims, there was an average of 31 weeks between the issuing of the claim and a trial/hearing. From January to March 2020 the average time taken for small claims and multi/ fast track claims to go to trial was 39.7 and 59.6 weeks.

<sup>21</sup> Punuka: Where Are We in Curbing Delays in Administration of Justice In Nigeria; Joan Monye, Patience Obiagbaoso, Richard Obidegwu, 13th October 2020, Punuka.Com/Where Are We In Curbing Delays In Administration Of Justice In Nigeria



It is pertinent to state that the efficiency of the United Kingdom judiciary system is linked to the development and implementation of Case Management System (CMS). In the United Kingdom, the Civil Procedure Act 1997 and the Civil Procedure Rules 1998, called for case management strategies such as the setting up of a time table for the monitoring of the progress of cases in respect to large claims and a paradigm shift of the responsibility for the management of civil litigation from the litigants and their counsel to the courts. A new fast track was also developed for small claims at the lower rung of the judicial ladder while all other cases were placed in multi-track system. Furthermore, cases were put through pre- action protocols, thus cutting down drastically, delays in the judicial process.<sup>22</sup>

## CONCLUSION

The question that keeps begging for answer is whether there could be solution to the above problems plaguing the Nigerian judiciary. Simply put, are the failures sectoring a necessary evil or an avoidable evil? The answer is no, if the proper attention and resources are given to these problems, all of them can be eradicated over time.

The Nigeria judicial system can thrive, it can do better, and the hope and confidence of the public can be restored in the judiciary, but the needful must be done. This will also create a stable political and economic society at large.

<sup>22</sup> Punuka: Where Are We in Curbing Delays in Administration of Justice In Nigeria; Joan Monye, Patience Obiagbaoso, Richard Obidegwu, 13th October 2020, Punuka.Com/Where Are We In Curbing Delays In Administration Of Justice In Nigeria



## REFERENCES

1. CliffsNotes; Heavy caseloads and Delay; criminal justice. [www.cliffsnotes.com](http://www.cliffsnotes.com)
2. Ending Delay in Litigation: Honourable Herbert Brownel, Jr, Attorney General of the United States; National Conference of Judicial Council, May 23, 1957.
3. Journal of Law, Policy and Globalization; [www.iiste.org](http://www.iiste.org) ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.26, 2014.
4. Lack of diversity and recruitment barriers put judiciary at risk; Baroness Taylor of Bolton. [www.parliament.UK](http://www.parliament.UK)
5. Nigerian Justice System: The Ideal, Hope And Reality. Mohammed Isah Shehu, Asso. Prof. Dr. Muhammad Fuad Bin Othman, Dr Nazariah Binti Osman, January 2017, <https://www.researchgate.net/publication/323547033>.
6. Punuka: Where Are We in Curbing Delays in Administration of Justice In Nigeria; Joan Monye, Patience Obiagbaoso, Richard Obidegwu, 13th October 2020, [Punuka.Com/Where-Are-We-In-Curbing-Delays-In-Administration-Of-Justice-In-Nigeria](http://Punuka.Com/Where-Are-We-In-Curbing-Delays-In-Administration-Of-Justice-In-Nigeria).
7. Premium times CJN Onnoghen warns lawyers against delay; 8 October 2018. [remiumtimesng.com/n](http://remiumtimesng.com/n)
8. Problems with the UK justice system & Solutions; [bscholarly.com](http://bscholarly.com).
9. The Guardian Conscience Nurtured by Truth; Sylvester Udemas Udemezue (to stop delay in court justice delivery) 10 January 2022, [guardian,ng/opinion/](http://guardian,ng/opinion/) to stop delay in court justice delivery.

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